

IN THE HIGH COURT OF SWAZILAND

In the matter of:

CASE. NO. 154/84

THE QUEEN

vs

RAYMOND JOHNSON

CORAM: D.D. WILL, CHIEF JUSTICE

(Delivered on 8th June 1984)

Will, C.J.:

The accused was convicted of theft on two counts. One was the theft of a motor car worth E5,000 and count two was the theft of a land rover worth E13,000. Because he has a list of previous convictions and because of the nature of the theft he was committed by the Magistrate to the High Court for sentence. The accused is still serving a sentence of 3 years two months of which he still has about two years still to serve.

According to the charges the offences were committed in December 1982 but all the accused's previous convictions were in July, 1983. They cannot therefore be taken into account and I will deal with the accused as a first offender. The crimes which the accused committed are serious and I sentence him to serve 18 months imprisonment on each count. The sentences are to run consecutively with the present sentences.

Although this case was referred to the High Court for sentence only, I think it is incumbent upon me to refer to certain unsatisfactory features disclosed by the record of the case.

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The record of adjournments of the case is as follows :-

14/2/83 Accused Nos. 1 and 3 remanded in custody to 23/2/83

23/2/83 Accused Nos. 1 and 3 remanded in custody to 10/3/83

10/3/83 Accused Nos. 2 and 3 remanded in custody to 24/3/83

24/3/83 Accused Nos. 2 and 3 remanded in custody to 6/4/83

6/4/83 Accused Nos. 2 and 3 present Accused No. 1 not present.

It appears that at some stage accused No. 1 had escaped from custody but again appeared together with Accused Nos 2 and 3 at some date which is not mentioned and the case was again adjourned to the 20/4/83.

20/4/83 Accused Nos. 1 and 2 present case remanded to 5/5/83

5/5/83 Accused Nos. 2 and 3 present remanded to 19/5/83

19/5/83 Accused Nos. 2 and 3 remanded to 2/6/83

2/6/83 remanded to 16/6/83

16/6/83 remanded to 29/6/83

29/6/83 Accused 2 remanded to 11/7/83 and Accused

No. 3 remanded to 17/7/83

27/7/83 Accused No. 3 remanded to 9/6/83

9/6/83 remanded remanded to 23/8/83

31/8/83 Accused not produced adjourned to 26/9/83

3/10/83 remanded to 10/10/83 10/10/83 Accused Nos. 2 and 3 present adjourned to 27/10/83

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27/10/83 Accused Nos. 1, 2 and 3 present and the case proceeded. The evidence of only one witness was taken and the case was then adjourned to 10/11/83

10/11/83 case was adjourned to 28/11/83

28/11/83 adjourned to 6/2/84

6/2/84 adjourned to 20/2/84

20/2/84 adjourned to 16/3/84

16/3/84 adjourned to 10/4/84

10/4/84 Accused No. 2 warned for 27/4/84

27/4/84 the case again proceeded but was adjourned to 30/4/84

30/4/84 adjourned to 3/5/84

3/5/84 the case proceeded to conclusion.

On some occasions all three Accused appeared for postponement of their cases. On other occasions Accused Nos. 1 and 3 only appeared and other times only Accused Nos. 2 and 3 appeared.

The main criticism on the handling of this case, however, is that it took nearly 15 months before it was concluded. There were only four witnesses. Accused No. 3 was acquitted at the close of the Crown Case presumably because there was no evidence against him. Accused No. 2 was acquitted at the conclusion of the whole case.

It has often been said that "justice deferred is justice denied." Accused Nos. 2 and 3 cannot be expected to agree that justice triumphed in the circumstances of this case.

A Magistrate's duty is to ensure that a case pending "before him should be brought to conclusion without unnecessary delay. It is not sufficient merely to grant

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postponement after postponement at the mere request by the Crown. He should enquire into the reasons for the repeated applications for postponement. The Accused must be given the right to object to repeated postponements. If it appears to the Magistrate that there are unnecessary delays in the prosecution of the case he should either dismiss the case or grant bail which is within the means of the Accused, or should release him on his own recognisance, or should grant a final adjournment but to place the Crown on terms to proceed with the case at the adjourned hearing. I have mentioned that there is a duty on the Magistrate to ensure that a case is brought to finality without unnecessary delays. The prosecuting authorities also have such a duty.

The Registrar is directed to cause a copy of these remarks to be circulated amongst judicial officers, prosecuting authorities and the police.

(D. WILL)

CHIEF JUSTICE