

IN THE HIGH COURT OF SWAZILAND

CRIM. APP. NO. 51/97

In the matter between

JOSEPH DE KORK

VS THE KING

CORAM: SAPIRE A C J & DUNN J.

FOR THE CROWN: MR. S. LANGWENYA

FOR THE ACCUSED: IN PERSON

RULING

2ND APRIL, 1998

This appeal was set down for hearing to-day. It cannot, however, be proceeded with as there are several matters regarding the record and the actual trial which must be attended to.

In so far as the record is concerned, it appears that certificates that are being issued by clerks in the Magistrate's Court as to the correctness of appeal records are simply being issued as a matter of formality. It appears that nobody is actually taking time to read and compare the original records with the typed copies. The typed records before us do not have copies of the charge sheet and complete copies of the medical reports.

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In the course of the trial an exculpatory statement which was made by the accused to the police at the time of his arrest, was handed in as part of the evidence. The statement was recorded in siSwati. The record before us does not have an English translation of the statement.

Turning to the actual trial, two matters need to be dealt with by the magistrate. Firstly, the three complainants were children of tender years. The record reflects that the complainants were questioned as to their ability to appreciate the nature of an oath, after they had been sworn in. The magistrate's opinion or conclusion after questioning the complainants is not recorded. The magistrate needs to deal with this aspect, to indicate whether what the complainants stated was treated as sworn evidence or as statements following and admonition to tell the truth.

Secondly, in so far as the sentence is concerned, it appears that notice was given in the charge sheet that the crown would be proceeding on the basis that the rapes were aggravated, in terms of Section 185 (bis) of the Criminal Procedure and Evidence Act. In those circumstances and upon proof by the Crown that the rapes were aggravated the magistrate was obliged to impose a sentence of not less than 9 years. The magistrate in fact found that there was aggravation but imposed an effective sentence of 7 years imprisonment. The magistrate should file additional reasons for the sentence he imposed.

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In the circumstances, the appeal is removed from the roll. The matters raised in this ruling are to be

communicated to the magistrate and the clerk of court for the necessary-action. As soon as the matters have been attended to, the Registrar is to allocate a date for the Hearing of the appeal.

B. DUNN      I agree

S.W. SAPIRE

JUDGE

ACTING CHIEF JUSTICE