

IN THE HIGH COURT OF SWAZILAND

REX

Vs

DUNGUZELA MANZINI XABA

REVIEW CASE NO. 43/99

CORAM

S.W. SAPIRE

REVIEW

(09/07/99)

The accused is charged with the offence of contravening Section 3(11) of the Girls' and Women's Protection Act No. 39 of 1920. It is alleged that upon or about the 25th day of September, 1998 and at or near Sidwala area in the Shiselweni District the said accused did unlawfully and intentionally have sexual intercourse with a minor girl of 15 years.

The Magistrate found the accused guilty and sentenced him to 6 years imprisonment.

I am not happy that the conviction is correct on the evidence and it seems to me that there could have been a reasonable doubt to the Magistrate as to whether the accused realised that the complainant was under the statutory age for consent.

As far as the sentence is concerned it has to be born in mind

- a) that the complainant was going on 16 at the time of the commission of the offence and there was an admitted relationship between the accused and the "complainant"
- b) that the accused should spend 6 years in prison may not be in accordance with the requirements of justice.

The Court requires this matter to be set down as an appeal, at an early date. Ensure that the accused is advised timeously and furnished with a copy of the record, and brought to court on the date of hearing. The Director of Public Prosecutions is requested to have the matter argued on his behalf by counsel.

S W Sapire CJ