

S v RAMONTJA 2020 (1) SACR 556 (NWM)

KEY CONCEPTS	
Intermediary	Evidence of children
Appointment of intermediary	Rape of 9-year-olds

FACTS: The complainants were two 9-year-old girls who met the appellant while walking together. He asked them to go with him to his place to get bread and cold drink and then dragged them to his place. On arrival he gave them bread and cold drink. When they refused, he instructed both of them to undress and get on top of the bed. The appellant had sexual intercourse with the one complainant whilst the other one was laying on the bed watching. When he was done with the first one, he had sexual intercourse with the second one. After the sexual intercourse, the appellant released the two complainants and threatened to assault them if they reported the incident to anyone. They proceeded home and reported to the mother of the one complainant. Both complainants were taken for medical examination.

The one complainant's mother testified and confirmed the report made to her by her daughter and the medical reports of both complainants were handed in without calling the doctor to testify. The medical report found that there was sexual intercourse perpetrated on both complainants.

The appellant denied raping the two complainants. His evidence was that he encountered the two complainants, who asked him for maize meal, and later on he saw them at the tavern with about two boys. He denied dragging the complainants to his place.

ISSUE: Appellant was convicted of two counts of rape in the regional court and the matter was transferred to the High Court for sentence. Convictions were confirmed by the High Court and the appellant was sentenced to life imprisonment for each count. He appealed against the conviction on both counts. The main ground of appeal is that the trial court did not properly appoint the intermediary in terms of s 170A of the Criminal Procedure Act 51 of 1977 (the CPA) for both the complainants.

DISCUSSION: According to *S v Booie and Another* 2005 (1) SACR 599 (B) the court has to fulfil the requirements for the appointment of an intermediary as laid down by section 170A of the Criminal Procedure Act 51 of 1977. The record has to reflect that an application was made, the name of the intermediary, the profession or qualification of the intermediary, the period served in such class or category as established by the Minister, and the fact that the oath or affirmation was administered before testimony was led. Further the record should reflect that the intermediary undertook to convey correctly to the court information communicated to her by the witness before evidence is led. The court found further that the appointment of an intermediary does not constitute a once off appointment to be used in every other case where such services are required. Every application has to be considered afresh.

According to the present court, s170A of the CPA requires that the court appoint a competent person as an intermediary. This imposes a duty on the court to satisfy itself that the person to be appointed as an intermediary is competent and will convey the general purport of any question to the relevant witness. The record of proceedings in this matter did not indicate the name of the intermediary and the qualifications as set out in *Booi supra*. Further, the record did not reflect that the intermediary undertook to convey to the witness the general purport of any questions put to her. The record refers to a person appointed by the court, but there is no record of such an appointment. The duty on the court is to appoint an intermediary for each witness.

FINDING: The failure by the regional magistrate to appoint and swear in the intermediary is an irregularity which renders the proceedings a nullity. The evidence of the two complainants was therefore not properly before the court and could not be relied upon.

The fact that the other available evidence in the matter included the mother, who had only received the first report, and a friend, who had seen the complainants go away with the appellant, meant that there was no evidence about the rape, other than that of the complainants. The medical evidence was simply a report and did not provide a link to the appellant. There was, therefore, insufficient evidence to convict the appellant.

There was a material misdirection by the trial court and the appeal was thus upheld. The conviction and sentence was set aside.