

IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape Division)

Case no: **K/S 104/05**
Date delivered: **03/05/2006**

In the matter between:

THE STATE

and

STEVEN SEGAPO

ORDER

TLALETSI, J:

Having read the record of the proceedings in this matter it is ordered as follows:-

1. That the trial Regional Magistrate is to provide a statement setting forth his full reasons for convicting the accused (STEVEN SEGAPO) of the crime of Indecent Assault. In such statement the Regional Magistrate is to also consider the following factors:-
 - 1.1 No evidence was presented regarding the respective roles played by accused number 1 and/or his co-perpetrator in relation to the rapes and Indecent Assault;
 - 1.2 According to the complainant one of the assailants

was not present when the indecent assault was perpetrated;

1.3 The evidence does not reveal which of the two assailants raped her first and which one raped her for the second time and indecently assaulted her.

1.4 In what way is common purpose to indecent assault is justified.

1.5 Why is the most adverse inference drawn against the accused and find him guilty of indecent assault only because he did not testify which according to the court would have meant taking the court onto his confidence. Was the accused not exercising his rights in terms of Section 35(3) of the Constitutional Act 108 of 1996. Furthermore the accused was not warned that should he elect not to testify the most adverse inference will be drawn against him.

2. The Regional Magistrate is called upon to justify the following remarks and the evidence induced by him from the complainant at page 20 line 13 – 19 of the record of the proceedings which reads:-

“En sonder nou om polities te raak, dit is ook nou so dat u is, ons kom nou uit `n land uit met `n sekere agtergrond. *Dis nou swart persone wat vir u as `n blanke meisie verkrag het. Hoe het dit vir u geaffekteer? U kan eerlik wees want die Hof is, vat nie iemand se kant nie. Dit gaan suiwer oor hoe u gevoel het.*

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Ek het op daardie stadium gevoel ek is onrein.”

3. Mr Fourie is to obtain the accused's birth certificate.
4. That the matter be remanded to 27 June 2006 for further trial and the accused be kept in custody until the trial is finalised.

L P TLALETSI
JUDGE
Northern Cape Division