

IN THE HIGH COURT OF SWAZILAND

REX

Vs

MLAMULI OBI XABA

Criminal Case No. 6/2007

Coram

S.B. MAPHALALA - J MR.

For the Crown For

SIMELANE IN PERSON

the Defence

JUDGMENT 23rd

May 2007

[1] The accused person who is representing himself has been indicted for the crime of rape where the Crown contends that upon **or** about the 14th April 2006, and at or near Magele area in the Shiselweni region the said accused person did intentionally have unlawful sexual intercourse with

[6] The first witness for the Crown was the medical doctor who examined the complainant and compiled a medical report which was entered as exhibit "A" to form part of the Crown's case. The medical doctor who gave evidence for the Crown was one Dr. Tedla of the Hlathikhulu Government Hospital. In the said medical report the good doctor states that "rape is a possibility though difficult to give conclusive statement".

[7] The second witness for the Crown is the complainant introduced as PW2 Ayanda Xaba. She related at some length the sequence of events in this matter and the role taken by the accused in the commission of this crime. She testified that the accused person was her uncle and that on the day in question the accused called her to his house. She was in the company of two other little girls one Nonhle Xaba and one Bongiwe Xaba when she proceeded to the accused. The accused then chased away Nonhle and Bongiwe. The accused then locked the door and undressed her. He unzipped his trousers and proceeded to rape her. When she tried to raise an alarm the accused closed her mouth using his hand.

[8] PW1 further told the court that she then heard a knock on the window and someone was kicking the door calling the accused but he did not reply. She recognized the voice to be that of Bongiwe's mother, Lindiwe Simelane. She told the court that one of the girls she was with was also knocking on the window of the house. After a while the accused allowed her to dress up and then opened the door and told her to leave. When she came out of the room she found Lindiwe Simelane by the door and reported to her that the accused had raped her. She testified further that the accused then locked himself up in his room. Thereafter the police were called who responded

promptly has reported to them and they took her to Hlathikhulu

[9] In **cross this** witness the accused failed to disturb her testimony that was raped by the accused as stated in the indict

[10] After its case the accused elected to make a sworn statement his version of events. His version is that on that day efct a lady who he invited to his room later on. That when complainant he thought he was with this other woman he was drunk.

[11] In sub-contended for the Crown that it has led evidence to accused beyond a reasonable doubt. It was

contended the contended that accused had pleaded guilty to fact that the ; the

accused had evidence to prove the commission of *pleaded guilty* version of events is nothing else but an fore be *selected*

[12] The accused hand contended that he thought he was having sexual the other woman that he had met earlier on and not the committed that he was so drunk to make any

[13] I have evidence that has been adduced in this matter and the

have come to the considered view that the Crown has proved its case beyond a reasonable doubt on the facts presented. There is a clear evidence that she was rape on the day in question as seen in the medical report entered as exhibit "A". It is also clear on the evidence of both the Crown and the accused person that the accused person had sexual intercourse with the complainant. The accused states that he thought he was having sexual intercourse with another girl he had met earlier on in the day not the complainant. I do not agree with this argument on the simple fact that accused chased away two other girls who were with the complainant and proceeded to have intercourse with the complainant in his room and there is no evidence that the other woman the accused met was in the company of two girls. On the facts of the matter I find that this defence raised by the accused cannot succeed.

[14] In the result, for the afore-going reasons the accused is found guilty of the offence of rape and the aggravating circumstances in terms of Section 185 *bis* of the Criminal Procedure and Evidence Act No. 67 of 1938 as amended has been proved that:

- (i) The complainant was a minor at the commission of the offence;
- (ii) The complainant had no sexual experience when she was raped,
and;
- (iii) The complainant was traumatized by this occurrence.



S.B. MAPHALALA

JUDGE