# IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE CRIMINAL CASE NO. 94/07

In the matter between:

**R**
v

**SIKHULILE THULASIZWE DLAMINI**

CORAM : Q.M. MABUZA –J
FOR THE CROWN : MS. Q. ZWANE
FOR THE ACCUSED : IN PERSON

## SENTENCE 25/2/08

[1] The Accused pleaded guilty to the crime of rape. The Crown accepted the plea and proceeded to prove the offence.

[2] The details of the charge are that on or about the 4th

December 2006 at or near Mlindazwe area in the Shiselweni Region, the said Accused person an adult male did intentionally have unlawful sexual intercourse with one Siphilile Simelane a female minor aged 9 years who is in law incapable of giving consent and did there by commit the crime of rape. The said crime is attended by the following aggravating factors as envisaged in Section 185 (bis) of the Criminal Procedure and Evidence Act 67 of 1938 in that:

- The Complainant was very young at the time of the sexual act;

- The Accused was well known to the victim.

- The Accused exposed the victim to sexually transmitted infections as he did not use a condom at the time of sexual intercourse.

[3] The Public Prosecutor called two witnesses who were the complainant and the doctor who examined her after the alleged rape, Dr. Masimba Jinguri.

[4] The Complainant told the Court that she was now 10 years old. She knew this because she had been told at

home. She did not know her birth date. She attended school and that she was currently in Grade 4. She attended church and Sunday school but she did not know the significance of an oath. She however knew the difference between the truth and a lie. It was a bad thing to tell a lie. She was admonished by the Court to tell the truth.

[5] She related how the Accused raped her. She knew the accused. He was a neighbour. He arrived at her home on the day of the rape and said she should go behind the house which she did. He also instructed her to remove her panties and put them below her knees. He thereupon inserted his penis in her vagina and made back and forward movements because they were standing. The accused made her lean her back against the wall of the house.

[6] A relative of hers called Xolani arrived and the Accused stopped. The Accused and Xolani left to go and play football at the football ground. She informed the court that she felt pain when the Accused had sex with her. Asked how she felt emotionally she said that she became angry at what the Accused had done to her because he was older than her.

[7] She told the Court that she could not scream because the Accused promised to beat her up. She did not report to anyone because the Accused threatened to assault her if she did so. When she was asked if she had had sex prior to this incident she answered in the affirmative, in the sense that she had played “emadlwane” with some of her relatives that she lived with who were her age. She identified the Accused in the dock.

[8] It was Xolani the boy who had disturbed them that reported to the complainant’s grandmother about finding the Accused and complainant having sex. The grandmother then told the complainant to fetch a stick and made one of the boys in the house administer a beating of the complainant.

[9] On the same day of the alleged rape the grandmother took the complainant to the Matsanjeni Health Centre where she was examined by Dr. Jinguri. After the examination the doctor advised them to go to the police which they did. She admitted to the Court that even though she did not know what a condom was the Accused had not been sheathed during intercourse.

[10] The Accused was invited to cross-examine the Complainant and he declined.

[11] Dr. Masimba Jinguri gave evidence next. He had compiled the report (Exhibit 1). He had examined the complainant on the 7th December 2007. She had washed herself beforehand. He found that her vagina was normal, it did not show signs of assault. However, the hymen was absent. It was torn. It was his opinion that she had been sexually assaulted. He handed in the medical report as exhibit 1. The Accused was invited to cross-examine the doctor and he declined whereupon the Crown closed its case. The Court thereafter invited the Accused to address it on the evidence of both the complainant and the doctor but he declined.

[12] The Court found the Accused guilty as charged on the basis of his plea of guilty, the evidence of the complainant and that of the doctor.

[13] The Accused was invited to address the Court on mitigation after the Crown had submitted that he did not have any previous convictions.

[14] The Accused in mitigation wished to be released so that

he would be able to go back to school to further his education. He was last in Standard 4 and would be proceeding to Standard 5. He said that he would never do whatever happened again. He had been taught at school that if he had any sex with a woman he should always use a condom and that it was crime to rape a person. That it was a crime to sleep with a young girl even if she had agreed. He told the Court that he lived with both his parents and that neither of them had spoken to him about sex. He was sixteen years old when the incident occurred and that he was arrested on the 9th December 2007. I postponed the matter to 25/2/08 for sentence. I now pass that sentence.

[15] In passing sentence I have taken the accused's mitigation into account. He was sixteen years old when the offence occurred and the complainant was 9 years old. Incidentally she is a very intelligence ten year old especially coming from the rural areas. He was in Standard 4. The age difference was 7 years. He was very remorseful about what had happened. Even though he had turned 18 years by the time of the trial he still looked very young for his age, and this factor should enable him to continue with his education while in custody. I took into his favour the fact that he

pleaded guilty and did not waste the Court's time on a protracted trial. He declined to cross-examine the complainant which would have caused her tremendous stress in reliving the ordeal. I took this fact in his favour.

[16] I also looked at the crime itself. Rape is very prevalent in Swaziland. Its frequency has reached alarming proportions and it must be stopped. I also looked at the interests of society. Society expects the court's to pass sentences that will deter other rapists out there. The sentence should also rehabilitate the Accused.

[17] Having said the above I sentence you to 7 years imprisonment. The sentence will be backdated to the 9th December 2006 when you were arrested.

**Q.M. MABUZA -J**