

IN THE HIGH COURT OF SWAZILAND
HELD AT MBABANE

CASE No. 155/2010

In the matter between:

REX

VS

ZWELI ZULU

**CORAM:
FOR THE CROWN
FOR THE ACCUSED**

**SEY J.
MR. M. NXUMALO
IN PERSON**

J U D G M E N T

12th AUGUST 2011

SEYJ.

[1] Zweli Zulu (herein after referred to as the accused) stands charged with the offence of rape.

[2] When the accused person was arraigned before this Court he was reminded of his rights to be represented by counsel and he informed the Court that he had engaged the services of an Attorney.

[3] The accused has pleaded guilty to the charge of rape which plea the Crown accepts.

[4] The Crown thereafter intimated to the Court that they had come to an agreement with the accused person and that they had filed a Statement of Agreed Facts which was duly signed by counsel for the Crown and Defence counsel.

[5] The Crown then read out the said Statement of Agreed Facts as well as the Doctor's Reports for both the complainant and the accused. All the said documents were handed into Court by consent.

[6] The Court thereafter enquired from the accused person whether he understood the contents of the documents and whether he had any objection to them being admitted into Court as evidence.

[7] In response, the accused said that he was fully aware of the contents of the documents and that he had no objection to them being admitted into Court as evidence. In the circumstances the said documents were duly admitted into Court as evidence and marked as Exhibits A, B and C respectively.

[8] The Statement of Agreed Facts which is dated the 6th day of July 2011 is to the effect that:

8.1. On the 9th November, 2009 the accused was looking after cattle at the grazing land at Sibovini area in the Lubombo Region. The complainant N G and one C N were going to school when the accused asked to have sexual intercourse with the complainant without using a condom.

8.2. While the accused was having sexual intercourse with the complainant C was watching them and after finishing with the complainant the accused told C not to tell anyone about the incident.

8.3. The accused gave the complainant a cell phone to play with. When Ncamsile Matsenjwa saw the cell phone with the complainant, she asked her where she had got the cell phone from and the complainant told her that she got the cell phone from the accused and further explained that the accused had sexual intercourse with her.

8.4. The complainant was taken to Good Shepherd Hospital for examination and the accused was also taken for examination. The doctor's findings were that both the accused and the complainant were infected with a sexually transmitted disease. The doctor further found that the complainant was sexually abused.

8.5. The accused was eventually arrested and released on 18/11/2009 to the custody of his father who is a Community Police Officer.

8.6. The accused concedes that it was unlawful to have sexual intercourse with the complainant.

8.7 The complainant was seven (7) years old and the accused was fifteen (15) years when the crime was committed on 9th November, 2009.

[9] It is trite law that when a case has to be decided on a Statement of Agreed Facts, it is necessary that sufficient particulars of the event be included in the Statement. This would not only prove the guilt of the accused but would also enable the Court to determine what would be an appropriate sentence for the offence committed. See the case of **Zwelithini Dlamini v Rex Criminal Appeal No. 5 of 2008** at page 4. In this present case, the Statement of Agreed Facts which has been tendered before this Court, clearly shows that the offence committed by the accused is rape. The complainant was 7 years old and therefore incapable in law of giving consent. Moreover, the accused did

not use a condom and the doctor's findings were that both the accused and the complainant were infected with gonorrhoea. In view of the evidence before this Court as well as the guilty plea advanced by the accused, the Court is satisfied that the Crown has proved the commission of the offence of rape. I accordingly convict the accused as charged.

M.M. SEY(MRS)

JUDGE OF THE HIGH COURT