

SOUTH AFRICA / JUDGMENT

## S v Ifalawo (CC66/2019) [2022] ZAGPPHC 1028 (28 June 2022)

[2022] ZAGPPHC 1028

COURT

North Gauteng High Court, Pretoria

BEFORE

PD Phahlane

CASE / FILE NUMBER

CC66/2019

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Policy

REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: CC66/2019

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

DATE:

28 June 2022

SIGNATURE:

PD. PHAHLANE

In

the matter between:       THE  
STATE  
and  
FREDDIE  
MAKGOKA IFALAWO  
ACCUSED

## JUDGMENT

PHAHLANE, J

- [1] The accused was charged with 24 counts for crimes committed between January 2014 and May 2017 in the province of Limpopo and Gauteng, such as:
1. The areas of Vuwani; Lebowakgomo; Mphephu; Dennilton and Makhado which fall within the jurisdiction of Polokwane, and falling under the Limpopo Provincial Division, Polokwane.
- [2] At the commencement of the proceedings, the State made an application to have the criminal proceedings against the accused arising from these provinces, be dealt with, and be heard by this court in the interest of the administration of justice. The defence was in support of the application and the application was so granted.
- [3] The charges are spread around 9 dockets/cases from different areas and will be summarised as follows:
1. CASE 1: relates to counts 1, 2 and 3 which deals with Rape read with the provisions of section 51(1) of Act 105 of 1997 (“the Act”), Kidnapping, and Impersonating a police officer, which is a contravention of section 68(1) of the South African Police Service Act 68 of 1995 (“the Police Service Act”). These counts have been withdrawn by the State because no evidence was led in that regard.
  2. CASE 2: relates to counts 4 and 5 which deals with Rape read with the provisions of section 51(2) of the Act, and Kidnapping. The offences were committed on 5 March 2014 at or near Lebowakgomo in the district of Lebowakgomo. The State alleges that the accused unlawfully and intentionally committed an act of sexual penetration with the complainant D[...] R[...] M[...] without her consent and deprived her of her freedom of movement.
  3. CASE 3: relates to counts 6 and 7 which deals with Kidnapping and contravention of section 68(1) of the Police Services Act (Impersonating a police officer). The offences were committed on 26 October 2014 at or near Dzanani in the district of Makhado. The State alleges that the accused unlawfully and intentionally deprived S[...] M[...] S[...] of her freedom of movement and pretended to be a member of the SAPS thereby contravening the provisions of section 68(1), read with the sections 1 and 5(2) of the Police Service Act.

4. CASE 4: relates to count 8 which is Rape read with the provisions of section 51(2) of the Act. The offence was committed on 24 June 2015 at or near Dennilton in the district of Groblersdal. The State alleges that the accused unlawfully and intentionally committed an act of sexual penetration with the complainant P[...] L[...] M[...] without her consent.
5. CASE 5: relates to counts 9, 10 and 11 which deals with Rape read with the provisions of section 51(2) of the Act; Kidnapping and Impersonating a police officer. The State alleges that on 24 April 2016 at or near Soekmekaar, in the district of Makhado, the accused unlawfully and intentionally committed an act of sexual penetration with the complainant M[...] J[...] M[...] without her consent, and that on or about 23 – 24 April 2016 at or near Vleifontein in the district of Makhado, accused unlawfully and intentionally deprived M[...] J[...] M[...] of her freedom of movement and also pretended to be a member of the SAPS in contravention of the provisions of the Police Services Act.
6. CASE 6: relates to counts 12 and 13 which deals with Rape read with the provisions of section 51(2) of the Act; and Kidnapping read with the provisions of section 51(2) and Part IV of Schedule 2 of the Act. These offences were committed on 10 November 2016 at or near Mamelodi East in the district of Mamelodi. The State alleges that the accused unlawfully and intentionally raped the complainant Z[...] N[...] and deprived her of her freedom of movement.
7. CASE 7: relates to counts 14, 15 and 16 which deals with Rape read with the provisions of section 51(2) of the Act; and Kidnapping and Impersonating a police officer. The State alleges that on 1 May 2017 at or near Kameeldrift, in the district of Kameeldrift, the accused unlawfully and intentionally committed an act of sexual penetration with the complainant P[...] N[...] M[...] without her consent, deprived her of her freedom of movement and also impersonated a police officer by pretending to be a member of the SAPS.
8. CASE 8: relates to counts 17 to 21 which deals with repeated acts of Rape read with the provisions of section 51(1) and 51(2) of the Act, committed on 6 May 2017; and another offence of Rape read with the provisions of section 51(2) of the Act; Kidnapping; Impersonating a police officer and Theft. It is alleged that on 6 May 2017 and at or near Pretoria, in the district of Pretoria, the accused unlawfully and intentionally committed repeated acts of sexual penetration with the complainant D[...] E[...] M[...] by penetrating her vagina with his fingers as well as his penis without her consent, and penetrated her vagina again with his penis without her consent. On the same day, the accused unlawfully and intentionally deprived the complainant of her freedom of movement; pretended to be a member of the SAPS; and stole R20 cash, the property of D[...] E[...] M[...].

9. CASE 9: relates to counts 22 to 24 which deals with repeated acts of Rape read with the provisions of section 51(1) of the Act, Sexual Assault, and Kidnapping. The State alleges that the offences were committed on 21 May 2017, at or near Pretoria, in the district of Pretoria, in that the

accused unlawfully and intentionally committed repeated acts of sexual penetration with the complainant A[...] D[...] M[...] by penetrating her anus; vagina, and mouth with his penis without her consent. The accused also unlawfully and intentionally sexually violated the complainant by forcing her to play with, and lick his penis without her consent, and also deprived the complainant of her freedom of movement.

- [4] Before the accused could plead to the charges, the court fully explained the provisions of section 51(1) and 51(2) of the Act to the accused. The accused is legally represented by advocate Tlouane who informed the court that he also fully explained these provisions to the accused. He pleaded NOT GUILTY to all the charges and elected to exercise his right to remain silent and not give any plea explanation. The accused also made formal admission in terms of section 220 of the Criminal Procedure Act 51 of 1977 ("the CPA"), the effect of which was explained to the accused by the court. The section 220 admissions relate to a wide range of exhibits which are inclusive of the affidavits; the chain of evidence relating to the collection of samples such as swaps for DNA; blood specimen; sexual assault kit; photograph of the accused and his vehicle.
- [5] The State called fifteen (15) witnesses in support of its case and the accused also testified. For the sake of coherence, I will deal with the cases according to their correct numbers as they appear in the indictment.
- [6] With regards to case 2 relating to counts 4 and 5, Ms D[...] R[...] M[...] ("D[...]") testified that on 5 March 2014 she was at Linting Lodge with Mr Kingsley Kagisho Mankgaba ("Mankgaba"). They had just arrived when an unknown man knocked at their room asking for a lady who had just entered the room wearing a badge from St. Angenas ZCC church. He said there is a woman outside in the motor vehicle who wants to speak to the lady wearing a badge. D[...] then went out to this man's vehicle which was parked in front of their room. She found a lady in the vehicle who was seated at the back seat and when she knocked on the door of the vehicle, the man opened the door for her and instructed her to get into the vehicle, and he drove off.
- [7] She explained that it was Wednesday, and it is a norm that women from her church would go to church on this day. The man took out an ID card from church and said he is Lekganyane and she saw the name of Lekganyane written on the ID. He drove on a road going to Lebowakgomo and said she is degrading his church on a Wednesday when women are in church and yet the complainant went to a lodge. He said he is taking her to Podungwane where she will have to explain why she decided to go the lodge instead of going to church. Podungwane is the headquarters of the church.

- [8] He dropped the unknown lady off at the KFC and drove with the complainant into a bush next to the school and parked his vehicle. He told the complainant to do as she was going to do at the lodge. D[...] said she was not wearing her under garment and the man came to the back seat and raped her without using a condom. Thereafter he took the complainant to a complex in Lebowakgomo and gave her a piece of paper with contact numbers to give to a man whom he pointed to the complainant, and he left. She said she did not have her cellphone with her because she left it at the lodge, but fortunately she knew her boyfriend's number off by heart and she searched for a public phone and called him and gave him directions to where she was. Her boyfriend arrived and they took a taxi back to the lodge and the police were called. She said she never saw the man who raped her again after the incident and does not know the accused.
- [9] The accused's version under cross-examination was put to her as follows: that the two of them knew each other very well; that on the day of the incident, the complainant called him at 9am wanting to know where he was and indicated that they will meet at Linting lodge where the accused later found her. Further that the accused indicated that he was with his sister in his vehicle, and when the accused arrived at the lodge, he went to a certain Mphahlele who stays at the lodge to offload items he had bought. The accused's version is that the complainant and his sister know each other well, and that he never went to knock at her room but that she is the one who went out to meet with him at the parking.
- [10] It was then put to her that after the accused had finished offloading the goods from his vehicle, he found the complainant talking to his sister in the vehicle. The accused avers that he invited her to get into the vehicle and she did, and they went to drop off his sister at KFC and thereafter they went to his sister's house which is not too far from the complex and had consensual sexual intercourse. D[...] disputed the accused's version and stuck to the evidence she gave in chief.
- [11] Mr Mankgaba testified that during the period of 5 March 2014, he was in a love relationship with the complainant, D[...]. At the time, he knew her for two years. On the day of the incident, he was with the complainant at Linting Lodge which is in Lebowakgomo. Ten minutes after arriving at the lodge, around 11:00 or 12:00, the accused knocked at their door and the complainant answered the door.

He requested to see the complainant and said he is from Lekganyane and has a message for D[...] from the ZCC headquarters. He said the complainant went outside with the accused and was gone for 30 minutes.

- [12] When he realized that the complainant was not coming back, went outside and approached the security guards to enquire if they had not seen the complainant. After talking to the security, he went to the shops, because the complainant left her phone with him and he did not know how to contact her. The complainant then called him while he was still at the shops. He asked the complainant where she was, and she told him that the accused took her to a certain place in Polokwane and had raped her. He (Mr Mankgaba) gave directions to the

complainant of where they could meet, and after they met, they went back to the lodge and called the police. The police arrived and statements were taken.

- [13] With regards to case 3 relating to counts 6 and 7, Mrs S[...] M[...] S[...] (“Mrs S[...]”) testified that she is a councillor in Makhado municipality and is also a farmer dealing with poultry; egg production; cattle and ploughing. She has been married to Mr D[...] S[...] for thirty-nine years. She testified that during the month of October 2014, on Sunday afternoon around 15h00, she was in the company of a friend Mr Kenneth Sigudu (“Mr Sigudu”). They were driving in a vehicle and had just crossed the river following a herd of cattle.
- [14] While waiting for the cattle to drink water, she took out some food and started to eat. As they were busy eating, a silver-grey double cap bakkie approached and parked on the side of their vehicle. A man alighted from the bakkie and went to the driver’s side and told Mr Sigudu that he was sent by Mr Mudau to come and fetch his wife, referring to the complainant. Mrs S[...] said she did not know this man and upon enquiring who he was, he responded that he is a police officer stationed at Silom police station.
- [15] She said because the bakkie was unmarked and the man was wearing civilian clothes, they asked him to show them his appointment card to identify himself but instead, the man told them that he was on standby and was contacted by Mr Mudau when he (the police officer) was in church. He requested Mrs S[...] to accompany him to the Silom police station, but she informed him that it was not possible that he could take her to Silom Police Station which is 10 kilometres from the place where they were but should rather take her to Mphephu police station (also known as Biyaba police station) which is nearer. The police officer became aggressive and said that she is wasting his time. She said, while still there, a white private sedan vehicle passed by, and this policeman took out his phone and contacted a person whom he alleged it was Mr Mudau. He spoke to the person on the phone and asked how can he pass by when he has found his wife.
- [16] She testified that when the police officer was busy on the phone, they got a chance to take a photo of the officer and his vehicle, using their phone cameras. The photographs were handed in as Exhibit D. Mr Sigudu then suggested that she leave with the officer and said that he will follow them. The officer agreed to take her to Biyaba police station and instructed her to get into his bakkie and occupy the back seat, and she did. He drove off at high speed, going towards Mphephu police station and she was surprised when he drove past the police station and went to the direction of Wyllie’s Poort tunnel. She enquired where they were headed, since they drove past the turn to the police station, and he responded that he was taking her to Mr Mudau.
- [17] Mrs S[...] took her phone and sent a message to Mr Sigudu, alerting him that they drove past the police station and were headed towards Wyllie’s Poort tunnel. She continued communicating with Mr Sigudu via SMS, updating him of their location and gave him directions of where they were going. When they approached a T-junction indicating the direction to Louis Trichardt (Makhado) and Musina, the officer took a turn and drove on the

road leading towards Louis Trichardt. She said when they approached a place called Witvlag, they left the main road and turned towards the left and took a gravel road. They ended up turning to a road which she knew, and she send a text message to Mr Sigudu telling him that they were heading towards Ha-Mailula. They drove down the slope and reached a place where there is a timber factory and he stopped the vehicle and became aggressive, and started insulting her. He then told her to get out of the vehicle and he drove away.

- [18] Mr Sigudu arrived, and they went to the police station to report the matter and showed the police the photo of the man and the vehicle he was driving. Mrs S[...] explained that she believed that man was a real police officer because of the authority which he showed or commanded when he approached them, and because of the way he spoke when he emphasised his point. She further explained that she was scared the whole time she was with the officer, and she spent 45 minutes to an hour in the company of this man. She said they drove for about 70 kilometres, and she did not sustain any injuries because this officer did not do anything to her. When asked if she knows the accused, she said she does not recognise him because the incident occurred in 2014.
- [19] Under cross examination, it was put to her that the accused have known her from the time he was awarded a tender to renovate a clinic in Ga-Mosekwa village which falls under her municipality, and that her husband is a teacher. She disputed that saying her husband has never been a teacher and that she does not know the accused and was never engaged or involved in the issuing of tenders for the department of health or at the clinic. She said if the accused really knew her, he would not have addressed her as Mr Mudau's wife but by her first name. It was further put to her that the accused denies telling her that he was a police officer or that he was sent by Mr Mudau to come and fetch her, and she refuted that.
- [20] Responding to the version that: 'the reason why the accused stopped his vehicle and approached the complainant and Mr Sigudu's
- was because the two vehicles were driving in the opposite direction, and Mr Sigudu's vehicle turned abruptly in front of his vehicle, and the accused stopped his vehicle and approached the complainant's vehicle in order to talk to the driver. She refuted this version and repeated her evidence that when the accused approached them, they had already parked their vehicle and were busy having lunch.
- [21] It was also put to the complainant that the accused confirms that she took photos of him and his vehicle, but that when the complainant took the photos, she said she was going to tell her husband that she was with him (ie. the accused), and she disputed that. She confirmed that her husband is a teacher and that he did not call him for assistance on the day of the incident because he was at work and that her friend Mr Sigudu was better positioned to help her at the time because he was with her.

- [22] It was finally put to Mrs S[...] that she got the accused arrested and falsely implicated him because she was afraid that the accused will inform her husband that she was with another man, and she disputed that.
- [23] Mr Sigudu also took the witness stand and corroborated Mrs S[...]’s evidence that their vehicle was already stationery when the accused approached them because at the time, they were having a meal. He said the accused looked angry and referred to the complainant as Mrs Mudau and instructed her to get out the vehicle. He said they were arguing with the accused when a white Mercedes Benz passed by and the accused ran towards it as if he was trying to stop it, and when he came back, they had already finished taking photos of the accused and his vehicle. He said the accused was seriously trembling and looking angry and told Mrs S[...] to be quick because he is a police officer and was on duty.
- [24] He testified that they asked the accused to produce proof that he is members of SAPS and the accused said he was called while in church and has left his ID card at home. He said after the accused left with the complainant, he followed them, and the complainant kept calling and sending him messages of where they were traveling, and also told him that she has been dropped off at the tall trees where he finally met with her. Under cross-examination, the accused’s version that was put to Mrs S[...] was also put to him and he disputed it.
- [25] Ms P[...] L[...] M[...] (“P[...]”) testified with regards to Case 4 relating to Count 8. She said she was raised under the ethos of the ZCC church and has always believed in the church and prayers. She went to Moria in 2015 to request prayers for her family because they did not live in peace. On Tuesday the 23rd of June 2015 she received a call from the accused who said he is pastor Molobedu from Moria instructed by Bishop Lekganyane to assist her with her problems that she had divulged to the priest in Moria. The accused mentioned the name of Mrs Hlongwane who is a principal at the school where she is employed as a teacher and said that he had arranged to meet her at Mrs Hlongwane’s house.
- [27] The complainant called Mrs Hlongwane and informed her that there is a person coming from Moria to assist her and Mrs Hlongwane confirmed that. The complainant regarded Mrs Hlongwane as a friend and a spiritual leader. She took her bag and some herbs, which she refers to as “ditaelo”, and went to Mrs Hlongwane’s house. This happened on the same Tuesday around 18h30. Upon her arrival at Mrs Hlongwane’s house, Mrs Hlongwane telephoned the accused and when the accused arrived, he found them sitting in the dining room. Mrs Hlongwane left and said she wanted to give them privacy. P[...] said she did not know the accused before this day. She said the accused started prophesying and was very accurate in his assessment of her problems.
- [28] The accused told her that there are snakes in her vehicles and that she will have an accident and die if she drives her vehicles. He thereafter said he will take her vehicles to Moria so that they can be fixed. P[...] explained that as a woman, she is not allowed be at the place where vehicles are fixed in Moria. The accused further informed her that she has something in her body that will eventually choke her to death. He also said there is something in her womb,

and she believed him because she had problems with her menstrual cycle. The accused then said he must be intimate with her by inserting his penis into her vagina so that whatever is inside her womb will be attached to his penis so that he may take it out. She said the accused wanted to have sex with her right there at Mrs Hlongwane's house and she refused because she was still trying to digest what the accused had told her, and she was also late because she left her children alone at home.

- [29] The next day she went to Middleburg with the accused to fetch her other vehicle which was to be taken to Moria. She said they did not use the usual road going to Middleburg, but they used the road behind Philadelphia hospital because the accused said he wanted to go to the scrap yard where he left his vehicle to be fixed. Going to the scrap yard, they drove on a gravel road and a bushy area and at some point, the accused instructed her to stop the vehicle next to a big tree and said it was time to take out the thing that was in her womb. Before she knew it, the accused was on his cell

phone speaking with a loud voice, saying: "Kgomo, (referring to Bishop Lekganyane) how am I going to help this person now?". She explained that at the time, the accused was speaking fast and using his hands as if he was angry. She was driving a Nissan NP200 with a canopy, and the accused said they should be intimate right there. She agreed to do it because she was scared, and she remembered that she always carried a blanket in her vehicle which she puts on the floor of the bakkie.

- [30] The complainant said she asked the accused to use a condom, and the accused responded by saying his flesh should touch her flesh because whatever is inside her womb should be attached to his penis. She told him that she was not using any contraceptives and was hesitant. The accused proceeded to rape her and he ejaculated on her blanket which she said - she knew it was going to help her in future.

- [31] When the accused was finished, they drove to Middleburg to collect her vehicle, a Toyota Corolla which the accused drove. On their way back home, the accused wanted to have sexual intercourse with her again and she refused. When they arrived at her home, he insisted on having sexual intercourse with her she once again refused. The accused then said he will be leaving and is taking the vehicle to Moria and asked the complainant to give him money for petrol and she said she does not have any money. She said it was Wednesday evening when the accused took her vehicle. On Friday the accused returned her vehicle, and he was with Mrs Hlongwane.

- [32] She said when she realized that Mrs Hlongwane and the accused were working together, she asked the department to transfer her to another school and blocked both Mrs Hlongwane and the accused on her phone. One Sunday afternoon she met the accused at the supermarket driving Mrs Hlongwane's vehicle and he came to her and shouted at her and asked why she had blocked him on the phone. The accused continued to shout and said he is her husband and hit her with a fist and pulled her keys from the ignition of her vehicle. She ran to the police officers who were in the vicinity and asked for help.

- [33] Under cross-examination, she disputed the accused's version that when he went to the school where she works to fetch Mrs Hlongwane's vehicle that had to be taken for repairs, she (the complainant) was interested in talking to the accused and that she told him that she had a vehicle at her sister's place in Middleburg which needed to be fixed. She further disputed the version that she exchanged phone numbers with the accused when they met at the school where she worked. She further disputed the version that she was in a love relationship with the accused and have had sexual intercourse with him before, 24 June 2015 and even after fetching the vehicle from Middleburg, and further that she wanted to keep her affair with the accused secret from her husband and Mrs Hlongwane. The complainant also disputed the version that she met the accused regularly at her tavern after they started having a love relationship. It was put to her that the accused denies ever driving any of her vehicles and assaulting her. The accused's version was also that he ended his relationship with the complainant after she started having a relationship with another young man, and she disputed that.
- [34] M[...] J[...] M[...] ("J[...]") is the complainant in case 5 relating to counts 9-11. She testified that on 23 April 2016, she was at Vleifontein with her husband S[...] T[...] (S[...]), who was at the time her boyfriend when she received a call around 7pm from someone named Tshitandani, who said he is a police officer from Makhado police station and wanted to know where she was because he was at her home in Ga-Maila, and she responded that she was at Vleifontein. The police officer said since he does not know Vleifontein, he is going back to Makhado and will contact a police officer named JP from Waterval SAPS to fetch her. She said the person created the impression that there was something wrong with her children at her homestead. She then told this police officer that the person coming to fetch her will find her at a well-known place called Bavendani.
- [35] She was standing along the road with S[...] when a white private vehicle arrived. The occupant asked if she is from Ga-Maila, and she responded in the affirmative. She was asked to quickly get into the vehicle because the police officers at the police station were waiting for her. The driver opened the door and alighted, and the complainant quickly rushed and got into the vehicle. Her boyfriend asked where they were taking her, and he was threatened with being assaulted with a firearm. The vehicle sped off and the driver said her boyfriend is disrespectful. She came to his defense and said her boyfriend is not disrespectful, and the driver hit her on the face with his left elbow. She said the man did not introduce himself. She was seated in the front seat and the driver took the direction of N1 North and drove in the direction of Polokwane, and along the way took a turn to Soekmekaar. She said the driver kept assaulting her on the way and asked why she is staying with T[...] who is a drunkard.

- [36] The man indicated that he is taking her to the police station where female police officers were waiting to punish her. They drove to a house where a lady came out with two children having blankets, and the driver instructed the lady to put the blankets in the vehicle. From there, they drove to a garage at Botlokwa to pour petrol and then to a tavern to buy food. They drove through a bushy area in Soekmekaar and ultimately entered a yard where there is shack.
- [37] The complainant was instructed to carry the blankets and get into the shack. She said there were two double beds, and she was instructed to take off all her clothes and place them on top of the other double bed. She was then instructed to sleep on the bed. She said this man told her to turn towards him and was lying on his back facing up. She explained that his penis was erect, and he forced her to suck his penis and she refused, telling him that he would rather kill her. She then turned away from him to face the other direction and this man forced himself on her by putting his penis into her vagina from the back and raped her, and did not use a condom. She said she was crying throughout the incident and this man told her that he was not going to ejaculate inside her because he knows that if he does, she will report him.
- [38] Around 4am, they drove to Elim where he dropped her off and gave her R40 and a jacket because she said she was cold. She then took a taxi to her sister's place in Vleifontein. She identified the accused as the man who came to fetch her with the vehicle on the day of the incident.
- [39] Under cross-examination she confirmed that her late husband's name was Freddy and was a teacher at place called W[...], in Madombetia. She further confirmed that she is running a creche and that her neighbours are Mudau Checha and Ramoshidza. It was then put to her that the information comes from the accused as proof that he knows her, and she responded that she does not know the accused. It was further put to her that on the day of the incident, she was having a love relationship with the accused, which started while her husband was still alive, and before the accused moved to Pretoria, and she refuted that. Responding to the version that the accused never assaulted her, she insisted that the accused severely assaulted her. She further denied the version that she called the accused on the day of incident in the morning around 9am to him directions of where she was on the day. She denied that she voluntarily went to Soekmekaar with the accused and had consensual sexual intercourse with him.
- [40] The complainant's husband Mr S[...] S[...] T[...] testified that he was with J[...] on 23 April 2016 at home when J[...] received a call from a person who said he was at the place where J[...] was staying previously and asked for directions to where she was. He said he heard J[...]’s conversation because the volume on the phone was high. He also heard when this person said he was a police officer. He explained that they gave him the directions and told him that he should go to Joe Slovo Street where they will be waiting for him at Bavenda shop. After a while, a white vehicle emerged, and it was already late and dark by then. The driver opened the door and

instructed J[...] to quickly get into the vehicle and said they will talk when they get to the police station. Mr T[...] said when he went closer to the vehicle to ask the driver where he was taking J[...], the driver said he will shoot him in the head because he is wasting his time. The vehicle drove off and he never saw the complainant that evening. He saw the complainant the next morning at her sister's place when he went there to report that the complainant was missing.

[41] Under cross-examination, he confirmed making a statement to the police but could not remember how long it took for the statement to be made. He explained that a police officer came to his workplace to take his statement and it was never read back to him. Neither did he read the statement himself before he signed it. He testified that when the police officer was taking down his statement, he was only responding to questions posed to him and was never to explain what happened.

[42] Ms Z[...] N[...] ("Z[...]") is the complainant in counts 12 and 13 regarding case 6. She testified that towards the end of the year in 2016, she moved from Durban to Mamelodi where she was staying with her cousin L[...] H[...] C[...] ("L[...]"). On 10 November 2016, around 23:00 she was walking home from work and had put on her headphones. She felt someone touching her and saying, "can't you hear I was talking to you?". The man said he heard that there was a lady walking on the street at night. The man identified himself as a police officer and said he was taking her to the police station. He wanted to take her by force, and she refused. He grabbed her and held her by the belt of the jean/denim she was wearing and put her in a white Isuzu bakkie that had stopped next to her. She tried to open the door in order to run away but the door was locked, and the man had a firearm. He drove off with her and drove past the police station and went to the playgrounds. She explained that the man was angry and shouting at her, and spoke in a language she did not understand. After the vehicle had stopped, he took her out, undressed her and made her lie on the ground and raped her.

[43] Thereafter he got into the vehicle and left her still lying on the ground. She managed to find her way back home, and when she arrived, she went to sleep and reported the incident to L[...] in the morning. L[...] took her to the police station to open a case and the following morning, she went back home to Durban. She did not have any contact with this person and never saw him again. She said she cannot recognise the person who raped her if she sees him again and does not know the accused and has never seen him before.

[44] Under cross-examination, it was put to her that on the day of the incident, she called the accused around 9pm when she was still at work and asked the accused to come and fetch her from the taxi rank next to Vista. It was further put to her that it was not the first time for the accused to pick her up after work and take her home because at the time, she was in a love relationship with the accused, and that she got into the accused's vehicle voluntarily when the accused drove off with her. The accused's version was further that after he picked her up, he proceeded to his place of business known as 'Mokoko box' where they had consensual sexual intercourse at a house which is behind the business. The accused alleged that the complainant asked him to buy her liquor and dagga, and because he was not happy with that, he decided to end their relationship there and then when he also realized that the

complainant was much younger than he thought.

- [45] Z[...] disputed knowing the accused and said she was seeing him for the first time on the day of the incident. She denied having had a love relationship with the accused and said at the time, she had just moved to Mamelodi where she was staying with L[...]. She disputed the version of the accused in toto.
- [46] L[...] confirmed that during November 2016, she was staying with Z[...] in the same house but were occupying different bedrooms. She said it was a norm for Z[...] to come to her room every morning at 8am before going to work, but on the 11th of November, Z[...] never came. She went to her room and knocked three times and there was no answer. After the third knock, Z[...] answered and when she got inside, she found her crying. Z[...] reported to her that when she was walking home from work, she was forced into a vehicle by an unknown man who drove off with her to a place where he raped her and left her there. She said on the evening of the incident, she did not see any vehicles parked outside her house and that the complainant did not have a boyfriend at the time because she was still new in the area.
- [47] She said Z[...] had only been staying in Mamelodi for less than a month and had just started working. She confirmed that the matter was reported to the police and said her mother went with Z[...] to the hospital after the matter was reported to the police. Explaining the emotional state of the complainant before she was called to testify in court, she said the complainant is afraid of going outside especially at night and that she always locks herself in the room. Further that she had been crying and refused to come to court.
- [48] With regards to Case 7 relating to Counts 14-16, Ms P[...] N[...] M[...] (Ms M[...]) testified that on 30 April 2017 she was with her partner Aubrey, and were booked at a hotel situated at the corner of Pretorius and Hamilton street. They booked out the following morning on 1 May 2017 around 7:30am but before 8:00am. As they booked out of the hotel, they noticed a young lady aged between 25-30 years old, locking the room diagonal to theirs. They left the hotel on foot and were walking on Beatrix Street. They proceeded to Church Street and noticed the young lady they saw earlier from the hotel walking past them. The young lady entered into a restaurant and when she came out, she went to a white Audi Sports motor vehicle that was parked outside

and talked to the man who was in the Audi. Ms M[...] said she saw the face of this man but did not pay too much attention on him.

- [49] She continued walking with her companion in Church Street and as they crossed Lion Bridge, they noticed the white Audi which they saw earlier stopping at a dealership where they sell motor vehicles. The driver alighted from the Audi and went inside the dealership. She parted ways with her partner at the corner of Du Toit and Church Street. She boarded a taxi to go home to Mamelodi while Aubrey had to catch a taxi going to Atteridgeville. She found two ladies in the taxi and when the taxi reached Hamilton and Beatrix Street, it stopped. After the taxi stopped, she heard the driver saying: "sisi, they are looking for you". She was at the time busy on her phone and did not look at the driver because she thought he

was talking to one of the two ladies she found in the taxi. The taxi driver again said: “sisi, they are looking for you”. When she looked up, she saw the accused standing at the driver’s door, and she told the taxi driver that she does not

know the accused. She was seeing the accused for the first time on that day.

- [50] The accused asked her if she was the one walking with the man who was wearing a blue T-shirt and having a green bag. She immediately thought something had happened to Aubrey and she got off from the taxi. The accused showed her the Audi and told her to get inside, and she did. It was the same white Audi she saw earlier. At the time, the Audi was parked behind the taxi. After she got into the Audi, the accused said he is a police officer and took out a card similar to the smart card used by policemen and it had a police emblem in it. The name ‘Kaizer’ appeared on the card she noticed the first four numbers, which are 5508 written on the card.
- [51] The accused thereafter used derogatory words and said he works with the ‘whores’ like her, who takes other woman’s men. At the time, the vehicle was driving at high speed on the pavement, and she noticed that they were driving past Loftus Versveld stadium. The accused instructed her to untie the belt of her trouser, and when she refused, the accused shouted at her and told her not to make him angry. She said she realized that she was in danger and decided to take off her trouser. She did not see the accused in possession of any weapon but thought he might have a weapon because he said he was a police officer. The accused drove to a suburb of Kilnerton in Pretoria and stopped in the centre of a circle.
- [52] The accused said his sister was struggling with her children because she (the witness) was busy running around with the sister’s husband. The accused further said he wanted to sort her out. She said the accused’s phone rang, and when he answered the call, it was on speaker, and she heard a woman’s voice saying – ‘where is that whore?’ After the accused dropped the call, he proposed love from her and said the complainant had sex the whole night, and even the bible says – ‘whores’ like her have to be forgiven and loved. He drove off and stopped at the petrol garage. Ms M[...] said she asked to go the toilet with the aim of asking for help and he agreed. When she was done at the toilet and was about to ask for help, she saw the accused going inside the garage shop – and she decided to go back to the vehicle without asking for help. She noticed a small cell phone in the vehicle, and she took the cell phone and sent a “please call” to her

own phone. Thereafter the accused returned and took the same cell phone to make a call.

- [53] The said the accused told her that he was going to have sexual intercourse with her by force, and she responded that he cannot, because she is a member of the ANC woman’s league and that if the accused can do something to her, the ANC woman’s league will look for him until they find him. They drove until they stopped at a garage at Kameeldrift. The accused instructed her to buy condoms and when she asked him to give her the money for condoms, the accused said she has had sex the whole night and she should use her money. She went inside the shop to buy condoms and as she was about to signal to the teller that she has been

kidnapped, she saw the accused standing behind her. They went back to the vehicle and the accused proceeded on the Cullinan road and drove past Bavianspoort Correctional Services. He then drove into the veld and stopped the vehicle and instructed the complainant to get to the back seat. He further instructed her to take off her clothes and that he should move in head-first. She did as instructed and was kneeling.

- [54] The accused went behind her and spread her legs apart and inserted his penis inside her vagina, and raped her. When the accused was finished raping her, he put something that looked like a condom inside the petrol tank. They both got dressed and the accused drove to Mamelodi. He asked for directions to the complainant's home and she said she stays in Mamelodi West. When they arrived at Mamelodi West, the accused stopped at a house at section D4 and said he was going to see his friend. He went to the house for less than five minutes and when he came out, he was in the company of a man whom he said - he wanted to buy fridges from.
- [55] As they left, the complainant gave directions of where she stays. She pointed at a house belonging to a friend which is about 15 metres away from her home, and that is where the accused dropped her off. She waited until the accused took a turn at the corner, and she went to her house and took a bath and went to bed. She said she called her partner Aubrey before going to sleep to inform him that she has been raped. The next morning when she woke up, she called the head of police at Mamelodi police station and reported that she has been raped. A case was opened, and she went to a doctor and she did not sustain any injuries.
- [56] Ms M[...] said the accused called him the day after the incident using a different number because she gave him her numbers when he asked for them at the time he took her home. She saw the accused again after a week around 7am when she was taking her grandson, Olwethu to the crèche. The accused was driving a Mercedes Benz at the time. Three days thereafter, she saw the accused again driving a Nissan 200 bakkie when she was fetching her grandson from crèche, and she called the investigating officer to make a report about this.
- [57] Under cross-examination, it was put to her that the accused was driving in front of a taxi along Church Street and the taxi driver flickered his vehicle lights to stop him, and when he stopped, the taxi parked in front of his vehicle. Further that as the accused was stopping, he received a phone call from the complainant, telling him that she is inside the taxi and that he should wait for her so she could go to his vehicle. She disputed that stating that the taxi driver could not have flickered his lights for the accused to stop because there were no other vehicles on the road, but that the accused's vehicle drove behind the taxi. She explained that after the taxi had stopped, she noticed the accused standing at the taxi driver's door. She disputed the accused's version that the accused never alighted from his vehicle and approached the taxi after it stopped, but that she is the one who went to his vehicle after getting off from the taxi.

- [58] She also disputed the accused's version that they did not stop at the garage to buy condoms and stated that when she went inside the garage to buy condoms, but could not scream for help, and insisted that she was too afraid to ask for help because she was in the company of a police officer, and thought he might have been in possession of a firearm. She explained that before she got out of the accused's vehicle, the accused threatened her and said she should not do anything stupid otherwise he would kill everyone at the garage.
- [59] It was put to her that the accused agrees to having had sexual intercourse with her on the day of the incident, but that it was with consent because the complainant is his girlfriend. Further that they have been having a love relationship for a while, and that is why the accused stopped his vehicle when the taxi driver stopped him. The complainant disputed having a love relationship with the accused and stated that she did not call the accused because she does not know him. She further denied the version that the accused have on several occasions fetched her from her home in Mamelodi before 1 May 2017, and that he has often slept with her at his BnB which is situated at section D4 in Mamelodi.
- [60] Mr Aubrey Mokoma testified on behalf of Ms M[...] and corroborated her evidence. He stated that on 30 April 2017, they booked at a hotel at the corner of Hamilton and Pretorius Street, and when they booked out the following morning on 1 May 2017 around 8am, they left the hotel on foot. As they were walking, he noticed the lady whom he saw at the hotel at the passage when they approached the lifts, walking slowly in front of them. The lady went into a restaurant, and he then saw a man leaning against

the white Audi motor vehicle parked between Audi and VW motor dealerships, talking to a security officer. The complainant boarded a taxi to Mamelodi, and he also took a taxi going to Atteridgeville. He said the complainant called him later that day and reported to him that she was kidnapped by the man they saw earlier standing next to the white Audi vehicle, and explained that the man had stopped the taxi and requested her to get out of the taxi and forced her into his vehicle, and that she had been raped. Nothing came out of the cross-examination of this witness, save to state that the witness confirmed seeing the man who was leaning against the white Audi vehicle that was parked next to the dealership.

- [61] Ms D[...] E[...] M[...] ("Ms M[...]") is the complainant in counts 17-21 falling under case 8. She testified that on 6 May 2017 she was walking in the street around the Glenwood area, going to checkers to buy food and deposit money for her child when a man attempted to stop her. She said she continued walking and ignored him because she did not know anyone

around that area. She identified the accused as the man who stopped her, and said she was seeing him for the first time that day. The accused approached her and grabbed her phone and pushed her and ordered her to get into the backseat of his vehicle. She said she was wearing a badge from the ZCC church where she is a member and the accused said he is a member of the church. He said he was going to take her to the police station because the person she was talking to over the phone is someone's husband, and that he was going to open a case against her.

- [62] The accused drove around Pretoria with her and showed her a female prison and said that inmates in that prison will deal with her. He told her that he was a policeman. She explained that as they were driving around, her daughter called wanting to know when she will receive the money she was to deposit for her and the accused showed her the shops where she could deposit the money. He grabbed her by the hand and went with her to Checkers where she was going to deposit the money. She had R300,00 in her possession and only deposited R200,00 for her daughter. After making a deposit, they went back to the vehicle and the accused demanded that she give him money she had, and she complied.
- [63] He drove off and while driving, he ordered her to lift her skirt so that he could see her thighs and she did. He then ordered her to undress her tights, and he touched her private parts. He drove to the bush where he ordered her to lick his penis. He further told her that he was going to have sexual intercourse with her, and she said she has a one-year-old child and came up with the excuse that she was HIV positive - with the aim of scaring him off, but the accused said it was okay as he also wanted to have her child. He then proceeded to rape the complainant and thereafter took her back to the street where he picked her up and left her there.
- [64] She said the accused called her in the evening and told her that he loves her. She explained that she gave her number to the accused when she pleaded with him not to rape her. She reported the rape incident to her employer who advised that she should report the matter to the police. She did and gave the police the accused's cell phone number. Ms M[...] said she complied with the accused's instructions because the accused threatened her and said she will be in a wheelchair if she does not comply.
- [65] It was put to her under cross-examination that on the day of the incident, she called the accused and requested him to fetch her because she wanted to go to the mall to deposit money for her child. The accused avers that after he met with the complainant opposite her workplace, he drove to the mall and withdrew money from the ATM and gave R400,00 to the complainant to send to her daughter because the complainant did not have money and asked money from him. Ms M[...] disputed that saying she did not know the accused but only met him for the first time when she was on her way to the shops and denied receiving any money from the accused and insisted that the accused is the one who took her money.
- [66] When asked why did she not scream for help when they were at the mall, she responded that the accused was walking beside her, and she was scared because he had threatened her earlier. It was then put to her that she did not ask for help because the accused never threatened her, and further that after he took her home, he later that day came to fetch her and they both went to his 'BnB' named Ncetolihle, loosely translated as Thuso-entle, at D4 Mamelodi where they had consensual sexual intercourse. The witness disputed that and insisted that the accused forced her into his vehicle and took her to the bushes where he raped her.

- [67] Mrs Heidi Scherman also took the stand and testified that she is Ms M[...]’s employer. She said the complainant had been working for her as a stay-in domestic worker for more than twenty
- (20) years and at the time of the incident, they had just relocated from Krugersdorp to Glenwood. She said the complainant was not familiar with the Glenwood area at the time. She explained that when she saw the complainant on Sunday, she was very emotional, crying, shaking, and could not speak. The complainant told her that she almost died and reported to her that she had been raped.
- [68] Describing her relationship with the complainant, she said they are like friends and knew about everything that happens to the complainant. She further testified that over the years that she had known the complainant, she had never seen her in a state that she was in. Mrs Scherman testified that after the incident, the complainant could not leave the house alone and they had to buy her a panic button. They also installed an electric fence and cameras around their property to make sure that the complainant was completely safe. She confirmed having knowledge of the phone call made by the accused, and said because the complainant was petrified, they gave her another phone number to use.
- [69] Under cross-examination, it was put to her that the complainant had been in a love relationship with the accused and that the accused denies having raped the complainant and that they had sexual intercourse by consent. She disputed that saying that she would have known of the relationship with the accused because they shared personal information with the complainant. She further said that the complainant only had a love relationship with Johannes, the father of her two children. She confirmed that she knew everything about the complainant because they were friends, and more like family.
- [70] With regards to case 9 relating to counts 20-24, Ms D[...] A[...] M[...] (“D[...]”) testified that she was walking with her boyfriend, Bennet Selelo (Bennet) on Sunday the 21st of May 2017 around 15:00 going to the park. She indicated to Bennet that she needed to use the bathroom, and they went to Shell garage in Beatrix Street in order to use their facilities. While at the entrance of the garage going to the toilet, the accused came, shouting at her, and asked her what she was doing there at that time of the day and not in church. The accused said he was from the chairperson of the ZCC, and was investigating her because she was in the company of a married man. He told her to take her belongings when she comes out of the toilet and should leave Bennet. She did as instructed and went to the accused’s vehicle without saying anything to Bennet. The accused told her that there will be newspaper reporters who will be coming to take her photos and send them to the church.
- [71] The accused told her that Bennet’s wife was in church at that time, crying, and will be coming with the reporters. As she got into the accused’s vehicle, she asked him not to take her to church, but to Prinsloo Street where she would take a taxi. She got into the back seat of the accused’s white Audi and he drove to a secluded building and parked the vehicle. There he instructed the complainant to lift her skirt and show him what he was going to do

with Bennet. She said the accused shouted at her and instructed her to take off her tights, and she did. He further instructed her to unzip his trouser, play with, and lick his private parts, and she did. The accused then started brushing her thighs and private parts. He then indicated that he does not feel comfortable where they were and drove to a field and when they got there, the accused again instructed her to put his penis in her mouth and lick it. She was then instructed to bend or kneel.

- [72] The accused proceeded to rape her while in her kneeling position and he thereafter instructed her to lie on her back and he penetrated her again. When he was done, he took the complainant to a taxi rank in Prinsloo Street and gave her R10 and asked the complainant to give him her phone numbers. He also gave the complainant his numbers and told her that from that day onwards, they are in a love relationship, and she should end her relationship with Bennet. She got into the taxi and the accused drove away. When she arrived home around 18:00, she called one of her cousins and reported to him what had happened.
- [73] She then took a bath and went to bed. Around 20:00, the accused called her and asked if Bennet had called, and she said he hasn't. D[...] testified that in the morning, she reported the incident to a lady where she works and that lady took her to the clinic, and the clinic referred them to the police station. She gave her statement to the police and gave them the accused's phone number. From the police station, she was taken to the hospital. Tests were conducted and she was also taken for counselling. D[...] explained that she followed the accused's instructions because she was scared, and the accused threatened her that he was going to lock her in the cells and she would never see her family again and will not be granted bail. She did not sustain any injuries. She never saw the accused again after the day of the incident.
- [74] It was put to her under cross-examination that she was not seeing the accused for the first time on the day of the incident because they had been in a love relationship. It was further put to her that when she saw the accused's vehicle at the garage, she left Bennet and went to the accused's vehicle by herself and asked him to forgive her because she had been exposed for cheating with Bennet. The witness disputed the accused's version and said she was seeing him for the first time that day. She further disputed the version that she suggested to the accused that they get a place where they could spend time together, and that they ended up going to Lebeya's place at Weskoppies hospital to spend a private moment together.
- [75] Mr Kolobe Bennet Selelo confirmed being in the company of D[...] and stated that they were walking on Johannes Ramokgwashe street going to the park at the Union Building. They went to a garage where the complainant needed to use the bathroom. He was holding a plastic and a bag belonging to the complainant when a man approached and accused him of taking his wife and threatened to assault him and call the police. He explained that at the time, he had been in a love relationship with the complainant for two years and five months. He explained further that this man told him to leave and went to the toilet. The man came back with the complainant who was at the time crying. He testified that the complainant

approached him and took her belongings and left with this man without saying anything. He went home and tried to call the complainant and there was no response, but the complainant called later in the evening and informed him that she had been raped.

- [76] Under cross-examination, he said when the man approached, he was in a fighting mood and asked if the woman he was with is A[...], and also threatened to call the people around the garage to come and kill him.
- [77] Dr Sipho Michael Lukhozi testified on behalf of the State as a medical expert and placed his qualifications and expertise on record. Besides obtaining an MBBCH degree from Wits University in the year 2000, he also obtained specialised qualifications from different institutions, including Stellenbosch university and the UK Royal College of Physicians in London. He worked in different provinces around the country, and in 2009 he started working as a medical practitioner in clinical forensic at Mamelodi Thuthuzela care centre. He explained that the centre is a one stop centre for victims of gender-based violence and sexual offences/assault, and it is also a multi-disciplinary centre.
- [78] He testified that he consulted with Z[...] N[...], the complainant in case 6 on 11 November 2016 at Mamelodi Thuthuzela care centre. He noted in the J88 of Z[...] admitted as exhibit F that there were no visible injuries upon genital examination, however, the absence of injuries does not rule out penetration. He

explained that he used the word “visible”, on purpose because even though the injuries could not be seen with a naked eye, it does not mean that they were absent. The reason

according to him is that injuries in the genital area heal very quickly.

- [79] Referring to a review article admitted by the court as exhibit N which was published in the paediatric and adolescent gynaecological unit at the Chile Maria Clinic in 2020, with regards to the question of when one would expect to find evidence of genital injuries in sexual violence, it is noted that “considering the techniques used, the median survival time for lesions could be 24, 40, and 80 hours when using the naked eye, colposcope, and toluidine blue dye respectively”. This means that because most of the examinations are conducted visually with the naked eye, the average survival time for an injury to be seen with the naked eye is 24hrs – but one can see more injuries clearly when using a microscope such as a colposcope which can zoom in and magnify the area so that they can pick up injuries up to 40 hours, and one can pick up injuries up to 80 hours using toluidine blue dye.
- [80] He testified that when examining Z[...], he relied on the naked eye observation, and all doctors do that. He opined that not seeing the injuries with the naked eye does not necessarily mean that there were no injuries upon examination. He further opined that with genital injuries following non-consensual sexual intercourse, more than 65% of cases won't have injuries even if they have presented within 24 hours. He explained that the person's age does not influence the absence or presence of injuries except in instances of early menopause or early puberty where oestrogen hormones will be minimal.

- [81] Responding to the question whether a victim would experience injuries where a stranger is perpetrating the sexual act, he said in cases where a woman knew her assailant, there was a statistically significant higher chance of sustaining injuries when compared with women who did not know their assailants - meaning that having a stranger attacker does not mean that there will be more injuries because studies have shown that a person who knows the perpetrator will have more injuries as opposed to a stranger[1].
- [82] He further explained that previous childbirth (vaginal deliveries) are also factors which are taken into consideration regarding the absence of injuries, and that the absence of injuries does not mean that the victim has given consent. He concluded his evidence by saying that lack of injuries highlights the importance of ensuring that all those who are involved in sexual offence cases such as medical and legal professionals; police officers are aware that injury is absolutely not a necessary outcome of sexual violence. There was no cross-examination of this witness, and the State closed its case.
- [83] The accused also took the witness stand and gave viva voce evidence. A broad conspectus of his evidence reveals that the issue in dispute on all the counts is consent. The version of the accused is briefly that he had a love relationship and consensual sexual intercourse with all the complainants, except with S[...] M[...] S[...]. According to him, all the complainants had freely and voluntarily gone with him to the places where the sexual intercourse occurred. He testified that if they had not freely and voluntarily gone with him to these places, they had ample opportunity to get help from the security or police that were around those areas. He gave very specific details about each incident and each complainant's life. He testified that the complainants were the instigators of the sexual intercourse and the meetings on the days of the incidents.
- [84] Regarding the complainant D[...] in counts 4 and 5, the accused said he knew her from the time when she was working in Lebowakgomo at an Indian shop where he was a customer. He said on 5 March 2014 he was in the company of his elder sister, when he went to check the 'BnB' lodge belonging to his sister. He went inside the lodge and talked to the workers and when he came outside, he found the complainant talking to his sister. He suggested to the complainant that they should travel together to Lebowakgomo, and she agreed. Arriving at Lebowakgomo, he dropped off his sister at the shops and proceeded with the complainant to his sister's house where they had consensual sexual intercourse with the complainant in his sister's bedroom, and thereafter went to drop off D[...] at the shopping complex because she was supposed to report for duty at 2pm.
- [85] He testified under cross-examination that at the time of the incident, he had been in a love relationship with the complainant for two to three years, and that on the day of the incident, he agreed with the complainant that they should meet at the lodge because the complainant was supposed to be at work at 12 midday. He could not explain why he initially said the complainant was supposed to report for duty at 2pm and not at 12, and said he remembers giving something to the complainant but is not sure what he gave her. He thereafter changed

his version and said he gave a quotation to the complainant for the cleaning material of his business which she was supposed to give to a certain Mr Chiloane. He admitted knowing the complainant's boyfriend Mr Mankgabo and said he (Mr Mankgabo) was not in the area of Limpopo on the day of the incident.

[86] Regarding the complainant in counts 6 and 7 Mrs S[...], he said he met the complainant and Mr Segudu on the road when he was on his way to Biyaba, Makhado coming from Ga-Mosekwa. He said the complainant and Mr Segudu were driving to the opposite direction and as he was about to pass them, they made a U-turn and faced the same direction he was taking and stopped their vehicle. He said he also stopped his vehicle and went to their vehicle and approached them on the side where Mr Segudu was. He said Mr Segudu appeared to be furious, and he then asked him why he was driving recklessly, but they ended up having an altercation. He said he realized at that moment that the complainant, whom he calls S[...], was in Mr Segudu's vehicle. He said he decided to leave but the complainant followed him. He testified that he left with the complainant and went to Makhado where he dropped her off at the gate of her house.

[87] He testified under cross-examination that there was no reason for him to impersonate himself as a police officer because Mrs S[...] knows him very well. He further stated that he knew Mrs S[...]’s husband because they grew up together in Makhado and that the husband is a truck driver. When confronted about the version put to the complainant that her husband is a teacher, he changed his version and said Mrs S[...]’s

husband graduated as a teacher from varsity and that when he retired, he started driving trucks because of his family business. He further stated that Mrs S[...] went away with him in his vehicle because she was embarrassed to be seen with another man in the vehicle because there were already rumours that she was in a love relationship with Mr Segudu.

[88] The accused then changed his version again and said he had a close relationship with Mr S[...] because they are best friends and were in the same soccer team and attended the same social club. According to him, he allowed Mr Segudu to take the picture of his vehicle and of himself because Mr Segudu said the complainant cannot go away with the person he does not know, referring to the accused. He then summersaulted and said the complainant went and apologized to him when she was exposed and threatened him, saying that if he (the accused) can tell her husband, Mr Segudu will hunt him down. When asked why this version was never put to the witness and was only being heard for the first time under cross-examination, he responded that he did not think it was necessary to tell his counsel about this version or that his version

should be put to the witnesses.

[89] Testifying in relation to count 8, the accused said the complainant found him around Siyabuswa area. He explained that when the complainant called him, he was at her place of residence where he left his vehicle because the complainant had earlier called and said she asked to be released early from work and that she will find him at her place. He then changed his

version and said the complainant came to his place at Mabena's and hooted for him to come out and said he should follow her to her place. He said they drove to his farm in Dennilton to look for his employees who were erecting a fence. When it was put to him that he initially said they went to a site where the complainant had a farm and had workers erecting a fence, he could not explain why he changed his version, and said he cannot recall what happened because it had been too long since the incident occurred.

[90] He testified that he had sexual intercourse with the complainant at the back of the complainant's vehicle at Dennilton at the complainant's place. He said Mrs Hlongwane who is a principal at the school where the complainant worked as a teacher is his sister. He also testified that he had been having a love relationship with the complainant for long and have had sexual intercourse with her before 24 June 2015, which is the day of the incident. He said he started knowing the complainant around 2007 and 2008 but does not remember exactly when they started having a love relationship. He said as far as he was concerned, he was still in a relationship with the complainant because they had not broken up, but only gave each other space because the complainant had to sort out her issues with the young man she was having a relationship with.

[91] As regards counts 9 to 11, the accused testified that he knew the complainant, J[...] M[...] because they grew up in the same village and have been having a love relationship since 2009. He said on 24 April 2016 he was on his way to Elim in Waterval, around the area of Mafikeng, going to attend the unveiling of a tombstone when he received a phone call from the complainant. He found her at a tavern called Lushaka la ba Venda in Vleifontein and they both left, taking the direction of Ga-Maila. They proceeded to Soekmekaar at his place. Upon arrival, he gave the complainant the key to open the house while he parked the vehicle in the garage.

[92] He said they spent the night together and had consensual sexual intercourse and around 5:20 he took her to Ga-Maila. He said he noticed that the complainant was getting cold and he gave her his jacket to wear and along the way, there was a vehicle which he knew and he asked the driver to give the complainant a lift and he gave her R40. He said they never had problems with the complainant and on 22 October 2018, he received a call from a certain captain Sekgala who informed him of the case regarding J[...].

[93] Under cross-examination, he denied raping the complainant and stated that during the time of the incident on 24 April 2016, they were already having a love relationship but could not remember for how long they were in a relationship for. It was put to him that it was very strange that he could not tell the court how long his relationship with the complainant lasted while he gave a detailed explanation or information during his examination in chief regarding the incident. He also changed his version of where he met the complainant, and said he met her in the street and cannot say that he met her at the tavern. He further said the complainant was under the influence of liquor when he met her.

- [94] He could not explain why this version was never put to the complainant. He said he noticed that the complainant was getting cold, and he gave her his jacket to wear and along the way, there was a vehicle which he knew, and he asked the driver to give the complainant a lift. The accused testified in chief that according to his culture, when he takes a woman out, he has to take her back to where he found her and when asked why his culture applies where it suits him because he did not take the complainant back home - he said he could not take her back because they were not going to the same direction. He said the complainant's father and his maternal grandfather are siblings. The accused alleged that captain Sekgala; captain Nel; the investigating officer, Mr Meyer, and other police officers he does not know, gave tips to J[...] and other complainants to falsely implicate him. I will come to this piece of evidence later in the judgment.
- [95] Testifying about counts 12 and 13, he said the complainant called him around 23:00 to come and fetch her from Vista village where the taxi normally drops her off and went with her to her parental home at Mamelodi gardens where they had sexual intercourse in her parent's home. He stated under cross-examination that he knew the complainant, Z[...] from 2014 when she was attending a technical college in Mamelodi. He said he was still in a love relationship with the complainant around November 2016 and they only met when they both had a chance to meet.
- [96] He said he had a sexual encounter with her once before 10 November 2016 and again on the day of the incident. He does not remember where they first engaged but the second time was at the complainant's aunt's place. He then changed his version and said both incidents happened at the aunt's place because they never went to any other place. When confronted with the contradictions in his evidence, he said he cannot remember because the incident happened a long time ago. He disputed the complainant's evidence and that of her cousin that the complainant had only been in Mamelodi for a month prior to the incident after she left Durban.
- [97] With regards to counts 14 to 16, he confirmed that he was driving a white Audi motor vehicle and met the complainant on the street at Nelson Mandela drive. He said he was crossing the road and overtook a white taxi, and thereafter a maroon taxi flickered its lights for him to stop. The taxi driver stopped parallel to his vehicle and informed him that there was a person in the taxi who wanted to talk to him. He said the complainant then got off the taxi and got into his vehicle and thereafter they drove to a garage in Silverton because the complainant wanted to use the bathroom. From there they drove towards China City which is situated on the road leading to Cullinan and took a turn at Mahube road.

- [98] He said they went to a lodge called Ncedolihle, which is situated at section A5 in Mamelodi where they had sexual intercourse. When asked who the lodge belongs to, he stated that it belonged to his wife whom he pointed out and was seated in the gallery in the court room. He denied having told the complainant that he was a police officer and said there was no need for him to identify himself as a police officer because the complainant knows him and his wife very well.
- [99] Under cross-examination, he claimed to have been in a love relationship with the complainant for many years but could not tell the years when the relationship started and said he could not remember. He said he does not know if the complainant was aware that he was a married man and when asked if it was okay for the complainant to have a boyfriend since he is married, he responded that he was going to have a problem because he would not want to put his wife's health in jeopardy of illnesses. Responding to the question whether he received a call from the complainant before she got off from the taxi, he said he did not say that and does not know where his counsel got such an instruction to put to Ms M[...], indicating that counsel might have been asking questions coming from his LLB books.
- [100] He confirmed using the road to Bavianspoort prison and said it is the road he took when he went to Mamelodi. He testified that the complainant insisted on having sexual intercourse with him and when asked what he meant by that, he gave a strange response and said he did not trust the complainant after seeing where she was coming from that morning, and explained that he thought that she might have been sleeping with other men and that is why she said she was willing to have sexual intercourse with him. He testified that he was still in a love relationship with the complainant and when asked to explain why the complainant would open a case of rape against him if they were still in a relationship, he responded that he considers himself to still be in a love relationship with her.
- [101] Regarding counts 17 to 21, he denied raping the complainant and said he knew her two years prior the date of the incident. He testified that he had a prior arrangement with the complainant a day before the incident that he would fetch her from her workplace because the complainant asked him to assist with the money so that she could send it to her child. He further testified that after fetching her from work, they went to the ATM at Lynwood mall where he withdrew R400,00 and gave R200,00 to the complainant. He said he does not remember where he dropped her off when they came back from the mall, but they met again later when he went to fetch her again at the gate of her workplace, and they drove to Nelmapius where they had sexual intercourse. He denied threatening her and telling her that he is a member of the SAPS.
- [102] Under cross-examination, the accused said he knew the complainant because she was working in the street where he was working as a taxi driver, and further that he used to transport the complainant and a group of other people from church. When confronted about this new evidence that was never put to the complainant, he said he can only respond to a specific question being asked. He said he was in a love relationship with the complainant for two years, and later changed his version and said he could not remember

how long the relationship lasted. He thereafter said their relationship started two years before 6 May 2017, and that the complainant was at that time working as a live-in domestic worker for the owner who had been staying in the property for five to six years before the date of the incident.

[103] When challenged about the evidence of Mrs Sherman, the complainant's employer - that she and the complainant only moved in that property six months prior to the incident, he said Mrs Sherman was not telling the truth. When asked why Mrs Sherman's evidence was never disputed, he said he does not know why it was not disputed. He was also not able to respond when challenged on his own version that the complainant was 3 months pregnant after they started having

a relationship. He then said he was hearing about this for the first time from the State advocate. When pressed further regarding whether the complainant became pregnant and gave birth to a child in the 2 years they were in a relationship, he said he does not know anything about what happened in those two years because the complainant is not his wife, and that it was difficult for him to tell whether the complainant was pregnant or not because she has a 'big body'.

[104] For the first time under cross-examination, the accused said he gave money to the complainant many times to support her children. He could however not tell how old the complainant's youngest child was and said it was not his duty to know. The accused was also challenged about his evidence that he had sexual intercourse with the complainant at Nelmapius, whereas it was put to her that they had sexual intercourse in Mamelodi D4. He responded by saying that they first had sex in Mamelodi D4 and thereafter drove to Nelmapius where they also had sex.

[105] The accused was asked a question about the time period when he was in a love relationship with the complainant Ms M[...] because that would have meant that he was during the same period, in a relationship with Z[...] N[...]; P[...] M[...]; J[...] M[...], and P[...] L[...] M[...]. He emphatically denied that he was in any other love relationship during the two years that he was in a relationship with Ms. M[...]. He first responded that - that could not be true because he had a wife.

[106] The State then confronted the accused and put to him that if he was in a relationship with Ms M[...] for two years before the 6th of May 2017 (on his own version), that means he was also in a relationship with Ms. M[...] during those two years, as well as Z[...] N[...], J[...] M[...], and L[...] M[...]. According to the accused's version, that would also mean that on 21 May 2017 he was also having a relationship with A[...] M[...] whilst he was still in a relationship with Ms. M[...]. The accused first denied this logical consequence of his version and then changed his answer and stated that the period indicated to him by the State according to his evidence is correct.

[107] Responding to the question that all the complainants said he raped them on the dates which fall under the two year period that he was talking about, he said it was not true. He stated that he was having a relationship with all of them at once because they were not from the same area. The above highlighted evidence of the accused makes the finding that his version is inescapable of being reasonably possibly true.

[108] Regarding counts 22 to 24, the accused testified that he was at the garage (filling station) talking to the petrol attendant and saw the complainant standing next to the window of the cashier with a male person. He alighted from his vehicle and approached the man and asked about the woman who was standing next to him because the complainant had at the time vanished and did not see where he went. He stated that the complainant reappeared after a while and took her belongings from this man and followed him to his vehicle. He said he drove off with the complainant in his vehicle and he went to see his daughter at the military base next to Kgosimampuru Correctional Services, and from there, they drove to Weskopies at his friend's place where they had sexual intercourse. He stated that when they finished, he went to drop her off at the taxi rank so that she could go home. He denied threatening the complainant and

raping her.

[109] It is not in dispute that all the complainants were single witnesses that testified about incidents of sexual intercourse having occurred without their consent. It is trite law that an accused may be convicted of any offence on the evidence of a single competent witness[2]. The proper approach to the evaluation of the evidence of a single witness was clearly set out in *S v Webber*[3] where the court held that: "Conviction is possible on the evidence of a single witness. Such witness must be credible, and the evidence should be approached with caution. Due consideration should be given to factors which affirm, and factors which detract from the credibility of the witness. The probative value of the evidence of a single witness should also not be equated with that of several witnesses".

[110] In *S v Sauls and Others*[4] Diemont JA held that: "There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of a single witness. The trial judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether it is trustworthy and whether despite the fact that there are shortcomings or defects or contradictions in the testimony, he is satisfied that the truth has told".

[111] The fundamental principle of our law in criminal trials is that the burden of proof rests on the prosecution to prove the accused's guilt beyond a reasonable doubt. Put differently - to secure a conviction, the State must prove all the elements of the crimes committed by the accused beyond a reasonable doubt. For the court to arrive at a finding that the State proved its case against the accused, the evidence of the State must be measured against the evidence of the accused as to whether his version could be said to be reasonably possibly true.

- [112] In *S v Sithole*[5] the court stated that: “There is only one test in a criminal case, and that is whether the evidence establishes the guilt of the accused beyond a reasonable doubt. The corollary is that the accused is entitled to be acquitted if there is a reasonable possibility that an innocent explanation which he has proffered might be true...”
- [113] The general considerations that are important when a court weighs up the evidence or when it evaluates the evidence at the end of a trial is to weigh the evidence as a whole and not to be selective in determining what evidence to consider. In doing so, the court must take the following into consideration, among others: all probabilities; reliability and opportunity for observation of the respective witnesses; the absence of interest or bias; the intrinsic merits or demerits of the testimony itself; inconsistencies or contradictions and corroboration. Probabilities must likewise be considered in the light of proven facts.
- [114] The question is therefore whether on the conspectus of the evidence, it can be concluded that all the offences the accused has been charged with, have been proved beyond a reasonable doubt by the State. This means the court must therefore decide whether on the evidence at hand, it can be said that the State has proved its case against the accused beyond a reasonable doubt.
- [115] In *S v Mdlongwa*[6] the Supreme Court of Appeal endorsed the following principle enunciated in *S v Van der Meyden*[7] where NUGENT J stated that: “A court does not base its conclusion, whether it be to convict or to acquit, on only part of the evidence...The proper test is that an accused is about to be convicted if the evidence establishes his guilt beyond reasonable doubt, and the logical corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of that test in any particular case will depend on the nature of the evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false, some of it might be found to be unreliable, and some of it might be found to be only possibly false or unreliable, but none of it may simply be ignored”.
- [116] In *S v Chabalala*[8] the Supreme Court of Appeal amplified as follows, the ‘holistic’ approach required by a trial court in examining the evidence on the question of the guilt or innocence of an accuse: “The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weights so heavily in favour of the State as to exclude any reasonable doubt about the accused’s guilt”.

- [117] The evidence of all the victims were corroborated by the people they were with on the day of the incident, and their first report witnesses who witnessed the behaviour and emotional status of the victims, and this relates to Z[...]; D[...]; and Ms M[...]. The evidence of the victims was also corroborated by the DNA reports in some of the cases.
- [118] Corroboration denotes other evidence which independently confirms or supports other evidence which renders the evidence of the accused less probable on the issues in dispute. See: *S v Gentle* 2005 (1) SACR 420 (SCA)
- [119] The evidence of D[...] in counts 4-5 was corroborated that of Mr Mankgaba and the DNA evidence admitted as exhibit M. In my view, their evidence contained no inherent improbabilities or material contradictions. The absence of consent to sexual intercourse by the complainant is confirmed by the fact that the complainant was in the company of her boyfriend when the accused deceived them and took her away.
- [120] The court accepts the evidence of the complainant that she was very scared and succumbed to the demands of the accused because there was no animosity between them, according to the accused. It should be noted that according to the complainant's evidence, she could not show the police where to find the accused, and neither did she know his name. Otherwise, if she really wanted to falsely implicate the accused, she would have told the police exactly where to find the accused and gave them his name.
- [121] The version of the accused on the other hand is improbable and inconsistent because he contradicted himself on various aspects. He gave specific details about the incident with the complainant - even though the incident occurred on 5 March
2014. He could initially not remember how long he had been in a love relationship with the complainant but later estimated it to be two to three years. For some reason, he remembers the finer detail of the incident such as the time the complainant phoned him that morning.
- [122] The State argued that the accused used the complainant's membership to the ZCC church and the ZCC badge she wore on the day of the incident as the catalyst and/or crux of his falsehoods to mislead her, and to enable him to kidnap her from the lodge. The State correctly submitted that if the complainant was in a love relationship with both the accused and Mr Mankgaba, it was highly unlikely that the complainant would be with Mr Mankgaba at the Lodge where the accused was the manager.
- [123] The version of Mrs S[...] in relation to counts 6 and 7 was corroborated by that of Mr Sigudu with regard to how the accused approached them and why the accused's photos were taken by them, including the explanation given to them by the accused as to why he was there when he took the complainant with him. In my view, the version of the State contains no inherent improbabilities, and the witnesses did not contradict themselves or each other in any material respect.

- [124] The he version of the accused on the other hand was full of material contradictions. He testified that he knew Mrs S[...] because they were doing tenders together at the clinic, and later changed this version during cross-examination to say that he knew Mrs S[...] as she was born and bred in Makhado. He further said he knew that Mrs S[...]’s husband was a teacher and then later changed his version and testified that Mr S[...] was a retired teacher and was now involved in the family business of owning trucks, and that he (Mr S[...]) was the driver to one of those trucks. This version was never put to the witnesses and is rejected by the court.
- [125] For the first time during cross-examination by the State, the accused brought up the allegation that there were rumours prior to seeing Mrs S[...] and Mr Sigudu that day that they were having a relationship. He testified that he knew that Mr Sigudu was a school principal, but that Mr Sigudu did not know him. This version was also never put to Mr Sigudu during cross-examination on behalf of the accused. Regarding his photograph that was taken by Mrs S[...] and Mr Sigudu, he first denied his photograph even on the face of Exhibit A admitted in terms of section 220 of the CPA, wherein it is stated in paragraph 19 that the accused formally admitted that Mrs S[...] took a photograph of him. Although exhibit A which he confirmed to the court that he understands the contents thereof and reflects his signature, he insisted that he had not admitted that it was Mrs S[...] who took the photograph of himself.
- [126] Like in all other cases, when confronted about the contradictions in his version or his version that was never put to the witnesses, he would say that he could not remember everything that happened because it had been a long time since the incident occurred. The evidence of the complainant was further corroborated by Mr Sigudu regarding where the accused abandoned her on the road in the middle of nowhere after she alerted Mr Sigudu of the exact place where she could be found. The accused alleged that Mrs S[...] and Mr Sigudu laid false charges against him because they did not want him to tell her husband about ‘the affair’ they were having. There is nothing to substantiate the allegations made by the accused and the evidence of both Mrs S[...] and Sikudu remain unshaken. In the circumstances, their evidence is accepted as honest, credible, and reliable, and the version of the accused in this case docket is rejected in toto.
- [127] As for L[...] M[...], her evidence clearly shows that she was manipulated by the accused into having sexual intercourse with him. The accused took advantage of her vulnerability when he told her that he was sent from the ZCC headquarters to come and assist her, by giving a prophesy which was unfortunately in line with the problems she was facing at the time, and which she had told to Mrs Hlongwane in confidence. The accused said Mrs Hlongwane was his sister, and it was not surprising that the accused was on point when he gave a prophecy to the complainant about her personal problems.

- [128] The accused indicated during his evidence that he was a member of the Lekganyane family and a member of the ZCC church. So, he knew exactly how the complainant would react when he told her that he had been sent by Bishop Lekganyane to come and assist her, and also pretended to be on the phone with the Bishop to report that the complainant is reluctant to follow the instructions coming from the Bishop himself.
- [129] When the complainant commenced with her evidence, she told the court about her Christian beliefs and how members of the church respect the prophecy and instructions coming from Moria. She told the court that when she received a call from the accused who informed her that he was sent to specifically assist her, she was very happy and told everyone that God was finally answering her prayers by sending someone special from Moria to come and help her. The accused knew that she had a problem with her womb, and tricked her into having sex with her by telling her that whatever is in her womb can only be taken out by inserting his penis into her vagina, thereby penetrating her and having sexual intercourse with her.
- [130] As with the other cases, the accused claimed that he was in a love relationship with Ms M[...] but could not remember for how many years their relationship lasted. The accused never disputed taking the vehicle of the complainant and keeping it with him after telling the complainant that he was taking it to Moria to be fixed. He in fact confirmed that he took the complainant's vehicle and did not dispute the complainant's evidence that when he brought the vehicle back after two days, it was damaged, having taken it being in good condition. One of the contradictions in the accused's version relates to the fact that he said on their way to Witbank with the complainant, she suggested that they stop at her site so she could check on the people who were erecting a fence at that site. He thereafter gave a different version and stated that they stopped at a farm where he kept his livestock because he wanted to check on his employees who were fixing a fence.
- [131] When confronted with the changed version during cross-examination, he claimed that the complainant also had a place in that area not far from his farm. A further contradiction in the accused's evidence relates to the version that was put to the complainant that the accused ended his love relationship with the complainant after he discovered that he was having a love relationship with a younger man. However, he stated under cross-examination that they had not agreed on ending their relationship and that one day when he visited the complainant, he found her having sexual intercourse with a younger boy. Like many of his versions that were not put to witnesses, this version was also not put to Ms M[...]. He also came up with another version that was never put to the complainant - that they had sex at her house or at Mabena's rooms for years before the date of the incident.

- [132] Mr Tlouane argued that the complainant was an adult and a teacher by profession, and it is therefore difficult to believe that she was convinced that her problems would be resolved through sexual intercourse with the accused. He submitted that for the State to rely on the evidence of a single witness without calling other witnesses should not be without consequences. Counsel further submitted that sexual intercourse of this complainant with the accused was with consent and that the accused did not deceive the complainant.
- [133] I do not agree with the submissions made by counsel. It is on record that the complainant only confided to principal Mahlangu, who the accused said it was his sister. The explanation given by the complainant regarding her Christian beliefs and the reasons why she succumbed to the manipulation of the accused who in my view, knew without a doubt, that the complainant would submit to, as he is also a member of the Lekganyane clan, including the fact that the accused never disputed her reasons as to why she submitted to his demands, leaves no room for doubt that her evidence was credible, reliable, honest, and truthful, and is therefore accepted by the court.
- [134] With regard to the case of J[...] M[...], the DNA report admitted as Exhibit M corroborates the version that the accused had sexual intercourse with her. In my view, there were no inherent improbabilities or material contradictions in the evidence presented by the State. Lack of consent to sexual intercourse is illustrated by the fact that J[...] said she was terrified that something had happened to her children when someone called and said he is a police officer from Makhado police station and was at her house. She was at the time with her boyfriend and the accused came to fetch her and drove away with her. According to her, she was also convinced that the accused would kill her because he threatened to hit her boyfriend with the firearm which he had and sped off with her, leaving her boyfriend behind. The accused took her away under the guise that something was wrong at her home with her children. He drove around with her for a long time and eventually took her to an unoccupied shack in the Soekmekaar area where he raped her in the early hours of the morning of 24 April 2016. After the rape, he drove with the complainant to a taxi stop where he dropped her off and gave her R40-00 and a jacket.
- [135] The State argued, and correctly so, that the accused planned the commission of the offences because he knew where the complainant lived with her children and “crooked” her children to get her telephone number. This was confirmed by the defence counsel who submitted that - it became very clear during the trial that the accused knew where the complainant stayed and also knew her children. However, counsel argued in his heads of argument that the state of affairs only renders the accused's evidence reasonably possibly true. Mr Tlouane further argued that the fact that the complainant willingly left with the accused without inviting her boyfriend to accompany them, is quite strange and submitted that the complainant's conduct is inconsistent with the fears she has raised when giving evidence.

- [136] I do not agree with the submissions made on behalf of the accused because the evidence of the accused was riddled with contradictions improbabilities. What makes the evidence of the accused not to be reasonably possibly true is the fact that he constantly changed his version as to what occurred when he picked J[...] up in the street and testified that the J[...] was under the influence of alcohol when she came to him. This version was never put to J[...] during cross-examination, and yet the accused denied that it was never put to her. He claimed to have been in a relationship with J[...] and yet he could not remember how long he had been in a love relationship with her, given the fact that they grew up in the same village, according to his version. He also claimed when testifying in chief - to have been related to the complainant's in-laws, and this version was never put to the complainant. On the flip side of things, the accused denied that he was part of the Lekganyane family (from his mother's side) as he initially testified and stated that he cannot be associated with her own mother because he carries his father's name.
- [137] The accused admitted the DNA report handed in as exhibit M in terms of section 220 of the CPA, and the contents thereof. The evidence of Mr T[...] on the other hand corroborates the version of the complainant that she received a call from the police who said they were at her house with her children. He confirmed that she was told that a policeman will come and fetch her, and when the police officer arrived, he instructed her to get into the vehicle. Mr T[...] was threatened to be shot in the head when he enquired where the complainant was taken to and where he would find her. In the circumstances, the evidence of J[...] M[...] and her witness are accepted by the court and the evidence of the accused is rejected.
- [138] With regards to the evidence relating to counts 12 and 13, of Z[...] N[...] and her cousin L [...], they did not contradict themselves. L[...] corroborated the evidence of the complainant that she was raped as reported to her and evident from the DNA report admitted as exhibit L. During cross-examination of the accused, some inconsistencies, improbabilities, and contradictions came to light in his version - which makes the finding inescapable that his version is not reasonably possibly true. He testified that he had known the complainant since 2014 and they were in a love relationship for about twelve months before the date of the incident. He disputed Z[...] and L[...]’s evidence that the complainant had only been in Mamelodi for about a month. Surprisingly enough, it was never put to the complainant or L[...] during cross-examination that the complainant was in a love relationship with the accused for twelve months before the rape.
- [139] The accused testified under cross-examination that he did not know how old Z[...] was, and said her age was never a problem because her body looks big enough and matured. He testified that the complainant abused alcohol and drugs and said he was not happy with the complainant taking drugs and alcohol. He said when they had a conversation about this aspect when they were seated in his vehicle, he realized that Z[...] was of a much tender age than he had thought and there and then ended the relationship during this conversation. He then changed his version and testified that the aunt of the complainant came out of the house when they were seated in his vehicle and said the complainant was still a child.

- [140] This was new evidence that the accused placed before court. The accused conceded that he thought Z[...] laid false charges against him because she was cross that he had broken up with her. He accused L[...] of coming to testify and corroborate the version of the complainant and said L[...] wanted to make sure Z[...]’s evidence was strong enough. The allegations by the accused are in my view baseless, and I am inclined to agree with the State’s submission that the accused’s version is riddled with inconsistencies and improbabilities.
- [141] Like in all the other cases, the accused did not come out as an impressive witness because when he was confronted with various aspects during cross-examination by the State, he alleged that he could not remember, because it had been a long time ago since the incident occurred. Looking at the facts and evidence presented by the State, there is nothing in the evidence of Z[...] which showed that she wanted to falsely implicate the accused, and her evidence and that of L[...] are accepted as being honest, reliable, and credible by the court, and the evidence of the accused is rejected as false.
- [142] Turning to the evidence of Ms M [...], she also presented herself as a good witness who was consistent and straight forward in giving her answers, both during examination in chief and cross examination. The State argued that the accused was clearly watching and following the complainant before he kidnapped her, since he “enquired from her as to whether she was not walking with the man who was wearing a blue T-shirt and was in possession of a green bag. The accused was referring to Aubrey, Ms M [...]’s boyfriend who she was walking with when they left the hotel. It was argued that the complainant had the opportunity to break loose from the accused when she requested to use the toilet at the garage, and when the accused went to see the person whom he said was selling fridges in Mamelodi D4.
- [143] That may so, but the crux of the issue for determination by this court is whether the accused kidnapped and raped the complainant. In his own version, the accused admitted having had sexual intercourse with the complainant and also admitted that the complaint was in his vehicle after she alighted from the taxi. The court is satisfied that Ms M [...] gave her evidence in a coherent matter and without any contradiction. She did not hesitate to answer questions by the State, even with the toughest questions coming under cross-examination by Mr Tlouane.
- [144] Just as in the case of Z[...] who only arrived in Mamelodi a month before the incident, so was Mrs M [...] who’s evidence was corroborated by Mrs Scherman that Mrs M [...] was not familiar with the area where they were staying. The accused gave an impression that he had been in a relationship with her but could not answer straight forward questions relating to her youngest child and whether she was pregnant at the time she started having a love relationship with him, or whether she was already pregnant by then. Instead, the accused came up with a story that he knew the owners of that property where the complainant was staying, referring to Mrs Scherman, including the alleged previous

owners of the property. He went as far as refuting the evidence of Mrs Scherman that she had to install cameras; an electric fence; and bought a panic button for the complainant because she was traumatised after the incident and did not want to be left alone in the property. The accused's evidence was riddled with material contradictions, inherent improbabilities, and inconsistencies which makes the finding inevitable that his version is not reasonably possibly true. His version is therefore rejected as false.

- [145] In the process of evaluating all the evidence before me, I had to determine whether the accused's version was reasonably possibly true, which would entitle him to an acquittal. The accused denied that he kidnapped and raped all the complainants, save for Mrs S[...], and he denied impersonating a police officer when he approached all of them. He alleged that all the witnesses voluntarily left with him, and all initiated the act of sexual intercourse which was ultimately done by consent with all the victims.
- [146] As indicated above, the accused alleged that all the complainants were falsely implicating him and were coached on how to give evidence by the investigating officer and other police officials, as well as the State prosecutors, advocates "H" and "S" who were representing the State at the beginning of the trial. The allegations were made when the accused was giving his evidence in chief and were never put to the complainants to respond thereto. He stated that he does not know why the witnesses would make false allegations against him, or why the police officials and two previous prosecutors coached the witnesses.
- [147] I want to place on record that when these allegations were made against the prosecuting team, they both made an application to recuse themselves from the case and the application was granted. The accused claimed to have proof of the coaching in that he observed the two previous prosecutors seated at the back of the court with a group of witnesses. He said he heard them telling the witnesses what to say and claimed that at the police station he heard through a thin wall how the police were planning with the witnesses to falsely implicate him. It should be noted that after the previous State prosecutors were excused by the court, the record of the proceedings was transcribed.
- [148] The current State prosecutor, advocate Cronje who took over the case requested that the accused and his counsel be given the opportunity to go through the record to enable the accused to respond to specific questions as regards the allegations made against some of the complainants. In this regard, the allegations of coaching made by the accused was tested by the State during cross-examination.
- [149] The accused alleged that Ms, P[...] M[...] was one of the witnesses coached by the previous prosecutors. He testified that Ms M[...] also confronted him in court in full view of other people in court and told him that he will go to jail for life and that if he is released, she would kill him. This version was never put to P[...] during cross-examination on his behalf. When the accused was confronted with the aforesaid issue, he became rude and disrespectful, and thereafter responded that he was on trial explaining the allegations that were made against him, and not what P[...] had said or the threats she had uttered. The

accused stuck with this unfortunate and inherently improbable answer when questioned about the allegations he made against other victims and stated that he was not prepared to answer any questions posed to him by the State. The aforesaid answer became the go-to answer of the accused whenever he was asked by the State why this and other aspects were not put in cross-examination to the witnesses.

- [150] The accused was further confronted with the fact that nothing about coaching was put in cross-examination of D[...] M[...], Kingsley Mankgaba, Z[...] N[...] or P[...] M[...], and he could not explain why this version was not put to any of the state witnesses. It became apparent during his cross-examination that he was not prepared to answer any of the questions posed to him by the State as he would respond to questions asked by stating that he would not answer the questions unless the Court and/or his counsel wanted him to respond to the questions.
- [151] I have had the opportunity of watching all the state witnesses as well as the accused when they testified in this court. All the State witnesses gave their evidence in a calm, sequential and relaxed manner, even though some of them were emotional when testifying. I distinctly formed an impression that they were truthful, honest, and reliable as witnesses. I can say without any shadow of doubt that the State witnesses did not embellish their versions to disadvantage the accused herein. I have no reason to reject or disregard their testimonies.
- [152] On the contrary, the accused was a woeful witness in the witness stand. He contradicted what was put to state witnesses on his behalf and even came up with new versions that were at odds with his entire testimony. He did not hesitate to deny what he testified to. I distinctly formed an impression that the accused was not telling the truth to this court. There are so many inconsistencies and improbabilities in the accused's evidence that I can say without any fear of contradiction that he was an untruthful, unreliable, and untrustworthy witness whose evidence cannot be relied on.
- [153] His version of events is so improbable that it cannot be accepted as representing a true version of events in this case. He adjusted his story so many times with regards to the charges in all the case dockets. What cannot be overlooked as regards the demeanour of the accused is the disrespect he had shown on several occasions when the witnesses were testifying. When J[...] M[...], Mrs M[...] and Mrs S[...] were testifying, the accused kept laughing until it came to a point where the State prosecutors brought this repeated behaviour to the attention of the court. When the court cautioned and reprimanded him and told him to respect the witnesses and the court, his answer was: "I have rights". J[...] was overcome with emotions throughout her testimony and had to be given a chance to recover. As if it was not enough for her to relive the traumatic experience, the accused had the audacity to laugh at her.
- [154] The evidence before court shows that all the complainants were lured into going with the accused as he used his tactics and commanded power and authority by presenting himself or creating the impression that he was a police officer, and a person from a religious entity

like the ZCC church to persuade the complainants to go with him, thereby ultimately raping all his victims. Kidnapping is the unlawful and intentional deprivation of a person's freedom of movement. Kidnapping can also be perpetrated by misleading the person or creating false impressions with the person.

- [155] On a consideration of the evidence in its totality and in the light of the probabilities and improbabilities in this case, I am of the view that the version of the accused was not reasonably possibly true and is rejected as false.
- [156] In my view, the State succeeded in proving beyond a reasonable doubt that all the complainants did not consent to sexual intercourse with the accused. The absence of consent was supported by the complainant's evidence and proof that their will were overborne by force or by a threat of force that produced submission but not consent. Thus, submission by itself is no grant of consent, and if a man so intimidates a woman as to induce her to abandon resistance and submit to intercourse to which she is unwilling, he commits the crime of rape[9].
- [157] Some of the complainants have testified that they did not experience any injuries as can be seen in the respective J88. Nonetheless, it is clear from the record as opined by Dr Lukhozi who examined Z[...] that having a stranger attacker does not mean that the victim will have more injuries because studies have shown that more than 65% of cases following non-consensual sexual intercourse won't have injuries. Therefore, in all cases of rape, the courts have a duty to send a clear message to the accused; to other potential rapists; and to the community in general that courts are determined to protect the equality, dignity, and freedom of all women, and shall show no mercy to those who seek to invade those rights.
- [158] In *Tshabalala v S*[10], the Constitutional Court referred with approval, to the case of *S v Chapman*[11] where the court described the offence of rape as follows: "Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim. The rights to dignity, to privacy, and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilisation. Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives".
- [159] Having considered all the evidence before me and the submissions made by both counsels, I am satisfied and of the view that the State succeeded in proving its case against the accused beyond a reasonable doubt in respect of all counts, save for counts 1; 2; 3 and 21. With regards to counts 1-3, the State could not adduce evidence in this case. The court was informed that the complainant passed away during October 2020. In the circumstances, the accused is entitled to his acquittal on counts 1-3. With regards to count 21 of theft of the cell phone, it is on record that the accused gave back the phone and should as such, be found

not guilty.

In the circumstances, the following order is made:

1. Accused is acquitted on Counts 1, 2, 3, and 21.
2. Accused is found Guilty as charged on Counts 4 -20, and counts 22-24.

PD. PHAHLANE

Judge of the High Court

Gauteng Division, Pretoria

For the State : Adv J. Cronje Instructed by : Deputy Director of Public Prosecutions Email: jcronje@npa.gov.za For the Accused : Adv K P Tlouane Instructed by : Legal Aid South Africa,

## Judgment

Delivered : 28 June 2022

- [1] McLean I, Roberts SA, White C, Paul S: Female genital injuries resulting from consensual and non-consensual vaginal intercourse. Forensic Sci Int 2011;204(1-3):27-33. Doi: 10.1016/j.forsciint,2010.04.049
- [2] Section 208 of the Criminal Procedure Act 51 of 1977.
- [3] 1971 (3) SA 754 (A).
- [4] 1981 (3) SA 172 (A).
- [5] 1999(1) SACR 585 (W)
- [6] 2010 (2) SACR 419 (SCA) at para 11
- [7] 1999 (1) SACR 447 (W)
- [8] 2003 (1) SACR 134 (SCA) at para 15
- [9] See: R v Swiggelaar 1950 (1) PH H61 (A).
- [10] 2020 (2) SACR 38 (CC); 2020 (5) SA 1 (CC).
- [11]
- [1997] ZASCA 45; 1997 (3) SA 431 (SCA) at paras 3-4.

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Prepared on 12 October 2026 · Esheria