

SOUTH AFRICA / JUDGMENT

S v Maruma (CC5/24) [2025] ZAGPPHC 312 (24 March 2025)

[2025] ZAGPPHC 312

COURT

North Gauteng High Court, Pretoria

BEFORE

Munzhelele

CASE / FILE NUMBER

CC5/24

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

No. CC5/24

(1) Reportable:

No

(2) Of interest to

other Judges: No

(3) Revised.

Date: 24 March 2025

Signature

In

the matter between: STATE
and
DOCTOR NKURUBE
MARUMA
ACCUSED
Date heard
: 28-October 2024 - 24 March
2025
Date judgment delivered
: 24 March 2025

JUDGMENT

Munzhelele J

Introduction

[1] South Africa is facing a gender-based violence (GBV) crisis that threatens the safety, dignity, and future of its people. The country has been labeled the rape capital of the world, with 42,780 rape cases and 53,498 sexual offences reported between April 2022 and March 2023, during the occurrences of all these offences. These are not just numbers—they represent real people, real victims, and real

sufferings. One of the complainants could not finish her evidence, due to the excessive trauma she had encountered. She has been

collapsing every time she tried to proceed with her evidence, until she decided that, she does not want to proceed with testifying

anymore. This is the real trauma of a person who has been traumatized by the ordeal that happened to her, which continues to unfold right before our eyes.

[2] Despite having a Constitution that upholds human rights and being a signatory to international and African human rights treaties, the scourge of rape, femicide, and domestic violence, continues to rise. This violence is not just an attack on individuals; it is an attack on our families, our communities, and our nation's future. Coming back to this case at hand, a number of women and children were terrorized at their own homes, during the night, in the Mankweng area, Limpopo Province and Pretoria West, Gauteng Province. This situation demands a deliberate and urgent effort to end this act of war on women and children.

[3] In this case, the accused has been charged with 46 counts, which are 23 counts of the contravention of section 3 of Act 32 of 2007(rape), which are 1,3,5, 6,8, 10,11, 13, 15, 17, 19, 21, 24, 26, 27, 28, 29, 32, 34, 36,40,42,44, and 46.

13 counts of housebreaking with intent to rob and robbery with aggravating circumstances which are 2,9,12,14, 16,18, 20, 23, 25, 31, 33, 41, and 45;

2 counts of housebreaking with intent to rape which are count 4, and 7;

2 counts of housebreaking with intent to steal and theft which are count 38, and 43;

2 counts of contravention of section 55 of act 32 of 2007 (attempted rape) which are count 10, and 22;

3 counts of robbery with aggravating circumstances which are count 30, 37, and 39; and;

1 count of theft which is count 35;

[4] The joinder of cases from the Mankweng jurisdiction with Pretoria cases, was authorized by Rodney James De Kock, a Deputy National

Director of Public Prosecutions, so that they could be joined with the cases from Pretoria West, Gauteng, to be dealt with by the High Court of Pretoria. See Exhibit 'A'. The charges were put to the accused and he understood them. The accused was informed by his legal counsel, of the applicable minimum sentences relevant to the charges against him during consultation. In respect of the 23 counts of rape, the State invoked the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997. Regarding the 16 counts of robbery with aggravating circumstances, the State invoked the provisions of section 51(2) of the same Act. The competent verdicts were also explained to the accused, who confirmed his understanding thereof.

[5] After the charges were read, the accused confirmed his understanding thereof and pleaded not guilty, denying any involvement in the commission of the alleged offences. The accused admitted the chain of custody concerning the buccal samples taken from him, as well as the swabs collected from all the complainants. He acknowledged that there was no tampering with the forensic kits sent to the Forensic Science Laboratory and that, while in the possession of forensic personnel,

the kits were securely stored and remained intact.

The forensic DNA results were admitted into evidence by consent, with both the accused and his legal representative confirming the accuracy of their contents. The admissions were duly confirmed by the accused and formally recorded in terms of section 220 of the Criminal Procedure Act 51 of 1977. The identification parade, which was held on February 28, 2023, at the Pretoria West Atteridgeville Police Station by Sergeant Mafa, where the accused was identified as the culprit by M[...] Mashitoa and H[...] L[...] in a line-up of eight people, as reflected in the photograph taken by Constable Patrick Ntsoane. Exhibit VV1-2 and WW1-2, was also admitted and handed in, with the consent of the defence. The defence also admitted that, the procedure followed, as recorded on SAPS 329 Exhibits VV3 and WW3, was correct.

[6] The state called the following fingerprints experts: Warrant Officer DD Cloete, who handed in the finger prints on exhibit E, F, G, H found from a bottle at the 340 Rosetta Street Pretoria West, where the complainant is Nolwazi N[...] count 29-30. The fingerprint uplifted, was a left ring finger. Again, the Warrant Officer testified regarding exhibit I, J, K, where the complainant is T[...] M[...] on count 33-35. The finger print uplifted, is the left thumb print,

found on the sliding doorframe. All these fingerprints, matched the fingerprints of the accused.

- [7] Finger print expert Warrant Officer Mkhari, testified in relation to exhibit L, M, N, O on count 43 of the complainant Justice Nungu, where a right palm print was found at the bathroom window tile inside the house. This right palm print belongs to the accused.
- [8] The fingerprint expert Warrant Officer F.J Joubert, testified about the fingerprint which was uplifted by Warrant Officer Mochekgechekge on the bugler, outside the sitting room on exhibit RR, SS, TT, UU of accused's left palm print.
- [9] The state also called the following witnesses:
 - 1. M[...] M[...] L[...] (Count 1): who was staying with her husband and kids at Ga – Thoka, Ga Manyane, a village in Limpopo Province. She testified that, on the 1st October 2017, she was chilling with her family and neighbours, drinking alcohol. At around 02h00 am she felt her tummy ache and went to the toilet which is outside the house. As she was in the toilet, she saw a shade from outside. The door of the toilet was unexpectedly opened when she saw a man with a knife. He pointed the knife towards her and instructed her to quickly stand up before he stabs her. She then stood up with her trousers still below her knees and the man pulled her out of the toilet to the back of the house and instructed her to bend over, and inserted his penis from her behind into her vagina and penetrated her. He then dressed up and then ran away. After he ran off, M[...] shouted out for help and ran to the house and informed her husband that she got raped outside. Her husband phoned the police. She opened a case and was then transported to Mankweng hospital where she received medical attention. The witness was able to identify the perpetrator and confirmed that it was not the first time she saw the accused. That she knows the accused from the taxi rank as he usually acted as a queue marshall. The DNA result from the complainant's vaginal swab matched the DNA results from the accused as per exhibit NN.
 - 2. S[...] C[...] D[...] (Count 2 -3): testified that on the 08 February 2021, at around 12h00 midnight and while sleeping at her place of residence, a male person broke into her room and threatened to kill her. The male person told her that he wanted to rape her. He held her against her will, while pointing a knife to her neck. He pushed her onto her bed, so she could lay on her back and while facing up, he forcefully removed her panties and undressed his trouser. The accused then forcefully inserted his penis into her vagina, and penetrated her. The accused further seized a 32- inch T.V, Fusion speaker, a phone and a R200 note. The witness was unable to identify the perpetrator. However, the DNA results of the accused, matched the DNA results from the vestibular swab of the complainant. See exhibit OO.
 - 3. M[...] B[...] M[...] (Count 4 –5 F[...]’s friend): could not finish her evidence – she testified that on the 23rd of March 2018, while she was sleeping with F[...], her brother and brother's girlfriend, she felt F[...] shaking her and she opened her eyes. Just below the door she thought she saw a person's knees but nevertheless continued to sleep. A few minutes later, she realised that an intruder had broken into their house and was standing by their heads.

She then moved away from the blankets and shouted her brother's name T[...]; then she woke up F[...] and M[...]. She informed T[...] that there was a stranger in the house. The man then ran towards the door and instructed T[...] to tell his sister to keep quiet, otherwise, he would kill one of them if she kept on screaming. These witness could not finish testifying as she had fainted and was taken by an ambulance. However, the DNA results of the accused matched the DNA results from the complainant as per exhibit NN.

4. F[...] T[...] L[...] (Count 4 and 6) – resided at Ga Thoka, in Limpopo Province. She testified that on 23 March 2018, she went to sleep at her friend M[...]’s home, in a shack. It was the four of them. Her, M[...], M[...] and T[...]. In the early morning around 04h00 am, She heard footsteps from outside the shack. In a few minutes, she heard M[...] scream and calling out T[...]’s name. When she opened her eyes, she realised that, the house was broken into, by an intruder who was standing at the side of their heads. The curtain dividing the bed side from the kitchen fell off, and the man instructed T[...] to hang it. He then told M[...] to come to the kitchen side, switched off the light, then later came and instructed her (B[...]), to come to the kitchen side. He instructed her to undress and she refused. Then he made her feel a gun on his waist and told her that he would kill her if she did not do as instructed. She then undressed both her trouser and panty, then the man stretched her legs apart, lowered his trouser up to his thighs and inserted his penis into her vagina, then penetrated her. After penetrating her, he told her to go back to sleep and told them to

lock the door just before he exited. After the ordeal, she could not fall asleep. When it dawned outside, they then reported the incident to their neighbour, who called the police. The police van arrived and they transported her and M[...] to the police station for a statement, then to the Mankweng hospital where they received medical attention. The witness was unable to identify the accused. The DNA results of the accused however, matched the DNA from the Vagina Swab of the complainant. See exhibit NN.

5. M[...] J[...] R[...] (count 7&8) and 16 years old – resided at stand no. 9[...] at Ga Thoka. She testified that on 04 April 2018 at around 20h30 pm, she went to sleep and was later joined by her little brothers. At around 03h00 am and as she was sleeping, she sensed a shadow in the room. She took off her blanket and realised that the room was broken into, by an intruder, as she saw a person standing, with his face covered, managing to see only the eyes. This person raised a weapon, a mini slasher and put it on her throat. He told her not to make a noise or he would cut her throat and order his friends to come through and kill her. He then started searching around and demanding money. She told him she did not have it and he further searched and found her mother’s purse but found no money. He then instructed her to

remove her blanket and to undress. She refused, and he threatened her with a panga. With fear, she gave in and undressed her skirt and panty. The man removed a condom out of his pocket, undressed and stretched her legs wide open and inserted his penis into her vagina and penetrated her. After a while, he got off and removed the condom, then instructed her to look away and not at him. He then left through the back window with a broken pane. She covered herself with the blanket for a while until such time that it dawned outside, ensuring that the man

had left. Then she proceeded to her mother's room crying, and narrated to her mom what had happened. Her mother phoned the Mankweng police station. On arrival of the police, they inspected the room in which she was raped. The police then took her to the police station for a statement and then transported her to Mankweng hospital, where she was given medical attention and counselling. The witness testified further that she was 16 years old when this ordeal happened, which affected her studies and resulting in her failing two terms consecutively and feeling alone. She suffered nightmares and shame. The witness was unable to identify the accused. However, the DNA results from the complainant's vaginal swab, matched the DNA results from the accused as per exhibit NN.

6. B[...] D[...] M[...] (Counts 9 & 10): testified that, she resided in Turfloop, Ga-Makanye, in a backroom, which she shared with her friend, R[...] B[...] M[...]. On 3 October 2018, while she and her roommate were asleep, she was awakened by the sound of voices inside the room. Her roommate shook her in an attempt to wake her. Upon waking up, she saw a man speaking to her roommate about sneakers. The room light was on, and the intruder had broken into the room.

The intruder asked, whose laptop was that, on the table, and she responded that it was hers. He then stated that he was taking it. He further demanded money, but both did not have any. The intruder, however, insisted that University students must have money, as Universities provide financial allowances. He became agitated, pointed a knife at them, and intimidated her roommate into retrieving money from her purse. Under duress, her roommate took out R600 and handed it to him.

The suspect then instructed them to return to bed and stated that he needed condoms. When they informed him that they did not have any, he ordered them to undress, and they complied. However, B[...] was menstruating and had a sanitary pad on her underwear. Her roommate told her to allow the intruder to start with her instead. The intruder then unzipped and lowered his trousers to his thighs, pulled the roommate to the edge of the bed, and instructed her to bend over. B[...] witnessed as he inserted his penis into her roommate's vagina and penetrated her.

After some time, the intruder instructed B[...] to cover herself with a blanket. He later removed the blanket and told her it was her turn. As her roommate dressed up, he ordered B[...] to come closer and instructed the roommate to cover herself. He then made B[...] sit at the corner of the bed and began touching her breasts and thighs. Whispering into her ear, he stated that, he would not rape her because she was menstruating, as he did not want to "get sick" or "infected." He shook the bed and remarked that he did not want the roommate to be the only one feeling the pain of being raped.

Shortly after, he instructed B[...] to get back under the blanket. She dressed up, and the intruder did the same. While they were getting dressed, there was a knock at the door, and male voices were heard urging and instructing him to finish up as they were "done." The intruder then left, taking B[...]’s laptop and laptop charger with him.

Approximately five minutes later, B[...] took her phone, as her roommate was crying, and called the other tenants in the building. They arrived, and she narrated the incident to them. The tenants then contacted the police, who arrived and obtained statements, and forensic personnel collected fingerprints. B[...]’s roommate was later transported to Mankweng Hospital by the police.

This incident severely affected B[...], as it occurred during the examination period. Both she and her roommate, had to leave and return home. They subsequently had to travel from home to the University to write exams before eventually relocating permanently. Due to the trauma, B[...] transferred institutions and is no longer enrolled at the University of Limpopo but is now studying at the University of Venda.

The witness was able to identify the perpetrator.

Count 11, she B[...] R[...] is in South Korea and could not attend court.

7. M[...] S[...] J[...] (Counts 12 & 13): who was 15 years old at the time, testified that, she resided at Mangweni Unit [...], Stand 1[...], with her mother and siblings. On 8 October 2018, she was asleep on the floor of the dining room with her siblings and mother. This arrangement was made because her mother was ill, and they did not want her to be alone. Her mother woke her up and instructed her to remain quiet, as there was a stranger in the house. The house was broken into by an intruder. Upon waking up, J[...] saw a man holding a household knife. The intruder told her mother to cover herself with a blanket and to stay quiet, threatening to kill her if she did not comply. The man then took J[...] to her mother's room, where he pushed her onto her mother's bed, removed her underwear, and lowered his trousers. He lifted her legs and inserted his penis into her vagina, penetrating her. Throughout the act, the stranger held the knife against her neck. J[...] cried, and as she did, she heard her mother shouting for help outside. The intruder then climbed onto the bed and exited the house through the window. J[...] immediately got off the bed and ran to a neighbour’s house, who then took her to Mankweng Police Station. The Police recorded her mother’s statement, as she, J[...] was unable to speak. J[...] was later taken to Mankweng Hospital, where she received medical attention and counselling. Her mother, who was already in poor health, suffered a stroke following the ordeal and died. The traumatic event has had a severe impact on J[...], and she

has repeatedly failed in school since the incident. The witness could not identify the perpetrator. However, the DNA results, confirmed

that the DNA of the accused, matched the DNA found on the swabs taken from the complainant. (See Exhibit NN).

8. D[...] N[...] P[...] (count 12&13 a witness): is the neighbour of M[...] S[...] J[...]. She testified that at around 05h30 am, she was asleep, when she heard the community shouting for help. She went out and heard the voice of the victim’s mother shouting for help. She went to the mother and found some of the community members already gathered in her yard. The

victim was crying and also bleeding on her thighs. She asked her what had happened, and the victim narrated the whole ordeal to her. She then phoned the Mankweng Police, who came and took the victim and her mother. The victim suffered from depression and the mother frequently complained about what had happened to her child.

9. Jack Ngobeni (Warrant Officer and investigating officer): has 22 years' experience in the employ of the SAPS, currently stationed at Braamfontein in the Sexual Offence Unit. He testified that, on or around August 2024, he could not subpoena B[...] R[...], a complainant, as he found that she had moved out of the country. He however, managed to make a means and communicate with her via a WhatsApp number, and she confirmed that she had moved to South Korea, further indicating that she was going to be in South Korea for a while and would only return to South Africa in August 2025. He further testified that, his attempt to subpoena also N[...] M[...] M[...], failed as it was confirmed by her mother that she had passed on.
10. Mosebe Constance Ngoasheng (count 14,15 - hearsay evidence which was admitted about the deceased N[...] M[...] who was raped): testified that she is a Constable at Mankweng SAPS with three years of service. In the year 2018 she was at work, when a female person came in at the station and requested assistance with a rape matter. She then stood up from the desk she was stationed at, went with her to a separate room for privacy. She introduced herself to the victim and asked her to narrate to her what had happened. After her narration, she opened a case. The statement of the deceased was handed in as Exhibit QQ. The DNA results of the accused matched the DNA found from the swabs taken from the deceased at the time when she was still alive. See exhibit NN.

T[...] J[...] never testified in court. she was traced and never found, regarding count 16 and 17.

11. P[...] H[...] (count 18 and 19): testified that, on the morning of the 28 July 2019, her house was broken into by an unknown male person who was in possession of a knife. She was able to see that knife because the suspect had switched on the torch on his cell phone. The suspect demanded to have a sexual intercourse with her or otherwise if she refused, that he was going to kill her. She complied and the suspect without consent, had sexual intercourse with her and ejaculated on her. After the sexual intercourse, he stole a phuma back pack, a Samsung cell phone, a cash amount of R150-00 and pairs of sneakers which belonged to the complainant. The DNA of the accused matched the DNA found on the vestibule swab from the complainant. See exhibit NN.
12. F[...] P[...] N[...] – (count 20-21-22): testified that she resided in Nellmaphius Ext 2[...] with her two sisters and two children. On 10 October 2019 at around 04h00 am, and while she was asleep, she opened her eyes and realised that there was a stranger who broke open and entered into the shack. The stranger was bending down and putting her sister's laptop in the bag. She asked the stranger what he was doing in their house. He stood up and headed straight to the bed where they were sleeping. He pointed a knife towards her. He then placed the knife on the 9 months' baby's chest and told her that if she does not do as per his

instructions, he will stab the child's chest through to her back. She then sat on the bed. He asked where they usually put their bags and she pointed him to where the bags were placed. He then instructed her to take out the purses from the bags and to remove all the money which was inside. He ordered her to tell her sister and the 12-year-old child to cover themselves with the blanket and sleep, if not, he would stab the 9-month old child. She then removed the money from both purses in the amount of R380 and gave it to him and he placed it in his pocket. He instructed her to go outside. He pointed the knife towards her waist and pushed her out the shack to the toilet outside. In the toilet, he instructed her to undress and put her hands on the toilet. He tried to insert his penis into her vagina but failed to completely penetrate but he touched the complainant's vagina, as he was failing. F then asked him to go and get a condom from the house. Her request was with the hope that she would manage to go and convince the sister in the house to call out for help. When she got to the shack, her sister and child were still underneath the blanket. She tried to stall for time as she looked for a condom she knew did not exist in the shack. The man began to call out for her aggressively telling her that she was wasting his time. She then went outside and he aggressively put a knife against her waist, this time hurting her. There was a mat outside the door which he grabbed and instructed her to lie on the mat. He undressed his trouser and inserted his penis in her vagina and penetrated her. Once he was done, he released his sperms onto the mat which she laid on. As he was dressing, her sister who was sleeping in the next shack came out with a spade as well as the neighbours, however, the man fled. The neighbours scattered in search of him but could not find him. Then she went to the Mamelodi Police station to report the incident. The police recorded her statement and then took her to Mamelodi Hospital where she received medical attention. The DNA results from the forensic laboratory confirmed that the semen found on the carpet where the sexual penetration occurred, is that of the accused.

13. N[...] M[...] (count 23-24) testified that, the accused whom she recognised and who was in the dock was the one who broke and entered her room on the 23 October 2019, while at Pretoria West. He recognised the accused through his big eyes, because she managed to look at his eyes when the accused was talking to her. The accused raped her first while she was lying on her back and proceeded to penetrate her while she was on lying on her belly. She reported the case to the police and the LCRC took finger prints on the window. Forensic evidence regarding the DNA, was found and matched that of the accused. Finger print of the accused was found on the window. On the date of the house breaking, the accused robbed the complainant's Nokia cell phone valued at R300 and the sneakers valued at R600 while threatening the complainant with a knife, telling her that if she does not give her the items she would be killed. The same applies to the rape, she was threatened to be killed with a knife if she did not submit to sexual intercourse. The accused's DNA was found matching the DNA found on the gown of the complainant.

14. C[...] P[...] – (counts 25 & 26), testified that she stayed in a room with two friends L[...] D[...] & H[...] M[...]. On 21 November 2019, they were in the house asleep. At around 01h00AM, she opened her eyes and saw a male person standing beside her and searching her pillow. The intruder broke and entered into the room where she was asleep with her friends. The man instructed her and her friends who had also woken up not to shout and he pointed a knife at them and threatened to stab them should they shout. The male person moved towards L[...] and instructed her to give him her cell phone. L[...] gave him her phone and she as well gave him her phone. The male person then instructed her to undress also threatening her with the knife he had in his hand. The male person had initially asked to have sexual intercourse with her but she refused. He used force and took her to H[...]’s bed forcefully and threw her on the bed, took out a condom from his pocket and inserted onto his penis then inserted his penis into her vagina forcefully. Once he was done penetrating her, she grabbed her by her hand, and threw her onto the other bed, then covered her and H[...] with a blanket and grabbed L[...] to the same bed, where she was penetrated. After a short while, she brought L[...] back and grabbed H[...] and covered them once more with a blanket. After he was done with H[...], he left. Then they cried and screamed for help. The other tenants responded

and called the Landlord who contacted the police. The police came and took them to the Pretoria West Police Station and took their

statement then took them to a local hospital for medical attention. After the whole ordeal, a Plasma TV, three cell phones and R800 from L[...]’s purse were taken. The witness was able to identify the perpetrator.

15. L[...] I[...] D[...] (count 25 and 27) testified that she was asleep, when woke up seeing a man who was in their room holding a firearm on one hand and on the other was holding a knife. She was the first one to see this man inside the room. She confirmed what C[...] said about the rape ordeal and the robbery of her money. She identified the intruder as the accused who had a gold tooth. Even in court, the accused was still having the gold tooth. She saw it again when he was laughing in court.
16. H[...] A[...] M[...] (Counts 25 and 28), resided at 3[...] K[...] Street, Pretoria West, with P[...] C[...] and L[...] D[...]. She confirmed the statements made by C[...] and D[...], regarding the rape and robbery. Following the ordeal, she stopped working because she felt that people were talking about her, and her husband left her as a result of the incident. Within the same month, they moved out of their residence.

The witness was able to identify the perpetrator. For all three complainants—P[...] C[...], L[...] I[...] D[...], and H[...] A[...] M[...]-swabs were taken, and the DNA found on their panties, matched the DNA of the accused.

17. N[...] N[...] (count 29-30) – testified that on 10 July 2020, she woke up around 5h00 am to go open the gate so her roommate could gain access upon her arrival back from the village, where she was at the time. She proceeded to go to the toilet which was outside her room. While she was inside the toilet, she felt a gun pointed at her head and a male instructing her

to keep quiet. The male person forcefully grabbed her and pulled her hand, forcing her to exit the toilet and pushed her so she could walk ahead of him. She headed to her room with that male person behind her. She opened her room, and the male entered in as well. The male locked the door and instructed her to sit on the bed. He further instructed her to stand up and undress. After undressing, the male reached for a knife that was kept in the room and instructed her to face the opposite direction and kneel on her bed. The male undressed his trouser and from her back, forcefully inserted his penis into her vagina and penetrated her. Once he was done, the man stole her bag, laptop, and phone. Before leaving, he told her he wasn't afraid of the police as he used strong traditional medicine. The woman, upset and crying, went outside to check if her roommate had arrived. When her roommate and her boyfriend showed up, she told them what happened. They took her to the Pretoria West Police station, where she gave a statement. The police then took her to Laudium clinic for medical tests and scheduled counselling. Fingerprints were also collected at her home from a glass bottle which was standing on top of the fridge in the room. The left ring finger was uplifted. And it was found that accused's finger was similar to the finger uplifted from the complainant's room. Exhibit E, F, G, H, were handed in as proof of evidence and comparison by Warrant Officer Dawid Daniel Cloete, of the LCRC Pretoria. Also, the DNA result of the accused matched the DNA result from the cervical OS swab of the complainant. See exhibit NN.

18. M[...] F[...] M[...] (count 31 – 32) testified that on the 14th January 2021 at around 10h00 pm, she felt something touching her. She opened her eyes and saw a man standing outside the window which was wide open, opening the curtain and pulling it to the side so she could see him clearly. She screamed as she did not expect anyone to be there. The man pointed a gun at her, warning to shoot her should she scream again. The man had her laptop bag in his hand, which he managed to take from her bed through the window. In the laptop bag were her personal documents. While still pointing a gun at her, the man ordered her to stand, so he could see her body structure. Thereafter, he ordered her to give him her laptop which was on the chair, further from the window, her cell phone and money, further ordering her to write her laptop and cell phone pin on a piece of paper for him, and hand them to him. He said that she should open the door which she did, thinking that he wanted more things to take for himself. He pulled a knife out of his pocket, told her to remove her underwear, lay on her back on the bed and open her legs. He unzipped his trouser and inserted his penis in her vagina, while still holding the knife in his hand. He ordered her to change her position so she could lie on her tummy on the bed and open her legs and inserted his penis into her vagina from behind. He then took a bucket that she uses to urinate in during the night, discarded the urine which was inside the said bucket, poured water taken from the kettle, in it and ordered her to use the water to wash her vagina. After washing her vagina and when the man was ready to leave, he told her that he is not afraid of the police and that's why he didn't bother

in wearing a balaclava and then told her to open the gate for him. When the man left, she went back to her room and cried so loud that three guys from the main house and the lady from the backroom came to her. The matter was reported to the police. And she also received treatment from the Laudium hospital. Identification was held and she was able to identify the accused as the perpetrator. See exhibit VV3. The DNA of the accused matched the DNA found on the blanket of the complainant. See exhibit NN.

19. N[...] T[...] M[...] (count 33 – 35) resided at 7 [...] t [...] v [...], Phillip Nel Park, Pretoria West with her husband and sister. She testified that on the 03rd of May 2021 around 04h00 am and while sleeping with her new born baby, she felt something touching her shoulder. When she opened her eyes, she realised that there was a male person holding a knife and a gun. The intruder had broken into her house. The male person said to her that he wants a phone. There were two phones and a laptop bag with a laptop inside, laying on the headboard, and he took them. As he took them, it seemed he was communicating with someone from outside. At that time, she had her child in her arms, the male person took the child away from her, then instructed her to undress, face backwards, undress and bent down. He placed the child on top of the bed and threatened her, saying if she didn't comply with his instructions, he would stab the child with the knife. He then also undressed and inserted his penis into her vagina. Throughout the act of penetration, the man had a knife in his hand. After he raped her, he demanded for money. She indicated to the man that she did not have money except for the R200 that she had put inside of a pouch of the phone he took. He collected two phones from the headboard, a laptop, another phone from the kitchen table and a Capitec Bank card, and ordered her to give out the pin numbers linked to the laptop and bank

card. She did as was ordered. He then instructed her to lie back in bed and he covered her with a blanket and instructed her to sleep. After a while, she realised that the man was gone as it was now silent. She then woke up and went to her sister to narrate all that had happened. Her sister contacted her husband who was at the time at work. After a while, the husband came back home. Upon his arrival, her husband took her to the police station in Pretoria West, where she narrated the whole ordeal to the police. The police went to their house with them, just to witness the place of the incident and to collect finger prints. Warrant officer Cloette, was the one who uplifted the finger print on the 3 of May 2021 from the outside of the sliding door frame above the handle. He found a left thumbprint corresponding with the thumb of the accused through exhibit I,J,K. Thereafter she was taken to the Laudium hospital for medical attention, examinations and counselling. The DNA of the accused matches the DNA found on the vestibule swab of the complainant. See exhibit NN. The incident has impacted her in that she had to relocate from the place of the incident. The witness was not able to identify the perpetrator.

20. S[...] M[...] (counts 36 & 37) – testified that on the 30th July 2021 at around 07h00 am, she was walking to school, Pretoria West High School to write her exams. As she was walking across the cemetery, she came across a male person who walked towards her. The male person started walking very quickly towards her. She took a few steps backwards as she wanted to

run away but the male person grabbed her by her braids(Hair) and pulled her braids around his hand, so she would not manage to move. She felt very painful as her front part hair was removed. He searched her school jacket and removed her phone from her pocket, removed the sim card and gave it to her. He then pulled out an okapi knife and pointed it at her as they were just walking around in the cemetery. The accused received a phone call where he instructed whoever was calling him to stab the person and leave him lying there. He pulled her down on someone's grave. He instructed her to remove her pants. She pleaded with him, but he held the knife closer to her. She then removed her trouser and panties up to her knees, and he also removed his pants, ordering her to lie down. He then forcefully inserted his penis inside her vagina and penetrated her by force while she was crying. After penetrating her, he got up and told her to get dressed and he said she was no longer going to see her family as he was going to sell her. She pleaded with him and told him that her mother would give her money and she would give it to him. Shortly after that, the accused left and she also left through a small passage from the cemetery that led to the tar road. She saw a slow moving vehicle and she ran towards it, banged it, crying out for help. The car stopped. A lady alighted

from the said vehicle and asked her what had happened. She narrated the whole ordeal to her and borrowed her cell phone so she could call her mother. Shortly after the phone call, the mother arrived and they both went to her school to explain to her principal that she would not be able to write her exams. They then proceeded to the police station where they opened a case and took her to the Laudium Clinic so she could be examined by a doctor. The DNA of the accused matched the DNA on the vagina swab of the complainant. See exhibit NN. This whole ordeal impacted on her in such a way that she had to relocate in order to avoid the cemetery route to school. She was admitted in a psychiatric ward at Vista Clinic in Centurion because of the trauma.

21. D[...] M[...] (count 38), testified that on 28 August 2021, around 06h00 in the morning, she was at home with her mother, sister and cousin, T[...] M[...] sleeping. As she was sleeping with her mom, she heard a scream. She and her mother both jumped out of bed to find out what was happening. When they opened the bedroom door they saw a male wearing a blue jacket and a blue bucket hat and holding a knife. The intruder had broken into the house. The male began moving backwards towards the living room exit door, with the knife pointing at them. She continued to scream to get the neighbour's attention and then picked up her phone and called the police. However, the male exited the door and fled. Upon his exit, she began to look around and noticed that her laptop, charger and headsets were missing. The police officer mochekegekhege uplifted the palm print from the buglar outside the sitting room. Police officer F, Joubert compared the palm print and found that it was a left palm print of the accused. This is found on exhibit RR, SS, TT and UU. The witness was not able to identify the perpetrator.
22. T[...] M[...] (witness on 38) – (cousin to D[...] M[...]) confirmed D[...]’s testimony. She however, was able to identify accused.

23. Z[...] L[...] N[...] (count 39- 40) – testified that in the morning of 12 November 2021, she was on her way to campus to write an exam. She came across an unknown man, who drew out a gun and pointed it at her. The unknown man instructed her to go back with him, and as they were heading back, he drew back the firearm and took out a knife from the pocket of his trouser, then instructed her to proceed heading down an unknown spot close to a graveyard. Upon arrival, the man demanded from her, a cell phone, laptop and money. He took her cell phone as she did not have the rest of the other things and instructed her to undress. He also undressed his trousers. He instructed her to face the opposite direction, leaving the unknown man to be behind her, and further instructed her to bend down. He then inserted his penis in the complainant's vagina from behind and raped her. After the ordeal, the man threatened to kill her but she begged for her life. As a result, she was later released by the man. She headed to campus and met a lady (sister Pretty), who drove her to the campus clinic after she had explained the ordeal that happened, to her. Medical tests were conducted at the campus clinic

and a rape case was opened at the Pretoria West Police station. The police took her to the local clinic in Pretoria West and the Doctor performed further medical tests. The DNA of the accused was found on the cervix swab from the complainant. See exhibit NN. After this incident, the complainant was struggling with her studies and attempted suicide on two counts. The witness was not able to identify the perpetrator.

24. H[...] E[...] L[...] (Count 41- 42) testified that on 11 May 2022, she was in her room sleeping with her minor child, when she was awakened by the accused standing beside her and pointing a knife towards her neck. The intruder had broken into her room. She tried to scream but the accused warned her that he would kill her minor child. The man ordered her to undress her night dress and underwear. With a knife in his hand, he ordered her to move closer to the chest drawer which was just beside the bed. He instructed her to bend over towards her bed and forcefully inserted his penis from behind, into her vagina and penetrated her. He then seized two pairs of shoes, a tablet and a phone. After the man left, she proceeded to her mom's room and screamed for her mother's attention, that

there was an intruder in her room. Her mother set the ADT alarm on, and the ADT intel came along with the police. She went to the

Pretoria West police station with the police to record a statement and was later taken to the Laudium hospital where she received

medical attention and counselling. The DNA result of the accused matches the DNA from the vaginal swab of the complainant. She

testified that she attended the Identity Parade. The witness was able to identify the perpetrator at the identification parade. See exhibit WW, and VV1-2.

25. Justice Nungu (count 43) resides at [...] B [...] Street, Danville Pretoria West, in a double storey house with his wife and two kids. On the 27th June 2022 at around 10h00 pm, he and his family went to sleep. All the windows were closed and doors to the house were locked. Around 3 AM. He heard someone making a noise, and uttering words regarding the T.V., he had just bought the previous day on 26th June 2022. He then woke up and went to the ground floor to check on the T.V and discovered that there was a housebreaking and that the t.v was stolen. He went out and took his car out of the garage and drove around with the hope that he'd see the intruder but failed. He then proceeded to the Pretoria West Police station to report the incident. He believes the intruder gained access to the house through the bathroom window on the ground floor, as he noticed that it was wide open. The police came to his house the very same day to investigate, looking for finger prints. Warrant officer Mkhari uplifted the right palm print at the bathroom window tile inside the house. After comparison, it was found to be the accused's palm print. This is on exhibit K, L, M, N.
26. N[...] N[...] V[...] (count 44), was residing at E [...] Apartments, Phillip Nel Park, Pretoria West with her boyfriend L [...] S [...]. On the 3rd of April 2022, her colleague dropped her off at a Sasol Garage around 11h00 pm in Phillip Nel Park, where on agreement, her boyfriend was to collect her. A man approached her and asked her why she looked so worried, and she told the man that she was waiting for her boyfriend. The man offered to walk her down to her house as he was very friendly towards her, promising that she would arrive home safely. As they were walking, they got closer to the bush and that's when the man now became aggressive and instructed her to walk into the bush. He instructed her to lie down on the ground and he pulled out a knife and tore the front part of her trousers open with the knife. He undressed his trousers and inserted his penis into her vagina. At all material times during the penetration, the knife was in his hand. He then told her that he was going to kill her. She begged for her life and explained to the man that she was four months pregnant. After the rape, he stood up dressed and started searching the bag saying he wants anything valuable. He found an iphone and instructed her to remove the sim card from the phone. He however, did not take the phone and said he didn't want an iphone as it would cause him to be caught. He instructed her to stand up so they could go. As they were walking outside the bush, she saw her boyfriend's car approaching. Her boyfriend also noticed that it was her and he stopped. She quickly ran to the car and got inside and narrated to the boyfriend that she was raped. Her boyfriend tried to chase him but did not manage to apprehend him. They then drove to the Pretoria West Police Station to report the incident. A statement was taken

down by the police and they instructed her not to take a bath. In the morning, the police came to her house, so that she could point out the area in the bush where she was raped and then proceeded to the Laudium Clinic where she got medical attention. The DNA of the accused matched the DNA results found on the vaginal vault of the complainant. See exhibit NN. After the whole ordeal, it was very difficult for her to stay in Pretoria. She had to resign from her job and relocate to Witbank. She also had to abandon her relationship as the relationship was no longer the same thereafter. The witness was able to identify the perpetrator.

28. A[...] M[...] (count 45-46) testified that she resided at no. [...] E [...] place, Phillip Nel Park, Pretoria West with her elder sister, her two children and her own child. On 14 August 2022, her sister left at around 5h00 am to attend a funeral. She remained asleep with her daughter, while her sister's minor daughter was sleeping in the other room. As she was sleeping, she felt something tapping her shoulders. She opened her eyes and realised that there was a male person who had a cell phone in his left hand with the flash light on and a knife in his right hand. He placed the knife on her neck and then on her daughter's neck, threatening to stab her child should she make a noise or not comply with any of his instructions. The intruder had broken and entered her room. He instructed her to move from the bed side of the window, towards the door and to undress. She was reluctant in undressing, but the intruder told her that, if she didn't do as told, he would hit the child against the wall. She undressed and lay on her side on the bed. The suspect inserted his penis in her vagina, then removed it, and inserted his licked fingers in her vagina then re-inserted his penis again in her vagina. After he was done, and as he was trying to zip his trousers, his phone fell, resulting in the flashlight illuminating his face, for her to see him. He then told her to sleep as he exited the room. On his way out, he took a bag which was on the table in the living

room. When he left, she wanted to contact her sister but realised that all three phones that were in the house had disappeared

including two laptops. She went to the neighbour's house, Mr. Netshifhefhe. She found the gate locked and then shouted his name. He came out, opened the gate for her and she rushed towards him crying and narrated what had happened to her. Mr Netshifhefhe took his car and accompanied the complaint to search for the intruder. As they were driving, she saw him walking barefoot. There was a police van which was approaching; Mr Netshifhefhe approached it and requested for help. The police van and Mr. Netshifhefhe drove towards the intruder. Mr Netshifhefhe, the neighbour alighted from the vehicle and ran towards the intruder who ran into the bush. Both Mr. Netshifhefhe and the police officer ran after the accused and ended up apprehending him. The police officer called for other officers who were on duty as he was off duty. The police officers came and took the accused and the victim together with Mr. Netshifhefhe to the police station. They all drove down to the police station for her statement to be recorded. After the statement was recorded, the complainant was taken by the police officers to Laudium hospital, where medical tests were performed on her. The DNA of the accused was found on the OS swab taken from the complainant at the hospital. This ordeal has severely affected her as she had to relocate to Soweto and stay with her other sister. She abandoned her studies as well due to the trauma. The witness was able to identify the perpetrator.

29. Ndivhuwo Daniel Netshifhefhe (witness for Count 45 and the arrest of the accused) testified that he resided at [...] E[...] T[...] Street, Phillip Nel Park, Pretoria West, and was a neighbor of A[...] M[...], a complainant in this matter.

On Sunday, 14 August 2022, at approximately 06:00 am, while he was sleeping, he heard his name being called by a female voice outside. He woke up and quickly ran outside, where he found A[...] crying for help and requesting that he open his gate. Upon opening the gate, A[...] ran towards him, hugged him while crying, and narrated the incident that had just occurred.

He then asked her whether she could identify the perpetrator, to which she responded affirmatively. He proceeded to take her into his vehicle and drove around their neighborhood in search of the suspect. While driving along Vom Hagen Street near a bridge, A[...] pointed out the accused, stating that he was the person who had raped and robbed her. To avoid alerting the accused, he continued driving further down the road to seek assistance in apprehending him.

As he approached a set of traffic lights, he noticed a police van parked nearby. He stopped and informed the police officers in the van that he needed assistance in arresting an individual who had raped and robbed his child. He then drove back to Vom Hagen Street, with the police van following behind. Upon spotting the accused, he stopped his car approximately two meters away from him, while the police van stopped behind his vehicle.

As soon as he exited his car, the accused attempted to flee. He pursued the accused, who ran into a nearby bush. Choosing not to enter the bush, he waited outside, and shortly thereafter, the accused emerged and ran westward. He continued pursuing the accused for approximately 13 meters, eventually catching up to him, pulling him down, and restraining him by sitting on him.

He then informed the accused of the reason for his arrest. In response, the accused admitted to stealing the bag containing the laptop and mobile phones but denied raping A[...]. After this admission, he stood up, restrained the accused, and led him back to the bush where the accused claimed to have left the stolen bag. Upon reaching the bush, he realized that he had lost his sandals and would not be able to enter the area without risking injury or allowing the accused to escape.

He then pulled the accused to the other side of the bush, where the accused pointed out the location of the backpack. While restraining the accused with one hand, he bent down and retrieved the bag. Throughout this time, the police officers were following closely behind him.

As he attempted to escort the accused towards the road, the accused began resisting and fighting back. To prevent his escape, he sat on the accused until additional police officers arrived. Upon their arrival, he handed the accused over to them. They then proceeded together to the Pretoria West Police Station, where he provided his statement. Shortly thereafter, the police took A[...] to a doctor in Laudium for medical attention.

30. Trevor Seleka (Counts 45 and 46) – Arrest and Detention of the Accused

Trevor Seleka testified that, on 14 August 2022, at approximately 06:45 am, he arrested the accused, Mr. Maruma. While on duty, he received a call from Captain Olivier requesting their urgent presence at Vom Hagen Street, Pretoria West. He proceeded to the scene in a state vehicle, accompanied by Warrant Officer Clusta and Constable Nguna.

Upon arrival, they found Captain Olivier and Mr. Netshifhefhe restraining the accused on the ground. A woman, carrying a baby, was also present and crying. He approached the woman and inquired why she was distressed. She then recounted the ordeal to him.

He immediately requested the assistance of Warrant Officer Clusta and Constable Nguna in arresting the accused. During the arrest, he informed the accused of his rights. The accused was in possession of a school bag, which he claimed belonged to him. However, the victim confirmed that the contents of the bag were hers. Upon searching the bag, he found two laptops, a cellphone, and a knife. Warrant Officer Clusta took possession of the items with the intention of booking them under SAP 13, where exhibits from suspects are ordinarily registered.

They then proceeded to the Pretoria West Police Station, where, at the request of the victim, a female police officer recorded her statement.

Application for Discharge

[10] At the close of the State's case, the accused applied for discharge on Count 5, where the complainant, M[...] B[...] M[...], collapsed during her testimony and was unable to complete her evidence due to the excessive trauma she had suffered. The accused also applied for discharge on: Count 11: Complainant B[...] R[...], who is currently in South Korea and was unable to testify. Counts 14 & 15: Complainant N[...] M[...], who has since passed away (see Exhibit D). Counts 16 & 17: Complainant T[...] J[...], who could not be traced and, therefore, did not testify. The court granted the application for discharge on Counts 5, 11, 16, and 17. The accused was accordingly found not guilty and discharged on these counts in terms of Section 174 of the Criminal Procedure Act 51 of 1977. However, on count 14 and 15 the application was denied.

[11] At the close of the state's case, the accused did not testify and elected to remain silent, choosing to close his case despite knowing that there was fingerprint, DNA, and identification parade evidence linking him to the crime and the crime scene. The Constitution of South Africa (Section 35(3)(h)) grants accused persons the right not to testify and to remain silent. *Osman and Another v Attorney-General, Transvaal 1998*

(4) SA 1224 (CC) Madala J para 50:

“Our legal system is an adversarial one. Once the prosecution has produced evidence sufficient to establish a prima facie case, an accused who fails to produce evidence to rebut that case is at risk. The failure to testify does not relieve the prosecution of its duty to prove guilt beyond reasonable doubt. An accused, however, always runs the risk that, absent any rebuttal, the prosecution's case may be sufficient to prove the elements of the offence. The fact that an accused has made such an election is not a breach of the right to remain silent”.

Again in *S v Boesak* (CCT25/00) [2000] ZACC 25; 2001 (1) BCLR 36; 2001 (1) SA 912 (CC) (1 December 2000) para [24] and [25] (‘The right to remain silent during trial and the potential consequences of exercising this right.’)

“[24] The right to remain silent has application at different stages of a criminal prosecution. An arrested person is entitled to remain silent and may not be compelled to make any confession or admission that could be used in evidence against that person. It arises again at the trial stage when an accused has the right to be presumed innocent, to remain silent, and not to testify during the proceedings. The fact that an accused person is under no obligation to testify does not mean that there are no consequences attaching to a decision to remain silent during the trial. If there is evidence calling for an answer, and an accused person chooses to remain silent in the face of such evidence, a court may well be entitled to conclude that the evidence is sufficient in the absence of an explanation to prove the guilt of the accused. Whether such a conclusion is justified will depend on the weight of the evidence.

- [25] Similarly, if in the course of the trial there is evidence that a document was written by the accused, and if the accused fails to challenge that evidence, or raise forgery as an issue, a court may be entitled to hold that in the absence of testimony from the accused the evidence is sufficient to prove that the accused was the author of the document. That is what the SCA did in the present case. It analysed the evidence it considered to be relevant to this issue and came to the conclusion that in the absence of a challenge or evidence to the contrary there was sufficient proof that the letter had been written by Dr Boesak.”
- [12] Courts may draw an adverse inference from the accused’s silence, especially if the State has presented strong prima facie evidence, as in this case, where there is an overwhelming amount of evidence linking the accused to the crimes committed against the complainants. However, silence alone is not proof of guilt. The state has a burden to prove beyond reasonable doubt the guilt of the accused on the totality of the evidence presented, before an inference of guilt can be drawn. In *Thebus and Another v S* (CCT36/02) [2003] ZACC 12; 2003 (6) SA 505 (CC); 2003 (10) BCLR 1100 (CC); 2003 (2) SACR 319 (CC) (28 August 2003) para 84,
- [84] Another explanation commonly given for the rule against adverse inferences is the principle that the state bears the onus of proving every element of an offence without the assistance of the accused. It is clear from our Constitution that the presumption of innocence implies that an accused person may only be convicted if it is established beyond a reasonable doubt that he or she is guilty of the offence. That, in turn, requires the proof of each element of the offence. However, our Constitution does not stipulate that only the state’s evidence may be used in determining whether the accused person has been proved guilty. Indeed, our law has always recognised that the question of whether the accused has been proven guilty or not is one to be determined on a conspectus of all the admissible evidence, whatever its provenance. This principle, too, cannot therefore found a valid objection to the drawing of adverse inferences”.

In this case at hand, the state has presented evidence based on fingerprints, identification parade, testimony of the complainants as well as DNA results from the forensic laboratory to prove their case.

Finger prints evidence

[13] On counts 29 and 30, at the room of N[...] N[...], police officer Dawie Cloete lifted a fingerprint from a glass bottle on top of the fridge. This fingerprint was found to be the left ring finger of the accused (see exhibits E, F, G, and H).

Furthermore, on counts 33, 34, and 35, at the house of N[...] T[...] M[...], police officer Dawie Cloete lifted a fingerprint from the sliding door frame. It was again found to match the accused's left thumb (see exhibits I, J, K, and H).

On count 38, at the house of D[...] M[...], police officer Motshekgetshekge lifted a palm print from the burglar bars outside the sitting room. This left palm print was found to match the accused's left palm print (see exhibits RR, SS, TT, and UU).

On count 43, at Justice Nungu's house, a palm print was also lifted by police officer Mkhari from the bathroom window tile inside the bathroom. This right palm print was found to match the accused's right palm print (see exhibits K, L, M, and N).

[14] All experts had impressions of two fingers to analyze for the purposes of their comparison. They all found the minimum required number of identical points on these comparisons. The expert witnesses were thoroughly cross-examined and could not be shaken. The fingerprint evidence presented by these experts, (Warrant Officer Dawie Cloete, Warrant Officer Mkhari, and Warrant Officer Joubert), were satisfactory in all material respects, as all the points of identity relied upon by them were not disputed by the defense during cross-examination and I could also clearly see that the points which were mentioned were indeed so identical. I was satisfied that their evidence was reliable. Their observations and comparisons of the uplifted fingerprints or palm prints with the obtained fingerprints or palm prints on SAP 192 were reliable, and the court could draw inferences from their evidence alone. In *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämpfung MbH* 1976 (3) SA 352 (A), the following was stated at 370E-G:

"In the ultimate result, it is the court's duty to construe the specification and on the merits to draw inferences from the facts established by the evidence."

[15] I have found that, the State proved that the accused's fingerprints were found at the crime scenes on count 29,30, 33, 34, 35,38 and 43. This creates prima facie evidence which is circumstantial in nature that he was present at the scenes. The accused did not testify to explain how his fingerprints got there at these scenes of crime. In *Sebidi and Others v S* (CA 48/22) [2023] ZANWHC 151 (29 August

2023) on para 23-24, Reddy AJ quoted with approval, the case of *S v Legate* 2001

(2) SACR 179 (SCA) at para [3], where Harms JA stated as follows in respect of the probative value of fingerprint evidence (Loosely translated from Afrikaans):

[23] "[3] The value of fingerprints as evidentiary material to link an accused to a crime, is well known. Normally, it provides not only prima facie evidence but often, is conclusive (see *S v Arendse* 1970

(2) SA 367 (C); S v van Wyk 1982

(2) SA 148 (NC).

[24] The palm print, which is classified as fingerprint evidence of the second appellant, lifted from the right side of the boot, is classified as circumstantial evidence. In R v Blom 1939 AD 188 at 202- 203 Watermeyer JA outlined the approach to circumstantial evidence as follows:

"In reasoning by reference in a criminal case, there are two cardinal rules of logic which cannot be ignored. The first rule is that, the inference sought to be drawn must be consistent with all the proven facts; if it is not so, the inference cannot be drawn. The second rule is that, the proven facts should be such that they exclude every reasonable inference from the proven facts, save the one that is sought to be drawn: if these proven facts do not exclude all other reasonable inferences, then there must be doubt whether the inference sought to be drawn is correct.

[16] I find in this case at hand that, the fingerprint evidence is sufficient for a conviction, especially because the accused failed to provide a reasonable explanation for the presence of his finger prints at the crime scene. The accused's inability to explain how his fingerprints were found at the crime scene could justify an inference of guilt in this case. Therefore, he will be convicted based solely on the fingerprint evidence on counts 29,30, 33, 34, 35,38 and 43.

Identification Parade Procedures:

[17] The accused was identified by the complainants M[...] M[...] and H[...] L[...], on count 31, 32, 40 and 42 at an identification parade, held at Attridgeville police station. In Phetla and Another v S (A632/2015) [2016] ZAGPPHC 555 (24 June 2016) para 31-32, the court emphasized the importance of proper procedures in conducting identification parades to prevent false impressions regarding a witness's ability to identify the accused. The reliability of an identification parade heavily depends on its proper conduct. Failure to adhere to established procedures can diminish the probative value of the identification. It's crucial for the prosecution to lead evidence, demonstrating that all safeguards were observed during the parade.

[18] The identification parade conducted in this case, was properly carried out in accordance with established identification procedures. This is evident from the exhibits submitted, namely, Exhibit VV1-3 and WW1-3, which confirm that the accused was identified as the perpetrator in a lineup consisting of eight individuals, as reflected in the photograph taken by Constable Patrick Ntsoane. The parade was supervised by Sergeant Mafa.

During the identification parade of H[...] L[...], Makwatse Mugedi guarded the witness before she attended the parade. Naledi Gumede escorted the witness to the parade, Ronald Khoza escorted the witness from the parade, and Makwatse Mugedi guarded the witness after the parade. Similarly, during the identification parade of M[...] M[...], Thomas Mafuna guarded the witness before she attended the parade, Ronald Khoza escorted the witness to the parade, Naledi Gumede escorted the witness from the parade, and Thomas Mafuna guarded the witness after the parade.

The SAPS 329 form indicates that, both complainants remained calm and confident in identifying the accused as the perpetrator. H[...] L[...] identified the accused within two minutes, while M[...] M[...] did so within one minute. The integrity of the identification parades remained intact, and no procedural irregularities were identified that could undermine the reliability or evidentiary weight of the identifications. I am satisfied that the procedures followed, were proper and reliable in the circumstances.

- [19] Counsel for the defence, with consent, agreed to the admission of Exhibits VV1-3 and WW1-3 as evidence in this matter and further admitted the contents thereof. In *S v Groenewald* 2005 (2) SACR 597 (SCA) para 33:

"[33] An admission is an acknowledgment of a fact. When proved or made formally during judicial proceedings, it dispenses with the need for proof in regard to that fact. Wigmore on Evidence; Revised edition of: A treatise on the Anglo-American system of evidence in trials at common law. 3rd edition 1940, calls it 'a method of escaping from the necessity of offering any evidence at all': a 'waiver relieving the opposing party from the need of any evidence'.

- [20] The accused did not testify in rebuttal of this evidence. Consequently, the only version before the court is that which was presented by the State. While an accused's right to remain silent is constitutionally protected, an adverse inference may be drawn where the State presents compelling identification evidence; such as a positive identification of the accused by the complainant during a properly conducted identification parade; and the accused elects not to testify in his defence. The inference is that, the accused is the culprit who was seen by the complainants on count 31, 32, 40, 42 at their houses during the commission of the offences. (*S v Tandwa and Others* 2008 (1) SACR 613 (SCA) at paras 119–120). See also *R v Blom* 1939 AD 188(inference to be drawn).

- [21] In respect of counts 9, 10, 25, 26, 27, 28, 33, 34, 35, 44, 45, and 46, the complainants (B[...] D[...] M[...], C[...] P[...], L[...] I[...] D[...], H[...] A[...] M[...], N[...] M[...], N[...] V[...], and A[...] M[...]), also identified the accused in court while he was seated in the accused's dock. Their identification was based on distinct facial features, particularly his prominent gold tooth at the front and his notably large eyes, which they had observed during the commission of the offenses. In *S v Charzen and another* 2006 (2) SACR 143 (SCA) para 11, remarks on the dangers of relying solely on dock identification without prior proper identification procedures, underscoring the necessity of conducting fair and reliable identification parades.

“But, as our courts have emphasised again and again, in matters of identification, honesty, sincerity and subjective assurance are

simply not enough. There must in addition, be certainty beyond reasonable doubt that the identification is reliable, and it is

generally recognised in this regard that evidence of identification based upon a witness’s recollection of a person’s

appearance can be ‘dangerously unreliable’, and must be approached with caution.”

[22] The complainant N[...] M[...], on count 33,34,35 has also identified the accused during identification parade. Her identification of the accused is reliable in this case because she had identified him before, at the identification parade. There is a corroboration that satisfies the cautionary rule placed on dock identification.

[23] In *S v Mthetwa* 1972 (3) SA 766 (A): 768A-C, the court emphasized the need for caution in relying on identification evidence, highlighting factors such as lighting, the witness's opportunity for observation, and the duration of the observation. The complainants in counts 9, 10, 25, 26, 27, 28, 44, 45, and 46 (C[...] P[...], L[...] I[...] D[...], H[...] A[...] M[...], N[...] V[...], and A[...] M[...]) did not only identify the accused during dock identification, but forensic evidence further corroborated their identification. DNA analysis conducted on swabs taken from the complainants by a medical practitioner, matched the DNA profile of the accused. This DNA evidence was admitted by the defense counsel during the trial, along with the contents thereof. Given the forensic confirmation, the possibility of an erroneous dock identification in this instance does not exist. This caution is satisfied by the corroboration provided through DNA evidence, which confirms that the complainants correctly identified the accused as the perpetrator on count 9, 10, 25, 26, 27, 28, 44, 45, and 46.

The DNA evidence

[24] In respect of counts 1, 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,28, 29, 30, 31, 32,33, 34, 35, 36, 37, 39, 40, 41, 42, 44, 45, and 46, the DNA analysis conducted on swabs taken from the complainants by a medical practitioner, matched the DNA profile of the accused. In *Bokolo Bokolo v S* (483/12) [2013] ZASCA 115 (18 September 2013) para 18:

“[18] Evidence that the STR profile of an accused person matches that of a sample taken at the scene or can be included therein, is circumstantial evidence. The weight thereof depends on a number of factors. These include:

- (i) the establishment of the chain evidence, i.e. that the respective samples were properly taken and safeguarded until they were tested in the laboratory;

- (ii) the proper functioning of the machines and equipment used to produce the electropherograms;
- (iii) the acceptability of the interpretation of the electropherograms;
- (iv) the probability of such a match or inclusion in the particular circumstances;
- (v) the other evidence in the case.”

[25] Exhibit A1, contains admissions made by the accused, which were read into the record by his counsel in terms of section 220 of the Criminal Procedure Act 51 of 1977. These admissions pertain to the chain of custody of DNA evidence, from the collection of swabs by medical practitioners at the hospital to their analysis at the forensic laboratory. The evidence was submitted in court as Exhibits A1 and P through MM.

The defense counsel and the accused admitted that the specimens collected from the complainants were properly sealed and that the evidence collection kits remained sealed. While in the possession of the Forensic Science Laboratory personnel, the seals remained intact and were not tampered with. Furthermore, buccal samples were collected from the accused, and the collection kit was sealed. The seal remained intact and untampered with, while in the custody of the Forensic Science Laboratory personnel.

[26] Warrant Officer Jeannie Eileen Yana Van Dyk, a duly qualified forensic analyst, received all the sealed case profiles and conducted the necessary forensic analysis, making findings as recorded in Exhibits NN and OO. Similarly, Warrant Officer Phokela Mogashoa, a forensic analyst, received the case profiles of A[...] M[...] and the accused, and made his findings as documented in Exhibit PP.

Both analysts concluded that DNA analysis conducted on the swabs taken from the complainants matched the DNA profile of the accused. The defense counsel consented to the admission of Exhibits NN to PP in court and further admitted the contents thereof, including the forensic process undertaken and the results confirming that the accused’s DNA was present in the swabs. I am satisfied that the chain evidence properly preserved the integrity of the DNA evidence. I am satisfied that the results were generated using the standard laboratory procedures which are also internationally accepted.

[27] Despite the overwhelming DNA evidence in the rape charges, the accused elected not to testify or provide any rebuttal. The combination of compelling forensic evidence and the accused’s silence often leads courts to conclude that the State has discharged its burden of proof beyond a reasonable doubt. In *Nkwanyana v S* (AR108/16) [2016] ZAKZPHC 82 (27 September 2016) at para 17, the court held:

“[17] It is our view that the only inference that ought to be drawn is that the appellant had sexual intercourse with the victim, and this is in line with R v Blom 1939 AD 188.”

[28] In respect of counts 1, 2, 3, 4, 6, 7, 8, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 44, 45, and 46, I am satisfied that the reliable DNA evidence supports the inference that the accused unlawfully broke into the complainants' residences and committed rape and robbery with aggravating circumstances.

Single evidence of single witnesses

- [29] It is, however, a well-established judicial principle that the evidence of a single witness should be approached with caution, his or her merits as a witness being weighed against factors which militate against his or her credibility. The evidence of such a single witness, must be clear, credible, and satisfactory in all material respects. In terms of section 208 of the Criminal Procedure Act 51 of 1977, "An accused may be convicted on the single evidence of any competent witness." However, courts have emphasized the need for caution when relying solely on a single witness's testimony (*S v Sauls and Others* 1981 (3) SA 172 (A)).
- [30] All the witnesses testified in a clear and convincing manner, without exaggeration. During cross-examination, they remained consistent and unwavering, despite breaking down due to the trauma they had suffered. They recounted their experiences with confidence, and no contradictions were identified in their testimony.
- [31] Although their evidence constitutes that of a single witness in certain instances, independent facts corroborate their versions. See the case of *S V Gentle* 2005(1) SACR 420 (SCA) at 430j-430c, where it was said that It must be emphasized that by corroboration is meant other evidence which supports the evidence of the complainant and which renders the evidence of the accused less probable, on the issues in dispute.

In respect of counts 33, 34, and 35, the complainant's evidence is corroborated by independent forensic evidence, including DNA analysis and fingerprint evidence.

Additionally, she was able to positively identify the accused during her testimony in court.

In respect of counts 41 and 42, the complainant's evidence is supported by DNA evidence, identification parade evidence, and dock identification.

In respect of counts 31 and 32, the complainant's evidence is corroborated by DNA and fingerprint evidence.

In respect of counts 38 and 43, the complainants' evidence is supported by fingerprint evidence.

In respect of counts 9, 10, 25, 26, 27, 28, 44, 45, and 46, the complainants' evidence is corroborated by DNA evidence and dock identification.

The complainant in respect of counts 45 and 46 identified the accused within minutes after the incident and played a direct role in his apprehension, with the assistance of her neighbor, Mr. Netshifhefhe, who traced and apprehended the suspect.

In respect of counts 1, 2, 3, 4, 6, 7, 8, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 36, 37, 39, and 40, the complainants' evidence is corroborated by DNA evidence.

[32] During their testimony, it was evident that all the witnesses, except for one, had no prior acquaintance with the accused. The sole witness who had seen him before, testified that she had observed him working as a queue marshal at a taxi rank. Apart from this, all other witnesses encountered the accused for the first time. There is, therefore, no history of prior disputes between the accused and the complainants.

The witnesses did not exaggerate their accounts, and despite the offences occurring on different dates and in different provinces, they consistently described the same modus operandi employed by the accused. Their versions align with common sense and logic. It is inherently improbable that they would have failed to recognize the accused, who unlawfully entered their homes and rooms.

The credibility and reliability of their evidence were thoroughly tested during cross-examination, and they remained steadfast. The totality of their evidence is satisfactory in all material respects.

Contravention of section 3 of Act 32 of 2007(Rape Charges).

[33] The accused faces 20 counts of contravening section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (rape). The evidence clearly establishes that on counts 1, 3, 6, 8, 13, 15, 19, 21, 24, 26, 27, 28, 29, 32, 34, 36, 40, 42, 44, and 46, the complainants were sexually violated by the accused, as his DNA was found in the swabs taken from their vaginas.

On count 22, the accused's DNA was found on the carpet on which the complainant was forced to lay. On count 24, his DNA was discovered on the complainant's gown, which she was wearing at the time of the incident. On count 32, his DNA was identified on the blanket covering the bed where the offence took place.

All the complainants testified that the accused was armed with a knife, which he used to threaten them into submission. He placed the knife against their necks, instilling fear for their lives. The accused forcibly penetrated each of the complainants on the respective dates of the offences. The sexual penetration was unlawful and non-consensual.

Furthermore, on count 13, the complainant J[...] M[...] was a minor, aged 15 years, at the time of the rape. Consequently, section 51(1) of the Criminal Law Amendment Act 105 of 1997 is applicable for sentencing purposes.

Housebreaking with Intent to Rob and Robbery with Aggravating Circumstances.

[34] The accused also faces charges of housebreaking with intent to rob and robbery with aggravating circumstances in respect of counts 2, 9, 12, 14, 18, 20, 23, 25, 31, 33, 41, and 45. Various items, including cell phones, laptops, and money, were stolen from the complainants.

Except for count 45, where the accused was traced, apprehended, and found in possession of the stolen items, none of the other complainants were able to recover their belongings.

On counts 2, 9, 14, 18, 20, 23, 41, and 45, the accused threatened the complainants with a knife, wielding it in close proximity to their faces. On counts 25 and 33, he was armed with both a knife and a firearm, brandishing both weapons to intimidate the victims. On count 31, the accused used only a firearm to threaten the complainant.

The accused unlawfully broke into and entered the complainants' residences while they were asleep. Given that he was armed with a firearm and a knife, the robberies meet the definition of aggravating circumstances as contemplated in section 1 of the Criminal Procedure Act 51 of 1977.

Housebreaking with Intent to Steal and Theft

[35] On counts 38 and 43, the complainants' houses were unlawfully broken into while they were asleep.

On count 38, the accused stole laptops and chargers. While inside the house, the complainant shouted, prompting her mother and sister to wake up and check on her in her sister's room. The accused then fled the scene. It was later discovered that the aforementioned items were missing.

On count 43, the complainants woke up in the morning and found that their television was missing. Upon further inspection, they discovered that the bathroom window had been opened. A fingerprint matching that of the accused, was found at the scene. The complainants were unable to recover their stolen items.

Housebreaking with Intent to Rape

[36] On counts 4 and 7, the complainants' residences were unlawfully broken into while they were asleep, and the accused proceeded to rape them, as charged in counts 6 and 8.

On count 4, the accused broke into a shack where the complainant, F[...] T[...], was asleep with her friend, M[...]. Both women were raped. However, M[...] was so severely traumatized that she was unable to complete her testimony. She repeatedly fainted while testifying and ultimately decided not to proceed with her evidence.

On count 7, the complainant awoke to the sight of a shadow through her blanket. When she opened her eyes, she saw the accused standing next to her bed. He threatened her with a knife, placed against her throat and proceeded to rape her.

DNA analysis confirmed that the accused's DNA matched the swabs taken from both complainants.

Attempted Rape

[37] Counts 10 and 22 relate to charges of attempted rape. On count 10, the accused broke into the complainant's room, demanding sneakers and money. The accused told the complainant that he did not intend to rape her because she was menstruating. However, he proceeded to

fondle her breasts and thighs without her consent. The complainant testified that the accused did this, so that the other girl who had already been raped would not feel alone in her suffering. This conduct does not constitute attempted rape but rather sexual assault, as the accused touched the complainant's intimate body parts without her consent.

Section 5(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 defines sexual assault as including direct or indirect contact between any part of the body of one person and the genital organs, anus, breasts, or any other body part of another person in a sexual manner, short of penetration.

The accused committed this act without the complainant's consent and demonstrated intent to engage in such conduct. His decision not to rape her was solely based on his fear of contracting an illness due to her menstruation, which further demonstrates his predisposition to commit sexual violence.

Accordingly, the state failed to prove attempted rape but successfully proved sexual assault.

[38] On count 22, the accused intended to rape the complainant but was unable to complete the act due to his positioning and interruption by the complainant, who begged him to use a condom.

The accused demonstrated a clear intention to unlawfully rape the complainant, as he threatened her with a knife and used force. However, he failed to complete the act, thereby satisfying the legal requirements for attempted rape.

Robbery with Aggravating Circumstances

[39] On count 30, the complainant was robbed of her bag, laptop, and cellphone while the accused was in possession of a knife, which he had taken from the room. The complainant was also raped on the same occasion. The aggravating circumstance in this case is the accused's use of the knife to threaten the complainant.

On count 37, while the complainant was walking to school, she encountered the accused, who produced an Okapi knife and pointed it at her. He then took her cellphone and proceeded to rape her on the same day.

On count 39, the complainant was on her way to campus to write an examination when she encountered the accused, who produced a firearm and demanded her cellphone, laptop, and money. As the complainant did not have a laptop or money, the accused took only her cellphone. She was also raped on that occasion. DNA evidence confirmed that the biological material found at the scene matched the accused. The aggravating circumstances in this case are the accused's use of a firearm and a knife to threaten and subdue the complainant.

Theft

[40] On count 35, the accused stole the complainant's Capitec bank card and demanded that she provide the PIN codes for both the laptop and the bank card. The complainant complied out of fear, as the accused was threatening a child with a knife. He warned that he would stab the child if she refused to comply. The complainant was also raped on that day. Subsequently, the accused withdrew an amount of R50.00 from the complainant's Capitec bank account without her consent, thereby stealing her money. The accused's fingerprint was found on the sliding door frame of the complainant's house, further linking him to the crime.

Findings on the Evidence

[41] I find that the state has proven its case against the accused beyond a reasonable doubt.

On counts 1, 3, 6, 8, 13, 15, 19, 21, 24, 26, 27, 28, 29, 32, 34, 36, 40, 42, 44, and 46, the state has proven that the accused

intentionally and sexually penetrated the complainants without their consent, constituting rape.

On counts 2, 9, 12, 14, 18, 20, 23, 25, 31, 33, 41, and 45, the state has proven that the accused unlawfully broke into the complainants'

houses with the intent to commit robbery and that he indeed committed robbery with aggravating circumstances by wielding either

a knife or a firearm.

On counts 4 and 7, the state has proven that the accused broke into the complainants' houses with the intent to commit rape and, in fact, proceeded to rape them.

On counts 38 and 43, the state has proven beyond a reasonable doubt that the accused broke into the complainants' houses and stole their property.

On count 10, the state failed to prove attempted rape but successfully proved sexual assault against the accused.

On count 22, the state has successfully proven that the accused attempted to rape the complainant.

On counts 30, 37, and 39, the state has proven beyond a reasonable doubt that the accused committed robbery with aggravating circumstances by using a firearm and/or a knife.

On count 35, the state has proven beyond a reasonable doubt that the accused stole money belonging to the complainant.

Verdict

[42] Based on the evidence presented, the following verdict is entered:

On counts 1, 2, 3, 4, 6, 7, 8, 9, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 46, the accused is found guilty as charged.

On count 10, the accused is found not guilty of attempted rape but is found guilty of sexual assault.

M. Munzhelele

Judge of the High Court, Pretoria

Heard: 28-October 2024 - 24 March 2025

Delivered: 24 March 2025

Counsel for the State: Adv. Tshabalala

Counsel for the Accused: Ms. Masete

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