

SOUTH AFRICA / JUDGMENT

S v Mbasigidi (SS214/2015)

[2016] ZAGPJHC 181 (5 July 2016)

[2016] ZAGPJHC 181**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Dosio

CASE / FILE NUMBER

SS214/2015

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****LOCAL DIVISION, JOHANNESBURG****CASE****NUMBER: SS214/2015****DATE:**

5 JULY 2016

In

the matter between:

THE

STATE

And

RUDYANI

RONALD

MBASIGIDI.....ACCUSED

JUDGMENT

DOSIO AJ:

INTRODUCTION

- [1] The accused has been arraigned on six (6) counts of rape, and one (1) count of kidnapping, one (1) count of attempted murder and one (1) count of murder. The accused pleaded not guilty to all counts. The identity of the perpetrator in respect to all counts was placed in dispute by the defence.
- [2] In respect to the six (6) rape counts, which are counts 2,3,4,6,7, and 8, the State alleges that the accused contravened the provisions of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act , 32 of 2007. The State alleged that these five (5) offences all fall within the ambit of section 51(1) Part 1 of Schedule 2 offences, as envisaged in the Criminal law Amendment Act, 105 of 1997 (“Criminal Law Amendment Act”).
- [3] In respect to count nine (9) the State alleges that this is a crime of murder read with the provisions of section 51(1) and schedule 2 of the Criminal Law Amendment Act.
- [4] Subsequent to this Court explaining to the accused that assessors could be appointed to assist this Court, the accused elected to proceed in the absence of assessors.
- [5] The State is represented by Advocate Marasela and the Defence Counsel is Advocate Netshifhefhe.
- [6] In respect to counts one (1) to four (4), the State alleges that on the 10th of February 2012, near Z, in the district of R, the accused kidnapped M P M by forcing her into the veld and then raped her by inserting his penis in her vagina without her consent.
- [7] In respect to counts five (5) to seven (7), the State alleges that on the 12th of February 2013, near Z, in the district of R, the accused raped B R, stabbed her with a knife and also inserted his penis into her vagina without her consent.
- [8] In respect to count eight (8) and nine (9), the State alleges that on 12th of March 2013, near Z, in the district of R, the accused raped B M, by inserting his penis in her vagina without her consent and thereafter killing her.
- [9] At the inception of the trial, certain admissions were made in terms of section 220 of the Criminal Procedure Act 51 of 1977, (“Criminal Procedure Act”), which were incorporated into one document. These exhibits were marked as exhibits “A”, “B”, “C”, “D”, “E”, “F”, “G” and “H” respectively. The admissions referred to are the following;
- i. The indictment marked as exhibit “A”.

- ii. A medical report compiled by Doctor Hlungwane. A collection of forensic evidence in respect to the complainant on counts one (1) to four (4), namely M P M, which was all marked as exhibit “B”.
 - iii. A medical report compiled by Doctor Mlandu. A collection of forensic evidence in respect to the complainant on counts five (5) to seven (7), namely B R, which was all marked as exhibit “C”.
 - iv. A post-mortem report compiled by Doctor Julian David Jacobson, in respect to the deceased on counts eight (8) and nine (9), namely, B M, was marked as exhibit “D”. In addition, Counsel for the accused admitted that the chain from the time that the deceased died, up to when the deceased was removed from the scene and examined by the pathologist, the deceased received no further injuries.
 - v. A key, sketch plan and photo album compiled by Constable Makhisonke Sithole, marked at exhibit “E”.
 - vi. A key, sketch plan and photo album marked at exhibit “G”.
 - vii. A collection of forensic reference blood sample of the accused, taken on the 19th of October 2012 by a nurse called D.M Segotso, marked as exhibit “H”
- [10] Although the Defence Counsel did not admit exhibit “F” which is a DNA report, Counsel admitted, at the inception of the trial, on behalf of the accused, that the chain regarding all the DNA specimens sent to the laboratory, were all correctly sealed and analysed.

THE EVIDENCE

- [11] The State called ten (10) witnesses. These witnesses were M P M (who is the complainant on counts 1-4), S M (who is the person to whom the first report was made in respect to counts 1-4), Warrant officer Phokela Mogashoa, Alpheos Mashile, Jack Ngobeni, Constable Mulutanyi Gededzha, Segeant Letsie Philemon Motapo (the investigating officer), Dr Jandisa Mlandu, B R, (the complainant on counts 5-7), and Constable Tusso Clifford Molefe (the arresting officer).
- [12] This court will summarise the evidence chronologically with reference to the counts and not in order of the appearance of the many witnesses that testified.

Counts 1 – 4

- [13] The witness M P M testified that one evening during February 2012, she was walking home from her friend called “M”. The time was 21h00. A man called to her. He then placed his right arm on her neck and covered her left face with his left arm. She was forced into the bushes and taken to a dumping site. This man, whom she could not identify, then undressed her night dress and used it to blindfold her. She was then told to bend forwards. He then placed a condom on his penis and inserted his penis into her vagina and had sexual intercourse with her without her consent. He ejaculated, took out his penis, placed another condom on it and inserted his penis into her vagina for a second time and had sexual

intercourse with her. He ejaculated for a second time, and took off the condom. He inserted his penis into her vagina for a third time and had sexual intercourse with her. He ejaculated for a third time and then asked her if she was going to lay charges against him and she said “no”. He also threatened to stab her with a knife if she screamed. She then managed to leave and went to her friend called S. She told her friend that she had been raped. S accompanied her to the street where she was living. She then went to the police station and made a statement. She was then taken to Olivedale hospital where a doctor took a vaginal swab.

[14] This complainant is corroborated by the medical report, namely, exhibit “B”, where the doctor concluded that the

examination showed vaginal penetration. The perineum also showed traces of soil and dirt with dry blood. Although the complainant

stated she was not penetrated in her anus, the doctor found dirt and soil and some superficial bruising on the skin surrounding the orifice of the anus.

[15] This witness impressed this court. She stated she could not identify the perpetrator and never attempted to falsely incriminate him in court by fabricating evidence that she possibly could identify him.

[16] S M, testified that on the 10th February 2012, the complainant, namely M P M, came to her house and informed her that a man had approached her, grabbed her and then took her to a dumping site next to a soccer field, and that he then raped her. The complainant was wearing a nightdress and her clothing was soiled with mud. She then accompanied this complainant to a certain lady to find some clothing for the complainant.

[17] This witness impressed the court.

Counts 5 – 7

[18] Prior to calling the witness B R, the State brought an ex parte application in terms of section 170A of the Criminal Procedure Act, to allow the complainant to testify in a closed circuit television room with the assistance of an intermediary. This court was satisfied that the witness would be exposed to undue mental stress and suffering and accordingly granted this application. Ms Mihloti Eunice Muhlari who was suitably qualified and had the relevant experience, was appointed by this court to assist as an intermediary. Ms Muhlari was unavailable on the second day of this complainant’s evidence and the court appointed Ntombi Claudia Zwane to act as an intermediary. She too was also suitably qualified to assist as an intermediary.

[19] B R testified that on the 12th of February 2013 she arrived from school and went to visit her cousin called A in Z. After departing from her cousin at 18h00, she was walking alone when she came across a friend by the name of D. He accompanied her half way down a shortcut through the veld, whereupon he turned back and went back to his house. An unknown person then appeared in front of her. As she passed him, he tripped her and she fell to the

ground. She screamed and this man kicked her and closed her mouth. This man was dark in complexion and he was wearing a tracksuit top which had a head piece attached to it.

- [20] He was speaking to her in Zulu, but she could tell that he was not fluent in Zulu. He then made her stand up and he blindfolded her with a cloth. He then dragged her to a spot with water and ordered her to lie on the ground. She refused to undress and this man stabbed her with a knife on her arm. She undressed her trouser and panties and fell to the ground. This man took off his clothes and lay on top of her and inserted his penis into her vagina and had sexual intercourse with her without her consent. It was painful in her vagina. She was unsure if he ejaculated.
- [21] He got off her, answered a call on his cell phone and returned to her. He asked her what her name was and then asked her what she would say if someone asked her how she had sustained the injuries. She responded by saying that she would say the injuries were caused by some boys. He threatened her that if she should report this matter he would kill her family as they are known to him. He then took out his penis for a second time and inserted it into her vagina and had sexual intercourse with her. She was unsure if he ejaculated. He then instructed her to dress, hugged her and they walked together up to the cross-road. He then took off her blindfold and pushed her in the opposite direction to himself. He then ran away.
- [22] She walked to the houses in C C and passed out on a certain verandah. People found her there and contacted her sister, who in turn called her brothers. As her family arrived, so too did the ambulance arrive. She was then taken to the Johannesburg hospital. Swabs were taken from her vagina and she was given stitches for her open wounds. She was in hospital for three days. On her discharge she was referred to Roodepoort for counselling. She stated that this incident affected her negatively as she felt the people at her school knew what had happened to her.
- [23] This witness impressed this court. She never tried to falsely incriminate the accused by fabricating that he was the perpetrator.
- [24] The evidence of this complainant is corroborated by Doctor Jandisa Mlandu who is employed at the Rahima Moosa Mother and Child hospital. She testified that on the 12th of February 2013, she examined B R. She noted that this child's clothing was full of grass and she had a stab wound on her left forearm, a laceration on her right hand and bruises on her back. The medical report compiled by this doctor also showed that the complainant had a torn hymen with abrasions on the posterior fourchette. The fossa navicularis also showed signs of bruising and small lacerations. This witness was unclear as to whether the injury to the child's forearm was fatal or not.

Counts 8 to 9

- [25] Jack Ngobeni testified that the deceased in respect to counts eight

- (8) and nine (9), was his girlfriend. During 2013 they were staying together. On the morning of the 12th of March 2013, she woke up at twenty to four in the morning, had a bath and then prepared the children for school. She left the house at four in the morning. Usually, a taxi would fetch her from the house, but on this morning, no taxi was available. He went back to sleep and woke up just before seven in the morning and took the child to a certain nanny. He returned home at half past seven that morning.
- [26] He received a call from the deceased's employer, who informed him that she had not yet arrived at work. Whilst standing there, he saw a whole lot of people congregating at the side of the soccer field. The police were also there. As he approached, he informed the police the deceased was missing. The police gave him a description of the deceased person who had been found. He then accompanied the police to a spot, where he identified the deceased. He also identified the shoes which were found at the scene as belonging to the deceased. He knew the accused in court as he was residing in Honeydew in 2013. The accused lived the third street away from where he lived.
- [27] A M testified that he lived in Z, H. On the 12th of March 2013, he left his home around four thirty in the morning. Whilst on his way, he passed a place called Mthonjeni, where some sewerage pipes lay, which needed to be installed. He heard the sound of someone walking in the grass. He saw a man coming from the direction where the sewerage pipes were, however it was too dark and he was unable to identify this person. This witness continued to walk where he was headed and returned around seven thirty that morning. At that stage, he noticed a lot of people congregating around the body of a female deceased person. He presumed that the person he had seen earlier that morning probably was responsible for killing this person.
- [28] Constable Mulutanyi Gededzha testified that he is employed at the Criminal Record Centre in Krugersdorp. He is a crime scene investigator and was responsible for compiling and collecting exhibits from the scene in respect to counts eight (8) and nine (9). He also took photos which are incorporated in exhibit "G".
- [29] Sergeant Letsie Philemon Molapo testified that he is the investigating officer of docket CAS number 495/3/2013 which refers to counts eight (8) and nine (9). He requested that a swab be taken from the deceased's genital area and that it be sent to the forensic laboratory. Upon analyses of the swab, the laboratory informed him that they already had a profile of DNA that matched the one found on the deceased and that it belonged to a person with the name of Mbasigidi RR, with identity number 8. This is the name and identity number of the accused before this court. The investigating officer testified that prior to obtaining this information he had no knowledge of this accused. Further investigation revealed that the accused had been arrested previously on a criminal charge on Honeydew CAS number 733/10/2012. Blood had been taken from him on that case and had been sent to the Forensic laboratory for analyses. The seal number according to the duplicate docket on CAS

733/10/2012 was 11D4AB4226EB. The accused in the matter of CAS number 733/10/2012 was never successfully prosecuted, as the complainant withdrew that matter. The profile however remained on the Forensic laboratory system.

- [30] The investigating officer testified that he was informed that the profile of the accused also matched the DNA found on the swabs of the complainants on Honeydew CAS number 452/02/2012 (which refers to counts 1-4) and Honeydew CAS number 555/02/2013 (which refers to counts 5-7). The services of an informer living in Zandspruit was used to trace the accused. After he was found, he was arrested on CAS number 495/03/13 (which refers to counts 8 and 9), and his blood was once again taken and was sent to the forensic laboratory for analyses. The seal number of this specimen is 11D4AA5106EB.
- [31] The accused was arrested on the 12th of July 2014. At that stage the Forensic laboratory was already in possession of the results of the swabs on CAS 452/02/2012, CAS 733/10/12 and CAS 555/02/2013.
- [32] The investigating officer stated that all three rape counts were committed in Zandspruit. Counts 1-4 and counts 5-7 were all committed near a dumping site and a soccer field. He stated that the place where the deceased on count 8 and 9 was raped and killed, was in the same area as the two previous mentioned incidents. He testified that because the DNA of the accused was found in the vagina of the deceased on count 8 and 9, that the accused must have had sexual intercourse with the deceased.
- [33] Constable Tusso Clifford Molefe testified that he was employed at the Gauteng Provincial Head Office. He was working all over Gauteng with DNA linkages. He had in his possession a docket with case number 733/10/12, where the nickname of the suspect referred to on that docket was "Super". Whilst still investigating, he received a DNA link, linking case 733/10/12 to a case of murder with Honeydew docket CAS number 495/3/2013 and the initials on the reference sample reflected "Mbasigidi RR". He did not know who this accused was, so he asked the ground intelligence to find a person by the name of "Super" living in the Honeydew area.
- [34] The information was gathered and he went to a certain plot on the 10th of July 2014, in Honeydew, where he found an African male. He introduced himself and requested this man to tell him his name and to give him his identity number. This witness also had in his possession the docket with CAS number 733/10/12, where the accused's name reflected on that docket was Ronald Mbasigidi and the nickname was "Super". He asked this man what his name was and the name replied he was called "Super". After satisfying himself that this was indeed the person referred to in docket 733/10/12, he arrested the accused before the court and explained his Constitutional rights. The accused also agreed that his surname was Mbasigidi and that his initials were R.R. The accused informed him that he had been out of the province.

DNA evidence

[35] Warrant officer Phokela Mogashoa testified that he was attached to the Biology Section of the Forensic Science Laboratory as a Forensic Analyst and a reporting officer. Although he has been attached to the Biology Section of the Forensic Science Laboratory since the 8th of March 2012, he had eleven years experience in the biological and molecular services.

[36] He stated that the investigating officer in this case had requested him to check if there was a common donor from all the exhibits

received, as the investigating officer suspected a serial rapist was possibly targeting women in the same area.

[37] He received the following case files, marked as follows:

- i. Honeydew CAS 452/02/12 LAB 58307/12 on 2014-07-14
- ii. Honeydew CAS 495/03/13 LAB 86449/13 on 2014-07-14
- iii. Honeydew CAS 733/10/12 LAB 333160/12 on 2014-07-14
- iv. Honeydew CAS 555/02/13 LAB 39216/13 on 2014-07-29

[38] He used nine (9) areas to compare the DNA. The nine (9) areas were given scientific names which were referred to as “D3S1358”,

“vWA”, “FGA”, “D8S1179”, “D21S11”, “D18S51”, “D5S818”,

“D13S317”, and “D7S820”. Each region has two DNA pieces of fragment sizes. One region is from the mother and the other region is from the father. The combination of all these short pieces of DNA, including the gender marker, constituted a unique DNA profile of an individual.

[39] The exhibit material of three (3) complainants was analysed and compared to the reference sample of the accused and the results were tabulated and included in table 1 of exhibit “F”.

[40] The DNA result obtained from the following exhibits mentioned below, matched the DNA result of the reference sample of the accused, which was marked as (11D4AB4226EB) which was obtained in CAS number 733/10/12. No vaginal swab was present in CAS 733/10/12, as apparently the swabs taken from the rape victim in that matter were too bloody. The exhibits which were compared to the reference sample of the accused on CAS 733/10/12 were;

1. Internal Cervical swab (PAD000122489V) (11D1AA0309XX “MP MALEKANE”)) [Honeydew CAS 452/02/12]

2. Vaginal Vault swab (PA30002363) (09D1AE4732XX) [Honeydew CAS 495/03/13]

3. Internal Cervical swab 10D1AA5746 (10D1AA5746XX) [Honeydew CAS 555/02/13]

“RAMAKGAMPANE BONGINKOSI”.

[41] This witness proceeded to explain the first line of table 1 on page 4 of exhibit “F”.

He stated that the four (4) exhibits constituted the unique profile of the DNA obtained from all four (4) specimens. The gender marker X:Y refers to the male gender, whereas the X:X refers to the female gender. The reference sample taken to the laboratory was XX, therefore it referred to the male gender.

[42] It is clear to this court when looking at the nine (9) regions which constitutes the short pieces of DNA obtained in each region that they are the same in each of the four

(4) dockets. The first region, namely D3S1358 was 15:15. The second region, namely vWA was 14:17. The third region, namely FGA was 18:2:24. The fourth region, namely,

D8S1179 was 13:14. The fifth region, namely D21S11 was 30:31.2. The sixth region, namely, D18S51 was 16:16. The seventh region, namely, D5S818 was 12:15. The eighth region, namely D13S317 was 11:13 and the ninth region, namely S7S820 was 10:12.

[43] It is clear to this court that by comparing the reference sample (11D4AB4226EB), marked “MBASIGIDI RR” in the third line in table 1, on page four (4) of exhibit “F” to the first, second and fourth lines in table one, that the reference sample matched all the regions. The evidence of this witness who compared the four exhibits, allows this Court to accept that it was the same person’s DNA who was found in the three dockets marked Honeydew CAS 452/02/12, Honeydew 495/03/13 and Honeydew 555/02/13.

[44] This witness stated that the statistical probability that this profile would be shared by two people would be 1 in 4.2 trillion people. Accordingly, it was very unlikely that this DNA belonged to another person.

[45] This witness was recalled by the State in terms of section 166 of the Criminal Procedure Act for two purposes, firstly to explain that there was a typographical error on exhibit “F” and that the docket he had mentioned on the table at paragraph 4 was CAS 495/03/13 and not 495/03/12. Secondly, he had also compiled an additional table which was incorporated in exhibit “I”, and the significance of this second table was that he had included and compared the first reference sample of the accused obtained from the accused on CAS 733/10/12, to the second

confirmatory reference sample which was obtained from the accused on CAS 495/03/13. He found them to be exactly the same.

[46] This witness stated that when he had presented his initial report marked as exhibit “F”, the initial reference sample of the accused, obtained on CAS 733/10/12, had not yet been compared to the confirmatory reference sample obtained on CAS 495/03/13. The second report is basically the same as the first report, the only addition being, that it includes the results obtained from the confirmatory sample. He stated that by looking at the table on exhibit “I” the confirmatory sample gives the same DNA profile as all the other exhibits.

[47] It is clear to this court that if one looks at paragraph 4 of exhibit “I”, that the first region, namely D3S1358 is 15:15 in both reference samples, the second region, namely vWA is 14:17 in both samples. The third region, namely FGA is 18:2:24 in both samples. The fourth region, namely, D8S1179 is 13:14 in both samples. The fifth region, namely D21S11 is 30:31.2 in both samples. The sixth region, namely, D18S51 is 16:16 in both samples. The seventh region, namely, D5S818 is 12:15 in both samples. The eighth region, namely D13S317 is 11:13 in both samples as is the ninth region, namely S7S820 in both samples reflected as 10:12.

[48] This witness impressed this court.

[49] The State closed their case.

[50] The accused testified and denied all knowledge of being involved in any rape, attempted murder or murder. His defence is a bare denial. He denied ever having had sexual intercourse with any of the two complainants or the deceased. In fact he testified he does not know either of the two complainants or the deceased.

[51] In respect to counts one (1) to four (4), he stated that during this period in 2012, he was not in the Gauteng Province. He was working in Liphalele, which is in the province of Limpopo. He would leave Gauteng on a Sunday or Monday and returned the next Sunday or Saturday. It would take four hours to travel from Liphalele to his place of residence in Gauteng. He worked in Liphalele in 2011 and again from January 2012 until August or September 2012. He was installing air conditioners for a private company, called Fifty Two Engineering and the owner of this company was John Perry.

Two people would supervise them, namely, a site manager and a safety officer.

[52] During this period, he worked in the mine and would commence his day at seven in the morning and would exit the mine at six in the evening.

[53] The accused had an opportunity to call any of the three above-mentioned people to corroborate his version that he was not in

Gauteng during February 2012, yet he elected not to.

[54] He could not give details about his whereabouts on the 12th of February 2013, or the 12th of March 2013. Although he knew the area where the deceased on count nine (9) was found, he stated that he did not recall ever going to that soccer field. He admitted that he lived six (6) streets away from this area. He heard from his girlfriend that the deceased on count nine (9) had been found. He did not himself go to that soccer field to see it for himself.

[55] During cross examination he merely denied his involvement and questioned how it was possible that his DNA could have been found on the swabs of the two complainants and the deceased. He maintained his version that he never had sexual intercourse with any of the two complainants or the deceased.

[56] The accused never disputed that he was arrested previously on a matter with CAS number 733/10/12. Due to the fact that he remained silent in this regard, this Court accepts he was indeed arrested on that case and that his blood was taken on that matter and kept in the forensic laboratories. The accused did admit that his blood was taken after his arrest on CAS number 495/03/13, but he denied he told Constable Tuso that his nickname was “Super”. He agreed he is R.R. Mbasigidi.

[57] In the absence of the accused challenging Constable Molefe during cross-examination, that he did not say his nickname was “Super”

at the time he was arrested, this Court accepts he did tell Constable Molefe that his nickname was “Super”.

EVALUATION

[58] The proper approach in a criminal case is to consider the totality of the evidence, that is, to examine the nature of the State case, the nature of the defence case, the probabilities emerging from the case as a whole, the credibility of all the witnesses in the case, including the defence witnesses, and then to ask one self, at the end of all this, whether the guilt of the accused has been established beyond a reasonable doubt.

[59] The two (2) complainants, namely, M P M and B R are single witnesses. The cautionary rule embodied in section 208 of the Criminal Procedure Act, was considered. This court is satisfied that both complainants were credible and honest witnesses. They did not try to exaggerate any of their evidence. Both witnesses stuck to their versions and this Court has found no material contradictions in their evidence.

[60] The presence of similar fact evidence in this case, has become highly relevant. The evidence shows that the perpetrator approached single women in Zandspruit, when it was dark. He would grab them and drag them into the veld. He would blindfold the victims and after having raping them he would ask them if they would lay a charge against him. He would either threaten, or actually stab the victim.

[61] Although there is no direct evidence as to whether the victim on counts eight (8) and nine (9) was blindfolded, the fact remains that a scarf was found at the scene as depicted at photo 19 of exhibit “G”. This incident happened on the 12th of March 2013. March is usually a warm month and there is no need for someone to wear a scarf. The fact that a scarf was found at the scene, allows this court to infer that possibly the perpetrator had in fact also covered the eyes of the deceased with this scarf.

[62] The learned authors D.T Zeffertt and A.P. Paizes in the South African Law of Evidence,[1] state at page 294; “In cases in which identity of the criminal is a substantial issue, evidence that the accused had a peculiar or aberrant propensity to commit the offence in question may, in the circumstance of the case, be so highly relevant to the question of his identity as to be admissible”; and further at page 297 that;

“The relevance of the similar-fact evidence will depend upon the factors such as the strength of the other direct or circumstantial evidence which already points to the accused, the degree of similarity in the modus operandi, and the extent to which the accused is already identified with the earlier offences.”

[63] In the case of *S v Blom* 1939 AD 188, the learned Watermeyer JA stated that there are two cardinal rules of logic;

“(1)The inference sought to be drawn must be consistent with all the proved facts. If not, then the inference cannot be drawn.

(2)The proved facts should be such that they exclude every other reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.”

[64] Counsel for the Defence argued that the DNA evidence is not to be accepted as it is filled with doubts and contradictions, and that these contradictions had to be resolved, by the State recalling Warrant officer Mogashoa. This Court does not agree. The reason why the State re-called warrant officer Mogashoa was to lead evidence pertaining to the results of the blood which were taken from the accused after he was arrested on the rape and murder count comprising counts eight (8) and nine (9), and also to correct the CAS number of 495/03/12 to 495/03/13.

[65] There was no evidence presented by the accused to counter the evidence of this DNA expert and accordingly his evidence is accepted by this court as correct.

[66] The similar modus operandi, together with the fact that the DNA of the accused was found on the genital swabs taken from the two complainants and the deceased, allows this court to infer as the only reasonable conclusion that it is the accused who raped all three victims.

[67] The accused's version that he did not rape any of these victims is rejected as false and not reasonably possibly true. This Court finds that the DNA found on the swabs of the two complainants and the deceased indeed belongs to the accused.

[68] In respect to count nine (9), there is no direct evidence showing that the accused stabbed and killed the deceased.

[69] J N testified the deceased left the house at four in the morning. A M testified that he left his house at half past four in the morning and that he saw a man walking in the area where the sewerage pipes are. This is the area where Alpheos saw the deceased's body lying, when he returned at seven thirty that morning.

[70] It is common cause that the accused lived in Honeydew and resided six

- (6) streets away from where the body of the deceased was found. The DNA of the accused was found on the vaginal swab of the deceased. Due to the fact that the DNA circumstantial evidence, incriminates the accused on the rape counts of the two complainants and the deceased, and the degree of similarity in the modus operandi of all three acts of rape, coupled with the fact that they all occurred in Zandspruit, leads this court to infer that we are dealing with the same person who also killed the deceased on count nine (9).
- [71] A M saw a man emerging from the area where the deceased was killed at four thirty in the morning. This area is remote, and few people are walking there at that time of the morning. A heard no screaming when he saw this man, which suggests the deceased was already dead or unable to scream due to the injuries sustained. This body was discovered shortly after she was raped. This Court finds there is sufficient similar fact evidence arising from the other exhibitions of violence in respect to the complainant on count five (5) to seven (7), that the accused was a violent person and that because he had stabbed the complainant on counts five (5) to seven (7), that he most probably, also stabbed this deceased on count eight
- (8) and
- nine
- (9) and killed her.

[72] This Court finds the inability of the accused to remember with clarity what he was doing in 2012, and no recollection of what he was doing on the 12th of February 2013 and the 10th of March 2013, as not reasonably possibly true.

[73] Considering the circumstantial evidence and similar fact evidence, this Court finds that the State has proven the identity of the person who killed the deceased on count nine (9) as being that of the accused.

FINDINGS

[74] In respect to count one (1), the court finds that the State has proven beyond reasonable doubt, that on the 10th of February 2012, at Zandspruit, the accused deprived the complainant, M P M of her freedom and movement. Accordingly, he is found guilty of kidnapping on count one (1). In respect to count two (2), three (3) and four (4), this Court is satisfied that the accused

had the intention in the form of *dolus directus* to rape the complainant and that he raped her without her consent on three separate occasions. There were no grounds of justification for his actions and he is found guilty of rape on counts two (2), three (3) and four (4).

Counts 5 - 7

[75] In respect to count five (5), this Court finds that the State has proved beyond reasonable doubt that the complainant B R was assaulted and stabbed on her arm on the 12th of February 2013, at Zandspruit. It is clear that the accused had the intention in the form of

dolus directus to stab her. Doctor Jandisa Mlandu did not explain clearly that this injury was life threatening. Accordingly, in terms of section 258 of the Criminal Procedure Act, the accused is found guilty of assault with intention to do grievous bodily harm in respect to count five (5).

[76] In respect to count six (6) and seven (7), this court is satisfied that the State has proved beyond reasonable doubt that the accused had the intention in the form of dolus directus to rape the complainant and that he did so on two occasions. There are no grounds of justification for his actions and accordingly the accused is found guilty of rape on counts six (6) and seven (7).

Counts 8 – 9

[77] In respect to count eight (8), this court is satisfied that the State has proved beyond reasonable doubt that the accused had the intention in the form of dolus directus to rape the complainant. There are no grounds of justification for his actions and accordingly the accused is found guilty of rape on count eight (8).

[78] In respect to count nine (9) this court is satisfied that the State has proven the identity of the perpetrator who killed the deceased as being the accused. This court finds that due to the many stab wounds inflicted on the deceased's body, that the accused had the intention in the form of dolus directus to kill the deceased. There are no grounds of justification and accordingly the accused is found guilty of murder on count nine (9).

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ACTING JUDGE OF THE HIGH COURT

Appearances:

On behalf of the State Adv P. Marasela

Cnr Kruis and Pritchard Street

Johannesburg

On behalf of the Accused Adv Netshifhefhe

Date Heard: 30 June 2016

Handed down Judgment: 5 July 2016

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