

SOUTH AFRICA / JUDGMENT

S v Ngqeza (CC26/2022) [2023] ZAECKMKHC 125 (6 February 2023)

[2023] ZAECKMKHC 125

COURT

Eastern Cape High Court, Makhanda

BEFORE

Smith

CASE / FILE NUMBER

CC26/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION - MAKHANDA)

CASE

NO: CC26/2022

In

the matter between:

THE
STATE
and
KHULULEKANI
JUSTIN NGQEZA
ACCUSED

JUDGMENT

Smith J

Introduction

- [1] The accused, a 33-year-old male, has been charged with seven counts of rape in contravention of section 3 of the Criminal Law (Sexual Offenses and Related Matters) Amendment Act, 32 of 2007, one count of attempted rape in contravention of section 55 (a) read with section 3 of the same Act, and 14 counts of trafficking in persons in contravention of section 4(1) of the Prevention and Combatting of Trafficking in Persons Act, 7 of 2013 (the Act). In the alternative, it is alleged that he has attempted to commit the crimes mentioned in section 4(1) of the Act.

The state was represented by Ms Turner and Mr Solani appeared for the accused.

- [2] He pleaded not guilty to all counts and elected not to provide a plea explanation. At the end of the state case he was acquitted in respect of count 14, which related to alleged trafficking in contravention of section 4 (1) of the Act.
- [3] The state alleges that the accused fraudulently pretended on social media to be a photographer for a company, namely Raw Talento Models (RT Models) with connections to clothing brands and that it was looking for models and brand ambassadors. Interested candidates were required to send a WhatsApp message to the photographer (being the accused), attend an initial photo-shoot and pay a sum in excess of R100 per photo-shoot. A candidate who introduced at least two other potential models to the company, would be entitled to a free third photo-shoot.
- [4] He had allegedly also created the fiction through social media that RT Models was a company of several people and that he was an employee of the company. The reality was, however, that he was in fact the company, the photographer, the clothing brand and the Facebook persona on the various Facebook pages, notwithstanding the fact that on each Facebook page different profile details were provided.
- [5] The state furthermore alleges that the accused had no photographic expertise or training and did not have a photographic studio. The WhatsApp conversations which were handed in as evidence indicate that he did not conduct himself in a professional manner: on occasion suggesting to a complainant that she watched pornography and asking others whether they were menstruating or were virgins. He was in fact selling candidates a fiction for which they were required to pay. He did not issue receipts, no printed photographs were ever produced and in some instances photographs were not even uploaded onto social media. The venue for the photo-shoots were the streets, low end bed-and-breakfast establishments, and candidates were required to change in public toilets or behind electrical transformer boxes. He used different names or remained anonymous, and aspiring models had only known him

either as 'the photographer', 'Buti' or 'Anele'. The photographs which he held out as having been taken by a professional photographer, may as well have been taken on a cell phone. Those photographs that were admitted as evidence indicated that he clearly did not have the capability of taking aesthetically pleasing or professionally produced photographs of aspiring models. Instead his intention was to exploit the naivety and vanity of young women for financial gain and sexual exploitation in a predatory fashion.

- [6] While the statutory elements which the state has to prove for convictions on the rape and attempted rape counts are well established, it is necessary for me to elaborate on those required for a successful prosecution in respect of the crime of trafficking in persons created in terms of section 4(1) of the Act.
- [7] Shorn of irrelevant provisions, the section provides as follows: any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic by means of fraud, or deception, aimed at either that person or an immediate family member of that person, for the purpose of any form or manner of exploitation, is guilty of the offense of trafficking in persons. The term exploitation is defined to include sexual exploitation. 'Sexual exploitation' is in turn defined in the Act as the commission of any sexual offense referred to in Act 32 of 2007.
- [8] Having regard to the allegations against the accused, the state is required to prove beyond a reasonable doubt that the accused recruited the complainants, either by way of fraud or deception, for the purpose of sexual exploitation. In this regard the state is required to prove that the accused recruited the complainants through social media by way of deception, namely holding out to them that they were being recruited for paid modelling jobs when in fact his intention was to lure them into situations where he

would either be able to rape or sexually take advantage of them in some other manner. The manner in which the state has adduced the evidence against the accused means that the determination of his guilt in respect of the rape and attempted rape counts are

inextricably linked to a consideration of the evidence in respect of the trafficking counts. Ms. Turner has correctly submitted that a finding that some of the complainants had indeed been raped or that there had been an attempt to rape one of them, will for the purposes of section 4 (1) of the Act, also establish the element of the intention to exploit them sexually. The state contends that such a finding will be reinforced by the strikingly similar modus operandi employed by the accused on each occasion.

- [9] The state elected not to adduce evidence in respect of the counts sequentially. To a large extent, this was due the fact that a number of the complainants and other witnesses were either writing or preparing for exams. Ms Turner has also deemed it necessary to group some of the complainants together in order to establish a pattern of behaviour on the part of the accused or to emphasize the respects in which their testimonies overlapped or corroborated each other. In consequence my summary of the witnesses' testimonies will also not be chronological.

[10] In addition to the complainants in the various counts, the state has also called several other witnesses, including persons to whom first reports were made and police officers, who, amongst others, testified regarding the circumstances of the accused's arrest, cell phone records which placed him in Salt River, Cape Town, in the vicinity of the bed and breakfast establishment where he had allegedly raped three of the complainants, and corroborating the testimony of one the complainants regarding attempts to contact the accused telephonically. Although I have had regard to all those testimonies, I refer to them only insofar as they may be relevant to my findings.

The evidence adduced on behalf of the state

[11] The state alleged that during May 2020, the complainant in counts 21 and 22, namely S[...] K[...], a 17 year old girl, was recruited by the accused by means of fraud or deception for the purposes of sexual exploitation, and on 18 May 2020 and at or near Warner Street, Komani, she was unlawfully and intentionally sexually penetrated by the accused,

without her consent and against her will.

[12] Ms K[...] testified that she had responded to the RT Models advertisement on Facebook for an audition in Komani. The accused contacted her and she followed his instructions regarding how to get to the photo shoot. As was the case with other complainants, the accused had told her in his text messages about the so-called 'sexy facial expressions' required to show that she was in the 'mood' and that he would help her with the poses. She had had previous modelling experience and was expecting to be shown by the accused how to pose. She was also interested in the lingerie shoot. She was late for the photo shoot but there was still one candidate present when she arrived at the venue. After that candidate had left, only she and the accused remained behind. She said that the accused pretended that he wanted to do a picnic photo shoot with her and for this purpose took her into an area obscured from view by bushes. He then spread a sheet on the ground and instructed her to put on a T-shirt with the brandname 'Souty' emblazoned across the chest. She put the T-shirt on, still wearing her underwear. The accused instructed her to lie on her back and he then sat astride her, pretending that it was necessary for the purpose of taking photos. He then instructed her to turn over on her hands and knees. He approached her from behind, pulled her panties aside and raped her. The penetration was painful for her and she cried as a result. The accused was, however, unperturbed, and said that she looked beautiful when she cries and that he wanted her to become his girlfriend. She then pushed him away and got to her feet. He hugged her and apologized. She then walked to the taxi rank, followed by the accused. The accused asked her what she would say when others asked her why she did not pay for the shoot and she said that she would tell the truth. He then told her to go straight home. She reported the rape to her friend, M[...] P[...]. On Mr P[...]’s advice she went to the police station the following day to report the rape and was thereafter taken to the hospital where she was medically examined. The medico-legal report confirmed that she had redness in her genitalia and an abrasion of the fossa navicularis. Mr P[...] also testified, corroborating her evidence that she had told him that she had been raped by the photographer whom she had

only known as Anele. He also confirmed that according to her the rape occurred in the bush behind McDonalds. He said that she was in an emotional state and had clearly experienced a traumatic event. The accused attempted to call her on several occasions thereafter, but she only replied to some of the calls. He also messaged her, saying that she should not try 'anything funny' because he had a video of what had happened at the photo-shoot.

- [13] The accused was arrested shortly thereafter. At the time of his arrest the photos taken of the complainant were still on his camera and provided corroboration for her testimony as to how the rape had allegedly occurred. In some of these photos the complainant is depicted as lying on her back and in others as lying on her stomach. Importantly, there was a gap of about seven minutes between some of the photos. The complainant, had testified that during this time the accused had lifted her by the waist, moved her underwear to the side and had raped her vaginally from behind. It is clear in some of the photographs that she was emotionally upset.
- [14] As was the case with other complainants, she was subsequently threatened by the accused that should she report the rape, he would upload a video on social media showing what he had done to her. The accused had, however, been lying about the existence such a video and had used the threat in an attempt to manipulate the complainant into remaining silent.
- [15] The complainant in respect of counts 16 and 17, L[...] F[...] (aka N[...]), a 17 year old girl was, according to the state, recruited by the accused by means of fraud or deception for the purpose of sexual exploitation during the period February 2019 to March 2020 and raped by him on 8 March 2020, at the Freedom Guesthouse, Parliament Street, Gqeberha. The state alleged that he had raped her by inserting the tip of his penis, his finger and his tongue into her vagina, without her consent and against her will.
- [16] The complainant testified that she had also responded to the advertisement on the RT Facebook page for Uitenhage. She was studying at the Nelson Mandela University at the time. The accused provided her with the usual instructions. When she moved to Gqeberha, she started communicating with him about the possibility of auditions in that city. She attended one photo-shoot and he invited her to a second shoot a week later. She was uncertain of the proposed venue and she and the accused agreed to meet at Shoprite Checkers in town. He advised her that he wanted to take her for an additional photo-shoot, which would concentrate on seductive facial expressions. He pretended that his boss wanted her to model for a lingerie shoot. In WhatsApp messages to her the accused repeatedly used the plural when explaining what would happen for example 'they will just focus on the face, they wanted to test you, they cannot give you a boys shirt, and I have to take pics of you doing the sexy facial expressions'. She was therefore under the impression that other people, in particular representatives from Mr Price stores, would be present and that the accused would be taking the photos in their presence.

[17] They agreed to meet before the regular photoshoot which was scheduled for later that afternoon. She and the accused walked to a bed-and-breakfast establishment where he booked a room. The accused gave her a large T-shirt to wear and instructed her to remove her underwear. She put the T-shirt on but did not take off her underwear. He commenced taking photos of her standing against the wall and then instructed her to move to the bed and lie on her stomach. He said that he was not satisfied with 'the poses and told her to assume a 'dog-style' position with her head on the pillow and her buttocks elevated. After taking a few photos of her in that position, he told her to close her eyes. He then approached her from behind and executed thrusting motions against her genital area. He then took more photos before instructing her to open her eyes. He moved her underwear aside and penetrated her vagina with his finger and tongue. He thereafter continued photographing her before approaching her and penetrating her with the tip of his penis. She begged him to stop and jumped away. The penetration was consequently brief and superficial. The accused then suggested that they take more photos of her posing against the wall. He then moved closer to her and kissed her on her neck. She, however, told him that she no longer wished to continue with the shoot and wanted to go home. The accused then left the room and she got dressed. They thereafter left for the group photo-shoot which had been scheduled for that afternoon. She attended and participated in the photoshoot and thereafter took a bus home. Immediately upon her arrival at home she sent a message to a friend, A[...] M[...], telling her that she might have been raped. She reported the rape to the police the following day and was admitted at the Dora Nginza Hospital where she was medically examined. The resultant medico-legal report indicated that there were no injuries to her genital area. She said that she was not surprised at this because the penetration was very brief and superficial. She also posted a story about her experience on Facebook but did not reveal the name of the photographer. Ms M[...] corroborated her version and testified that Ms F[...] had told her by Whatsapp message on 8 May 2020 that she thought she might have been raped. She then Googled to ascertain the requirements of the crime and forwarded the results of her search to Ms F[...], who confirmed that she had indeed been raped by a photographer in Port Elizabeth (Gqeberha).

[18] Ms F[...] said that she was aware of the fact that the accused was actually taking photos of her at the guesthouse, because she had seen one of the photos on his camera screen. However, by the time the accused had been arrested all the photographs that

had been taken at the guest house had apparently been deleted, leaving a gap of about 32 images. This was apparent when regard was had to the serial numbers of the photos. One of the state witnesses, namely O[...] S[...], himself photographer, testified that when photographs are deleted after subsequent photos had been taken, the deletion would be apparent because the serial numbers would not be chronological. The only conclusion to be drawn is that the accused deleted the photographs after he learned that she had laid a charge against him, because he knew that the photographs would corroborate her version. His contention that the police must have deleted the photos is unsustainable. It is only logical that the police would have wanted to preserve those photos to be used as evidence against the accused.

[19] It appears that the accused afterwards suspected that the complainant intended to report the rape to the police. This prompted him to contact her by way of WhatsApp call and to inquire about her whereabouts in a message. He lied to her that he was outside her residence in Kersten. When these strategies did not seem to work, he threatened her as he did with Ms. K[...]. He also suggested in the WhatsApp messages that her statement that he had offered to assist her with the sexy facial expressions, confirmed that she had consented to sexual intercourse in order to be turned on. The latter's testimony regarding the unsuccessful attempts to

contact the accused was corroborated by the investigating officer, Captain Makubalo.

[20] The accused had also sent her a screenshot of an email purportedly sent to him by his attorney. Ms Turner has, however, correctly pointed out that this purported email contains extensive inappropriate use of capital letters in the middle of sentences, the same oddity that appears in all the accused's written correspondence of which he admitted he was the author. In addition, the email did not refer to the name of the attorney nor of the attorneys firm. The inference is therefore ineluctable that the accused was the author of the email and that he had sent it to Ms F[...] to intimidate her.

[21] It appears that he also attempted to intimidate her by making repeated requests for the case number. Ms Turner submitted that his repeated failure to answer his phone when he was called by the investigating officer, is a clear indication that his request for the case number was not a genuine desire to contact the police, but instead also intended to intimidate Ms F[...].

[22] In respect of counts 3,4,5,6, 12 and 13, the state alleged that the accused had either trafficked or raped three young girls in Cape Town during 2018 and 2019 (the Cape Town complainants). All three of them were allegedly taken by the accused to the Sleep

and Go bed-and-breakfast in Salt River, under the pretext that they were attending a private lingerie shoot at which lingerie companies'

representatives would be present and the accused would be the photographer. The accused gave each of them a short long-sleeved blue dress to wear for the photo-shoots.

[23] The state alleged in particular that during the period September to November 2018, the complainant in counts 3 and 4 namely N[...] S[...], an 18 year old girl, was recruited by the accused by means of fraud or deception for the purpose of sexual exploitation. And on 4 November 2018 she was twice raped per vaginam by the accused at the aforementioned bed-and-breakfast.

[24] Ms S[...] testified that she had also seen the advertisement by RT Models on its Cape Town Facebook page. She had expressed interest and was contacted by the accused. She subsequently attended two photo-shoots. After the second photo-shoot the accused called her aside and told her that a lingerie brand was interested in her photographs. He told her that the brand required a 19-year-old model but that he would do her a favour because she

was still under age. He told her not to tell anyone about the photo-shoot and gave her money for taxi fare. She met the accused in town as arranged and they travelled together by taxi to the aforementioned bed-and-breakfast where he booked a room. He then gave her the same dress to wear and instructed her to remove her underwear, which she did. He then took photos of her. He was, however, not satisfied with the poses because according to him they were not sufficiently seductive. He then instructed her to get onto the bed and kneel on her hands and knees. After taking photos of her in this position he approached her from behind, instructed her to lower her back and to open her legs. He then dropped his pants and raped her vaginally. She objected and told him that she wanted to leave. He, however, insisted on taking more photos and instructed her to lie on her back and close her eyes. After taking more photos of her in that position, he again opened her legs and raped her. After she got dressed, they left the bed-and-breakfast and travelled to another venue where a group photo-shoot would take place. The accused had offered her the sum of R40 for taxi fare but she had refused to accept. He then put the money in her pocket. She said that she took part in the photo-shoot after the accused had raped her in order to complete the advertised requirements of RT Models to qualify for a modelling contract. She did not attend any further photo-shoots. When during 2020 she saw photos of her friend, M[...] Z[...], the complainant in Count 18, on the RT Models Facebook page, she contacted her to warn her about the accused and his agency. She also reported the rape to the members of her modelling WhatsApp group, including Ms S[...] and Ms N[...], the complainant in count 13. Her decision to report the rape was also prompted by the fact that she had been elected as a gender officer for the EFF student command and decided to set an example herself.

- [25] The complainant in Counts 5 and 6, B[...] G[...], a 19-year-old girl, was allegedly also recruited by means of fraud or deception for the purposes of sexual exploitation and on 27 January 2019, raped by the accused per vaginam.
- [26] She testified that she was introduced to the RT Models Facebook advertisement by Ms S[...]. She subsequently attended several photo-shoots in the latter's company. During the last photo-shoot the accused told her that an agent was interested in signing her as a model and during the early part of the following year she again attended a photo shoot in the company of S[...] B[...], the complainant in count
7. The accused told her to meet him the following day and said that he would introduce her to the manager of the agency that was interested in her. He gave her R200 to cover her transport costs. She travelled to town by taxi, accompanied by Ms B[...]. She met the accused at the Golden Acre Shopping Center, and they travelled together by taxi to a bed-and-breakfast establishment next to a traffic circle in Salt River. Ms B[...] remained behind and waited for her at the Golden Acre. Upon their arrival at the bed and breakfast, the accused booked a room. He told her that the manager of the agency had been delayed and they should start the photo-shoot. He then gave her the same dress to wear and instructed her to remove her underwear, which she did. He then took photos of her but said that he was not happy with her facial expression and urged her to look more seductive. He then approached

her, fondled her breasts and kissed her on the mouth. She was frightened and started screaming. She pushed him away and he placed his hand over her mouth, muffling her screams. He then pushed her onto the bed, pulled down his pants and raped her. After ejaculating he apologized, saying all human beings make mistakes. She then got dressed, left and took a taxi home. He thereafter again invited her to a photo-shoot but she told him that she was not interested. She reported the rape to Ms S[...] the following year. This was after Ms S[...] had asked her why she did not attend further photo-shoots with the accused.

- [27] Ms G[...]’s testimony was corroborated in certain material respects by S[...] B[...], who had accompanied her to the Golden Acre Center where she was supposed to meet the accused before the regular photoshoot on 27 January 2019. She said that Ms G[...] had told her that it would be a private shoot. She left in the company of the accused and returned about an hour later. According to Ms B[...] she was not herself when she returned and it was clear that something was bothering her.
- [28] The other Cape Town complainant, Y[...] N[...], (the complainant in counts 12 and 13) a-19 year old girl, was allegedly also trafficked by the accused for the purpose of sexual exploitation during the period September 2018 to August 2019 and during August 2019 was raped by him per vaginam at the same bed-and- breakfast.
- [29] She testified that she was recruited by the accused in the same manner as the others after she had seen the Facebook advertisement for RT Models for the city of Cape Town. She had also followed his instructions and afterwards attended three photo-shoots together with other candidates. The accused then contacted her and pretended that a lingerie and swimwear company was interested in signing her as a model. He told her that he had concealed her age as she was not yet 21 years old. He also told her that a test photo-shoot would be required.
- [30] She took a taxi to town where the accused had arranged to meet her. They then travelled together by taxi to the same bed-and-breakfast where he booked a room. He gave her the same dress to wear and commenced with taking photos. He said, however, that he was not satisfied with her poses. He then touched her on her thighs under her dress. He pulled her onto the bed and pushed her down forcing her to lie on her back. He then lowered his pants, climbed on top of her, opened her legs with his knees and raped her. He then left the room and locked the door. She got dressed and upon his return she moved past him and left. He had instructed her to wait for him while he withdrew money for her taxi fare, but she ignored him and left. She did not initially report the incident but later informed her cousin and her mother. She had also learned about Ms S[...]’s experience. She did not report the rape to her family, because she did not want to bother her mother who was struggling to cope with her brother’s drug problem at the time. She was also busy preparing for her final Matric exams for which she set in September 2019. She reported the rape to Ms S[...] when the latter called her in 2022 to inquire about her experience with the accused.

- [31] During cross-examination it was put to all the Cape Town complainants that they had conspired falsely to implicate the accused with encouragement from the police because they were disgruntled by the fact that someone else had been chosen as a brand ambassador. They all denied that this was the case.
- [32] The complainants in counts 1, 2, 8, 9, 10 and 11 (the East London complainants) were all allegedly trafficked by the accused for sexual purposes, and in the case of the complainant in count nine, was raped by the accused. He had allegedly also attempted to rape the complainant in count two. The rape and attempted rape incidents allegedly took place took place at the Thule Bed-and-Breakfast in Oxford Street in East London.
- [33] The state alleged that the complainant in counts 1 and 2, N[...] M[...], a 15 year old girl, was also recruited by the accused for the purpose of sexual exploitation in East London during 2018. On 28 December 2018 and at the above-mentioned bed- and-breakfast establishment, the accused had allegedly attempted to rape her.
- [34] Ms M[...] testified that the accused had informed her via WhatsApp during December 2018 that she had been selected for a lingerie shoot even though she was still under age. On 28 December 2018, she attended a photo-shoot at the usual location but could not locate the other models. She then managed to contact another model who told her to wait at the Windmill Roadhouse. The accused eventually met her there and told her that she would be going for a private photo-shoot in Oxford Street. They then travelled together by taxi to the aforementioned bed-and-breakfast where the accused booked a room and gave her a 'Souty' T-shirt to wear. She put the T-shirt on but did not remove her underwear. She was wearing what she described as boy style panties. The accused told her to stand against the door and do 'horny' poses. As was the case with the other complainants, the accused told her that he was dissatisfied with the poses and indicated that he would assist her. He then approached her and kissed her. He thereafter instructed her to assume a 'dog-style' position with her chest on the bed and her buttocks elevated. The accused attempted to penetrate her from behind but was unable to do so because of the type of underwear she was wearing. She thereafter left in a hurry, still wearing the high-heeled shoes that she had put on for the shoot. The accused had also given her money for the taxi fare. She said that she did not report the attempted rape, because she felt that she had made a mistake and was desperate to obtain her ambassadorship. She, however, attended the two subsequent photo-shoots in the company of a friend to ensure that there was no repetition of what had happened. She laid a charge on 8 May 2021, after she had spoken to one I[...] M[...], who told her that a police officer was investigating the case. She obtained the contact details of the officer and eventually contacted him to make a statement.
- [35] The complainant in counts 10 and 11, L[...] K[...], a 15 year old girl, was allegedly recruited for sexual purposes by means of fraud or deception by the accused in East London during June 2019. It was also alleged that during July 2019 and at the aforementioned bed-and-breakfast the accused had raped per vaginam.

- [36] Ms K[...] testified that she was in grade 10 when she met the accused through the RT Models Facebook page during the school holidays in June 2019. After she had attended a photo-shoot at the East London Beachfront, he told her that a lingerie company was interested in her but that they were really looking for an 18 year old girl. As she was only 15 years old, he had lied to the company about her age on her behalf. He had also asked her whether she was menstruating and if she would be able to do 'horny poses'. The accused had wanted her to attend the private photo-shoot directly after the second main shoot, but because it was too late for her to travel home alone, they arranged for the shoot to take place the following day. He then also gave her money for taxi fare.
- [37] The following day they met at the City Hall in Oxford Street, East London and walked together to the bed-and-breakfast establishment. She, like the other complainants, had expected representatives of the lingerie company to be present at the photo shoot. She was also given a T-shirt to wear and instructed to remove her underwear. She put on the T-shirt but did not take off her underwear. The accused then instructed her to stand against the door and do 'horny poses' with her eyes partially closed. He told her that she appeared uncomfortable and said that he would help her. He then came closer and kiss her. He thereafter instructed her to lie on the bed on her stomach and close her eyes. He then pulled her up by the waist, pulled her underwear down and raped her vaginally from behind, using a condom.
- [38] When she subsequently asked him whether he did the same thing to other models, he threatened her that he would tell everybody that she was a slut and that she was the one who seduced him. As a result of this threat and the fact that her mother had disapproved of her taking part in a swimwear photo-shoot, she had decided to remain silent. However, when she saw a post by Ms G[...] regarding her experience with the RP Modeling photographer, she contacted her through WhatsApp. Ms G[...] gave her the contact details of the investigating officer and she eventually made a statement on 8 May 2021.
- [39] The complainant in counts 8 and 9, V[...] H[...] A[...], an 18 year old girl, was allegedly also recruited by the accused by means of deception or fraud for the purposes of sexual exploitation during the period March to April 2019 and on 6 April 2019 was allegedly raped by the accused per vaginam.
- [40] She testified that after attending normal photo-shoots, she was also told by the accused that a lingerie company was interested in her and that she was required to attend a private photo-shoot. The private shoot was to take place on 6 April 2019, directly after the main shoot. She and the accused travelled together by taxi to Oxford Street where they alighted and went to the bed-and-breakfast establishment. She had also expected that representatives of the lingerie company would be present. The accused gave her a short blue long-sleeved dress to wear, which was the same style of dress that the Cape Town complainants had described. She was also instructed to pose against the door and to make 'sexy faces' before being instructed to get onto the bed and kneel down with her hands on her thighs. He then took photos of her in that position. She was facing away from the accused as he pushed her down

on her stomach. He then climbed on top of her, kissed on the ear, moved her panties aside and raped her. He afterwards offered to give her R10 for taxi fare but she refused to accept it and instead walked to Oxford Street where she took a taxi home. Upon her arrival at home she sent a message to her boyfriend, O[...] S[...],

and the following day told him what had happened. He was aware that she was attending a private photo shoot on that day. She told him the following day that she had been raped by the accused. She also contacted the RP Models Facebook page to complain. She had apparently believed the fiction created by the accused, namely that he was a photographer working for a modelling company run by others.

[41] As mentioned earlier, Mr S[...] also testified and corroborated Ms A[...]’s testimony that she had told him that she was raped by the accused at the place she had been taken to under the pretext that she was to pose for a lingerie photo-shoot. He testified that she seemed sad and withdrawn when she made the report. He also confirmed that she had contacted the RT Models Facebook page as she had showed him the text messages. The response she had received was to the effect that she and the accused had consensual sexual intercourse and that he did not rape her.

[42] She thereafter posted warnings on her Facebook page stating that young girls should rather walk away from RT Models and 'not look back' because the photographer was not to be trusted. She did not state on social media that she had been raped nor did she mention the name of the photographer. She laid a charge against the accused on 20 April 2021 after I[...] M[...] had told her that the police were investigating the matter and that the complainants were encouraged to make statements.

[43] The complainant in count seven, S[...] B[...], a 19 year old girl, was also allegedly recruited by means of fraud or deception for the purpose of sexual exploitation during the period January to February 2019. She testified that she was introduced to the accused by Ms G[...].

She subsequently attended two photo-shoots during January and March 2019 in the Strand and at the Cape Town Gardens, where the accused took photos of her wearing different outfits, including a swimsuit. He subsequently invited her via WhatsApp to attend a private photo-shoot. The accused told her that she 'owed' him. She, however, decided not accept the offer after discussing it with her mother, who was not comfortable with her attending a photo- shoot alone.

[44] The complainant in count 15, A[...] D[...], a 21-year-old woman, was allegedly also recruited for the purpose of sexual exploitation by the accused by means of fraud or deception during the period March 2019 to January 2020. She testified that she had attended two photo-shoots with the accused during March 2019 before receiving a message from him about 2 to 3 weeks later that a lingerie company was interested in her after seeing her pictures. He also asked her whether she could do 'sexy poses'. When she replied that she could not, he offered to help her. He also said that she cannot present for the lingerie shoot while she was on her periods. She decided, however, not to attend the photo-shoot because she did not trust the accused. During January 2020 she received a further communication from him advising her

that the lingerie company was still interested in her. He also suggested that she should try a nude photo-shoot. When the complainant indicated that she wished to discuss the matter with her mother, the accused suggested that she did not tell her mother when she had lost her virginity. As a result of these inappropriate messages she decided to block his cell number. She had subsequently sent a message to her friend, Ms F[...], after the latter had posted on Facebook that she had also been raped.

[45] The accused allegedly also recruited the complainant in count 18, M[...] Z[...], an 18 year old girl, by means of fraud or deception for sexual exploitation during April 2020, at Komani. She testified that she attended a photo-shoot on 9 May 2020 where they were required to change outfits behind an electrical transformer box. She confirmed that Ms N[...], the complainant in count 19, also attended the shoot. The accused had also asked her to take part in a lingerie shoot. He followed the invitation by a WhatsApp message inquiring whether she was still a virgin. She was upset about those type of personal questions and advised him that she was not interested in the lingerie shoot. She was subsequently in touch with Ms S[...], whose experiences reinforced her decision not to attend further photo-shoots with the accused.

[46] The complainant in count 19, S[...] N[...], a 17 year old girl, was allegedly recruited by the accused for sexual purposes in Komani during the period April to May 2020. She testified that she also attended the photoshoot on 9 May 2020 where Ms Z[...]

was also present. After the latter had left, she remained behind for the private shoot. The accused wanted her to do a test shoot for a 'camouflage brand' even though he had told her that she was still too young. He took her to the same place where he had allegedly raped Ms K[...], telling her that the photographs required a green background. He also gave her a lime green T-shirt to wear and told her to do a 'horny poses'. He said that he would show her how to look 'horny'. He then tried to kiss her but she pushed him away. She was cross and told him that what he was doing was not right. She then took off the T-shirt and left. He also tried to encourage her to be part of the 'sexy ads campaign' and wanted her to attend another photo-shoot on 18 May 2020. She refused to attend any further shoots because she was not comfortable with his demands for her to do 'sexy poses'.

[47] The complainant in count 20, namely Ms V[...], a 19 year old woman, was allegedly also recruited by the accused by means of fraud or deception for the purposes of sexual exploitation during the period October 2019 to May 2020. She testified that she attended a photo shoot on 18 May 2020. She also confirmed that they were required to change outfits behind a transformer box. That same afternoon she received an invitation from the accused to attend a lingerie shoot, which she declined. The following day she was visited by the police with the result that she did not attend any further photo-shoots with the accused. That concludes my summary of the evidence adduced on behalf of the state and I now turn to summarize the accused's testimony.

The accused's testimony

[48] The accused, in his testimony, maintained that his company, RT Models, is a bona fide photographic business established for the purpose of recruiting and promoting talented young girls to establish careers in modelling. He started out manufacturing clothing

and eventually branched out into photography. He denied having trafficked any of the complainants for sexual purposes, and that he had raped or attempting to rape any of them. He said that the false allegations against him were all driven by an overzealous Komani prosecutor and disgruntled aspiring models.

[49] He denied having seen Ms M[...] on 28 December 2018 at all. He said that she attended a photo-shoot on 4 December 2018 and after the photos had been taken, she had left with the others. There was another photo-shoot on 28 December 2018 but he had been told by others attending the shoot that Ms M[...] got lost and was waiting at the Windmill Roadhouse. He decided to go and fetch her but on his way there he received a call informing him that his stepfather was seriously ill. In fact the latter had passed away two days later. He accordingly denied that he had accompanied Ms M[...] to the bed and breakfast or that he had attempted to rape her as alleged. He only saw her again during March and July 2019 at subsequent photo- shoots.

[50] In respect of Ms S[...], the complainant in counts 3 and 4, he denied that he had accompanied her to a bed-and-breakfast and that he had spoken to her about a lingerie photo-shoot. He said that during 2018 he had not yet launched a lingerie campaign in Cape Town. He admitted having seen her at other photo-shoots and on one occasion, which was at the second photo-shoot, she came running to him and hugged him. He as surprised but hugged her back. One of the other aspiring models had told him that Ms S[...] wanted to know why he was only hugging her and said that she wanted to hug him. He said that he had hugged her because he did not want 'the thing to become funny'.

[51] When he was asked why she would falsely implicate him, he suggested that she was probably disgruntled about the fact that someone else had been announced as a paid brand ambassador. According to him, this could be the only reason why she had joined a campaign on Facebook badmouthing his company.

[52] Regarding the complainant in counts 5 and 6 namely, Ms G[...], although admitting that she did attend some photo-shoots, he said that on 27 January 2019 he had a photo shoot in the Strand and could therefore not have accompanied her to the bed-and-breakfast. When he was asked why she would falsely implicate him, he said that during his bail application he was advised by an attorney that certain persons, including Ms G[...], had commenced a campaign on social media badmouthing him. He assumed that the campaign was started after rumours had spread about his arrest.

- [53] He also denied that he had met Ms B[...], the complainant in count 7, at a photo- shoot on 6 December 2018. He said he had seen her for the first time on 3 March 2019 at a photo shoot at Strand Beach. She thereafter came to another photo-shoot on 27 March 2019. He did not have any interaction with her before 3 March 2019.
- [54] He also testified that he had no knowledge of the allegations by Ms A[...], the complainant in counts 8 and 9. She had attended a photo-shoot on 26 March 2019 and he had met her for the first time on that day. After the photo-shoot he rushed to the Windmill Roadhouse from where he had to catch a bus to Cape Town. He did not see her again thereafter. He suspected that she falsely implicated him and badmouthed his company so that her boyfriend's photography company could be advantaged.
- [55] Regarding Ms K[...], the complainant in count 13, he said that he met her at a photo-shoot on 28 June 2019, when she was accompanied by her grandmother. He did not see her again after that. He thereafter left for Johannesburg and only returned on 27 July 2017. He could not proffer any reason why she would falsely implicate him.
- [56] In respect of Ms N[...], the complainant in count 12, he denied that he had seen her at all during 2019. She had told him that she was busy doing her Matric. He admitted, however, that he had seen her at photo-shoots during 2018.
- [57] He said that Ms D[...], the complainant in count 15, had attended three photo- shoots during 20 9. the last one being either late 2019 or early 2020. He had only communicated with her regarding the dates for the photo-shoots and the outfits to be worn. He did not see her again after the third photo-shoot.
- [58] Regarding Ms F[...], the complainant in counts 16 and 17, he said that she indicated that she was interested in joining the lingerie campaign. He had told her that the photo-shoots for the campaign could not be done in public for obvious reasons. They agreed to do the lingerie photo-shoot before the next scheduled shoot. They had arranged to meet at Shoprite Checkers in town on 8 March 2020. He arrived early and waited for her. Upon her arrival she hugged him. He had asked her why she hugged him and she
- said that she was just greeting him. They then started walking towards Lincoln Park. On their way there her phone rang and he joked
- about the fact that she had kept it in her bosom. They thereafter conversed about the photo-shoot. He explained to her that they were going to a bed-and-breakfast establishment where the photo-shoot would take place. He encouraged her to tell him if she felt uncomfortable, in which event they could cancel the shoot. She, however, assured him that she was happy to proceed.
- [59] After they had entered the room, he gave her the keys and told her to lock while he went outside, waiting for her to change. He thereafter commenced taking photos of her posing against the wall. She told him that she had done research about sexy facial expressions but was still unable to do it properly. He then showed her how to do. To assist her he asked her what she understood by the term lingerie. She said that it was underwear worn by a woman

to seduce her partner. He then told her to pose as if her partner was in the room. She tried her best but still could not do it properly. He then told her to pose on the bed. He asked her to kneel and he photographed her from behind. He then asked her to move towards the door. He again told her that she should tell him if she were uncomfortable in which event they would immediately stop. She was, however, still happy to proceed. Because it was close to the time of the next shoot they had to stop. They thereafter left and walked back to town together. In support of his assertion that nothing untoward had happened at the bed and breakfast, he said that she quite happily participated in the photo-shoot in town.

- [60] He said after it had become clear that she was falsely accusing him of having raped her, he had to devise a strategy to force her to tell the truth. He then decided to tell her that he had taken a video of what happened at the bed-and-breakfast, and that the video would prove that he was merely assisting her with 'sexy poses'. He also asked her for the case number because he wanted to go to the police station to inquire about the case. She, however, told him that the police were aware of the fact that he did not force himself on her. She afterwards gave him a landline number to call in order to inquire about the case number. He did call the number but the person who answered said that the complainant should know what the case number was. When he communicated this to her she told him to invent a case number. After that he was unable to contact her because she had blocked his cell number.
- [61] Regarding the complainant in count 18, namely Ms Z[...], he said that she contacted him in the usual manner after reacting to the Facebook advertisement. She attended a photo-shoot on 9 May 2020 and photos were taken of her in two outfits. After that he had told her about the next photo-shoot which would have been on 19 May 2020. She, however, did not attend. He did not have any interaction with her except for that pertaining to the dates and requirements for the photo-shoots.
- [62] He said that the complainant in count 19, Ms N[...], had also attended a photo-shoot on 9 May 2020. She had reacted to an advertisement for the 'sexy ads campaign'. He, however, told her that he did not take photos of women in lingerie who were unknown to him and that she first had to attend a 'Souty' photo-shoot, which had been scheduled for late in April. She told him that she would be turning 18 that year. He had seen her again on 9 May after she had agreed to participate in the auditions. After the usual photoshoot they went to another area where he gave her T-shirt and asked her to change. She called him after she had finished and he took photos of her doing 'sexy facial poses'. Because he had to travel to King Williams Town, he could only take a few photos. He then left her to change back into her own clothing. She returned the T-shirt to him and they both left. She took a taxi home and he took one to King Williams Town. He did not see her thereafter. He could also not proffer any reason why she would falsely implicate him.
- [63] Regarding Ms V[...], the complainant in count 20, he testified that she had also reacted to the Facebook posting during October

2019. He had seen her for the first time at a photo-shoot on 18 May 2020. After the photos were taken of her in two outfits, she paid and left. He did not see her again thereafter. He also denied that there was any other interaction between him and Ms V[...] other than that pertaining to the dates and requirements of the photo-shoots.

[64] In respect of the complainant in counts 21 and 22, Ms K[...], he said that she had contacted him in the usual manner saying that she was interested in the 'sexy ads campaign'. She eventually came to a photo-shoot at Komani on 18 May 2020. He had explained to her the previous day the type of background that was required for the sexy ads photo-shoot. She also agreed to wear a T-shirt. They then went to a spot near a church where he gave her a T-shirt and asked her to change. He then placed a sheet on the ground

and asked her to pose while lying on her back. He took a few photos and showed it to her. They both agreed that the sexy facial

expressions were not satisfactory. He took about 4 to 5 more photos and asked her to change into a kneeling position and he took about 2 to 3 photos of her facing him. The photo-shoot was, however, interrupted when he received a call. She then put on her own clothing and handed the T-shirt back to him. They walked together to the taxi rank where she told him that she would be going to her aunt's place. He gave her taxi fare and they parted. He denied that he had raped her or that he acted in any other untoward manner. That then concludes my summary of the evidence.

Discussion

[65] The state has urged me not to consider the accused's conduct as desperate acts of criminality but rather as parts of an overall scheme to recruit and lure naïve young girls into situations where he could exploit them financially and sexually. This is indeed the correct approach to be adopted in the evaluation of evidence adduced in a criminal trial. It is trite that the burden is on the state to prove the guilt of the

accused beyond a reasonable doubt. If on the conspectus of all the evidence there is a reasonable possibility that the accused's version might be true, he should be acquitted. In determining whether this onus had been discharged, the evidence implicating the accused must be considered in its totality and not in isolation. This is also how the exculpatory evidence adduced by the accused should be looked at. (*S v Van den Meyden* 1999 1 SACR 447). I have also been mindful of the dangers inherent in the testimonies of the various single witnesses and, as will be apparent below, I have treated their evidence with the requisite caution.

[66] Ms Turner has argued that RT Models was not a bona fide photographic company, but rather an enterprise set up as a ruse and vehicle for the accused to achieve his aforementioned nefarious objectives. This is a very compelling argument indeed. It was obvious, even to the untrained eye, that the photographs submitted into evidence were not taken in a professional manner. There was no effort to ensure that the aspiring models were posing against aesthetically pleasing backgrounds, no attention was given to composition and none

of the most basic photographic techniques had been employed. For example, in some of the so-called 'sexy poses' photos, the models were made to lie on plastic bags as makeshift cushions and their expressions were anything but sensual, ranging from confused, apprehensive and in one case, the model appeared to be terrified. It is thus manifest that the photos were not taken for the purpose of submission to prospective clients, but rather as a ruse for some other degenerate purpose. Even though the accused, on his version, had no formal training in photography, it is clear from the poor quality of the photos that he did not even make an effort to produce the quality of photos that the aspiring models would have required to build up a portfolio, reinforcing the compelling inference that he had an entirely different objective..

- [67] That his objective was not to produce visually appealing photographs required by the aspiring models to secure paid modelling jobs, is borne out by the evidence. All the complainants testified how they were initially enticed into attending seemingly bona fide photo-shoots. The accused would then lose no time to test the waters regarding the candidates' suitability for sexual exploitation. He would send inappropriate Whatsapp messages, amongst others enquiring whether they watch pornography, their menstrual cycles and whether they were virgins. They were also treated in a very unprofessional manner, being required to undress in public toilets, bushes or behind electricity boxes.
- [68] It is against the backdrop of these incontrovertible facts that the complainants' versions should be evaluated.
- [69] In my view the evidence against the accused was compelling and overwhelming. The Cape Town complainants corroborated one another in all material respects. They all gave the same description of the dress that the accused gave them to wear. They also each individually pointed out the bed and breakfast in Salt River where they were allegedly raped to a police photographer. And as Ms Turner correctly argued, any suggestion that they conspired to make up their stories is dispelled by the fact that Ms G[...] did not know the name of the street where the bed and breakfast establishment was situated, but was able to point it out, using a traffic circle as her landmark. Their versions were further corroborated by the evidence of the accused's cell phone records which established that he had been in the area immediately after the rape of Ms F[...], when he had travelled to Cape Town. Ms G[...]s version that she was taken to the bed and breakfast by the accused was also corroborated by Ms B[...], who had accompanied her to the Golden Acre Shopping Center. She had also given a reasonable explanation why she did not report the rape to Ms B[...] upon her return from the bed and breakfast.
- [70] To my mind it is understandable in the circumstances why they, like the other complainants, did not immediately lay charges against the accused. All of them were naive young girls who had clearly been traumatized and appeared to have been desperate to obtain paid modelling jobs. Even though it must have been clear to them at that stage that the accused did not have the bona fide intention of helping them to obtain modelling jobs, they were still naively and desperately clinging to the unrealistic expectation that something good would come out of

their suffering.

- [71] The East London complainants similarly corroborated one another in respect of the modus operandi adopted by the accused. All of them also independently pointed out the bed and breakfast where the accused had raped them to the police photographer. They were all excellent witnesses and the defence was unable to point to any inconsistencies or improbabilities in their evidence.
- [72] Ms K[...]’s testimony was corroborated by the photos found on the accused’s camera in the respects which I have previously alluded to. She had also reported the matter to her boyfriend soon after the incident. She also was an excellent witness and the defence has not been able to proffer any cogent reasons why her evidence should not be accepted.
- [73] Ms F[...]’s testimony was also corroborated in material respects by the extensive Whatsapp exchanges between her and the accused. She had reported to her friend and the police the same day. Her repeated calls to one U[...] M[...], to seek advice and assistance were clearly the acts of a desperate and traumatized woman. Regarding the criticism that she had incongruously attended the photoshoot at the City Hall after the alleged rape, she had explained that she was desperate for a paying modelling job to supplement her meagre student allowance in terms of the NSFAS scheme. To my mind, there is also no reason why her evidence should not be accepted.
- [74] Although the complainants in respect of the rape counts were single witnesses, they corroborated one another regarding the pattern of behaviour adopted by the accused on each occasion and some of them were corroborated by first reports made soon after the alleged rapes. They all described in consistent detail how they were sexually penetrated by the accused without their consent and against their will. And as Ms Turner has correctly submitted, having regard to the geographical distances between complainants and their different backgrounds and personalities, it is improbable that they could have conspired falsely to fabricate such an intricate and accurate web of criminal behaviour.
- [75] I am accordingly satisfied that the evidence presented by the state in respect of the rape counts and, in the case of Count 2, the attempted rape count, established a strong and compelling prima facie case which required of the accused to proffer an explanation that could be regarded as reasonably possibly true.
- [76] All of the complainants in the trafficking counts were also impressive witnesses. Their testimonies’ were consistent and without any improbabilities. There is also no reason why their testimonies should not be accepted. And as Ms Turner has correctly submitted, a finding that the accused had raped the other complainants would compel the inference that he also acted with the requisite intention to exploit them sexually. Their testimonies must therefore be considered in the light of those given by the complainants in the rape counts. Those complainants had all been raped after accepting an invitation from the accused to participate in the lingerie photo-shoots. It is manifest from their testimonies that the accused had used that campaign as a pretext to recruit young girls and lure them into

situations where he could exploit them sexually. The inference that he had harboured the same intentions in respect of the complainants in the trafficking counts is thus ineluctable.

- [77] It must have been apparent from my summary of the evidence that the accused was a very bad witness. He proffered the most improbable reasons why the complaints would have conspired to accuse him falsely, relying on an alleged comment by a prosecutor in Komani that he would not be so lucky to escape a conviction as he did in Pretoria. He also purported to rely on information given to by an attorney at a bail hearing, the name of whom he had conveniently forgotten. He claimed that the attorney gave him a printout of a Facebook page which confirmed the extent of the conspiracy to implicate him falsely, and proffered some contrived explanation for his inability to produce it. It was clear that he was not unamenable to fabricating evidence when it suited him. He also had great difficulty in explaining the damning Whatsapp conversations between him and Ms F[...], and often resorted to ascribing improbable and patently contrived meanings to incriminating phrases in the texts. By way of example, he suggested that the word 'muffing' which in the context it was used in the messages clearly referred to oral sex, really meant to 'assist'. He also contrived to ascribe an asexual meaning to the phrase 'turning on' used in messages he had sent to Ms F[...].
- [78] While testifying that he had given models a T-shirt to wear during the 'sexy facial expression' shoots so that they could pretend they were wearing lingerie, he was unable to provide a plausible reason why they could not just as well have pretended in their own clothes, and why some models were taken to a bed-and-breakfast while others were photographed outdoors.

Findings and verdict

- [79] In my view the evidence established beyond a reasonable doubt that the accused was engaged in fraud and deception. He has exploited the fantasies of young women who desperately required paid modelling jobs, notwithstanding the fact that many of them clearly were not cut out for such a career. His only purpose and intention was sexually to exploit the young women who reacted to the RT Models Facebook advertisements, mislead them into believing that a lingerie company was interested in them, and lure them to bed and breakfast establishments and other isolated places where he would sexually assault them.
- [80] I am accordingly satisfied, not only that there is no possibility of his version being true, but also that it must be rejected as patently contrived and false.
- [81] I am consequently satisfied that the state has proved beyond a reasonable doubt that the accused had raped the complainants in counts 4, 6, 9, 11, 13, 17 and 22 and that he attempted to rape the complainant in count 2. He is accordingly found guilty as charged in respect of all those counts.

[82] In respect of counts 1, 3, 5, 7, 8, 10, 12, 15, 16, 18, 19, 20 and 21, I am satisfied that the state has proved beyond a reasonable doubt that the accused has trafficked those complainants in contravention of section 4 (1) of Act 7 of 2013. He is accordingly also found guilty as charged in respect of all those counts.

JE SMITH

JUDGE OF THE HIGH COURT

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Judgement

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