REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO: SS 36/2009

DATE:18/03/2011

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

....
DATE SIGNATURE

In the matter between:

THE STATE

and

MADUMETJA JACK MOGALE Accused

J U D G M E N T

KGOMO, J:

INTRODUCTION

[1] The accused, a 42 year old male person, then of R417 Waterworks Section, Zuurbekom, Gauteng, stood arraigned in the High Court, Johannesburg on 18 counts of kidnapping, 19 counts of rape, 16 counts of murder, one count of attempted murder, three counts of robbery with aggravating circumstances as intended in section 1 of the Criminal Procedure Act, 51 of 1977, one (1) count of fraud, alternatively theft, one (1) count of theft, one (1) count of assault with intent to do grievous bodily harm, one (1) count of sexual assault and one (1) count of escaping from lawful custody.

[2] Accused was legally represented throughout the trial. Before he pleaded to the charges the provisions i.e. import and implications or extent of sections 51 and 52 of the Criminal Law Amendment Act 105 of 1997 (Minimum Sentences Act), section 3 read with sections 1, 55, 56-61 of the Criminal Law Amendment Act (Sexual Offences and Related Matters) 32 of 2007 as well as the applicable sections of the Criminal Procedure Act were fully explained to the accused and his counsel also confirmed on record that he had explained same to him earlier on.

[3] Accused pleaded not guilty to all the charges and elected to remain silent (not to disclose the basis of his defence).

THE CHARGES

[4] The specific allegations levelled against the accused are that:

4.1 Count 1: Kidnapping

Upon or about 17 March 2008 and at or near Waterworks settlement in the district of Westonaria, the accused did unlawfully and intentionally deprive one HEM of her freedom of movement by luring her from Westonaria Magistrate's Court to Waterworks settlement or area in Westonaria.

4.2 Count 2: Rape

Upon or about the date and at or near the place mentioned in Count 1, the accused did unlawfully and intentionally commit an act of sexual penetration with or on HEM by penetrating her vagina with his penis without her consent.

4.3 Count 3: Robbery with aggravating circumstances as intended in section 1 of the Criminal Procedure Act read with section 51(2) and Schedule 2 of the Minimum Sentences Act

In that upon or about the date and at or near the place mentioned in Count 1, the accused did unlawfully and intentionally assault HEM with the intent to rob and did unlawfully and intentionally take a Nokia 1100 cellphone from her possession, being the property or in the lawful possession of the said HEM. Aggravating circumstances as defined in section 1 of Act 51 of 1977 being present but undefined.

4.4 Count 4: Murder

In that upon or about the date and at or near the place mentioned in Count 1, the accused did unlawfully and intentionally kill HEM.

4.5 Count 5: Kidnapping

In that during or about 5 to 10 October 2008 and at or near Anchorville, Lenasia Extension 1 in the district of Lenasia, Johannesburg, the accused did unlawfully and intentionally deprive DEM of her freedom of movement.

4.6 Count 6: Rape

In that upon or about the date, and at or near the place mentioned in Count 5 the accused did unlawfully and

intentionally commit an act of sexual penetration with DEM by penetrating her vagina with his penis without her consent.

4.7 Count 7: Robbery with aggravating circumstances as intended in section 1 of Act 51 of 1977 read with section 51(2) and Schedule 2 of the Minimum Sentences Act

In that upon or about the date and at or near the place mentioned in Count 5, the accused did unlawfully and intentionally assault DEM with the intent to rob and did unlawfully and intentionally take a cellphone from the latter, it being the property or in the lawful possession of the said DEM. Aggravating circumstances as defined in section 1 of Act 51 of 1977 being present.

4.8 Count 8: Murder

In that upon or about the date and at or near the place mentioned in Count 5, the accused did unlawfully and intentionally kill DEM.

4.9 Count 9: Kidnapping

In that during or about the period September 2008 and at or near Mosquito Valley, Lenasia Ext 1 in the district of Lenasia,

the accused did unlawfully and intentionally deprive an unknown adult female person of her freedom of movement.

4.10 Count 10: Rape

In that upon or about the period and at or near the place mentioned in Count 9, the accused did unlawfully and intentionally commit an act of sexual penetration with an unknown female person by penetrating her vagina with his penis without her consent.

4.11 Count 11: Murder

In that upon or about the period and at or near the place mentioned in Count 9, the accused did unlawfully and intentionally kill an unknown adult female person.

4.12 Count 12: Kidnapping

In that during or about the period of November to December 2008 and at or near West End Brick and Clay in the district of Westonaria, the accused did unlawfully and intentionally deprive an unknown adult female person of her freedom of movement.

4.13 Count 13: Rape

In that upon or about the period and at or near the place mentioned in Count 12, the accused did unlawfully and intentionally commit an act of sexual penetration with an unknown adult female person by penetrating her vagina with his penis without her consent.

4.14 Count 14: Murder

In that upon or about the period and at or near the place mentioned in Count 12, the accused did unlawfully and intentionally kill an unknown adult female person.

4.15 Count 15: Kidnapping

In that upon or about 6 December 2008 and at or near West End Brick and Clay in the district of Westonaria, the accused did unlawfully and intentionally deprive an unknown adult female person of her freedom of movement.

4.16 Count 16: Rape

In that upon or about the date and at or near the place mentioned in Count 15, the accused did unlawfully and intentionally commit an act of sexual penetration with an adult

female person by penetrating her vagina with his penis without her consent.

4.17 Count 17: Rape

In that upon or about the date and at or near the place mentioned in Count 15, the accused did unlawfully and intentionally commit an act of sexual penetration with an unknown female person by penetrating her anus with his penis without her consent.

4.18 Count 18: Murder

In that upon or about the date and at or near the place mentioned in Count 15, the accused did unlawfully and intentionally kill an unknown adult female person.

4.19 Count 19: Assault with intent to do grievous bodily harm

In that upon or about 24 December 2008 and at or near Lenasia in the district of Lenasia, the accused did unlawfully and intentionally assault NM with the intent to do her grievous bodily harm by making her drink a substance that made her dizzy or hallucinate.

4.20 Count 20: Kidnapping

In that upon or about the date and at or near the place mentioned in Count 19, the accused did unlawfully and intentionally deprive NM of her freedom of movement by luring her from her place of employment at Lenasia and taking her to a nearby bush.

4.21 Count 21: Rape

In that upon or about the date and at or near the place mentioned in Count 19, the accused did unlawfully and intentionally commit an act of sexual penetration with an adult female person, to wit, NM, by penetrating her vagina with his penis without her consent and by false and/or deceitful means.

4.22 Count 22: Indecent assault

In that upon or about the date and at or near the place mentioned in Count 19, the accused did unlawfully and intentionally sexually violate the complainant, namely, NM, by rubbing a certain substance with his hands on her vagina without her consent.

4.23 Count 23: Fraud

In that upon or about 23 December 2008 and at or near the place mentioned in Count 19, the accused did unlawfully and intentionally misrepresent to NM that he was a traditional healer or prophet and that she should pay him a sum of money, inducing her by such misrepresentation to pay to him the sum of R400,00 in order for him to cure her, knowing full well that he was not a traditional healer or likewise designation or profession or calling, and therefore not entitled to be paid the sum of R400,00.

ALTERNATIVE TO COUNT 23: THEFT

In that upon or about the date and at or near the place mentioned in Count 19, the accused did unlawfully take and steal the sum of R400,00, the property or in the lawful possession of NM.

4.24 Count 24: Kidnapping

In that during or about the period of December 2008 to January 2009 and at or near Avalon, Lenasia Ext 1 in the district of

Lenasia, the accused did unlawfully and intentionally deprive an unknown adult female person of her freedom of movement.

4.25 Count 25: Rape

In that upon or about the period and at or near the place mentioned in Count 24, the accused did unlawfully and intentionally commit an act of sexual penetration with an unknown adult female person, by penetrating her vagina with his penis without her consent.

4.26 Count 26: Murder

In that upon or about the period and at or near the place mentioned in Count 24, the accused did unlawfully and intentionally kill an unknown adult female person.

4.27 Count 27: Kidnapping

In that upon or about 19 to 26 January 2009 and at or near Oupa Fat's Dam, Lenasia Ext 1 in the district of Lenasia, the accused did unlawfully and intentionally deprive ST of her freedom of movement by luring her from her workplace in Lenasia to the Oupa Fat's Dam in Lenasia Ext 1.

4.28 Count 28: Rape

In that upon or about the date and at or near the place mentioned in Count 27, the accused did unlawfully and intentionally commit an act of sexual penetration with an adult female person, to wit, ST, by penetrating her vagina with his penis without her consent.

4.29 Count 29: Murder

In that upon or about the date and at or near the place mentioned in Count 27, the accused did unlawfully and intentionally kill ST, an adult female person.

4.30 Count 30: Kidnapping

In that upon or about 22 January 2009 and at or near Waterworks in the district of Westonaria, the accused did unlawfully and intentionally deprive NN of her freedom of movement by luring her from the Waterpan Caltex Garage to Waterworks in Westonaria.

4.31 Count 31: Rape

In that upon or about the date and at or near the place mentioned in Count 30, the accused did unlawfully and intentionally commit an act of sexual penetration with an adult female person, to wit, NN, by penetrating her vagina with his penis without her consent.

4.32 Count 32: Murder

In that upon or about the date and at or near the place mentioned in Count 30, the accused did unlawfully and intentionally kill NN, an adult female person.

4.33 Count 33: Kidnapping

In that during or about January 2009 and at or near Mosquito Valley, Lenasia Ext 1 in the district of Lenasia, the accused did unlawfully and intentionally deprive an unknown adult female person of her freedom of movement.

4.34 Count 34: Rape

In that upon or about the period and at or near the place mentioned in Count 33, the accused did unlawfully and intentionally commit an act of sexual penetration with an unknown adult female person, by penetrating her vagina with his penis without her consent.

4.35 Count 35: Murder

In that upon or about the period and at or near the place mentioned in Count 33, the accused did unlawfully and intentionally kill an unknown adult female person.

4.36 Count 36: Kidnapping

In that during or about the period January 2009 and at or near Anchorville, Lenasia Ext 1 in the district of Lenasia, the accused did unlawfully and intentionally deprive an unknown adult female person of her freedom of movement.

4.37 Count 37: Rape

In that upon or about the period and at or near the place mentioned in Count 36, the accused did unlawfully and intentionally commit an act of sexual penetration with an

unknown adult female person, by penetrating her vagina with his penis without her consent.

4.38 Count 38: Murder

In that upon or about the period and at or near the place mentioned in Count 36, the accused did unlawfully and intentionally kill an unknown adult female person.

4.39 Count 39: Kidnapping

In that during or about the period January 2009 and at or near Anchorville, Lenasia Ext 1 in the district of Lenasia, the accused did unlawfully and intentionally deprive an unknown child of his/her freedom of movement.

4.40 Count 40: Murder

In that upon or about the period and at or near the place mentioned in Count 39, the accused did unlawfully and intentionally kill an unknown child.

4.41 Count 41: Kidnapping

In that upon or about 29 January 2009 and at or near West End Brick and Clay in the district of Westonaria, the accused did unlawfully and intentionally deprive an unknown female person of her freedom of movement.

4.42 Count 42: Rape

In that upon or about the date and at or near the place mentioned in Count 41, the accused did unlawfully and intentionally commit an act of sexual penetration with an unknown adult female person by penetrating her vagina with his penis without her consent.

4.43 Count 43: Murder

In that upon or about the date and at or near the place mentioned in Count 41, the accused did unlawfully and intentionally assault an unknown adult female person, thereby causing certain injuries as a result of which the said unknown female person died at or near Leratong Hospital in the district of Westonaria on 19 February 2009 and thus the accused did unlawfully and intentionally kill the said unknown female person.

4.44 Count 44: Kidnapping

In that during or about the period February to March 2009 and at or near Venterspost in the district of Westonaria, the accused did unlawfully and intentionally deprive DCG of her freedom of movement by luring her from Extension 5, Simunye to Venterspost in Westonaria.

4.45 Count 45: Rape

In that upon or about the period and at or near the place mentioned in Count 44, the accused did unlawfully and intentionally commit an act of sexual penetration with an adult female person, to wit, DCG by penetrating her vagina with his penis without her consent.

4.46 Count 46: Murder

In that upon or about the period and at or near the place mentioned in Count 44, the accused did unlawfully and intentionally kill DCG, an adult female person.

4.47 Count 47: Kidnapping

In that during or about the period February to March 2009 and at or near Anchorville, Lenasia Ext 1 in the district of Lenasia, the accused did unlawfully and intentionally deprive UES of her freedom of movement.

4.48 Count 48: Rape

In that upon or about the period and at or near the place mentioned in Count 47, the accused did unlawfully and intentionally commit an act of sexual penetration with an adult female person, to wit, UES, by penetrating her vagina with his penis without her consent.

4.49 Count 49: Murder

In that upon or about the period and at or near the place mentioned in Count 47, the accused did unlawfully and intentionally kill UES.

4.50 Count 50: Kidnapping

In that during or about the period of February to March 2009 and at or near West End Brick and Clay in the district of Westonaria, the accused did unlawfully and intentionally deprive an unknown female person of her freedom of movement.

4.51 Count 51: Rape

In that upon or about the period and at or near the place mentioned in Count 50, the accused did unlawfully and intentionally commit an act of sexual penetration with an unknown adult female person by penetrating her vagina with his penis without her consent.

4.52 Count 52: Murder

In that upon or about the period and at or near the place mentioned in Count 50, the accused did unlawfully and intentionally kill an unknown female person.

4.53 Count 53: Kidnapping

In that upon or about 13 March 2009 and at or near Venterspost in the district of Westonaria, the accused did unlawfully and intentionally deprive Dimakat Magdeline Tlallo (aka Mamikie) of her freedom of movement by luring her to a field in Venterspost or Westonaria.

4.54 Count 54: Robbery with aggravating circumstances read with section 1 of Act 51 of 1977 as well as sections 51 and 52 of the Minimum Sentences Act

In that upon or about the date and at or near the place mentioned in Count 53, the accused did unlawfully and intentionally assault Dimakatso Magdeline Tlallo (aka Mamikie) with the intent to rob and did unlawfully and intentionally take a pair of jeans, a panty, and a Samsung SGH-E250 cellphone from her possession, being the property of or in the lawful possession of the said DMT (aka M), aggravating circumstances as defined in section 1 of Act 51 of 1977 being present.

4.55 Count 55: Rape

In that upon or about the date and at or near the place mentioned in Count 53, the accused did unlawfully and intentionally commit an act of sexual penetration with an adult female person, to wit, DMT (aka M) by penetrating her vagina with his penis without her consent.

4.56 Count 56: Rape

In that upon or about the date and at or near the place mentioned in Count 53, the accused did unlawfully and intentionally commit an act of sexual penetration with an adult female person, namely, DMT (aka M) by penetrating her anus with his penis without her consent.

4.57 Count 57: Attempted murder

In that upon or about the date and at or near the place mentioned in Count 53, the accused did unlawfully and intentionally attempt to kill DMT (aka M) an adult female person.

4.58 Count 58: Escaping from lawful custody

In that upon or about 14 April 2009 and at or near Brixton in the district of Johannesburg, the accused; after being lawfully arrested and incarcerated, did unlawfully and intentionally escape from lawful custody.

4.59 Count 59: Kidnapping

In that upon or about the period January 2007 and at or near Mosquito Valley in the district of Lenasia, the accused did unlawfully and intentionally deprive ANW of her freedom of movement.

4.60 Count 60: Rape

In that upon or about the date and at or near the place mentioned in Count 59, the accused did unlawfully and intentionally commit an act of sexual penetration with an adult

female person; to wit NAW by penetrating her vagina with his penis without her consent.

4.61 Count 61: Murder

In that upon or about the date and at or near the place mentioned in Count 59, the accused did unlawfully and intentionally kill ANW, an adult female person.

4.62 Throughout this judgment the charges herein will be referred to as they appear hereinafter i.e. grouped under their respective dockets as "*cases*". For that purpose the charges are grouped as follows:

- Case 1: Counts 1-4.
- Case 2: Counts 5-8.
- Case 3: Counts 9-11.
- Case 4: Counts 12-14.
- Case 5: Counts 15-18.
- Case 6: Counts 19-23.
- Case 7: Counts 24-26.
- Case 8: Counts 27-29.
- Case 9: Counts 30-32.
- Case 10: Counts 33-35.
- Case 11: Counts 36-40.

- Case 12: Counts 41-43.
- Case 13: Counts 44-36.
- Case 14: Counts 47-49.
- Case 15: Counts 50-52.
- Case 16: Counts 53-57.
- Case 17: Counts 58.
- Case 18: Counts 59-61.

PLEA

[5] Accused pleaded not guilty to all the charges. He was represented throughout the proceedings by Adv Madondo, duly instructed by the Legal Aid Board.

FORMAL ADMISSIONS BY THE ACCUSED

[6] Before the State started leading evidence as well as throughout the trial, especially at regular intervals before a group of charges or a case was dealt with through the leading of evidence, the accused, duly advised and assisted by his legal representative, admitted certain facts relating to individual charges in terms of section 220 of Act 51 of 1977, as amended. Apart from appending his signature to the written admissions after they had been read into the record, the accused also affixed or imprinted his right thumb print on the admission document. Both the lead prosecutor and defence counsels also appended their signatures to the formal admissions

before they were handed in as exhibits. All the above signatures were put on paper in my presence and the presence of the prosecuting team as well as the accused and his counsel, in open court, all being present at the same time.

[7] In the formal admissions the accused did not dispute that 17 women and a child were kidnapped; 19 females were raped; 15 females and one child were murdered; 3 of the victims were robbed of the items specified in the charges; one female was assaulted so much that she nearly died, thus attempted murder having been committed; 2 females were sodomised, acts constituting rape in terms of the Criminal Law (Sexual Offences) Act, 2007 (as amended) and that fraud, alternatively theft as well as one count of assault with intent to do grievous bodily harm were committed; all on the dates as well as places specified in the indictment. The only charge not formally admitted was the count on escaping from lawful custody.

[8] What appeared to be in dispute is who had committed or perpetrated all the acts set out in the charges.

[9] The State was thus set the task of proving whether or not the accused herein was the perpetrator of all the acts set out hereinbefore.

[10] The State led the evidence of 41 witnesses. It also set out to prove through various reports that the accused before this Court was causally

connected to the acts and/or omissions as set out in the indictment. I will deal with them shortly hereunder.

[11] Photo albums compiled of the various scenes of crimes and other relevant points and places were also handed in and the defence admitted that they should all be handed in and accepted into the record of proceedings herein as proof of what they depicted therein.

[12] In addition to *viva voce* evidence led through the state witnesses the prosecution herein made use as evidence of pointing outs by the accused, warning statements made by the accused to then (Police) Director, Brig Byleveldt and the investigations officer, W/O Ungerer as well as Linkage Analysis evidence by Professor G N Labuschagne of the Police Investigative Psychology Unit, Criminal Records and Forensic Science Services. The State also relied on cellphone records evidence tendered by Captain Francois Samuel Möller of the Police Priority Crime Management Centre. Forensic Analysis Reports were also handed in and explained by various experts from the Police Forensic and Scientific Divisions, notably, Captain Shamil Raman Govan, a Senior Forensic Analyst and Supt Cornelia Elizabeth Bergh, a Chief Forensic Analyst. For record purposes the present day equivalent designation of superintendent is lieutenant-colonel.

[13] Identification parades were also held where the accused was identified by some witnesses and others did not point him out, as I will set out more fully later hereunder.

[14] According to Prof G N Labuschagne, linkage analysis is used to identify serial crimes that have been committed by one offender through the use among others of:

- the manner in which the crime was committed inclusive of the behaviour that is contained in two distinct components of a crime, those being, *modus operandi* and signature or unique combination of behaviour of the offender; and

- the circumstances under which the crimes were committed.

[15] Further information used to determine whether a crime or crimes are linked to one individual are victimology and locations of crime scenes.

[16] According to Prof Labuschagne, linkage analysis does not take into account physical evidence like DNA, fingerprints or ballistic results, but instead focuses on the behavioural elements displayed by the offender during the commission of the crime that are observable on the crime scene when it is discovered by the authorities or from victim accounts.

[17] Linkage Analysis reports are submitted in support of similar fact evidence. Such linkage analysis involves:

- the gathering of information about the crime;

- reviewing the information about the crime and identifying significant features of each crime individually;

- determining any consistencies across the series of crimes; and

- compiling a written analysis detailing the conclusions derived.

[18] To arrive at the outcomes envisaged or justified by the facts Prof Labuschagne relied on the following sources of information:

- consultation with the investigations officer(s);

- consultation with the prosecuting team;

- *ex post facto* visits to crime scenes;

- examination of docket information;

- scientifically accepted research;

- previous experience in the investigation of serial crimes; and

- Masters and Doctoral degree research as well as post-Doctoral research into serial murders in the South African context.

[19] The witness (Dr Labuschagne) received 16 (sixteen) dockets from the police that according to them had striking similarities in *modus operandi* and/or outcomes. They were:

Case 1: Westonaria CAS 283/01/2010 (Counts 1-4).

Case 2: Lenasia CAS 264/10/2008 (Counts 5-8).

Case 3: Lenasia CAS 797/09/2009 (Counts 9-11).

Case 4: Westonaria CAS 156/12/2008 (Counts 12-14).

Case 5: Westonara CAS 157/12/2008 (Counts 15-18).

Case 7: Lenasia CAS 709/01/2009 (Counts 24-26).

Case 8: Lenasia CAS 711/01/2009 (Counts 27-29).

Case 9: Westonara CAS 582/01/2009 (Counts 30-32).

Case 10: Lenasia CAS 710/01/2009 (Counts 33-35).

Case 11: Lenasia CAS 712/01/2009 (Counts 36-40).

Case 12: Westonaria CAS 690/02/2009 (Counts 41-43).

Case 13: Westonaria CAS 34/03/2009 (Counts 44-46).

Case 14: Lenasia CAS 728/03/2009 (Counts 47-49).

Case 15: Westonaria CAS 228/03/2009 (Counts 50-52).

Case 16: Westonaria CAS 309/03/2009 (Counts 53-57).

Case 18: Lenasia CAS 683/01/2009 (Counts 59-61).

[20] Prof Labuschagne differentiates between serial murders and sexual murders. Serial murders occur when someone murders at least two (2) or more people at different times and for a primarily intrinsic or psychological

reason. More often than not these murders have a sexual component to them. Typically, such offenders perpetrating serial murders do not stop until apprehended. They sometimes continue their behaviour in spite of the fact that there is a public outcry and the police are already investigating. The underlying motive for such murderers is usually a sense of power and control that the perpetrator feels or experiences when committing such crimes. Serial murderers tend to stick to one main method of selections and murdering their victims. They also tend to keep to a certain victimology in most instances.

[21] On the other hand, sexual murder is a murder that has a sexual theme to it, which theme may be expressed in various ways. For example, a victim may also be raped and/or sodomised, the victim may be left naked or partially naked, the victim's genitals or breasts may be mutilated, objects may be inserted in the victim's anus or vagina, a victim may be positioned or left lying in a sexual position, or sexual objects may be placed around the victim.

[22] According to Prof Labuschagne, rape may not necessarily be the sole requirement for a murder to be classified as sexual. More often than not the relationship between the offender and the victim is that of strangers, with the crime happening in an open veld or public place. The mechanism or method of death is more often than not asphyxiation due to strangulation or the use of blunt force trauma.

[23] The *modus operandi* of the offender usually encompasses all behaviour initiated by the offender to procure a victim and complete the

criminal acts without being apprehended. These behaviours can vary depending on the experience, intelligence and motivation of the offender. Such behaviours can alter over time as the person, i.e. the offender, adapts to the circumstances and gains experience and confidence. As with many other aspects of human behaviour, the repetitive nature of these crimes affords the offender a sense of familiarity and control that allows him to begin to focus more intently on the sexual and/or aggressive motive for the crime as a series continues.

[24] Serial murders have a distinct signature which is sometimes referred to as "*a calling card*" of the offender. There would be a specific or unique combination of behaviours that emerge across two or more offences to form a pattern.

[25] Serial offenders tend to have certain geographical areas in which they commit their crimes. According to Prof Labuschagne they tend to be relatively consistent in using these areas to commit subsequent crimes and may, despite police activity, still return to these areas to commit further crimes. Such geographical areas are called "*comfort zones*". The location where the offender commits these crimes is usually chosen because of some or other association the offender has with the area. This association is referred to as "*the anchor zone*". This expert surmises that in serial murders it is usually found that the offender lives or works near the area in which the crimes are committed.

[26] Prof Labuschagne's report found that between 2008 and March 2009 the bodies of 15 deceased adult females, one adult female who lived to tell the tale and one deceased child were found in the Westonaria, Venterspos and Lenasia areas. The Lenasia and Westonaria cases were grouped nearby each other while the two Venterspos cases were also found to have occurred nearby each other.

[27] In most of the cases the suspect used the weapons that were at the scene of crime, such as items of the victim's clothing as ligatures, which was the case in 11 (eleven) of the cases; a brick; a sharp object or his bare hands for manual strangulation. Strangulation appears to have been used in 13 (thirteen) of the cases under the expert's review as indicated either by *post mortem* reports or the presence of a ligature around the victim's neck as was the case in 11 (eleven) of the 13 (thirteen) cases. In Counts 53-57 the victim herself described how she was bludgeoned by the accused herein. Blunt force trauma was used in 4 (four) of the incidents. In Counts 15-18 (Case 5), 30-32 (Case 9) and 53-57 (Case 16) both strangulation and blunt force trauma were present. South African serial murderers have been known to alter their method of killing during a series of murders. This is ascribed to experimentation, unforeseen events that take place during the actual murder, such as victim resistance or the appearance or presence of a passerby or a change in *modus operandi* that leads to a change in the method of murdering. However, generally, strangulation is typically the most commonly used method of causing death in serial murder cases.

[28] 14 (fourteen) of the incidents under review had a sexual theme as evidenced by either partial nakedness of the victim or indications of vaginal or anal rape. Prof Labuschagne concluded that a sexual theme tends to be consistently observed in a series of murders where the murders are sexual in nature because this has to do with the offender's inner motive for targeting his victims, hence the consistency.

[29] In these particular cases under review by the expert, the suspect's signature in the series was the targeting of adult black females for sexual murders involving strangulation, usually by ligature, and leaving their partially naked bodies in or around the West End Brick and Clay near Lenasia, Lenasia or Venterspos. In all cases the victims went missing in broad daylight. The geographical patterns of the crime scenes pointed to the crime scenes in the West End Brick and Clay area being in significantly close proximity of each other and all of them being in close proximity of the Lenasia crime scenes. The crime scenes in the Venterspos area are in significantly close proximity to each other. That is why this expert arrived at a conclusion that the patterns of body recovery sites are consistent with serial murder behaviour.

[30] About the doctrine of victimology, Prof Labuschagne stated that in these cases, all victims were adult black females, with the single exception of the one child in Counts 36-40 (Case 11). He states further that serial murderers often tend to keep to a particular victimology. In these instances, he submitted, the category of victim (black adult females) was selected as it

seemingly had some or other relevance to the offender. Such relevance may be hatred that had developed within the offender for the victim group as a result of his own life experiences, which may be manifested in perceived maltreatment by women. That normally precipitates the targeting of this group.

[31] It was this expert's overall conclusion that the crimes as set out in Counts 1-18, and 24-61 were undoubtedly the work of the same offender based on geographical location of the crime scenes, the sexual theme of the incidents, the presence of ligatures around the victims' necks, the general signature and the victimology.

[32] The accused did not contradict or gainsay any of this expert's evidence. No questions were put to the witness to dispute any of the theories propounded and conclusions arrived at.

CATEGORIES OF TRANSGRESSION/CASES INVOLVED

[33] From the evidence led herein the cases the accused faced can be categorised as follows:

- Cases in which direct evidence was presented.

- Cases in which circumstantial evidence was presented.

- Cases in which circumstantial evidence was presented and in which the State also relies on similar fact evidence.

- Cases in which the State relies on purely similar fact evidence.

DIRECT EVIDENCE CASES

[34] Within this group or category falls 3 (three) cases namely:

- Case 6 i.e. Counts 19-23 (Lenasia CAS 878/12/2008).

- Case 16 i.e. Counts 53-57 (Westonaria CAS 309/03/2009).

- Case 17 i.e. Counts 58 (Brixton CAS 357/04/2009).

CASE 6: COUNTS 19-23 (LENASIA CAS 878/12/2008)

[35] The undisputed facts are that on 24 December 2008 the accused accosted or met the complainant herein, NM at some shopping complex in Lenasia and they ultimately ended at her workplace where she was also residing as a domestic worker.

[36] What is in dispute is whether the accused kidnapped, assaulted, raped, sexually assaulted the complainant and also defrauded her. The accused's case is that he and the complainant were lovers and had consensual sexual

intercourse, not in some bushes, but at the backrooms at the latter's workplace. He further contended that the complainant willingly drank the tea he brewed for her as part of a healing process and that she also legitimately paid him for services rendered, i.e. for healing her.

[37] Evidence on behalf of the State on this case and counts was led through the complainant herself; Elizabeth Motlanthe, her co-worker; Mimi Mathabatha, her sister and Elizabeth Mathabatha, her mother. The State also relied on the warning statement recorded by Brigadier Byleveldt on 14 April 2009 at Brixton Police Station. Evidence of a pointing out by the complainant of the accused at an Identification Parade held on 29 March 2009 was also led.

[38] NM testified that she met the accused for the first time at a shopping complex in Lenasia where she had gone to purchase some Christmas clothing. As she walked out of the store on her way home she met the accused who inexplicably and accurately told her that she was having a problem with her suitor or lover and also suffered from a serious womb ailment. He offered to help her get well. Because he was so convincing she trusted him and gave him R150,00 to purchase some tea leaves and other necessary ingredients to brew a healing concoction. He was sporting a ZCC badge and this made her believe he was a real prophet or priest as he claimed. He accompanied her to her place and promised to come back the following day.

[39] Indeed the following day he promptly arrived at her workplace. She invited him into her room after asking her room-mates to stay outside while she was busy with the "*priest*". He brewed the tea and asked her to drink it. At that stage he convinced her to give him some more money for his services upon which she gave him R400,00 in cash.

[40] After drinking the brew which was laced with some unknown species of leaves, she started feeling strange or dizzy. He then convinced her that her strange feeling was as a result of the fact that the brew was busy exorcising the evil spirits that were making her sick. He then implored her to go with him to the nearby bushes so that when the spirits escaped, they should not hide inside her room only to find their way into her again. She agreed and he led her to a nearby bush. There he convinced her to take off her pants and underwear and lie "*missionary style*" on her back, naked waste downwards. He then started rubbing some tea leaves on her exposed vagina, telling her that this was part of the treatment.

[41] He then told her that in order to exorcise the "*tokolosh*" from within her he must also have sex with her. As she verily believed this "*Man of God*" was going to help heal her she agreed and he penetrated her even though, due to her dizziness, she could not feel anything but could see what he was doing.

[42] She further testified that she prayed and exhorted Jesus Christ to help her as the accused was having sexual intercourse with her under mysterious circumstances. She was not her real self.

[43] After he had finished the accused left her there in the veld and she tottered back to her place of abode.

[44] For the rest of the day she was feeling and acting so strange that her co-worker, Elizabeth Motlanthe, phoned her family at Lebowakgomo in Limpopo to come and fetch her. Her sister, Mimi Mathabatha arrived on 25 December 2008 and took her to Lebowakgomo. Upon recommendation from clinic and hospital people whom she consulted on 26 December 2008 she reported the matter to the police.

[45] On 29 March 2009 she attended an Identification Parade where she pointed out the accused as the person who molested her. She was adamant that she would not have paid the accused any monies or allowed him to have sexual intercourse with her had she known that he was an imposter and fraudster.

[46] It was put to this witness that it will be the accused's version that the two of them had had an intimate relationship since the latter part of the year 2007 and that he thus knew of her problems after he saw her experiencing some unnatural discharge after having sex with her at his shack or house, and had been treating her for this ailment since. He claimed that on the day in question he had consensual intercourse with her inside her room at her workplace residence and thereafter left. She vehemently denied these.

[47] Elizabeth Motlanthe corroborated the complainant's version of 24 December 2008 on which date, she said, the latter came to their room with a man referred to as "*the reverend*" or priest who was there to perform some rituals for her. She positively identified the accused as that reverend or priest. She also corroborated the complainant's version of acting funny by stating that when she returned home 2 to 3 hours after leaving with the accused, she was not looking well: she vomited and acted like a crazy or mad person, hence she phoned her people who came to fetch her the following day.

[48] Her sister Mini Mathabatha also corroborated the complainant's version on what happened until the latter opened a case at Lebowakgomo Police Station.

[49] Her mother, Elizabeth Mathabatha also corroborated the complainant's version. Incidentally, both of them worked for the same employer as domestic servants and stay in the same backroom where the whole incident started or was developed further. The elder Mrs Mathabatha categorically denied having been in love with another older man who later allegedly became the complainant's lover as well, as claimed by the accused.

[50] In paragraph 31 of the warning statement taken down by Brig Byleveldt on 14 April 2009 reference is made, allegedly by the accused, of going to a park with the complainant herein and then using force to hold her down and then having sexual intercourse with her against her will. It is so that the

accused is denying any knowledge of the warning statement. The matter will be dealt with and evaluated later on.

CASE 16: COUNTS 53-57 (WESTONARIA CAS 309/03/2009)

[51] In this case undisputed evidence is that a complainant (I will conveniently refer to as M) was given a lift by a man on 13 March 2009 who then eloped or drove away with her to a field near the Westonaria Sewage Farm where he (the man) assaulted her with a brick and also strangled her until she lost consciousness. The man then raped her anally and vaginally and then left her for dead. Her cellphone, a Samsung SGH 250 with IMEI No. 35615202990760 which was among the articles missing when she regained consciousness some 24 hours later was found by the police at the accused's house when he was arrested on 27 March 2009.

[52] What is in dispute is whether the accused kidnapped, robbed, raped and attempted to kill the complainant. The accused also disputes that he was wearing the ZCC badge and sangoma beads, all at the same time and that he was using a cream white Volkswagen Golf with registration numbers KSV 378 GP on that day. He further contends now that the Identification Parade at which M pointed her out, which was held on 3 June 2009 at Brixton Police Station was not procedurally correct. He also contests the DNA results and denies making a warning statement before Brig Byleveldt.

[53] On behalf of the State M testified that on 13 March 2009 she was offered a lift by the accused in his cream white Volkswagen Golf in which one MS, a local acquaintance and neighbour, was a passenger. She was on her way from Venterspos to Westonaria town. That is when she noticed that the accused wore a ZCC badge and sangoma beads, which aspect is very unusual, according to her. After dropping MS and her two children at her home, their car proceeded towards Westonaria. After MS had alighted from the Golf, she left the back seat where she was initially seated and climbed in the front passenger seat. Along the way the accused told her that he was a ZCC member who heals people. He also told her he was a prophet and that he could see that she was destined to be married to or by a rich man but that before all that could happen, he needed to cleanse her of the "*bad things*" which were keeping her from meeting this rich man. He told her that in order to remove the "*bad things*" he must bath her in a certain tea concoction that he would prepare for her.

[54] When she declined his offer to "*heal*" her the accused drank a substance from a bottle which she believed or thought was alcohol. When they reached the outskirts of Westonaria instead of turning left towards the town centre he turned right and accelerated the car so that she could not alight until he stopped it at some thicket near the municipal sewage farm. He then swiftly alighted and hastened to her side of the car before she could alight, pulled her out of the car and started to molest her. She resisted and fought back and at the same time ripped off the sangoma bead necklace from his neck, scattering the beads around the area. The accused then bashed her

head with a stone or brick, also strangling her at the same time until she lost consciousness. She regained her consciousness about 24 hours later, i.e. the following day. She was naked and her pants, underwear and Samsung SGH 250 cellphone were missing. She covered her lower body with her jersey and managed to get help from a worker at the sewage works who phoned for an ambulance.

[55] At the hospital she was told that she had been raped and sodomised. Her head and face were so severely disfigured that she had to spend a long time in hospital unable to speak and had to undergo facial reconstruction surgery.

[56] After the long hospital recovery she attended an identification parade during which she pointed out the accused as her molester. She also identified her cellphone which the police told her was retrieved from the accused. Proof that the cellphone was indeed hers was that photos of herself and members of her family were downloaded from it.

[57] On behalf of the accused it was put to this complainant that he (accused) will come and deny ever giving her a lift on 13 March 2009; that on that day his Volkswagen Golf was out of order and at home; that he was not wearing sangoma beads around his neck and that on that day he was at his sister's place at Thokoza near Boksburg or Alberton. It was part of his defence also that on this date he was wearing a Roman Catholic Church rosary and he also stated that he never drank alcohol in his life.

[58] Dr Chakela-Mashele who did the gynaecological examination on the complainant confirmed that she was penetrated in the vagina and anus. She also collected samples for a sexual assault kit and had same sent to the Forensic Science Laboratory for analysis. Her evidence was not disputed.

[59] It was also put to this witness on behalf of the accused that on the day of the identification parade she was brought by two female trainee police women to the cell where he was incarcerated or held where the two trainee police women pointed him out to her, hence she could positively identify him at the parade line-up later that morning. She denied it.

[60] MS corroborated the complainant's version of events in as far as the happening at Venterspos are concerned. She had thumped a paying lift or occasion from a Golf sedan driven by a man who later picked up the complainant, who incidentally was her neighbour. This man was wearing a ZCC badge and he told her that he was a ZCC prophet as well as a traditional healer. He told her that he could see that something bad or unbecoming would occur or come between her and her husband. He tried to turn onto a deserted road leading to the Venterspos Golf Course but turned back to the main road when he observed the presence of traffic police in the vicinity. He then told her that her belief saved her. He said this to her after she told him during his earlier pontifications that she was a firm believer in God Almighty and did not indulge in prophesies and orations or practices of the occult.

[61] She corroborated the complainant's version about how they drove away with her in his car. Because something seemed odd or out of place with the man she memorised and later wrote down the registration plates of the Golf being "*RVS 378 GP*".

[62] That evening, upon discovering that the complainant did not return home, she approached her family with the information she had about the person last seen with her and went to the police with them to report her missing. She described the driver of the Volkswagen Golf as being dark in complexion as well as what he was wearing. She also gave a description of the car that was used, that fitted the accused cream white Volkswagen Golf. The registration plate number she gave to the police differed with that of the accused in only one respect: She gave the first letter as "*R*" whereas the accused's car's registration number starts with a "*K*". The rest of the letters and numbers were identical with the accused's car's.

[63] She could not identify that man at the identification parade at Brixton Police Station because she was too scared. She however made a dock identification of the accused during her testimony in court.

ARREST OF THE ACCUSED

[64] By this time that M was assaulted, kidnapped, raped, sodomised and robbed, the local police were already grappling with a spate of mysterious deaths around Lenasia and Westonaria. One Captain Manthata of

Westonaria Police Station was investigating these strange and frightening occurrences when she received a report about the experiences of M. She had received information about the suspect from MS. She (captain Manthatha) happened to mention the description of the man who molested M, the car that he drove and the fact that he was wearing both a ZCC badge and sangoma beads to Constable Mohlokwane who immediately remembered that the accused fitted the description very well. Const Mohlokwane also remembered how she had in the recent past investigated another case involving the accused and noticed how he also had a ZCC badge as well as sangoma beads at the same time. The colour and make of the car allegedly used by M's molester peculiarly resembled one she once saw being driven by the accused after one of his appearance at court in Westonaria in January 2009. On that date she was passing by when the accused called her and boasted to him how well he was doing in life, also pointing to his new pride and joy, a cream white Volkswagen Golf sedan.

[65] She knew where the accused's shack was situated and she took Capt Manthata for a reconnaissance mission. Outside the shack or house they saw a cream white Golf with registration numbers KVS 378 GP which fitted the description of the car from which M was last seen being driven in.

[66] On the night of 27 March 2009 Capt Manthata led a contingent of police and arrested the accused at his shack where he was found in bed with his girlfriend, Charlotte Manaka. Various items including a Samsung SGH 250 cellphone, multi-coloured sangoma beads, twine, women's clothing and

underwear were found. According to Capt Manthata the accused was duly notified of the reasons for his arrest and read out his constitutional rights. When she (Capt Manthata) asked the accused where he got the Samsung SGH 250 cellphone from he allegedly told him that he picked it up in the street at Westonaria on a day when he was going to purchase or collect a car spare part for his car at a shop.

[67] Under cross-examination it was put to Capt Manthata that W/O Ungerer, the investigating officer in this case, was in fact leading the police contingent that came to arrest him. It was further put to Capt Manthata that it was w/o Ungerer who kicked the door of his shack down that night of his arrest. Capt Manthata vehemently denied this. She testified that only after the accused had been arrested and handcuffed did she phone the case investigator, W/O Ungerer, who arrived just before Brig Byleveldt also arrived – both quite some time later.

[68] Capt Manthata explained further, upon a question why MS's registration number started with an "*R*" whereas the accused's car registration started with a "*K*" that it may have been a genuine mistake as some numbers may be eroded and thus mistakeable.

[69] Capt Manthata was also adamant that no used or unused condom was found at the accused's home during his arrest. She refuted the accused's contention that the positive DNA results the State was relying on in this case was derived from a used condom confiscated by the police during his arrest.

IDENTIFICATION PARADE BY M

[70] It was conducted by Capt Van Schalkwyk from the Organised Crime Unit in Johannesburg. It was held on 3 June 2009 at Brixton Police Station. Capt Van Schalkyk testified that the parade was held according to the law and procedures and that none of the accused's constitutional rights were infringed. With the consent of the accused the *pro-forma* SAP 329 form and notes of the identification parade were accepted in the record of proceedings herein. Trainee Constables Elizabeth Skosana and Nobuhle Sibiya guarded the witnesses going to the parade and coming therefrom respectively. In their testimonies the trainees reiterated that they did not know who the suspect(s) were at the parade as they were taken from where they were working and assigned their duties at the parade. They further testified that they only met the witnesses when the latter walked into the offices where they were to guard them respectively. They further testified that as trainee constables they were not allowed to go to the police cells without a mentor or supervisor being present and for a good reason at that. Accordingly, according to them, it was impossible on the day for them to have accompanied a witness that was going to participate in an identification parade to the cells before the identification parade started.

[71] According to the SAP 329 form as well as admissions by the accused, the latter was accompanied by his own attorney at the identification parade and the attorney was present throughout the parade and never caused any complaint to be recorded by the officer in charge.

CELLPHONE EVIDENCE

[72] As stated above, when the accused was arrested, a Samsung SGH E250 cellphone belonging to the complainant that disappeared when she was molested was found in his house. There is evidence that was not contradicted that when data was downloaded from the cellphone by duly qualified experts photos of the complaint as well as those of her family members were found. Cell C phone records were also obtained and properly accepted as evidence unopposed. Detailed billing from the accused's cellphone number shows that the latter's sim card was inserted into the complainant's missing cellphone on the same date that she was spirited away by the accused and molested, i.e. 13 March 2009 at 18h34.

[73] The accused never disputed this evidence, neither did he offer any explanation as to how his sim card happened to be in the complainant's handset on the day of her disappearance.

BEADS

[74] Beads of a similar nature, colour and size as those that were found at the scene of M's rape and sodomy were also retrieved from the accused's house on the night of his arrest. Expert evidence confirmed that they were similar. During cross-examination of the expert witness it was put to her on behalf of the accused that the accused would deny knowledge of such beads. However, when the accused's girlfriend Charlotte Manaka testified, she

confirmed to the court that apart from using a ZCC badge, the accused was also simultaneously using or wearing sangoma beads similar to those that were found at his house and which were also similar to those found at the scene of M's molestation. She was not contradicted hereon at any stage when she testified as a state witness. Surprisingly, when the accused testified in his defence he stated that the sangoma beads found at his house during his arrest belonged to Charlotte Manaka who used them for traditional healing purposes. This was never put to her when she was in the witness stand.

DNA EVIDENCE

[75] There has been no challenge to the chain of DNA evidence that was led by Capt Govan of the Forensic Science Laboratory of the South African Police. Such evidence was that, except for one case that was investigated after the accused was arrested, all the samples of articles, condoms and crime scene sex kits were collected by the police at the scenes of the murders well before the accused was suspected of any serial rape or murder. The accused did not gainsay that DNA evidence was obtained from the bodies or victims, the specimen properly sealed, referenced, transported and received by the Forensic Science Laboratory in Pretoria and also analysed and compared.

[76] The sexual kit samples of the complainant, M, in this case and charges were also properly collected, packaged and sent for analysis. A comparison

with a control blood sample obtained from the accused found that the accused's male DNA profile was present in the sexual assault kit sample. Despite this evidence of a "*match*" the accused did not contradict it or come up with a cogent explanation why his DNA profile was there. He persisted with his general assertion that the police used a used-condom found at his place on the day of his arrest to frame him for all the offences set out in the indictment, with the exception of the escaping charge of course.

[77] In as far as these Counts 53-57 are concerned, evidence is also to the effect that the forensic analyst received the sexual assault kit of this complainant on 18 March 2009, i.e. 9 days before the accused was arrested. Obviously, the accused's sole defence disputing DNA linkage to these charges as being tainted falls flat.

[78] It was never put to Capt Govan that he was the one who contaminated the samples that he received for analysis.

WARNING STATEMENT BY BRIG BYLEVELDT

[79] There is evidence that on 14 April 2009 W/O Ungerer requested Brig Byleveldt, his commanding officer and also commissioned officer, to interview the accused and take down his customary warning statement.

[80] In this warning statement the accused allegedly talked about the facts of the charges relating to M at paragraph 8E thereof. In that paragraph the accused mentions kidnapping the complainant, how he manhandled her from the car, how he assaulted her with a brick, and how he strangled her until she lost consciousness. He then mentions raping her.

[81] What is important is that before the evidence of this warning statement was tendered, State counsel, Adv Moonsamy mentioned to the court that the document contains admissions that may amount to confessions by the accused. She wanted to hear from the accused's counsel, Adv Madondo, if he would like to have a trial-within-a-trial. Adv Madondo intimated to the court that he was in possession of the said warning statement and that the accused did not require a trial-within-a-trial. He categorically stated that the warning statement may be admitted into evidence and that admissibility thereof as a document was not in issue as everything around it will be resolved by credibility.

[82] Cross-examination that followed from the accused's defence counsel hereon was that he was not the author of that warning statement and that on the date in question a bunch of documents were thrust under his nose and he was ordered to sign. He signed the first page and then decided to refuse to sign the rest of the documents.

[83] What is interesting is that the accused nonetheless admits giving the answers contained in the last part of the warning statement immediately after

the main body of the statement. Those answers confirmed that the accused was not induced or influenced or forced to give the information recorded iin the warning statement.

[84] According to Brig Byleveldt, at the time he interviewed the accused, he did not have possession of or insight into the case dockets involved. He was only recording what the accused was saying. More importantly, in respect of this case involving M, the police had not yet interviewed her as she was still in hospital, unable to speak due to the injuries she sustained on 13 March 2009.

CASE 17: COUNTS 58 (BRIXTON CAS 357/04/2009)

[85] The facts of this count are that as on 14 April 2009 the accused was incarcerated in the Brixton Police cells awaiting a court appearance at the Protea Magistrate's Court on 16 April 2009. Somehow accused conjured to leave or disappear from the police cells at Brixton and was found in the toilet of the Brixton Magistrate's Court cells, hiding.

[86] The State alleges the accused escaped from lawful custody whereas the accused's defence is that on that day the police came to their cell (cell 3) and ordered all inmates to go to court at Brixton Magistrate's Court, hence he walked out with them.

[87] The evidence of the State was led through the mouths of W/O Nkosinathi Mhlophe, the officer in charge at the Brixton Police cells; W/O

Elias Madonsela, the court orderly at Brixton Magistrate's Court as well as Capt Mosa Shezi.

[88] W/O Mhlophe testified that on this date W/O Madonsela came to fetch those prisoners or inmates that were to attend court at Brixton Magistrate's Court. A list had been compiled of these inmates and the names recorded in the Brixton Court Occurrence Book. There were also corresponding J.15 charge sheets for each name to ensure that the right people were booked out to court.

[89] They called names, one by one, and an inmate would answer to his name and step out of the cell. Among the names called out, there was no Madumetja Jack Mogale. The cell(s) were then locked and the inmates taken to court where they were lodged in the court cells awaiting calling into court when same was in session later.

[90] After the inmates had been escorted to court W/O Ungerer who was the investigator in the accused's case came to book him out for investigations. He was nowhere to be found. The (Ungerer and Capt Shezi) hastened to the court cells and with the help of W/O Mhlophe and Mandonsela they called out the accused's name from the door but he did not respond. Capt Shezi entered the court cell and found the accused sitting on a toilet seat at the back of the cell, fully clothed and with a cap drawn over his eyes, according to him, clearly hiding. He was taken back to the police station.

[91] It was later discovered that the inmate who was called out for court was one Gerald Moloi, not the accused. That when Moloi's name was called out the accused stepped out impersonating him or presenting himself as Gerald Moloi, thus ending up at court.

[92] According to the police witnesses, the nett effect of the accused's action was that he would either step forward at court as Gerald Moloi and be remanded on warning as the real Gerald Moloi was indeed remanded on warning that day. Alternatively all names would be called out and he would remain in the cells. Because his names were not in the court criminal record book and court cell occurrence book he would then be set free.

[93] The State's case is that this was a completed escaping from lawful custody.

CIRCUMSTANTIAL EVIDENCE CASES

[94] There are three (3) cases herein where the State relies for a conviction on circumstantial evidence, namely:

- Case 9: Counts 30-32.

- Case 12: Counts 41-43.

- Case 18: Counts 59-61.

[95] Before I deal with the evidence led in those counts and/or cases it is necessary that I deal shortly with the aspect of what is meant by circumstantial evidence.

[96] Circumstantial evidence is sometimes described as a network of facts around the accused. It may come to nothing. On the other hand it may be absolutely convincing. The law does not demand that one should act upon certainties alone. In our lives, in our acts, in our thoughts, we do not deal with certainties: we ought to act upon just and reasonable convictions founded upon just and reasonable grounds. The law asks for no more and the law demands no less.

Compare: *Benzani Ndumalo v The State* Case No. 450/2008 [2009] ZASCA 113.

[97] When dealing with circumstantial evidence the enquiry before the court is whether on the evidence before it, it could reasonably come to a conclusion that it was indeed the accused who perpetrated the offences in question.

See: *S v Nduna* 2011 (1) SACR 115 (SCA).

[98] This involves a determination of whether the two cardinal rules of logic in *R v Blom* 1939 AD had been satisfied:

- firstly, whether the inference sought to be drawn is consistent with all the proven facts because if not, then the inference cannot be drawn; and

- secondly, whether the proven facts are such that they exclude all other reasonable inferences from them save the one sought to be drawn. If the proved facts do not so exclude all other reasonable inferences, then there must be a doubt whether the inference sough to be drawn is correct.

See also: *S v Sesetse* 1981 (3) SA 353 (A) at 369-370.
S v Morgan 1993 (2) SACR 134 (A) at 172.

[99] Circumstantial evidence in itself may at times furnish direct proof of issues in question. In *S v Reddy* 1996 (2) SCR 1 (A) Zulman AJA (then) held among others that circumstantial evidence is not necessarily weaker than direct evidence. That in certain circumstances it may even be stronger or of more value than direct evidence.

See also: *S v Shabalala* 1996 (2) SA 297 (A) at 299.

[100] Murphy J however, cautioned in the unreported (by then) case of *State v J R Nyauza*: Case No. CC97/07 decided on 5 December 2007 that

circumstantial similar fact evidence must not be used to promote a forbidden line of reasoning such as: the accused is a bad man and therefore must be guilty, or, the accused is a murderer and therefore should be convicted of a murder charge he is facing.

[101] Rather, the circumstantial evidence must be relevant in some way or other in that its peculiar nature cloaks it with a higher degree of relevance warranting its reception and reliance upon it.

[102] As Lord Herschell puts it in the landmark English decision of the Privy Council in *Makin v Attorney-General for New South Wales* (1894) AC 57 (PC) at 65:

> "*It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered in the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct and character to have committed the offences for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show a commission of other crimes does not render it inadmissible if it is relevant to an issue before the jury; and, it may be so relevant if it bears upon the question of whether the acts alleged to constitute the crimes charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused.*"

[103] Inferences to be drawn when circumstantial evidence is utilised must be carefully distinguished from conjecture or speculation. There can be no

inference lest there are objective facts from which to infer other facts which it is sought to establish. If there are no positive proven facts from which the inference can be made, the method of inference falls away and what is left is mere speculation or conjecture.

See: *Caswell v Powell Duffryn Association Collieries Ltd* 1940 AC 152 at 169 per Lord Wright.

[104] In order to decide whether the State has proved its case beyond reasonable doubt based on circumstantial evidence, the court need to take into account the cumulative effect of the evidence before it as a whole. It is not advisable or let me say, it is impermissible and an incorrect approach to consider the evidence piecemeal.

See: *S v Reddy, supra*.

S v Snyman 1968 (2) SA 582 (A) at 589F.

S v Hassim 1973 (3) SA 443 (A) at 457H.

S v Zuma 2006 (2) SACR 191 (W) at 209B-I.

[105] I now deal with those charges where circumstantial evidence played a major part.

CASE 9: COUNTS 30-32 (WESTONARIA 582/01/2009)

[106] On 23 January 2009 the body of one NN was found at Waterworks in Westonaria. The deceased had been bludgeoned with a rock that was found at the scene. She was also strangled with her own pair of black pants which were still around her neck. The State argued that the death of the deceased could be ascribed to the accused through circumstantial evidence. The accused denies kidnapping, raping and murdering the deceased herein.

EVIDENCE TENDERED BY THE STATE

[107] Nozuko Maqanta testified that she was the deceased's friend and they worked together as sex workers at and around the Caltex Garage on the corner of the N12 and R28 freeways near Westonaria. They also shared sleeping or living quarters in Westonaria.

[108] On 22 January 2009, a man whom she identified as the accused before this Court stopped near her at the garage area driving a cream white Volkswagen Golf. He wanted to take her for business to his home which he said was at Zuurbekom. She was not interested. At his request she called the deceased to him. They discussed and later the deceased left with the accused. She made a dock identification of the accused as she, according to her, was not called to any identification parade. Two (2) days later one Capt Shivalo stopped his car at her place of work and told her about the body of an unidentified black woman that was found in the area and by the description of the clothing the deceased was wearing this witness immediately knew that it was the body of N. She told Capt Shivalo as much. A month or two later she

again saw the accused in his Volkswagen Golf at the Caltex Garage and she recorded the registration numbers of his car on a piece of paper. That number was KSV 378 GP.

[109] During January 2010 W/O Ungerer traced her and obtained her statement concerning the disappearance of her friend. According to her, by coincidence or as fate would have it, as W/O Ungerer was fiddling with a docket, at a later date, a photograph fell out of it and she immediately recognised the person on that photograph as the accused. She told W/O Ungerer about it.

[110] The accused's defence, as put to this witness during cross-examination, was that at no stage at all was he ever at or near that Caltex Garage and that he never dealt with prostitutes. He further averred that the car the witness saw could not have been his because at or during the period the witness mentioned his Volkswagen Golf was out of order and was at a mechanic's place. He also denied going back to the Caltex Garage one to two months after 22 January 2009 although he would from time to time use the road that passed there.

DNA EVIDENCE

[111] With regard to the case involving this deceased again there has been no challenge to the chain of DNA evidence. The nett results hereof is that it was never disputed on behalf of the accused that after the DNA specimen or evidence was obtained from the bodies or victims including the deceased herein, the specimen were properly sealed, referenced, transported and received by the Forensic Science Laboratory. Among the items found at the scene of the murder was a used condom. Specimen taken from its inside were properly analysed and compared with the control blood sample that was obtained from the accused after his arrest on 27 March 2009 without any contamination or the occurrence of any irregularity. The conclusion or results of the analysis was that the male DNA profile that was found in the condom matched the DNA profile of the accused.

[112] As in the case of complainant M, the accused's line of defence here is that the police obtained his DNA profile from a used condom confiscated by the police at his house on the day he was arrested. This defence cannot stand because as Capt Govan testified, he received the sexual assault kit of the deceased herein on 28 January 2009, long before the arrest of the accused on 27 March 2009. There was no allud-ment of contamination of DNA evidence by Capt Govan and the state case is still to the effect that no used condom was found at the accused's home on the night of his arrest, a fact confirmed by the accsued's girlfriend conclusively as mentioned hereinbefore.

CELLPHONE USE AND TOWER OR REPEATING STATIONS

[113] Capt Möller's evidence on the charges relating to this deceased was that on the date of the latter's disappearance, i.e. 22 January 2009 at 16h00 cellphone records from Cell C (accused cellphone service provider) showed that a call was made from the accused's cellphone which was transmitted through the Jachtfontein cellphone tower or repeating station. He surmised that a call being made from the vicinity of the corner or junction of the N12 and R28 highways will be picked up by the Jachtfontein tower or repeating station. Acceptance of this evidence places the accused or the cellphone user in the vicinity of the scene where the deceased was last seen on the date of her disappearance. The accused has at no stage alluded to this Court that another person was using his cellphone on this day. The court thus accepts that he was its user at 16h00 on 22 January 2009 and thus inferentially was at or around the area where the deceased NN was collected from. The accused's denial of being there or thereabout is thus highly improbable and can be safely rejected as false. The evidence of W/O Ungerer about that area especially the location of the Caltex Garage corroborates this aspect. It was not contradicted.

CASE 12: COUNTS 41-43 (WESTONARIA CAS 690/02/09)

[114] On 29 January 2009 an unknown black woman was found near West End Brick and Clay factory in Westonaria. She was badly assaulted on her head and face but still alive. She was also naked. She was taken to hospital. A Dr Kashif examined her on 30 January 2009 and also collected samples which she sent to the Forensic Science Laboratory for analysis. Her

gynaecological examination of the woman pointed to her having been raped. The woman died of her injuries on 19 February 2009 without regaining consciousness and/or the police interviewing her. The State submits that the accused kidnapped, raped and so severely assaulted the woman that she succumbed to the injuries. Also that the accused raped her. The accused denies all the allegations.

[115] Capt Govan from the biological unit of the Forensic Science Laboratories testified that after receiving on 19 March 2009, the sexual assault kit and specimen collected by Dr Kashif he analysed it and compared it with the control blood sample of the accused without any contamination or the occurrence of any irregularity. The end results were that the male DNA profile that was found in the sexual kit samples matched the DNA profile of the accused.

[116] It is reiterated that no challenge had been mounted to the acceptance into the record of the DNA chain evidence.

[117] The accused's defence that a used condom found and confiscated at his house on the date of his arrest is also far-fetched and fallacious because at the time the sexual assault kit was received for analysis the accused was not arrested.

CASE 18: COUNTS 59-61 (LENASIA CAS 683/01/09)

[118] On 27 January 2009 the body of ANW was found at Mosquito Valley in Lenasia. The deceased was strangled and the ligature, a piece of blue fabric, was still around her neck. She had also been raped. The accused denies having kidnapped, raped and murdered the deceased.

[119] The State led the evidence of Edward Ysiliso Molahlehi, the deceased's uncle as well as DNA evidence.

[120] Edward Molahlehi testified that a few weeks before the disappearance of her niece, i.e. the deceased, he visited her home at her bidding as she was ill. She was residing at Thembalihle Squatter Camp or Informal Settlement. Upon his arrival there he saw a man who was sporting a ZCC badge on his chest and whom he identified as the accused before this Court, leaving the deceased's house by going towards the backyard side. He was entering through the front entrance. Out of curiosity he (the witness) went to check where the accused went out at the back and discovered that there was no gate or entrance or exit at the back of the yard. He concluded that the accused should have vaulted a fence at the back. This witness also made a dock identification of the accused.

[121] Later that month the deceased went missing.

[122] On 17 February 2009 he identified her body at the Diepkloof Government Mortuary.

[123] The accused's version during cross-examination was that he was never at the deeased's home during January 2009 or at any time.

DNA EVIDENCE

[124] As stated above Capt Govan's evidence on the chain of DNA evidence was never disputed by the defence. This Court can thus safely accept that the accused admitted that where DNA evidence was obtained from the bodies of the deceased or victims including this deceased, the specimen was properly sealed, referenced, transported and received by the Forensic Science Laboratory.

[125] According to Capt Govan from the biological unit of the Forensic Science Laboratory the samples in the sexual assault kit collected by Dr Klepp during the autopsy on the body of the deceased was properly analysed by him and compared with the control blood sample of the accused without any contamination or the occurrence of any irregularity. The results reached or arrived at were that the male DNA profile that was found in the sexual assault kit matched the DNA profile of the accused.

[126] The accused riposte hereto was the issue he raised in other cases: that a used condom was taken from his home on 27 March 2009 when he

was arrested and that the DNA profile taken therefrom were used to frame him.

[127] In this case there is evidence that a used condom was found by the police about five (5) meters from where the body of the deceased was lying. It was sent for analysis and comparison with the control blood sample of the accused. The results revealed that there was no match between the DNA profile collected from the condom and the accused's. The explanation herefore is found in the testimonies of W/O Ungerer, Capt Govan and Prof Labuschagne: their explanations are that the general area where the deceased's body was found was frequented and used by sex workers or prostitutes and that consequently a strong possibility existed that this condom may belong to another person other than the perpetrator of the crimes set out in the indictment herein.

CASES INVOLVING CIRCUMSTANTIAL EVIDENCE AND SIMILAR FACT EVIDENCE

[128] There are three (3) cases or 10 counts in which the State relied on a combination of circumstantial evidence and similar fact evidence. They are:

- Case 1: Counts 1-4 (Lenasia CAS 283/01/2010).

- Case 8: Counts 27-29 (Lenasia CAS 711/01/2009).

- Case 13: Counts 44-46 (Westonaria CAS 34/03/2009).

[129] I have already explained in brief what circumstantial evidence means and entail. For the uninitiated I will also give a brief outline of what similar evidence is.

[130] The use and/or admission into the record of proceedings of similar fact evidence is closely aligned to rules of relevance and admissibility as seen within the Law of Evidence. This principle is aptly illustrated by Innes CJ in *R v Trupedo* 1920 AD 58 where the learned Chief Justice put it at 62 as follows:

> "*The general rule is that all facts relevant to the issue in legal proceedings may be proved. Much of the law of evidence is concerned with exceptions to the general principles … But where its operation is not so excluded it must remain as the fundamental test of admissibility.*"

[131] Similarly, similar fact evidence is closely linked to and with evidence as to character. The topic of similar fact evidence involves a consideration of the requirement that evidence, if it is to be received, must be logically relevant and of sufficient probative force to warrant its reception despite any practical disadvantages that might be caused by admitting it. English law principles regarding character evidence also play a big role when similar fact evidence is considered or used. In Hoffman and Zeffertt : *The Law of Evidence* 4th Edition, the respected authors put it as follows at p 52:

> "*… Similar fact evidence, it will be seen, is only exceptionally admissible. It will be received, exceptionally, only if it is, first,*

sufficiently relevant to warrant its reception and, secondly, if it has a relevance other than one based solely upon character."

[132] In *Omega, Louis Brandt et Frere SA and Another v African Textile Distributors*, 1982 (1) SA 951 (T) Nicholas J held among others that similar fact evidence should be received only where it is not oppressive or unfair to the other side and the other side has had fair notice of it and is able to deal with it.

[133] The prosecution may not adduce similar-fact evidence of improper conduct by the accused on other occasions if its only relevance is to show that the accused is of bad character and is, therefore, likely to have committed the offence. However, such similar fact evidence will be admissible if it has a relevance other than by way of this forbidden line of reasoning if its probative force is sufficiently strong to warrant its exceptional reception despite any practical disadvantages and despite its potentiality to prejudice the accused.

See: *DPP v Boardman* (1975) AC 421 (HL) [1974] 3 All ER 887.

[134] In *S v Nduna (supra*) Ebrahim AJA held among others that whilst similar fact evidence is admissible to prove the identity of an accused person as the perpetrator of an offence, it cannot be used to prove the commission of the crime itself. The honourable court added that this legal principle operates, in addition, to exclude such similar fact evidence from being confirmatory

material on another count. The learned judge proceeded to elucidate the above principle by stating that:

> "*18. However, the application of the rule is not to be confused with the situation where the rule is invoked to establish the cogency of the evidence of systematic course of wrongful conduct, in order to render it more probable that the offender committed each of the offences charged in respect of such conduct. C S v Gokool 1965 (3) SA 461 (N) at 475A-D). The appellant's argument, if it were to be accepted, would be tantamount to excluding evidence of the modus operandi of the appellant merely because he had been charged with more than one count of robbery.*"

[135] In *S v Gokool* 1965 (3) SA 461 (N), Harcourt J said the following at 475D-F:

> "*It is clear that each count brought against an accused person must be considered separately and that the admissibility of evidence on each count must be tested as if that count had been the only count against such accused - R v Buthelezi , 1944 T.P.D. 254. But this does not prevent material, which could be admissible under the rules relating to similar fact evidence, from being received merely because a plurality of counts is involved in a case.*"

[136] The above rules and principles speak to the circumstances of this case and similar fact evidence was thus quite relevant.

[137] I now proceed to evaluate the evidence on the cases or counts I -4 mentioned above.

CASE 1: COUNTS 1-4 (LENASIA CAS 283/01/2010)

[138] On 17 March 2008 the deceased, HEM, went missing after attending a court case in Westonaria as a witness in which the accused was one of the people charged. Her body was found on 14 May 2010 and due to advanced decomposition was only identified positively through parental DNA analysis. She had been murdered and the accused is charged with kidnapping, robbing, raping and murdering her. The accused denies all these allegations or charges.

[139] Four (4) witnesses and evidence of cellphone use were utilised by the State to substantiate the charges.

[140] The first witness, Betty Maluleke, testified to the effect that she was the deceased's friend and on 17 March 2008 they attended a court case at Westonaria Magistrate's Court as witnesses and the accused and others were standing arraigned on fraud charges. After the case was postponed she and the deceased boarded a train going in the direction of Soweto via Lenasia. The accused also boarded the same train, sitting with them among other passengers in the same coach.

[141] She testified further that the deceased and the accused even had a conversation together and the deceased even asked for an amount of R2,00 from the accused.

[142] The deceased told her that she was going to alight at Waterworks Station instead of her usual railway station that was further ahead and that despite her (the witness's) protestations about her not being comfortable with her (deceased) alighting at Waterworks the deceased persisted and alighted from the train at Waterworks. Her explanation was that she wanted to do some purchases at Lenasia. The accused also alighted after the deceased at the same railway station.

[143] When the deceased did not arrive home that day her people confronted her about her whereabouts and she told them about the last time she saw her when she alighted from the train together with the accused. The deceased people confronted the accused and he professed lack of knowledge of her whereabouts.

[144] During cross-examination it was put to this witness on behalf of the accused that he did travel in the same train with the deceased and the witness but after he and the former had exited the train he did not know where she went to thereafter.

[145] Vincent Sambo a relative of the deceased testified that after reporting the disappearance of the deceased to the police, he went with them (police) to the accused's place to confront him about the deceased's disappearance. He was together with one Kennel Ndlovu and the latter confronted the accused about the deceased's whereabouts. According to Sambo the accused told the enquiring party that after he and the deceased left the train the deceased

went to Lenasia and he went in the opposite direction. This witness confirmed the deceased's cellphone number as being 073 283 7779.

[146] Kennel Ndlovu testified that he questioned the accused after receiving information from Betty Maluleke about them disembarking off the train together at Waterworks. He stated further that the accused became nervous or angry but definitely jumpy and denied ever being with the deceased on the day of her disappearance. Accused was arrested for kidnapping but charges were withdrawn by the prosecutor and investigations continued.

[147] The next witness, Frans Aphane, testified that he attended the Westonaria Magistrate's Court on 17 March 2008 as a co-accused of the accused herein in that case. After the case was postponed, as was usual or the case during other court appearances, he offered the accused a lift in his car as he was also going to where the accused also resided – being Waterworks. The accused this time declined the offer, telling him that he was going to Germiston and as such would use a train. This witness confirmed that the accused wore a ZCC badge as well as sangoma beads at the same time. He also stated that the accused had told him that he (accused) was a prophet who could heal illnesses and ailments. The accused even showed him a pamphlet in which he advertised or enumerated the illnesses, ailments or conditions he specialised on. For the record, such an advert or pamphlet was handed in as Exhibit CM4 without any objection to it being raised by the accused or his defence counsel. It was one of the items found and confiscated from the accused's home during his arrest.

[148] I should mention here that throughout this trial the accused would have refresher consultation his counsel with the leave of this Court. I assumed it was to give and receive further and proper instructions because these consultations would be at the tail end of cross-examination.

[149] On their next court appearance at Westonaria the deceased's people confronted the accused about the deceased and he told them that he did not know where she was. He also told this Court that the fraud charges were so serious and the disappearance of key-witnesses so frightening and suspicious that the state witnesses (complainants) in that case even begged the magistrate to withdraw the charges against all the accused as they also feared they would disappear without trace. He added to his testimony and stated that he himself confronted the accused about the whereabouts of the deceased since they left together on the day of her disappearance. According to this witness the accused told him that he left her somewhere at Lenasia as he was about to board a train to Vereeniging.

[150] Accused disputed this witness's testimony in as far as it involved the deceased.

[151] Klaas Moipolai corroborated Aphane's story.

CELLPHONE RECORDS

[152] Capt Möller testified that after studying the cellphone records he had received from MTN Cellular Services he established that the IMEI number of the deceased's cellphone with sim card number 073 283 7779 was 35230001315240 and that she had been using it from December 2006 until 17 March 2008 i.e. until the day of her disappearance.

[153] A study of the IMEI-mapping of the accused's cellphone and number indicated that the accused had inserted his own sim card in the deceased's cellphone and used it between 15h15 and 15h51 on the date of the deceased's disappearance.

[154] It should be mentioned that according to evidence led, the postponement of the case at Westonaria Magistrate's Court on 17 March 2008 was done in the morning.

[155] The rape charge will be dealt with under similar fact evidence.

CASE 8: COUNTS 27-29 (LENASIA CAS 711/01/2009)

[156] On 19 January 2009 the deceased herein, ST, went missing during her lunch break at her workplace. Her body was found on 26 January 2009 with a ligature around her neck. She had been strangled and also raped.

[157] What is in dispute is whether it is the accused who kidnapped, raped and murdered the deceased.

[158] The State led the evidence of two witnesses, her work colleague, Bongiwe Thulisiwe Ntsele and Zacharia Tshoeu Molakeng.

[159] According to Bongiwe Ntsele she and the deceased worked for a Dr Shabangu to distribute advertisement pamphlets. On 19 January 2009 she and the deceased operated at different sides of the public parking lot of a shopping complex in Lenasia. During lunch time the deceased came towards her where she was positioned near the employer's surgery accompanied by a male person. That person was the accused before this Court. The deceased informed her that she was leaving with the accused to a church where she wanted the bishop to pray for her so that she can be healed of her disease. She however assured her that she would be back by 14h00. The accused and the deceased then left together.

[160] Before the two left together the deceased entered their place of employment to leave her bag and cellphone, leaving the accused with her outside. That was when, according to this witness, she conversed with the accused. In fact the accused started prophesying to her about her family problems. She cut him short by telling him that as a saved Christian she did not believe in such pagan prophesies.

[161] The deceased did not return at 14h00 as promised.

[162] Later that afternoon she (witness) saw the accused around her working precinct and confronted him about the whereabouts of the deceased,

whereupon the accused responded that he did not leave with her (deceased) but only accompanied her to a car that was to take her to the church she wanted to attend.

[163] When it dawned on her that the deceased was in fact nowhere to be found or seen, she went to tell the deceased's husband all that had happened.

[164] This witness was positive about the accused's identity: she described his facial features and even mentioned that he had lacerations or scars on both his forehead and lower lips. A photo-album already accepted or received as an exhibit in this Court with the blessing of the accused's defence counsel was shown to the witness and she pointed at the areas in the accused's face where there were clearly visible scars or lacerations on the photos in the album.

[165] The accused's cross-examination was geared at telling the witness and this Court that he did not have injuries and consequently scars on his forehead and lip. In fact the accused came up with a different answer in his evidence-in-chief which contradicted all these that was put to the witness Bongiwe Ntsele.

[166] Zacharia Tshoeu Molakeng confirmed the evidence of Bongiwe about how the accused was dressed. Accused's further defence was that at the time of this incident his legs were incapacitated by injuries he sustained

during the previous years. Bongiwe Ntsele was adamant that the accused was not using a stick to walk: she said he was walking freely, with no stick as support.

CASE 13: COUNTS 46-44 (WESTONARIA 34/03/2009)

[167] On or about 22 February 2009 the deceased herein, DCG went missing after leaving home to travel to Carletonville for a funeral. Her body was found on 1 March 2009. She was strangled with a ligature and she had been raped.

[168] The accused also denies all charges of kidnapping, rape and murder.

WARNING STATEMENT TAKEN BY BRIG BYLEVELDT

[169] In the warning statement the accused is said to have made before Brig Byleveldt at Brixton Police Station, on 14 April 2009 the accused makes mention of picking up a black woman with a light complexion who was on her way to Carletonville. He also described the route he followed after turning off the main route, away from the direction to Carletonville. The end destination he mentioned or described corresponds exactly with and to the place where the body of the deceased herein was found – murdered and raped. In the warning statement the accused is heard to state that he raped or had sexual intercourse with that woman against her will twice before he assaulted and left her there at the scene in the veld.

[170] I will deal with this matter further when I evaluate the totality of the evidence in the light of all the probabilities, circumstantial evidence, similar fact evidence as qualified and elucidated by the linkage evidence tendered by Prof Labuschagne.

SIMILAR FACT EVIDENCE

[171] I have already outlined in brief what similar fact evidence is and how relevant it is in cases like this where the court has to do with a serial rapist(s) or murderer(s). To add thereto, similar facts are admissible if they are relevant and evidence can be relevant only if a reasonable inference may be drawn from it about a fact in issue. Similar fact evidence is not just about criminal propensity. There must be a logical connection between the *facta probans* (similar facts) and *facta probanda* (facts to be proved). Such connection may be found through the improbability of coincidence and the more striking the similarity of the events are, the more probable the possibility of the coincidence would be.

[172] Lord Wilberforce put it more succinctly in the House of Lords decision in *Director of Public Prosecutions v Boardman (supra)* when he said:

> "*… the basic principle must be that the admission of similar fact evidence is exceptional and requires a strong degree of probative force. The probative force is derived from the circumstance that the facts testified to by the several witnesses bear to each other bear such a striking similarity that they must, when judged by experience and common sense, either all be true or have arisen from a cause common*

to the witnesses or from pure coincidence. The jury may, therefore, properly be asked to judge whether the right conclusion is that all are true, so that each story is supported by the other."

[173] With the above quotation setting the tone a trier of fact may be within his rights and supported by the law to come to the following summation:

- If all the proven facts give rise to a logically consistent inference with a high degree of probability that a crime was committed, why should such facts be disregarded or doubted?

- It follows from this line of reasoning that in cases in which the identity of the criminal is the key issue, facts proven in relation to other charges establishing a propensity to commit the offence in question, may in the circumstances of the case be so highly relevant to the question of identity as to be admissible.

- This would be particularly so where the proven facts points to a signature behaviour, ritualistic conduct and a peculiar *modus operandi* that is crystallised.

[174] Proof of an abnormal propensity on the part of an accused is highly relevant to, and probative of, the issue of identity where the signature attending various crimes indicates the presence of that abnormal propensity.

The accused's criminal disposition established by his previous conduct also may be relevant to identify him as a killer.

See: *R v Straffen* [1952] 2 All ER 657 (QB).

[175] In the above English case the accused was charged with the murder of a little girl who had been strangled without any attempt to sexually assault her or conceal the body. There was no incriminating evidence against the accused except the fact that he was known to have been frequenting the area where the death occurred at the time the murder took place. The prosecution used similar fact evidence to the effect that some time earlier the accused had strangled two other little girls in very similar circumstances. This evidence was held admissible on the ground that it was relevant to identity of the perpetrator who was found to be the accused.

[176] Our highest court of appeal, presently the Supreme Court of Appeal, has also concluded that evidence of abnormal propensity is not only admissible but in and of itself will be sufficient to be the basis of a conviction provided that the inference is logically consistent with and the only reasonable inference to be drawn in the circumstances.

See: *S v D* 1991 (2) SACR 543 (A).

[177] In the above case the appellant committed a series of rapes and robberies in a particular area within a period of about four (4) months. The crimes committed by an unidentified assailant were committed in the same

area and in the middle of the series of similar crimes. The same pattern of conduct which was followed by the appellant in all the other crimes was also followed by the unidentified assailant. These crimes were all committed during the mornings or early afternoon when the victims would likely be alone. His *modus operandi* was the same and he had a predilection for wrist watches. On the basis of the linkage analysis evidence the judge concluded that cumulatively viewed, the similarities in all the crimes of the unidentified assailant and those of the appellant were sufficiently striking to corroborate the other circumstantial evidence pointing to the appellant as the culprit, thereby signifying a strong endorsement by the Appellate Division of the admissibility of linkage analysis evidence and similar fact evidence.

[178] Grosskopf JA put it among others as follows:

> "*The facts surrounding the rapes and robberies proved to have been committed by the appellant in the present case bear such a striking similarity to the facts of the rape and robbery committed by the unidentified assailant, that evidence of the former should, in my opinion, be admissible as similar fact evidence.*"

SIMILAR FACT EVIDENCE AS ELUCIDATED BY LINKAGE ANALYSIS EVIDENCE

[179] In the following instances the State relied on purely similar fact evidence as elucidated or explained or coloured by linkage analysis evidence:

- Case 2: Counts 5-8 (Lenasia CAS 264/10/08).
- Case 3: Counts 9-11 (Lenasia (CAS 797/09/08).
- Case 4: Counts 12-14 (Westonaria CAS 156/12/2008).
- Case 5: Counts 15-18 (Westonaria CAS 157/12/2008).
- Case 7: Counts 24-26 (Lenasia CAS 709/01/09).
- Case 10: Counts 33-35 (Lenasia CAS 710/01/09).
- Case 11: Counts 36-40 (Lenasia CAS 712/01/09).
- Case 14: Counts 47-49 (Lenasia CAS 728/03/09).
- Case 15: Counts 50-52 (Westonaria CAS 228/03/2009).

[180] For completeness sake Case 2 involves the kidnapping, rape, robbery and murder of DEM around Anchorville, Lenasia between 5 and 10 October 2008; Case 3 involves the kidnapping, rape and murder of an unidentified adult woman near Mosquito Valley, Lenasia around September 2008; Case 4 involves the kidnapping, rape and murder during November to December 2008 of an unknown black female whose body was found near West End Brick and Clay, in Westonaria; Case 5 involves the kidnapping, rape, murder, another rape and another murder of two unknown black females around 6 December 2008 near West End Brick and Clay; Case 7 involves the kidnapping, rape and murder during December 2008 of an unknown adult female person near Avalon, Lenasia Extension 1, Lenasia; Case 10 involves the kidnapping rape and murder of an unknown adult female person near Mosquito Valley, Lenasia during or about January 2009; Case 11 involves the kidnapping, rape and murder of an adult female person as well as the kidnapping and murder of a small child near Anchorville, Lenasia around

January 2009; Case 14 involves the kidnapping, rape and murder of an adult female person, UES near Anchorville, Lenasia, around February and March 2009; and Case 15 involves the kidnapping, rape and murder of an unknown adult female person near West End Brick and Clay, Westonaria around February and March 2009.

[181] In all the above cases or counts the accused made admissions in terms of section 220 of Act 51 of 1977 concerning the discovery, recovery, cause of death and identity (where applicable) of the deceased. He also admitted that the crime scenes were not contaminated and the victim did not sustain further injuries when removed from the crime scenes until *post mortem* examinations were conducted. He did not dispute that samples and items were obtained and retrieved from the bodies and crime scenes and sexual offences kits were properly sent to the Forensic Science Laboratory for analysis.

[182] However, the accused denied kidnapping, raping, murdering and robbing the victims.

[183] The State relies on circumstantial evidence and similar fact evidence as well as the linkage analysis which was done and testified to by Prof Labuschagne.

[184] According to his *Curriculum Vitae*, which formed a separate part of his report, Prof Labuschagne is a world renowned expert on serial murders. He holds a PhD degree in psychology as well as two Masters Degrees, one in psychology and one in criminology. He is the Commander of the Investigative Psychology Unit of the South African Police and holds the rank of Colonel. His unit provides offender profiling and investigative support services to the South African Police. He has an impressive employment history and holds membership of various professional bodies in the fields of psychology and criminology. He has made a number of conference presentations, has published in accredited journals and has testified in many criminal cases. Since 2001 he has been involved in the investigation of 24 serial murder cases – 22 in South Africa and 2 overseas. His post-graduate dissertations were discourses on serial murders in South Africa. He has been recognised in international academic writings as one of the world's foremost experts in profiling psychologically motivated crimes.

[185] When he testified in this case he was awesome indeed! He was a particularly impressive expert witness who presented his evidence in a lucid, professional and objective manner. His evidence has been of immense help to this Court.

[186] When a series of mysteriously dead bodies were discovered around Lenasia – Westonaria at first the police thought they were run-of-the-mill murders by some depraved murderer or murderers. However, when a forensically consistent pattern in the causes of death in respect of the many

victims of death and rape became ascertainable from the apparent *modus operandi* of the perpetrator and certain ritualistic or signature behaviour by the perpetrator emerged, the police concluded that a distinct possibility existed that the murders, rape, robbery and concomitant kidnapping were the work of a serial murderer. That is when Brig Byleveldt of the Police Serial Crimes Unit was roped in to lead investigations. The various case dockets from Lenasia, Venterspos and Westonaria were centralised under a single investigator, W/O Ungerer who reported to Brig Byleveldt and his team of special investigators. They were based at Brixton Police Station. Prof Labuschagne was also brought onto the cases to lend his specialised talents to the investigations.

[187] Prof Labuschagne testified fully about the murders in all the charges and explained how through the use of linkage analysis he came to the conclusion that al the murders and concomitantly all the other accompanying criminal acts forming the subject matter of the charges herein were the work of one serial killer namely, the accused in this case.

[188] To summarise his evidence, he testified to the effect that between the period March 2008 and March 2009, fifteen (15) adult black females and one black child were murdered around Westonaria, Venterspos and Lenasia areas. One adult black female survived the attempt to murder her and thus lived to tell the tale. The geographical area of the murder, as stated above, was around Westonaria, Lenasia and Venterspos. The Lenasia and Westonaria crimes were grouped nearby each other while the two Venterspos cases were also grouped nearby each other. Because most of the bodies

were found in the general vicinity of West End Brick and Clay factory, the police dubbed the then unidentified perpetrator the "*West End Serial Killer*".

[189] The "*tools*" used to cause the deaths were all found at the scenes of the murders. "*Strangulation*" was used in 13 of the cases and "*blunt force trauma*" was used in 4 incidents. Fourteen (14) of the incidents had a sexual theme. The suspect's "*signature*" in the series was the targeting of adult black females for sexual murders involving strangulation, usually by using one or other type of ligature, and leaving their partially naked bodies in or around the same geographical area. In cases where the victims were known or identified, they all went missing during the daytime.

[190] Prof Labuschagne came to the conclusion that the crimes committed in Cases 3, 4, 7, 8, 9, 10, 11, 13, 14, 15 and 18 were undoubtedly the work of the same offender when regard was had to the geographical location of the crime scenes, the sexual theme to the incidents, the presence of a ligature around the victims' necks and the victimology. He further concluded that Cases 1, 2, 5, 12 and 16 were all possibly linked to the same offender who perpetrated the other mentioned cases.

[191] In a nutshell, Prof Labuschagne's testimony connected the accused herein to all the counts in this indictment except Counts 19, 20, 21, 22 and 23 involving the complainant NM as well as Count 58 involving the accused's escape from custody.

[192] Prof Labuschagne was categoric that there was no possibility of a copy-cat killer being involved here.

[193] The accused's defence in all the charges except Counts 19, 20, 21, 22 and 23 involving NM is one of a bare denial. In respect of the NM counts or charges as set out above the accused admits having had sexual intercourse with the complainant on the date mentioned in the charge but contends that such intercourse was consensual. He further contends that the sexual intercourse occurred at the backroom the complainant lived in at Lenasia, not in the bush as the complainant testified. He denies assaulting her, raping her, kidnapping her, defrauding her, indecently assaulting her or stealing anything from her.

DEFENCE CASE

[194] In answer to the individual charges levelled against him the accused led *viva voce* evidence in his defence. He did not call any witnesses.

[195] With regards to Counts 1-4 the accused denied ever seeing BM embark and/or alight from the train he was using from Westonaria until he disembarked at Waterworks station, let alone share the same coach. This version in chief contradicted his version during cross-examination of BM: that indeed he and Betty were seated in the same coach and that she even asked him for R2,00 which he said he did not have. In relation to evidence tendered by Frans Aphane and Klaas Moipolai about his responses upon being asked

about the whereabouts of the deceased herein, HEM, that he said he did not know where she was, he came up with a different answer to Frans Aphane as stated above to the effect that he left the deceased at the shops at Lenasia. In chief he came up with a completely new version in his evidence: that in fact on that date he was always in the company of his sister Rebecca who exited the train with him at Waterworks. It is common cause that this version was never put to the state witnesses, when they testified. The sister, Rebecca, was never called to come and corroborate this version despite it having been put directly to him during cross-examination that if this version is true, then his sister, who incidentally attended the trial regularly, should come and testify to confirm it. He could not explain how his sim card was inserted and used in the deceased's cellphone at 15h05 on the date of her disappearance, which was long after the accused and the deceased her alighted the train from Westonaria.

[196] With regard to Counts 5-8 (DEM) the deceased was a member of the Thembelihle ZCC branch. Accused testified that he only attended this specific church once, a far cry from the impression given during cross-examination of state witnesses that it was one of the churches he frequented.

[197] With regard to Counts 12-18 (the two unknown adult females whose bodies were found near West End Brick and Clay between November 2008 and 6 December 2008) the accused agreed that the area where they were murdered was about half a kilometre from his home. He however denied having anything to do with their deaths.

[198] With regard to Counts 19-23 (NM) the accused testified that he met and proposed to the complainant during about November 2007 and were lovers until he met and fell in love with Charlotte Manaka. The latter testified that the period was April 2008. Accused avers that on 23 December 2008 the complainant called him on his cell and asked that he meet her at DB Supermarket at Lenasia. That was the time he was with Charlotte Manaka busy buying groceries and things for Christmas. That after agreeing with Charlotte that he should go buy liquor, he accompanied her to the taxi rank on her way to her house in Soweto. They were to meet again at his house at Waterworks, Lenasia in the evening. He then went to meet the complainant and they walked to her place at her workplace and agreed to meet again the following day. According to the accused, the following day he visited the complainant as agreed and they shared the coffee he brewed, had consensual sex in her room and he then went to his house where he found his girlfriend or fiancé angry with him for returning late.

[199] When asked about the specifics of their relationship the accused started clutching at straws. He changed his version from one where he and the complainant were straight lovers until 24 December 2008 to one wherein he was trying to end it and the complainant was insistent that it continue. He could not tell what her telephone number(s) was or when her birthday was.

[200] It is the accused only who mentions the DB Supermarket as their rendezvous, which aspect is contained in the warning statement of Brig

Byleveldt. The complainant never mentioned this name in her evidence-in-chief, neither was it put to her in cross-examination that it was material to their meeting on 23 December 2008.

[201] His evidence-in-chief renders the contents of Brig Byleveldt somewhat important: At no stage did the complainant mention having sex with the accused inside her room yet the accused testified to that effect in chief. The warning statement by Brig Byleveldt also mentions he having sex with the complainant twice inside her room in addition to again in the veld. It begs the question where did Brig Byleveldt get this information from.

[202] With regards to Counts 24-26 (unknown adult female whose body was found at Avalon, Lenasia Ext 1 between December 2008 and January 2009) purely circumstantial evidence, similar fact evidence and linkage analysis evidence is being relied on.

[203] With regards to Counts 27, 28 and 29 (ST) the accused's defence is a bare denial. He denies knowing or having seen the state witnesses Bongiwe Ntsele on the date of the deceased's disappearance or at all. He professes no knowledge of the deceased also.

[204] When the witness told this Court that she could identify the accused by among others a scar on his forehead and a red scar on his lower lip the

accused vehemently denied ever having had such scars. The photos in the exhibits that he himself had admitted as being correct and depicting himself and other scenes the accused definitely have the two scars. Even in court, those scars were quite visible and distinguishable.

[205] This baseless denial of a clearly visible identifying mark can only work against the accused's credibility and reliability as a witness.

[206] With regards to Counts 30-32, the accused's defence is a bare denial. He denied ever going to the Caltex Garage mentioned by state witness Nozuko Maqanta. Under cross-examination the accused tried to put it across that he does not reside at Zuurbekom but was forced admit it when it was pointed out to him that his suburb of Waterworks was situated in Zuurbekom. Evidence was also elicited that on the date of the deceased's disappearance the accused's personal cellphone was used near the area of Caltex Garage. He never disputed this.

[207] With regard to Counts 33-35 (murdered and raped body found at Mosquito Valley around January 2009), Accused denied any knowledge thereof but could not explain how his DNA profile found its way into the samples that were collected in a sexual crime kit at the crime scene.

[208] With regards to Counts 36-40 (murder and rape of unknown adult female with a child near West End Brick and Clay during January 2009). The

accused denies any complicity but cannot say how his DNA was found at the scene or how the method used was identical with the other murders.

[209] With regards to Counts 41-43 (unknown adult female found murdered and raped near West End Brick and Clay on 29 January 2009). The State relies on linkage analysis evidence here. The accused's defence is a bare denial. Yet DNA evidence linked him.

[210] With regards to Counts 43-46 (DC G found dead and raped near Venterspost during February-March 2009). Accused denies any complicity in these crimes. Yet, despite all that, the warning statement to Brig Byleveldt mentions graphic details about the kidnapping, rape and murder of a woman on her way to Carletonville.

[211] With regards to Counts 47-49 (deceased UES found murdered and raped near Anchorville, Lenasia Ext 1 in February-March 2009). The accused did not lead any evidence on these counts in his defence, except for a general denial.

[212] With regards to Counts 50-52 (unknown murdered and raped woman whose body was found near West End Brick and Clay around February-March 2009). The accused did not lead any specific evidence hereon except for a general denial.

[213] With regards to Counts 53-57 (DMT aka M). The accused denied knowing the complainant. In the warning statement he allegedly made to Brig

Byleveldt the accused mentioned what happened to this complainant. As stated hereinbefore, Brig Byleveldt could not have obtained this evidence, especially of what actually happened to the complainant at the scene of crime because at the time the warning statement was written down, the latter was still in hospital, her jaws wired shut and could not yet speak. The accused also alluded to the student police witnesses at the subsequent Identification Parade bringing the complainant to the cells where he was detained solely for purposes of showing him to her. As stated above again, this version is highly improbable in the light of him being represented by an attorney at the parade and the latter not noticing or reporting such a flagrant disregard of the rules. It becomes more absurd when the accused's version that he actually reported this to his attorney is taken into account. The accused could also not explain how his DNA profile found its way to the crime scene.

[214] With regards to Count 58 (escaping at Brixton Police Station on 14 April 2009) the accused's version is that he was ordered by the cell police to go to court despite the fact that it was not his court day or the court he was to appear at. He denies the version that he did not respond to his name being called at the court cells or being found "*hiding*" in the cell toilet. He could not explain what he was doing on the toilet seat at the back of the cell fully dressed and with a cap pulled over his eyes.

[215] With regard to Counts 59-61 (deceased ANW whose murdered and raped body was found near Mosquito Valley, Lenasia in January 2009) the accused's defence is a bare denial. He also disputed the deceased's uncle,

Edward Molahlehi's evidence that he saw him at the deceased's home just before she disappeared. He also in this instance could not explain how his DNA profile found its way into the samples collected in a sexual assault kit at the crime scene.

[216] This aspect is also contained in the warning statement made to Brig Byleveldt. What is more revealing from the accused's evidence is that he voluntarily took the police to areas to make pointing-out but he categorically stated that he deliberately took the police to wrong scenes or areas. He thus admitted deliberately taking the police on a wild goose chase. Coincidentally, although he did not point at the exact areas where the bodies of victims were found, he nevertheless took the police to the forests and thickets in the general areas where the crimes were committed.

[217] As part of the accused's defence he tried to rely on *alibi*. It is trite law that an *alibi* defence should be considered in the light of the totality of the evidence given in the case and the court's impression of all the witnesses.

See: *S v Khumalo* 1991 (4) SA 310 (A).

[218] One would have expected the accused to follow up this *alibi* defence with a witness(es) to confirm his *alibi* but he did not call any. It is true that there is no burden on an accused person to prove his *alibi*.

See: *S v Shabalala* 1986 (4) SA 734 (A).

S v Hlongwane 1959 (3) SA 337 (A).

However, the accused did not come up with this *alibi* defence when state witnesses were being cross-examined. He only brought it up during his evidence-in-chief. As stated above, the witness(es) he was alluding to as his *alibi's* were throughout this case in court and as such there cannot be a situation of him not locating them. Negative inferences may under such circumstances sometimes be drawn and it is my considered view that I am entitled to draw such inferences in this case.

EVALUATION

[219] Proof of an accused's guilt beyond a reasonable doubt is what the State must achieve before it succeeds in pushing the wall of guilt onto the side of the accused. There is no duty on an accused person to push any part of that wall onto the side of the State. An accused's person should be acquitted if the State evidence is not strong enough. He should be acquitted if there exists a reasonable possibility that his evidence may be true.

See: *S v Alex Carriers (Pty) Ltd en 'n Ander* 1985 (3) SA 79 (T).

S v Radebe 1991 (2) SA 166 (T).

S v Munyai 1986 (4) SA 712 (V).

[220] In evaluating the evidence led the court must not decide the matter in a piecemeal fashion. All the evidence presented must be taken into account. The state case and the defence case are not to be viewed in isolated compartments. They must be weighed, the one against the other, looking at both as part of a whole while all the time bearing in mind that it is the State that bears the *onus* of proving the accused's guilt beyond a reasonable doubt.

See: *S v Chabalala* 2003 (1) SACR 134 (SCA).

S v Van Aswegen 2001 (2) SACR 97 (SCA).

[221] The court does not have to believe the defence story, still less does it have to believe it in all its details. It is sufficient if it views it as being reasonably possibly true.

See: *R v M* 1946 AD 1023 at 1027.

S v Jaffer 1988 (2) SACR 84 (C) at 89D.

[222] The court must also not only apply its mind to the merits and demerits of the State and defence witnesses but also to the probabilities of the case. Such probabilities should also be tested against the proven facts that are common cause.

See: *S v Abrahams* 1979 (1) SA 203 (A).

S v Mhlongo 1991 (4) SACR 207 (A).

S v Guess 1976 (4) SA 715 (A).

S v Trainor 2003 (1) SACR 35 (SCA).

[223] The identity of the perpetrator of the crimes set out in the indictment is an important aspect that must be decided on the evidence that has been led. When a court has to deal with evidence of identity, it has to scrutinise it closely. The court must be satisfied, before it accepts such evidence, that the identifying witness in fact has a recollection of the person concerned which goes beyond being merely an impression.

See: *S v Mehlape* 1963 (2) SA 29 (A) at 32E-G.

[224] In *S v Ndika and Others* 2002 (1) SACR 250 (SCA) Marais JA held among others at 256 that it is of course so that the honesty of a witness in identifying a person is not a guarantee of its correctness. The objective circumstances attending to the observation of the person and the safety of the mind of the observant are just as critical. The identification must also be reliable.

[225] In *S v Mthetwa* 1972 (3) SA 766 (A) Holmes JA held as follows at 768A regarding identification:

> "*Because of the fallibility of human observation, evidence of identification is approached by the Courts with some caution. It is not enough for the identifying witness to be honest: the reliability of his observation must also be tested. This depends on various factors, such as lighting, visibility, and eyesight; the proximity of the witness; his opportunity for observation, both as to time and situation; the extent of his prior knowledge of the accused; the mobility of the scene; corroboration; suggestibility; the accused's face, voice, build, gait, and*

dress; the result of identification parades, if any; and, of course, the evidence by or on behalf of the accused. The list is not exhaustive. These factors, or such of them as are applicable in a particular case, are not individually decisive, but must be weighed one against the other, in the light of the totality of the evidence, and the probabilities."

See also: *Nomandela and Others v State* [2007] 1 All SA 506 (E).

[226] Where a conviction depends on identification alone, a court must be satisfied that the identifying witness is truthful and perhaps, more importantly, there must be no reasonable doubt that the witness is not making a mistake regarding the identity of the perpetrator. Something more than the mere *ipse dixit* of the identifying witness is required – it may be that the perpetrator is known to the witness or it may be the perpetrator has a distinctive feature(s). It also may be that the features of the perpetrator are so burnt into the memory of the witness that despite the latter not being able to enumerate a list of identifying bodily features or mode of dress, such a witness's testimony is, in the peculiar way in which it was led and the impression such witness's demeanour in the witness stand gave to the court may be such that that the identification may be accepted as being reliable and honest.

See: *S v Sithole and Others* 1999 (1) SACR 585 (W).

[227] The accused has also been seen with some of the deceased person by single witnesses. It is trite law that such evidence of single witnesses should be approached with the requisite caution. Before the court can convict on such evidence of a single witness, it must be satisfied that such evidence is

satisfactory in all material respects or it has been corroborated by other evidence.

See: *R v Mokoena* 1932 CPD 79.

S v Ganie 1967 (4) SA 203 (N).

[228] In *S v Webber* 1971 (3) SA 754 (A) it was held among others by Rumpff JA that it is not possible to prescribe a formula in terms whereof every single witness's credibility can be determined, but it is essential to approach such evidence with caution and to weigh up the good qualities of such a witness against all the factors which may diminish the credibility of the witness.

[229] From the totality of the evidence, much of which uncontradicted and uncontested, from the section 220 admissions, the medico-legal and *post mortem* reports, the crime scene analyses and the DNA evidence which was admitted by consent in affidavits in terms of section 212 of the Criminal Procedure Act, it can be safely accepted that the bodies of all the victims, except for one child, were those of adult black females. Some had been identified while others have not. In almost all the bodies found the causes of death were mostly strangulation with or without the accompanying blunt force trauma. Most of the bodies were left lying in sexual positions – naked, and their faces were stuffed or covered with soil or mud. They had also been raped. Some of the victim's items or possessions notably cellphones, were taken away. The circumstances under which the deceased were deprived of

possession of their goods are unknown until now. If we can say they were robbed it would in my view be speculation. That the deceased's possessions were stolen cannot in my view be denied.

[230] The cause of death on Counts 4 and 8 (Cases 1 and 2) are undetermined, in Count 11 is strangulation with a blue fabric and the deceased panties as ligature; in Count 14 (Case 4) is strangulation; in Count 18 (Case 5) is blunt force trauma to head and strangulation; in Count 26 (Case 7) is strangulation with a pink strapping; in Count 29 (Case 8) is strangulation; in Count 32 (Case 9) is blunt force trauma and strangulation; in Count 35 (Case 10) is strangulation with a blue fabric; in Counts 38 and 40 (Case 11), both the adult black female and the child have been strangled with a black fabric; in Count 43 (Case 12) is blunt force trauma to head; in Count 46 (Case 13) is strangulation with the deceased handbag strap; in Count 49 (Case 14) is strangulation with a wire; in Count 52 (Case 15) is strangulation with a scarf; in Count 57 (Case 16) is blunt force trauma to head and strangulation; in Count 61 (Case 18) is strangulation with a blue fabric.

[231] In all the above cases or counts, except for Counts 4 and 35 (Cases 1 and 10) there was a sexual theme to the murders. The perpetrator's signature in all cases was the targeting of adult black females for sexual satisfaction and thereafter murdering them by strangulation or bludgeoning their heads and faces. He left the victims with the ligatures still around their necks, their bodies naked or partially naked and the area of the crimes was

the areas around West End Brick and Clay, Lenasia and Venterspos or Westonaria.

[232] In all cases where the victims were identified, they all went missing during the day. The geographical area of the crimes are close to each other around West End Brick and Clay, Lenasia area and Venterspos (Westonaria). The victimology is that of adult black females. The child also killed could have been killed because it was with its mother at the time.

[233] The evidence of Capt Govan, the forensic analyst of the Forensic Science Laboratory about receipt of the sexual offences kits before the accused was arrested and comparing those kits with the accused's control DNA sample after his arrest, the chain evidence attendant to the analysis until positive DNA matches were made with the accused herein, was not challenged by the accused. No aspersions were cast by the accused on the way the specimen were obtained, their sealing, referencing, transportation, analysis and comparison with the control blood sample of the accused.

[234] The accused was arrested after the complainant in Counts 53-57 (Case 16), M was molested. She lived to tell the tale. The witness, M S, blew the whistle on the accused after the complainant herein did not return home. The accused is quoted to have used the following words to MS after he picked up the complainant herein and had to off-load her (Mary) and her children at her home:

"*You have been saved by your faith …*"

This is one of the aspects that worried MS to such an extent that she went to report what happened during the day between her, the complainant and the accused. Her suspicions precipitated a chain of events I have already set out above which culminated in the accused's arrest.

[235] Capt F S Möller of the Hi-Tech Project Centre of the South African Police tendered uncontradicted evidence indicative of the accused herein having inserted and used his sim card in the cellphones that were in the possession of the complainants in Cases 1 (Counts 1-4), and Case 16 (Counts 53-57). His cellphone also placed him in the vicinity of the Caltex Garage from whence the complainant in Counts 30-32, NN was taken away or seen for the last time, alive. The cellphone of M (Counts 53-57) was found in the accused's possession when he was arrested.

[236] In the series of admissions in terms of section 220 by the accused, throughout the trial, the accused admitted the places and dates of death of the victims as well as the findings of the *post mortems* in respect of each victim. He also admitted that all the victims in all the counts herein were also raped prior to their deaths or before rigor mortis set in. He also admitted that cellphones were lost, stolen or robbed and he also received money from NM.

[237] The accused herein categorically denied being a traditional or spiritual healer. He even ascribed the presence of sangoma beads found at his home

to his girlfriend Charlotte Manaka. Charlotte denied these. She testified without any contradiction from the accused that he (accused) owned the sangoma beads and that he even professed to be a prophet.

[238] During his eye-opening testimony, Prof Labuschagne testified to and handed in as exhibit a satellite aerial photograph incorporating and depicting the distinct geographic locations of the murders as well as the accused's home. A road map of the location depicting the locations of the bodies found was also handed in as exhibit. They were prepared by Prof Labuschagne who testified that he did so through the use of GPS or the so-called global positioning technology. The accuracy of this data has not been disputed.

[239] Prof Labuschagne, consistent with the methodology he and others in the field have developed, once he suspected a serial murderer was at work, embarked upon developing the linkage analysis alluded to above.

[240] As already stated above, the process of linkage analysis involves the gathering of information about the crimes, reviewing that information and identifying significant features of each crime individually, determining any consistencies across the series of the crimes; and then compiling a written analysis.

[241] Prof Labuschagne reached the following conclusions which were supported by the evidence and the proven facts in this case:

- The causes of death in almost all the crimes were strangulation with or without blunt force trauma. He stated that strangulation is typically the most common cause of death in serial cases. That serial murderers have been known to alter their method of killing during their killing reign which could be as a result of experimentation, unforeseen events occurring when the crimes are in process, victim resistance, the presence of passers-by or a change in *modus operandi* as the perpetrator becomes bolder or more expert or when he needs to change.

- The manner in which the bodies of victims were found were identical and pointed to the accused being the perpetrator when regard is had to what he did to those victims that he was the last person to be seen with while alive.

- In almost all the cases the culprit's signature can be described as targeting adult black females and then leaving their bodies out in the open veld, all not very far from each other.

- The geographical profiling according to Prof Labuschagne pointed to a serial criminal, the accused: the bodies found around the Lenasia, West End Brick and Clay and Waterworks areas were close to each other. He explained that serial murderers tend to cluster their crime scenes working

ritualistically towards a central point despite the risks of apprehension or discovery.

- The professor further stated that serial murderers always worked from the parameters towards the centre or central point. He stated that the crimes herein started outwards and moved towards the centre where the accused's home was situated. He further explained that this pattern of centralisation could be the result of a growing comfort zone and lack of apprehension of detection as the offender grows in confidence and acquires a sense of power through the commission of his nefarious deeds. He further stated that this could also explain why such murderers or criminals change their methods.

- The method of killing was that the killer moved from blunt force trauma to strangulation which, to a perverted killer, would have been a more satisfying experience of power in that strangulation offers the perpetrator greater control over the process in the timing of his victim's death. He concluded that in strangulation the killer is able to control the pace of death.
- The victimology across the entire spectrum of the murder and rape scenes as set out in the indictment herein is consistent throughout. The culprit preferred adult black females. According to Prof Labuschagne, serial criminals, especially serial murderers tend to have an ideal victim. Such victim

> species usually has some relevance to the serial criminal like hatred that has welled within the serial criminal for the victim group as a result of some life experiences or what that victim group had done to him. Mostly a perceived maltreatment by a woman may be the main reason. It may not be factually so but the perpetrator would pump himself into believing that was so.

[242] Prof Labuschagne's investigation and assessment of all the relevant facts, evidence, circumstances and trends led him to the conclusion that all the crimes committed in all the cases making out the indictment herein were committed by the same offender. It was his further conclusion that the uniqueness of the behaviours and circumstances accompanying these crimes are indicative of one offender being involved. He ruled out the possibility of a copy-cat offender because the apparent psychological motivation and footprint across the entire series of crimes was unique. This was strengthened by the fact that after the accused was arrested, all similar murders or rapes ceased abruptly and to date no similar crime has occurred within the same geographical area, let alone with the same signature and victimology.

[243] What brings the accused herein within the parameter of what Prof Labuschagne testified on is what was testified to by Capt Khomotso Manthata of Westonaria Police Station who was in charge of initial investigations of some of the cases in this indictment before a decision was reached that a serial offender was involved and all dockets should be centralised. On the

date of the accused's arrest, the latter displayed an above average degree of contempt and hatred for women. He also, according to Capt Manthata's evidence, displayed character traits that were akin to those of a psychopath by ranting and raving and exposing his manhood to all and sundry and urinating so exposed, even in front of women. Incidentally, Capt Manthata is a woman.

[244] Capt Manthata further testified that after the accused herein was transferred to Brixton Police Station, she met him again at Westonaria Magistrate's Court where he was appearing in another case of fraud and the accused, upon seeing her, said to her in Sepedi:

> "*One day I will be out of custody and you will be the first person I will rape and murder.*"

[245] These were prophetic words in my view, which fell in tune with the *modus operandi*, signature and the entire trend testified to by Prof Labuschagne.

[246] The above are some of those pointers that, in my view, point to the accused herein as the perpetrator of the crimes set out in the indictment.

[247] It should be mentioned here, that the accused in his evidence or through his defence counsel when afforded the opportunity to cross-examine

the professor, did not ask the latter any questions to gainsay any of his observations, theories and conclusions.

[248] Before I come to my conclusion, it is important that the issues of the two warning statements allegedly made by the accused to Brig Byleveldt and W/O Ungerer be dissected. The accused professes ignorance of Brig Byleveldt's warning statement. He stated that the latter, in the presence of W/O Ungerer, Capt Mosa Shezi and a tall, dark complexioned Shangaan speaking captain from a police station in Soweto surrounded him in Brig Byleveldt's office at Brixton Police Station and the latter shoved a stack of documents under his nose and ordered him to sign after sweet-talking him first with promises of lenient treatment if he signed. He said he put his signature on the first page and then decided to refuse to sign the rest of the papers. He went further to claim that when he refused to sign he was assaulted and electrocuted as well as suffocated with a glove but he was steadfast in his refusal to sign. In short, his story on Brig Byleveldt's warning statement was that the latter wrote his own stories in the papers and then first asked him later ordered him to sign.

[249] On the other hand, Brig Byleveldt's evidence, as confirmed or corroborated by W/O or Captain Raphadu who was specifically brought in from a Soweto Police Station as an interpreter, was that the accused was fully informed of his full rights including right not to depose to any statement as well as right to legal representation. The accused elected to make a warning statement. Brig Byleveldt is a commissioned officer. According to the

evidence he dealt with the introductory questionnaire preceding the body of the statement on a point by point basis, each stage being interpreted to the accused by Capt Raphadu in his Native Sepedi language without any misunderstandings.

[250] Before this warning statement could be read and explained by Brig Byleveldt I specifically enquired from the accused and his counsel if the admissibility thereof was in dispute whereupon the accused through his counsel indicated that the document's admissibility was not in question even though the contents of the document may amount to a confession or admission by the accused. The accused, through his defence counsel expressly stated that the contents of the warning statement may be read and explained into the record and that they will deal with same as a credibility issue in their defence evidence as well as in closing argument as his defence is that he was not its author. A trial-within-a-trial was thus not held.

[251] Brig Byleveldt testified that when he invited the accused to choose if he wanted to make a warning statement, he had not yet had insight into the dockets involved and as such did not have deeper knowledge of what was in issue. The only document he had with him was a list of the dockets and where they were opened as well as the offences involved. He then wrote down each and every detail as given to him by the accused. Before the last page of the warning statement could be completed he read back what the accused had related to them and inexplicably, the accused started being emotional, loud and restless after signing the first page. Brig Byleveldt then

proceeded to read out the questions in the last page and the accused surprisingly confirmed what he had said through the answers that he gave despite his earlier recalcitrance and emotion charged outburst. When the accused refused to further sign the warning statement, he did not force him to do so. He denied ever assaulting or intimidating the accused.

[252] I tend to agree with the state evidence that the accused was the author, through Brig Byleveldt, of this warning statement. Although he did not mention specific incidents, dates and areas therein, what he gave to the police, which is my finding that he did, corresponds with most of the evidence and circumstances circumstantially and even verbally testified to by witnesses. As already alluded to, what the warning statement mentioned about Case 16 (Counts 53-37) regarding M corresponded exactly with the evidence later led in this Court whereas when the warning statement was taken down on 14 April 2009, the complainant was still in hospital, unable to speak and as such not yet interviewed by the police.

[253] Some of the witnesses made what is called dock identification of the accused when they testified. Dock identification is not the most ideal type of identification. It was ruled in *S v Moradu* 1994 (2) SACR 410 (W) by Blieden J that the danger of dock identification is the same as that which is created by a leading question in examination-in-chief as it suggested an answer. The learned judge held that dock identification should be ruled inadmissible save

in very exceptional circumstances. In my view this ruling is neither left or right.

[254] I am however persuaded to agree with the ruling of Bam AJ in *S v Ramabokela and Another* 2011 (2) SACR 122 (GNP) wherein the learned judge found and ruled among others that while dock identification did not carry the same weight as evidence emanating from a proper identification parade, it however cannot be equated to an answer to a leading question. Dock identification should be evaluated in the same manner as all the evidence regarding identification – with caution. Weight to be attached to such evidence depends on circumstances in an individual case and on the evaluation of the totality of the evidence – with the usual cautionary rules being applied.

[255] As regards W/O Ungerer, the accused also made warning statements concerning some of the cases. It should be mentioned here that the accused did not attack these warning statements with much vigour or conviction. For example, he gave a full explanation in the NM matter (Case 6). In respect of the Caltex Garage deceased the accused allegedly told W/O Ungerer that he could have had sex with the deceased but he did not murder her. The general tone of these warning statements was a denial of murder or rape of the victims.

CREDIBILITY

[256] I have had the opportunity of watching all the state witnesses as well as the accused when they testified in this Court. All the state witnesses gave their evidence in a calm, sequential and relaxed manner. I distinctly formed an impression that they were truthful, honest and reliable as witnesses in this Court. Although there could be one or two contradictions in some of the details in their testimonies, same were not of any meaningful or material nature as to affect the quality of their evidence or cast doubt or aspersions on their credibility. I can say here without any shadow of doubt that the state witnesses did not embellish their versions to disadvantage the accused herein. I have no reason to reject or disregard their testimonies.

[257] On the contrary, the accused was a woeful witness in the witness stand. He contradicted what was put to state witnesses on his behalf and even came up with new versions that were at odds with his entire testimony. He did not hesitate to deny what he testified to a few moments earlier. I distinctly formed an impression that the accused was not telling the truth to this Court. He heard what his fiancé, Charlotte Manaka said about him and what happened during his arrest but did not contradict her under cross-examination. Nevertheless, when he testified in his defence, he went ahead and negated all that which Charlotte Manaka told the court, even venturing to state that in fact it was Charlotte who was a traditional healer who also wore the sangoma beads that were found at his home. He had clearly forgotten that during cross-examination he denied ever having seen beads in his house. He professed to being a non-drinking and non-smoking ZCC member but in his evidence he openly told this Court that he did smoke cigarettes and when

Charlotte Manaka told this Court that she and the accused drank alcohol together on the Christmas day of 2008, he never contradicted her while she was in the witness stand. There are so many inconsistencies and improbabilities in the accused's evidence that I can say without any fear of contradiction that he was an untruthful, unreliable and untrustworthy witness whose evidence cannot be relied on. His version of events is so improbable that it cannot be accepted as representing a true version of events in this case. He adjusted his story so many times that this Court cannot say what his real defence now is to the charges he is facing.

[258] From the totality of the evidence led herein, inclusive of the accused's version, I have been persuaded that the State has been able to prove the following against the accused beyond a reasonable doubt.

COUNTS 1-4

[259] That HEM was with the accused when she was last seen alive. When she was found murdered, she had been raped. The accused used his pin code in her cellphone the very afternoon of the day he was last seen alighting from a train with her at Waterworks railway station. Prof Labuschagne's linkage analysis evidence clearly pointed to him as her killer and rapist. It is an inescapable conclusion that the deceased did not accompany the accused to where he took her willingly or voluntarily and as such the only inference that can be drawn from the proven facts is that he kidnapped her. She lost her cellphone to the accused. However, whether it was through a robbery cannot

be ascertained from the facts. However, her cellphone was stolen from her and the only person who did that is the accused.

COUNTS 5-8

[260] On these counts linkage analysis evidence through similar fact evidence linked the accused to the murder and rape of DEM. When her body was discovered she had also been raped and her cellphone was missing. The signature, geographical factor, victimology and forensically consistent pattern; all pointed to the accused as the perpetrator.

COUNTS 9-11

[261] The State successfully linked the accused to the murder and rape of the unknown black woman found at Mosquito Valley. Linkage analysis evidence in my view points straight at the accused. The position of the body and its degree of undress bore a distinct signature or footprint ascribable to this accused. The issue of kidnapping is not very clearly circumscribed.

COUNTS 12-14

[262] The linkage analysis evidence and similar fact evidence in my view also point to the accused as the perpetrator of the crimes set out in these counts, namely, rape and murder. The circumstances hereof are strikingly

similar to all the other murders, thus bearing a distinct footprint pointing to the accused as the criminal. As in Counts 9-11 above there is no clear evidence of kidnapping.

COUNTS 15-18

[263] The victim in these counts were discovered by accident when the police were combing the crime scene of the murder in Counts 12-14. It is my considered view and finding that the accused is linked to these offences by similar fact evidence and linkage analysis.

CONTS 19-23

[264] At the onset, from the evidence of the complainant NM I had a serious doubt as to the accused's culpability herein as the complainant indicated in her evidence that she agreed to do what the accused asked her to do. However, through the accused's cross-examination as well as during his evidence in defence it became clear that the accused's version was contrived and fabricated. He at first claimed he and the complainant were lovers but later he changed his version to state that she was no more his lover and he was trying to get rid of her while she clinged onto him. A lover does not charge his sweetheart for brewing a tea or coffee but this is what the accused did. From the totality of the evidence led it is my considered view and finding that the State has proved the accused's guilt beyond a reasonable doubt. There is direct eyewitness evidence by the complainant graphically setting out

what happened on 24 December 2008. Her evidence was corroborated by other witnesses as well as available similar fact evidence and circumstantial evidence. The complainant pointed the accused without any hesitation of the resultant identification parade. In his warning statement the accused admitted his dastardly deed. The accused's guilt on the rape and sexual assault charges is in line with the provisions of section 1(3)(c) of the Criminal Law Amendment Act (Sexual Offences and Related Matters) 32 of 2007.

COUNTS 24-26

[265] The accused was linked to the death of the deceased. Linkage evidence clearly pointed to the accused and rape of the unknown woman in these counts by the similar fact evidence as well as the linkage analysis evidence of Prof Labuschagne.

COUNTS 27-29

[266] The deceased left her workplace at the Lenasia Shopping Centre during her lunch break on 19 January 2009. The accused was alleged in evidence to have professed to take the deceased herein, ST, to a ZCC church for prayers. She did not return as promised before 14h00. Accused was later seen walking around the shopping centre and when asked about the deceased's whereabouts, he replied that he thought she would already be back from church because he did not go with her to the church but escorted her to a car that was going to the church. In his evidence-in-chief the accused

denied knowledge of this incident although not much was said about it when the state witnesses were in the witness box.

COUNTS 30-32

[267] Evidence on these counts by Nozuko Maqanta pointed to the accused as being the person who left with the deceased in his cream white Volkswagen Golf on 22 January 2009. Accused's DNA profile was found in the sexual crime kit collected at the scene of her murder and rape. Despite the accused professing that he was in Alberton at his sister's place on that day his cellphone was proved to have been picked up by a tower or repeating station near the place where he is alleged to have picked up the deceased.

COUNTS 33-35

[268] This was an unidentified adult black woman who was murdered and raped. The signature of the offence fits the accused and the linkage analysis evidence proves his guilty on murder and rape.

COUNTS 36-40

[269] Similarly, the accused was correspondingly linked to the murder and rape of the unidentified woman and small child by the linkage analysis evidence. All the footprints and signature in these crimes point to the accused.

COUNTS 41-43

[270] This was the unknown black female who was found near West End Brick and Clay severely assaulted and raped. She was taken to hospital but died without regaining consciousness. It is my view also here, that the accused was associated to the crimes herein, i.e. the murder and rape through similar fact evidence and linkage analysis. The accused's DNA profile was also found in the sexual crime kit collected at the crime scene. It is my finding thus that the accused's guilt has been proven beyond a reasonable doubt. One does not brutally murder and rape a woman going with one voluntarily. Consequently an inference of kidnapping can be drawn from the facts.

COUNTS 44-46

[271] This is the case of the woman DCG who was going to a funeral at Carletonville. In the warning statement the accused accurately described what happened to the woman who was on her way to Carletonville. He described her light skin complexion, which fitted the photo that the deceased's husband handed in to court as exhibit. The accused's DNA profile was found in a sexual assault kit collected where her body was found murdered and raped. As proof that accused was not being framed, a used condom was found some few meters from where the body lay and analysis thereof did not

link it to the accused: The DNA profile found in the condom did not match the accused's.

COUNTS 47-49

[273] It is my considered view and finding that the accused has been successfully linked to the murder, disappearance and rape of the complainant UES who disappeared on her way to the clinic. Linkage analysis evidence clearly points to the accused as the culprit. However, there is no clear evidence of kidnapping and the circumstances in this case do not tend themselves to an inference being drawn.

COUNTS 50-52

[274] The unidentified body of the black adult female found near West End Brick and Clay bore, in my view, all the footprints and signature of the accused as the murderer and rapist. It is not known how she got there and the circumstances thereof do not lend themselves to an inference that she was kidnapped. However, the linkage analysis evidence points to the accused as the perpetrator.

COUNTS 50-52

[275] Similarly the linkage analysis evidence of Prof Labuschagne points to the accused having been responsible for the death and rape of the unidentified black woman who was found near West End Brick and Clay

during February to March 2009. Similarly I cannot infer kidnapping readily from the circumstances of this case.

COUNTS 53-57

[276] The accused was graphically linked to the crimes herein by the complainant herself who lived to tell the tale. The accused's DNA profile was found in a sexual offences kit collected at the scene of the crime. The complainant's evidence was corroborated by MS's evidence on what took place that day. The complainant's cellphone was found in the accused's possession when he was arrested and expert evidence proved that he (accused) used his sim card in that cellphone from the date of the complainant's kidnapping, attempted murder, rape and sodomy which amounts to rape and the disappearance of the complainant's pair of jeans, panty and cellphone. The sangoma beads that the complainant ripped from the accused's neck matched the ones found at his home.

COUNT 58

[277] The State led the evidence of how inmates were called one by one out of the police cells at Brixton Police Station on their way to court. Each name is checked against the J15 charge sheets from the court. The State has proved that the accused impersonated one Godfrey Moloi, a fellow inmate at Cell 3 at Brixton Police Station when the latter's names were called. When his absence from the cells was discovered and the police went and called out his

names at the court cells, he hid in the toilet, fully clothed, hiding his face with a cap. The accused's version of events is highly improbable. Not only did the evidence contradict his story that all Cell 3 inmates went to court but the owner of the name he impersonated was found still in Cell 3 together with other inmates who were not going to court. Accused's guilt of escaping from custody was proved. The evidence proved a completed escape, not an attempt.

COUNTS 59-61

[278] The accused has in my view and finding, been linked to the disappearance, murder and rape of the deceased herein, ANW. Linkage analysis and similar fact evidence points at him being the perpetrator. The circumstances of this case also point to the deceased having been deprived of her freedom of movement.

[279] Overall, it is my further considered view and finding that the version given by the accused cannot be believed. It is riddled with inconsistencies, improbabilities and blatant untruths. It is self-destructive in that the accused contradicted himself and his version many times on end at material points as set out hereinbefore.

[280] The accused's version is thus rejected as false insofar as it is in conflict with the state evidence. It cannot be said to be reasonably possibly true.

[281] The accused is thus found guilty on the following counts as follows:

(a) Counts 1-4: Guilty as charged. Counts 1, 2 and 4. Count 3 guilty of theft.

(b) Counts 5-8: Guilty as charged. Counts 5, 6 and 8. Count 7 guilty of theft.

(c) Counts 9-11: Guilty as charged. Counts 10 and 11. Not guilty and discharged. Count 9 (kidnapping).

(d) Counts 12-14: Guilty as charged. Counts 13 and 14. Not guilty and discharged, Count 12 (kidnapping).

(e) Counts 15-18: Guilty as charged. Counts 16, 17 and 18. Not guilty and discharged. Count 15 (kidnapping).

(f) Counts 19-23: Guilty as charged all counts.

(g) Counts 24-26: Guilty as charged. Counts 25 and 26. Not guilty and discharged, Count 24.

(h) Counts 27-29: Guilty as charged all counts.

(i) Counts 30-32: Guilty as charged all counts.

(j) Counts 33-35: Guilty as charged. Counts 34 and 35. Not guilty and discharged, Count 33 (kidnapping).

(k) Counts 36-40: Guilty as charged. Counts 37, 38 and 40. Not guilty and discharged, Counts 36 and 39.

(l) Counts 41-43: Guilty as charged all counts.

(m) Counts 44-46: Guilty as charged all counts.

(n) Counts 47-49: Guilty as charged. Counts 48 and 49. Not guilty and discharged, Count 47 (kidnapping).

(o) Counts 50-52: Guilty as charged. Counts 51 and 52. Not guilty and discharged on Count 50.

(p) Counts 53-57: Guilty as charged on all five counts.

(q) Count 58: Guilty as charged.

(r) Counts 59-61: Guilty as charged all three counts.

[282] To summarise, the accused is found:

(a) Guilty as charged on Counts 1, 2, 4, 5, 6, 8, 10, 11, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 24, 35, 37, 38, 40, 41, 42, 43, 44, 45, 46, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 61.

(b) Counts 3 and 7: Guilty of theft.

(c) Not guilty and discharged Counts 9, 12, 15, 24, 33, 36, 39, 47 and 50.

SENTENCE

[283] Mr Mogale, this Court must now decide what sentence is appropriate for the offences in which you have been found guilty. To arrive at the appropriate sentence to be imposed, this Court will look at your personal circumstances, take into account the nature of the offences you have been convicted of, factor in the interests of society, weigh same against the others and then blend them with the requisite measure of mercy. In the assessment of the appropriate sentence, this Court must act even-handedly – not over-emphasising the effect of the crimes you committed or under-emphasising any of the elements or purposes relevant to sentencing.

[284] The main purposes of punishment are deterrence, prevention, reformation and retribution. Punishment is expected to fit you as a criminal as

well as your transgressions, be fair to society in general and be blended with a measure of mercy according to the circumstances.

S v Rabie 1975 (4) SA 855 (A) at 862G-H.

S v Zinn 1969 (2) SA 577 (A).

[285] Courts of law are under a duty generally to sentence offenders in such a way that they may or could be reformed or rehabilitated for the good of mankind or posterity. Punishment, read sentencing in this instance, should not be cruel and inhumane.

S v Karg 1961 (1) SA 231 (A) at 236.

[286] However, the peculiar circumstances of each case will and should dictate which of the purposes of punishment should be given prominence when a sentence is assessed: A cruel and heartless crime may deserve a retributive and/or deterrent sentence.

[287] In *S v Mhlakaza and Another* 1997 (1) SACR 515 (SCA) the court held among others as follows at 519d-e:

> "*Given the current levels of violence and serious crimes in this country, it seems proper that in sentencing especially such crimes, the emphasis should be on retribution and deterrence … Retribution may even be decisive (S v Nkwanyana and Others 1990 (4) SA 735 (A) at 749C-D)*."

[288] Nugent JA propounded the same view in *S v Schwartz* 2004 (2) SACR 370 (SCA) when he mentioned the following at 378c-d:

> "*… in our law, retribution and deterrence are proper purposes of punishment and they must be accorded due weight in any sentence that is imposed. Each of the elements of punishment is not required to be accorded equal weight, but instead proper weight must be accorded to each according to the circumstances. Serious crimes will usually require that retribution and deterrence should come to the fore and that rehabilitation of the offender will consequently play a relatively smaller role.*"

[289] The majority of the crimes or offences of which you have been convicted attracts the provisions of the Criminal Law Amendment Act 105 of 1997 (the Minimum Sentences Act). The mandatory sentences that this Court is by law obliged to impose are life in prison for each of them. I am obliged to impose life sentences unless you come up with circumstances that are substantial and compelling enough for this Court to deviate from imposing the prescribed minimum sentences. All the murders and four of rape convictions carry life sentences. The robbery with aggravating circumstances convictions carry minimum sentences of 15 years with the court having the discretion to go up to 20 years for a first offender; 20-25 years for a second conviction and 25 years and/or more for a third and subsequent conviction.

[290] I have alluded to mercy, above. In *S v Rabie (supra)* the learned judge held among others as follows at 861c-f:

> "*Then there is the approach of mercy or compassion or plain humanity. It has nothing in common with maudlin sympathy for the accused.*

> *While recognising that fair punishment may sometimes have to be robust, mercy is a balanced and humane quality of thought which tampers one's approach when considering the basic factors of letting the punishment fit the criminal as well as the crime, and being fair to the society.*"

[291] Holmes JA weighed in with the following in *S v V* 1972 (3) SA 611 (A) at 614D:

> "*… the element of mercy, a hallmark of civilised and enlightened administration, should not be overlooked lest the court be in danger of reducing itself to the plane of the criminal. True mercy has nothing in common with soft weakness or maudlin sympathy for the criminal or permissive tolerance. It is an element of justice itself.*"

[292] On the other hand, sight should not be lost of the fact that the legislature had a specific purpose and reasons to promulgate the Minimum Sentences Act. It was precisely to deal with situations as serious and heart-rending as these that prevail in this case.

[293] In *S v Malgas* 2001 (1) SACR 469 (SCA) the court ruled that specified and prescribed minimum sentences that ought to be imposed as a matter of course and law and should not be departed from lightly or for flimsy reasons. The honourable court further held that the legislature has, however, deliberately left it to the discretion of court to decide whether the circumstances of a particular case call for a departure from the prescribed minimum sentence.

[294] I agree with the view that courts are required to approach the imposition of sanctions or sentences, conscious of the fact that the legislature has ordained specific minimum sentences in respect of certain specified convictions and that in the absence of weighty justification such minimum sentences must be imposed.

[295] What should be at the back of a sentencing officer's mind is that account should be taken of the fact that certain crimes have been singled out for severe punishment and that any other sentence that should be imposed, if it is not a prescribed minimum as prescribed by law, should be assessed or handed down paying due regard to the bench marks which the legislature has provided or set.

[296] There has been some uncertainty as to what substantial and compelling circumstances are: Some courts interpreted them to mean circumstances that are over and above ordinary circumstances while others have preferred the literal interpretation that they are ordinary circumstances which, when viewed in the light of the peculiar circumstances of the case in issue can be regarded as substantial and compelling. Examples of the former view is *S v Vilakazi* 2009 (1) SCR 552 (SCA), 2008 (4) All SA 396 and as example of the latter view we can look at *S v Ntsele, S v Dlamini, S v R* 2010 (1) SACR 295 (GSJ).

[297] In the *S v Vilakazi* case, Stegmann J put it as follows in support of the first view:

> "*… the absence of previous convictions, the comparable youthfulness of offenders, the unfortunate factors in their backgrounds, the probable effect upon them of liquor which they may have taken, the absence of dangerous weapons and the fact that the complainant, if it is a rape case, had not suffered any injury; are all factors that the court sentencing a convicted rapist or person in the ordinary course, would weigh up as substantial factors relevant to the assessment of a just sentence and as tending to mitigate the severity of the punishment to be imposed. However, in my judgment …*"

so goes the judgment:

> "*… these factors, substantial though they are, are matters that Parliament must have had in mind as everyday circumstances that would be found present in any or most of the crimes referred to in Part 1 of Schedule 2. Without emasculating the legislation, they cannot be thought of as compelling, the conclusion having to be that a lesser sentence than the prescribed Parliamentary sentence should be imposed. This owing to the absence of any exceptional factor to explain the prisoner's conduct and the absence of any mitigating factors other than the everyday factors already mentioned. As I understand this legislation, substantial and compelling circumstances must be factors of unusual and exceptional kind that Parliament cannot be supposed to have had in contemplation when prescribing penalties for certain crimes committed in the circumstances.*"

[298] In the *Ntsele, Dlamini v R* matter the following view was propounded:

> "*In determining whether in terms of sect. 51 of the Criminal Law Amendment Act 105 of 1997, substantial and compelling circumstances justifying a sentence less than the prescribed minimum sentence provided for are present, all factors traditionally taken into account in sentencing, or what has sometimes been described as everyday or ordinary factors, should also be taken into account. It is not incorrect as a matter of law to have regard to such everyday factors in deciding whether one could depart from the minimum sentences.*"

[299] It is my considered view that the above cases are not mutually destructive of each other when regard is had to the intentions of the legislature. A combination of principles propounded in both will, in my view, result in a balanced and acceptable application of what the law requires of a sentencing officer when a decision is made whether there are factors that could justify a departure from the imposition of a prescribed minimum sentence.

[300] The accused herein has been found guilty of 16 counts of murder with aggravating circumstances, 19 counts of rape with aggravating circumstances, 1 count of robbery with aggravating circumstances, 9 counts of kidnapping, 2 counts of theft, 1 count of assault with intent to do grievous bodily harm, 1 count of fraud, 1 count of attempted murder, 1 count of sexual assault and 1 count of escaping from lawful custody.

[301] The 16 murders and 18 of the rapes on which the accused has been convicted are subject to the provisions of the Minimum Sentences Act attracting life sentences each because section 51(1) of the Minimum Sentences Act is applicable to the murders and the rapes were perpetrated or committed accompanied by grievous bodily harm. Furthermore, in the rapes in Counts 16, 17, 55 and 56 the victims were raped more than once, thus also attracting life imprisonment *per se*. One rape conviction, in Count 21, falls under Part 3 of Schedule 2 which in terms of section 51(2)(b) attracts a prescribed sentence of not less than 20 years imprisonment if the offender is a third time or more offender. The conviction for robbery with aggravating

circumstances falls under Part 2 of Schedule 2. In terms of section 51(2)(a) of the Minimum Sentences Act the prescribed minimum sentence is 15 years.

[302] The State has also argued that in respect of the other convictions, namely, kidnapping, theft, assault with intent to do grievous bodily harm, fraud, attempted murder, sexual murder and escaping from lawful custody, direct imprisonment on each of them is warranted.

[303] The accused elected not to testify orally in mitigation of sentence or call any witnesses. He did not want any pre-sentencing reports to be compiled for him. His counsel addressed this court from the bar.

[304] The accused's personal circumstances are as follows: he was born in April 1967, thus being 44 years now. This makes him between 41 and 42 years when the crimes were committed. He is yet unmarried but professes to have two children aged 12 and 16 with different mothers. He went to school up to Standard 10 (Grade 12) but did not complete the standard. At the time of the commission of the offences as well as now he was unemployed and he claims that after his girlfriend bought the Volkswagen Golf mentioned in this case he used it as a taxi to make a living. The State proved previous convictions against him, namely:

(a) 21 September 1988: Rape – sentenced to 7 years imprisonment by the Potgietersrus (Mokopane) Limpopo Regional Court.

(b) 9 February 1995: Tolwe Periodic Court, Limpopo – 2 counts of housebreaking with intent to steal and theft – sentenced to 3 months on each count.

(c) 9 February 1995: At Tolwe Periodic Court of Mokopane Magistrate's Court – trespass – sentenced to 1 month imprisonment.

(d) 5 June 1996: At Naboomspruit Regional Court – rape – sentenced to 10 years imprisonment.

(e) 28 January 2010: At Westonaria Magistrate's Court – 12 counts of fraud – sentenced to R12 000,00 or 18 months imprisonment. A further 18 months imprisonment suspended for 5 years on conditions. All 12 counts taken as one for purposes of sentence.

[305] The fraud conviction and sentence above were imposed while the accused was in custody for these offences for which he was arrested on 27 March 2009.

[306] The State handed in Victim Impact Reports in respect of the two surviving complainants, NM and M"*M*\'T in aggravation of sentence.

[307] According to her report, M was severely injured during her assault and rape by the accused. She was unconscious in hospital for five (5) days. Her injuries included the loss of three (3) front teeth, seriously damaged neck muscles due to strangulation, she had lacerations and scratches all over her body and her face was swollen and contorted. She had to undergo facial reconstruction surgery at Chris Hani Baragwanath Hospital. She indicated that after her sexual assault, her private parts (vagina and anus) were very painful and she developed a smelly discharge that only became healed after she was given medication by Leratong Hospital staff where she was admitted. Her menstrual period has changed dramatically from a three-day circle at the most to a circle spanning over 7 days, accompanied by excruciating pain which was never the case before. She has become emotionally unstable and withdrawn and was not yet free to talk about what happened to her. She has developed a phobia for men and fears walking in the streets as she fears being abducted and raped again. She reported having nightmares and has been seriously traumatised by the incident. At times she has a difficulty falling asleep. However, she has managed to fall in love again and is presently seven (7) months pregnant. Despite all the emotional support she receives from her family and fiancé she still does not trust men. Her self-esteem has fallen very low and whenever she thinks back to what happened to her, she feels very dirty and used. Her life is no longer the same for now.

[308] NM also indicated that after the encounter with the accused, she no longer trusts men as a seemingly gentle and loving man turned into a monster in front of her. Although she knows she is blameless she still blames herself

and has no peace in her conscience. The report mentions that she will be offered counselling for her trauma.

[309] The accused herein systematically targeted, enticed, raped, murdered and robbed or stole from defenceless and unsuspecting women whom he sweet talked or charmed with false prophesies when the accounts of the survivors is taken into account. He has not opened up to this Court and as such it is not clear why he committed such blood-curdling deeds. Up to this time the accused remains unrepentant and is not showing any remorse. It is true, as his counsel argued and submitted, that non-admission of blame by an accused person need not be held against him *per se*. However, it is my considered view, that after the graphic details of what he did as heard through the mouths of the surviving complainants, one would have expected the accused to relent and expiate to what he was proven to have done. His own evidence did not cast any aspersions or doubt on the apparent truthfulness and genuineness of the eyewitnesses' accounts. This in my view, is an aggravating factor.

[310] The accused is not a stranger to the courts of law: he started his criminal career at a tender age of 21 when his previous records are considered. It is clear that after he served his last 10 years imprisonment that was imposed on him in June 1996 for rape, he went straight to his criminal ways, deteriorating into a serial murderer and rapist.

[311] He is a repeat rapist and fraudster and he is not a visitor to the life and doings of thieves: he was previously convicted and sentenced for housebreaking with intent to steal and theft. It is very clear that previous sentences did not manage to deter or reform this accused.

[312] The offences the accused has been convicted of are of a very serious nature indeed. It is trite fact that sexual assault and rape cases humiliate and seriously infringe on a woman's integrity, dignity and privacy. All but two of the accused's victims were murdered after being abused but the two that are still alive will live with severe psychological traumas for the rest of their lives.

[313] It is apparent and this Court accepts that the accused did not use condoms when he raped some of his victims. This is an aggravating factor, especially at this time and era when the whole world, including our country, is grappling with the scourge of HIV and Aids, which are pandemics.

[314] It is also clear that human life is of no value to people like the accused. He is a terror, a terrible terror! Lord of the lonely spots and bushes who goes around in search of women to rape and murder! Before whom all women must give way or be smitten to nothingness and everlasting night, if I am to borrow from the allegory of the book: Wind in the Willows.

[315] The accused's conduct is definitely a socially deviant one which invokes indignation from law-abiding citizens and is frowned upon and abhorred by society. The crimes he committed are fearsome as they are

loathsome and despicable. It will not be out of place to say that ordinary citizens are disgusted and outraged by the accused's behaviour and handiwork.

[316] It is so that society in general is crying out loud, demanding protection from people like the accused. Our courts must, as I can safely say they have started to, rise to the occasion and pronounce themselves unequivocally against such abuses as were committed by the accused.

[317] For example, in *S v Di Blasi* 1996 (1) SACR 1 (A) the Appellate Division pronounced its abhorrence at 10f-g in the following terms:

> "*The requirements of society demand that a premeditated, callous murder such as the present should not be punished too leniently lest the administration of justice be brought into disrepute. The punishment should not only reflect the shock and indignation of interested persons and of the community at large and so serve as a just retribution for the crime but should also deter others from similar conduct.*"

[318] Nugent JA put it in *S v Schwartz (supra)* as follows at 379b:

> "*I have pointed out that in the case of serious crimes, societies' sense of outrage and the deterrence of the offender and other potential offenders deserve considerable weight.*"

[319] In *S v Chapman* 1997 (2) SACR 3 (SCA) the honourable court ruled as follows at 5e:

"*The courts are under a duty to send (the following) clear message to the accused, to other potential rapists and to the community: we are determined to protect the equality, dignity and freedom of all women, and we shall show no mercy to those who seek to invade those rights.*"

[320] In *S v Msimango and Another* 2005 (1) SACR 377 (O) the court held that violence in any force is no longer to be tolerated and that courts, by imposing heavier sentences, must send out a clear message both to prospective criminals and other members of society that courts are seriously concerned with the restoration and maintenance of safer living conditions and administration of justice are being protected.

S v Phallo and Others 1999 (2) SACR 558 (SCA).

[321] This Court subscribes to the above views and will not shirk its responsibilities by handling a person convicted of the crimes the accused has been found guilty of, with kid gloves.

[322] Counsel for the accused argued and submitted that it should be taken into account that the accused was in custody for two years before he is to be sentenced. I am aware and mindful of the principles evolved and set out in *S v Brophy and Another* 2007 (2) SACR 56 (W) as well as *S v Vilakazi* 2009 (1) SACR 552 (SCA) about the period accused persons spent in custody before their cases are finalised. It is my considered view and finding that the

accused's circumstances can be distinguished from the facts and circumstances prevailing in the above two cases: In our case, the accused escaped from the Brixton Police Station immediately after he was arrested. He had to be kept in custody under those circumstances. During January 2010 he started serving his 18 months prison term for fraud. The accused consequently, in my view, cannot be heard to claim the benefits set out in the above two cases in the light of his continuous incarceration until today when he is sentenced.

[323] I agree with the argument and submissions of counsel for the State that the accused should be removed permanently from society. He does not deserve to be with ordinary and normal law-abiding citizens. Him and his ilk belong in jail where they may be gainfully utilised or employed to manufacture and produce equipment and products as payment for their upkeep and for their sins.

[324] I have looked through the accused's counsel's submissions and am convinced that no substantial and compelling circumstances have been advanced before me to justify a departure from the imposition of the prescribed minimum sentences.

[325] Accused, it is the considered opinion of this Court that you are an evil and perverted serial murderer and rapist who poses an extreme danger to

society in general and to women in particular. It is my duty to ensure that you are permanently removed from society.

[326] You implored Brig Byleveldt, according to your warning statement to him in the following terms:

> "*Director, I want you to help me because when I am with a woman, I lose control and don't know what I am doing. I kill all of them if they don't give me what I want.*"

[327] I am happy sir, to grant you your wish. You cannot live with women in peace and in a loving atmosphere. Whenever you see them you kill them if you do not get what you want from them or they don't want to accede to your demand or request. There is no way you can be outside prison and not come into contact with women. So, to protect you from yourself and the women folk from you, I am removing you for good from being in and at the same space with them.

[328] The sentences that I impose upon you then are the following:

A.

(a) On the 16 murder convictions, i.e. Counts 4, 8, 11, 14, 18, 26, 29, 32, 35, 38, 40, 43, 46, 49, 52 and 61 you are sentenced to imprisonment for life on each count.

(b) On the 15 rape convictions, i.e. Counts 2, 6, 10, 13, 21, 25, 28, 31, 34, 37, 42, 45, 48, 51 and 60 you are

sentenced to 20 (twenty) years imprisonment on each count.

(c) On the four (4) rape convictions in Counts 16, 17, 55 and 56 you are sentenced to life to life imprisonment on each count.

(d) On the robbery with aggravating circumstances conviction, i.e. Count 54, you are sentenced to 15 (fifteen) years imprisonment.

(e) On the nine (9) convictions for kidnapping, i.e. Counts 1, 5, 20, 27, 30, 41, 44, 53 and 59 you are sentenced to five (5) years imprisonment on each count.

(f) On the two (2) theft convictions i.e. Counts 3 and 7 you are sentenced to 3 years imprisonment on each count.

(g) On the one (1) conviction of assault with intent to do grievous bodily harm (Count 19) you are sentenced to 2 (two) years imprisonment.

(h) On the one (1) fraud conviction, i.e. Count 23, you are sentenced to three (3) years imprisonment.

(i) On the one (1) conviction for attempted murder, i.e. Count 57, you are sentenced to five (5) years imprisonment.

(j) On the one (1) conviction for sexual assault, i.e. Count 22, you are sentenced to three (3) years imprisonment.

(k) On the one (1) conviction for escaping from lawful custody you are sentenced to three (3) years imprisonment.

B.

(a) The sentences in respect of the 15 rape convictions in Counts 2, 6, 10, 13, 21, 25, 28, 31, 34, 37, 42, 45, 48, 51 and 60 as well as the life imprisonment sentences imposed in respect of the other four rape convictions on Counts 16, 17, 55 and 56 are ordered to run concurrently with the life sentences imposed in respect of Counts 4, 8, 11, 14, 18, 26, 29, 32, 35, 38, 40, 43, 46, 49, 52 and 61.

(b) The sentences imposed for the two (2) theft convictions, i.e. Counts 3 and 7 as well as the sentences imposed for the fraud conviction (Count 23) are ordered to run concurrently with the sentence imposed for the robbery with aggravating circumstances conviction (Count 54).

(c) The sentences imposed in respect of the 9 convictions for kidnapping (Counts 1, 5, 20, 27, 30, 41, 44, 53 and 59) as well as the sentences imposed for the one (1) assault GBH conviction (Count 19) and the sentence imposed in respect of the sexual assault conviction (Count 22) are ordered to run concurrently with the sentence imposed in respect of the attempted murder conviction, i.e. Count 57.

[329] To summarise your sentences, you are sentenced to 16 (sixteen) life imprisonment terms, plus 23 years in jail.

[330] In the very unlikely situation where the Correctional Services Department may contemplate releasing the accused on parole in the future, it is the recommendation of this Court, because of the complete absence of any remorse or recognition of wrongdoing, and in my opinion, there is little prospect of rehabilitation or reformation, that the accused should remain in custody for the remainder of his natural life and should never be released from prison.

[331] As I have already alluded to at the beginning of my judgment this Court wishes to express its appreciation to Prof Labuschagne, the investigators in these cases as well as the prosecution team and commend them for a job well performed. In many instances the general outcry is that cases have been investigated and/or prosecuted in a sloppy manner causing anxiety for those

affected by the crimes in question as well as bringing the administration of justice into disrepute. The police work in this case, especially the expert linkage analysis evidence tendered by Prof Labuschagne was of world class standard and it is my considered opinion that we all will be within our rights to fell justifiably proud. May it not be only in this case but the good work be continued in other and all current and subsequent investigations. I am not forgetting Adv Madondo, the defence counsel herein. It was unfortunate for him that he was saddling a loosing horse but he did his best under very difficult and untenable conditions and circumstances. Unlike most of our younger advocate corps, he did not engage himself in time wasting or embarrassing dramatics and was courteous and professional throughout the trial. This Court wishes all who were involved in this trial well and the best in their future efforts.

[332] Finally, the accused is declared unfit to possess a firearm in terms of section 103 of the Firearms Control Act 2000 (Act 60 of 2000) as amended. Any firearm and/or ammunition that may have been held by the accused must be seized and declared confiscated to the State.

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N F KGOMO
JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG

FOR THE STATE	ADV E MOONSAMY ASSISTED BY ADV N MULLER
FOR THE ACCUSED	ADV MADONDO
DATE OF CONVICTION	16 MARCH 2011
DATE OF SENTENCE	18 MARCH 2011