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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DMSION, CAPE TOWN)**

REPORTABLE

CASE NUMBER: SS17/ 2017

In the matter between:

THE STATE

versus

MASIXOLO MAX MPEVU

ACCUSED

JUDGMENT ON SENTENCE DELIVERED ON 21 SEPTEMBER 2017

Henney, J:

Introduction

[1] In this particular case the accused had been convicted on 10 charges, which emanated from 3 incidents in which he was involved. The first incident happened on 1 November 2015 in respect of the first complainant when the accused accosted and kidnapped her at knifepoint, where after he dragged her to a nearby toilet. He firstly attempted to rob her of some money she had on her, but did not succeed. He then proceeded to rape her more than once, by pushing his penis into her mouth and then also proceeded to rape her vaginally.

[2] The second incident happened on 10 February 2016, where the accused also kidnapped a different complainant, by dragging her, also at knifepoint, to a secluded place where he firstly robbed her of her possessions, namely, a watch and a

Samsung cell phone, where after he also proceeded to rape her by forcefully inserting his penis into her vagina.

[3] The third incident happened on 26 March 2016 when he once again attacked a different complainant, by kidnapping her at knifepoint. She was dragged into a toilet and robbed of a cellular phone. He then also proceeded to rape her more than once by forcing his penis into her mouth and there after forcing it into her vagina.

[4] The accused was eventually arrested and after the matter was transferred to the High Court, he pleaded guilty in terms of the provisions of section 105A. The court was of the opinion initially that the sentence to which the accused agreed may not have been a just sentence in terms of the provisions of section 105A(9) (a) of the Criminal Procedure Act, 51 of 1977("the CPA"). The state and the defence nonetheless, wanted this court to proceed and accepted that the court should convict the accused on the admissions he made on the charges to which he has pleaded and exercise its discretion to impose sentence as contemplated in section 105A(9)(b)(i) of the CPA.

[5] Apart from the 3 rape charges the accused was also convicted on two charges of robbery with aggravating circumstances, one of attempted robbery, one of assault with intent to do grievous bodily injury and three charges of kidnapping, as set out in the indictment.

[6] In respect of the 3 rape charges the provisions of the Criminal Law Amendment Act, 105 of 1997 is applicable. In respect of count 3 and count 10, a sentence of life imprisonment is prescribed in terms of section 51 (1), part 1 of schedule 2 of the Act because the victims were raped more than once. In respect of the rape committed with the complainant on count 7, a sentence of 10 years imprisonment is prescribed. And in respect of the two charges of robbery with aggravating circumstances, a sentence of 15 years imprisonment on each of these charges is prescribed.

[7] The court has to impose these sentences unless there are substantial and compelling circumstances to deviate from these prescribed sentences. I will deal with this aspect at a later stage. In respect of all the other charges, the court has to exercise its ordinary sentencing jurisdiction.

[8] In imposing an appropriate sentence the court has to take into consideration all factors and circumstances of the particular case. The court has to consider the aims of punishment, such as deterrence, retribution, rehabilitation and prevention.

The court also has to consider the accused personal circumstances, the offence or offences which he has committed and the interests of society.

The accused personal circumstances are the following

[9] He is 27 years old, unemployed and not married. He has previous convictions for theft, which was committed respectively in May 2012 and August 2012. In respect of both these offences a suspended sentence was imposed. He has a further previous conviction for possession of drugs and a fine was imposed as sentence for this conviction.

[10] Mr Carstens argued that the accused has shown remorse, by pleading guilty to all the charges and did not subject the complainants to the further trauma of having to testify in this case. The court will later come back to this question of remorse.

The offence

[11] The crimes that the accused has been convicted of, especially the rape and robbery with aggravating circumstances charges are viewed as particularly serious. What the court views as particularly serious is the fact that the accused preyed on defenceless women and attacked them with a knife. He dragged them to a specific place, robbed them of their possessions and then proceeded to rape them.

[12] He did not only do this once but on more than one occasion. From the facts of this matter as a whole, his conduct points to a particular modus operandi. Although none of the complainants has sustained any serious injuries the accused nonetheless proceeded to apprehend the complainants in a violent manner, by using a knife and dragging the complainants into a secluded place or toilet, where he proceeded to rape them.

[13] In two of the cases, the women were raped by the accused by not only forcing his penis into their vaginas but also into their mouths. The rapes of the complainants must have been a very humiliating experience for them. From the victim impact reports it is clear in respect of all three complainants, that this rape had an everlasting impact on them. Two of the three complainants had been sexually violated by other people before they were raped by the accused. It seems that they had difficulty to recover from that ordeal.

[14] The first complainant, to whom I shall refer to as "N", was only 17 years old at

the time of the incident. The impact of the rape on N, who was raped during the first incident, was the following: social exclusion and loneliness, emotional outbreaks, feelings of mistrust, disturbed sleeping patterns, disturbed dreams and nightmares (she had dreams that the accused killed her) and feelings of fear.

[15] The second complainant, to whom I shall refer to as "IQ", was sexually violated for the first time at the age of 16 years when an uncle of hers tried to rape her and for the second time at the age of 17 was raped by a family friend in the Eastern Cape. The first incident was not reported because it was a family member of hers. The second incident was reported to the police but they were unable to find the alleged perpetrator.

[16] This complainant also contracted the HIV virus prior to this incident and she was not aware of when and how she contracted this virus. According to the victim impact report, the psychological impact this incident had on her, manifested itself in expressing feelings of shame, guilt, anger and powerlessness. She is unable to overcome what happened to her and having to accept her status. She has no self-esteem and regards herself as unworthy of being loved again. Her only coping mechanism at present is alcohol because she has never received any counselling and is unable to control her thoughts and emotions. She isolates and withdraws herself from family and friends, and is often depressed.

[17] According to the social worker who compiled the victim impact report the complainant expressed on more than one occasion that she would prefer ending her life, instead of living with the guilt, shame and frustration. According to the social worker, the complainant has never received any therapeutic counselling and she is in need of such assistance because she has expressed suicidal thoughts and she has expressed the willingness to receive such assistance to overcome her traumatic experience.

[18] The third complainant to whom I shall refer to as 'T' was also allegedly raped by her maternal grandmother's boyfriend when she was 12 years old, but this was also not taken further because she was not believed by members of the family. This particular incident with the accused happened when the complainant returned from her work at Woolworths after completing the late shift (12:00 PM to 21:00 PM).

[19] She was walking alone when she was accosted by the accused and threatened with a knife. The impact this incident had on her, resulted in her having nightmares, lack of sleep, a desire to bath continually as she feels dirty and a lack of

physical energy. She was referred for counselling at work and attended the sessions but did not complete it because of her work hours and church activities which clashed with the counselling sessions.

[20] According to the social worker who compiled the victim impact statement, the complainant also expressed a desire to commit suicide. The complainant enquired if it would be possible to admit herself to Valkenberg Psychiatric Hospital, on a voluntary basis to assist her from committing suicide. The social worker as a result of this contacted Valkenberg and Stikland Hospital but these institutions required the complainant to fund her own medical treatment in terms of the hospitals policies, which I find astounding, unacceptable and totally unsympathetic towards the plight of this woman who is clearly in need of such assistance.

[21] As a result of this incident, she developed outburst of anger to such an extent that she would take it out on her colleagues at work, which resulted in her reliving a first written warning in May 2016 and a final written warning in June 2017.

[22] At some stage when the detective approached her at work regarding this matter, she had to disclose to her manager what happened to her which a colleague overheard. This colleague spread rumours about her and she became the laughing stock at her place of employment. This resulted in her receiving approaches from male colleagues which she would decline and they would also make remark about the incident. She was unable to cope with this and as a result of that, she decided to resign from work on 3 August 2017.

[23] This case illustrates a horrible effect of the psychological scars and damage which the crime of rape has on many women in this country. This court cannot even begin to imagine or place itself in the position of such women. It is not clear whether they will ever be able to recover from the horrendous effects of the rapes perpetrated on them.

[24] More than 22 years ago this court in **S v C 1996 (2) SACR at 186 D-E** said the following about the crime of rape: *"Rape is regarded by society as one of the most heinous of crimes, and rightly so. A rapist does not murder his victim - he murders her self-respect and destroys her feeling of physical and mental integrity and security. His monstrous deed often haunts his victim and subjects her to mental torment for the rest of her life - a fate often worse than loss of life. Serial rapists and murderers are regarded by society as inherently evil beings. They are. the most feared and loathed criminals in our community. Society demands protection in the*

form of heavy and deterrent sentences from the courts against such atrocious crimes."

[25] This is clearly what happened in all three of these cases where the victims' self-respect and their feelings of physical and mental integrity and security were destroyed. The monstrous deeds of the accused still haunts the victims and subjects them to torment to the extent that 2 of them wanted to commit suicide, which the court described in the above-mentioned case as a fate often worse than loss of life. They were not murdered, but their self-respect, dignity, privacy and their security of person were murdered and egregiously violated and undermined.

[26] There are some similarities between this case and the above-mentioned case in the sense that in this case, as well as that case, three women were raped on different occasions by the accused. In that case, however, the three different rapes occurred over a period of 4 days. What was further very disturbing of this case was the fact that these complainants, were from an underprivileged background, and did not receive the necessary and proper assistance as required from the government. They have not received any counselling and they were only able after almost 2 years had passed to speak to a social worker.

[27] When this information was presented to me, I was outraged and furious. Although I was dealing with the sentencing of the accused in a criminal trial, I would have failed in my duty as a High Court Judge not to have adequately given attention to the plight of these women and to enquire why their rights as victims were not adequately protected. Especially in light of the fact that two of these women were previously sexually violated, before the accused had raped them and when I was informed that at least two of them were seriously contemplating committing suicide. According to the evidence, the victims either did not receive any counselling (in the case of N and NQ) or were referred to a victim support room at the police station in Milnerton (in the case of T), where they would be seen by lay counsellors who would assist them on an ad hoc basis.

[28] This was the evidence that was given by the social workers from the Department of Social Development and the investigating officer, who testified that there are no other services available. I was placed under the impression that no sustainable program of assistance to rape victims were put in place by the Department of Social Development of the Western Cape, whereby rape victims after they have reported the case to the police and after they had been seen by a doctor,

could be assisted. I then instructed the prosecutor to call a senior officer- in the Department of Social Development in the Western Cape who would be able to better inform this court whether such services were available.

[29] This official, Soraya Abrahams, who is the regional director in the Department of the Metro North Region, is responsible for the delivering of all social work services in an area which stretches from Delft to Milnerton and under whose supervision the two social workers that compiled the victim impact reports falls. She presented this court with an agreement in terms of which, as she put it, they have "purchased the services of Rape Crisis to be a service provider" to provide counselling services to rape victims after they have been raped. The agreement handed to court it seems was concluded for the period 1 April 2017 to 31 March 2018, which do not cover the periods in which these incidents relevant to this case had occurred. I will accept that there was such an agreement in place and that was also her evidence that there was such an agreement to deliver such services in the periods relevant to this case.

[30] According to her not all victims would accept the invitation to make use of that services provided by Rape Crisis, especially at that moment after the incident has been reported. According to a document that was handed up by her from Rape Crisis, all 3 victims in this case were seen by a Rape Crisis counsellor. In respect of all 3 victims, the following services were rendered on the respective days they were there:

- a) containment counselling; b) a forensic examination; c) the administration of relevant medication(PEP). It is not clear what the exact content, substance and nature of the services entail.

[31] It also seems that these victims were transported from Milnerton to Victoria Hospital in Wynberg to be seen by the councillors of Rape Crisis. Whilst I am not a professional in this field, I cannot imagine that this could have been sufficient or nearly sufficient counselling that could have been given to these three complainants. It was clearly of such a nature that they did not even remember or consider it to be counselling that were given to them. There was clearly no further follow-up consultation or further contact with any of these 3 women. They were left to cope on their own.

[32] Mrs Abrahams wanted to create the impression that these women were to blame because they did not either go back or make any effort to go for follow-up services to Rape Crisis. I find this explanation pathetic, unhelpful and unsympathetic

to the plight of these three women. I cannot imagine that they would not have wanted assistance, given the situation they were later found to be in by the social workers attached to the office of Mrs Abrahams. She also later conceded that Rape Crisis should have been more proactive and should have provided some follow up service to these complainants. It is not clear whether the provision of such services falls within the mandate of Rape Crisis. I therefore do not wish to comment whether they had neglected or failed to deliver such service. If it is indeed the case, then they have figuratively speaking, dropped the ball as far as these women are concerned.

[33] In my view, ultimately it remains the constitutional responsibility of the Department of Social Development to have either delivered the service or to ensure that Rape Crisis delivers this service. In this regard, the Department has failed in their constitutional duty towards these 3 women. It is also clear from the evidence given by the Department of Social Development, whilst they have contracted the services out to Rape Crisis, that there is clearly not a sustainable system in place to assist women who had been raped or sexually violated, with a programme of long-term and continuous counselling and assistance after they had been raped or sexually violated.

[34] What is currently in place is clearly not enough; it is merely ad hoc assistance in the form of lay counselling, which is immediately given to a rape victim after the incident. There is no proper follow-up or monitoring or after-care assistance given to a rape victim after they have been seen by a counsellor of Rape Crisis. In my view this conduct clearly amounts to a violation of the rights of these 3 women, which rights they have as victims in terms of the Constitution. Whatever services was given in any event was not sufficient to assist any of these victims as is evident from what was reported about their psychological condition, in the various victim impact statements as compiled by the social workers.

[35] The highest court in the land in **Wickham v Magistrate, Stellenbosch and Others 2017 (1) SACR 209 (CC)** at paras 23-26 recognised that in terms of section 234 of the Constitution that Parliament in order to deepen the culture of democracy adopt charters of rights consistent with the Constitution. The Service Charter for Victims of Crime in South Africa ("**Victims Charter**") is a charter of such rights. In terms of the Victims Charter certain rights of victims are set out therein, which includes the following:

"1. The right to be treated with fairness and with respect for dignity and

privacy:

- You have the right to be attended to promptly and courteously, treated with respect for your dignity and privacy by all members of any department, institution, agency or organisation dealing with or providing a service to you (hereafter referred to as a service provider).
- The police (during the investigations,) the prosecutors and court officials (during preparation for and during the trial proceedings), and all other service providers will take measures to minimise any inconvenience to you by, among others, conducting interviews with you in your language of choice and in private, if necessary.
- These measures will prevent that you are being subjected to secondary victimisation.

5. The right to assistance:

- You have the right to request assistance and, where relevant, have access to available social, health and counselling services, as well as legal assistance.
- The police will assist you by explaining police procedures, informing you of your rights and making the appropriate referral to other relevant service providers.
- The office manager or head of office at the court will provide for the services of an interpreter.
- The prosecutor will ensure that special measures are taken in the case of sexual offences, domestic violence and child support or maintenance matters and that, where available, such cases are heard in specialised courts.
- If you have special needs, all service providers will, within the scope of their functions, take all reasonable steps to accommodate you and ensure that you are treated in a sensitive manner."

[36] The Minimum Standards on Services for Victims of Crime states under Part II: The Processes and Responsibilities of the Relevant Service Provider that:

"If you are in need of assistance:

28. A number of government departments will provide assistance to you. The police will assist in on-site crisis intervention, in referrals for medical or

psychological assistance, in explaining police procedures, in providing information about your rights, in referral to non-governmental and community-based organisations (NGOs and CBOs) or community-based victim support services, in ensuring your safety at the scene of the crime, in the preservation of evidence and in advising you on crime prevention.

29. If there is any further threat after sentence, you, the investigating officer or the prosecutor must immediately contact the office of the Witness Protection Unit.
30. The Department of Social Services and other social service providers will, if available, offer emotional and practical support services, which may include court preparation programmes.
31. Healthcare workers will ensure that your rights, as contained in the Patients' Rights Charter, are upheld.
32. The Department of Education will ensure that intervention programmes such as counselling, referral and support procedures, are in place for victims in the educational system."

[37] The right of victims to be granted psychological assistance and counselling was universally recognised by the United Nations by adoption of the Declaration of Basic Principles for Justice for Victims of Crime and Abuse of Power on 29 November 1985. It states:

"Assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.
15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.
16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.
17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above."

It is therefore clear what was provided or not provided to these three women falls short from what is required by law and the Department of Social Services has been found wanting in this regard.

The interests of society

[38] Society demands that people like the accused that makes themselves guilty of multiple rapes on defenceless woman be severely punished. In the matter of S v C, such a person is described as a serial rapist. Women need to be protected against people like the accused. This court should make sure that the accused should never again have an opportunity to be placed in the position to once again rape a woman.

[39] It has been argued by Mr Carstens on behalf of the accused that he has remorse for his actions, due to the fact that he has admitted guilt on all of these charges. And this fact, together with all the other circumstances of this case would be sufficient substantial and compelling circumstances to deviate from the prescribed sentences. The mere fact that a person has pleaded guilty, in my view, cannot be regarded as a factor that can be advanced to justify a deviation from the prescribed sentence. Especially in light of the fact that the accused had little or no choice but to admit guilt on these charges levelled against him, due to the fact that the evidence against him was damning. According to prosecutor the complainants identified the accused and he was connected by means of DNA evidence to all of these rapes.

[40] Even if he did plead guilty without having been forced by damning evidence to do so, this fact in my view, together with his personal circumstances would not have constituted substantial and compelling circumstances to deviate from the prescribed sentences. The facts of this case based on the severity of the charges against him, which includes the manner in which he had attacked and raped the complainants on 3 separate occasions with a dangerous weapon, do not justify such a conclusion. This is a case where life imprisonment would not be inappropriate, especially when the court has to protect women against a serial rapist like the accused. I cannot imagine a more appropriate or suitable sentence for a person who has made himself guilty of rape on multiple occasions, than life imprisonment.

[41] In the result, I impose the following sentence in respect of the offences committed in respect of "N" on 1 November 2015:

Count 1 - Attempted robbery with aggravating circumstances - 5 years imprisonment;
Count 2 - Kidnapping - 3 years imprisonment;

Count 3 - Rape - life imprisonment;

Count 4 - Assault with intent to do grievous bodily injury - 6 months imprisonment.

[42] In respect of the offences committed on 10 February 2016, which was committed in respect of the complainant "NQ":

Count 5 - Kidnapping - 3 years imprisonment;

Count 6 - Robbery with aggravating circumstances- 15 years imprisonment;

Count 7- Rape - 10 years imprisonment.

[43] In respect of the offences committed on 26 March 2016 in respect of "T":

Count 8 - Kidnapping - 3 years imprisonment;

Count 9 - Robbery with aggravating circumstances - 15 years imprisonment;

Count 10 - Rape - life imprisonment.

[44] It is ordered that all the sentences imposed should run concurrently. In terms of the provisions of section 103 of Act 60 of 2000 the Fire Arms and Ammunitions Act, the accused is declared unfit to possess a firearm.

[45] I also make the following order: That Mrs Soraya Abrahams of the Department of Social Development is directed to provide this court as well as the MEC for Social Development of the Western Cape with a report regarding the necessary psychological and psychiatric services they have provided to the 3 complainants in this matter, after a period of 3 months of this court order.

JUDGE OF THE HIGH COURT
RCA HENNEY

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NUMBER: CC 17/2017

In the matter between:

THE STATE

and

MASIXOLE MPEVU

ACCUSED

**PLEA AND SENTENCE AGREEMENT IN TERMS OF
SECTION 105A OF ACT 51 OF 1977(AS AMENDED)**

A. PREAMBLE

WHEREAS

1. The accused is charged as follows:

- a) **KIDNAPPING (THREE COUNTS).**
- b) **RAPE (THREE COUNTS) - AS CONTEMPLATED IN SECTION 3 OF THE CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT, ACT 32 OF 2007 ('SORMA'), READ WITH THE PROVISIONS OF SECTIONS 1, 56(1), 57, 58, 59, 60 AND 61 OF ACT 32 OF 2007; ALSO READ WITH SECTIONS 256 AND 261 OF THE CRIMINAL PROCEDURE ACT, ACT 51 OF 1977 ('CPA') AND FURTHER READ WITH THE PROVISION OF SECTION 51(1) AND PART 1 SCHEDULE 2 OF THE CRIMINAL LAW AMENDMENT ACT 105 OF 1997 ('CLAA').**
- c) **ATTEMPTED ROBBERY (1 COUNT) - WITH AGGRAVATING CIRCUMSTANCES AS DEFINED IN SECTION 1 OF THE CPA.**
- d) **ASSAULT WITH INTENT TO DO GRIEVOUS BODILY HARM.**
- e) **ROBBERY (TWO COUNTS) - WITH AGGRAVATING CIRCUMSTANCES AS DEFINED IN SECTION 1 OF THE CPA READ WITH THE PROVISIONS OF S 51(2) AND PART II OF SCHEDULE 2 OF THE CLAA.**

2. Advocate David Damerell, a Deputy Director of Public Prosecutions, has been duly authorized in writing by the National Director of Public Prosecutions, as required by section 105 A of the CPA, to negotiate and enter into a Plea and Sentence agreement with the accused. A copy of the authorization is attached as Annexure "A".

3. Advocate Pulane A Thaiteng is duly authorised to conduct proceedings in court on behalf of the State in connection with this agreement, after it has been duly entered into.

4. The Deputy Director of Public Prosecutions and accused, who is represented herein by Advocate Henk Carstens, have negotiated and entered into the agreement in respect of a plea of guilty by accused to the offence of which he may be convicted as well as a just sentence to be imposed by the Honourable Court.

5. The accused has been informed of his rights referred to in section 105A(2)(a) of the CPA:

- a. To be presumed innocent until proven guilty beyond reasonable doubt;
- b. To remain silent and not to testify during the proceedings;
- c. Not to be compelled to give self-incriminating evidence; and
- d. That he is not obliged to enter into this agreement, but that if he does enter into this agreement, the contents thereof will be made known to the Court which may convict and sentence him in terms of the agreement or may refuse to accept the agreement, in which case the agreement will be null and void and the State will not be able to use or present such agreement against him as evidence in a criminal trial before another Court.

6. Advocate Pulane A Thaiten'g has duly complied with the requirements of section 105A(1)(b) of the CPA regarding the following aspects:-

7. The investigating officer, Dectective Sergeant Mziwethu Sidinana, has bel;n consulted with. He is satisfied with the terms of the agreement, including the sentence;

8. Proper regard has been had to the circumstances prescribed in section 105A(b)(ii) of the CPA;

The complainants, namely;

- i. **N M**
- ii. **N P**
- iii. **T R**

have been afforded an opportunity to make representations to the prosecutor regarding the content of the agreement and are satisfied with the terms of the agreement including the sentence;

9. The accused, represented and assisted by the above-mentioned legal representative, admits guilt in respect of all the charges, as mentioned above, and

pleads guilty thereto on the basis set out below.

10. The Deputy Director of Public Prosecutions is prepared to accept such a plea of guilty.

NOW THEREFORE the Deputy Director of Public Prosecutions, Advocate D Damerell, and the accused, who is represented herein by Advocate H Carstens, have negotiated and reached the following agreement with the following terms in respect of a plea of guilty by the accused 1s well as a just and fair sentence to be imposed by this Honourable Court.

B. PLEA OF GUILTY AND ADMISSIONS

11. The accused pleads guilty to the charges, as set out in paragraph 1 above, and makes the following admissions:

a. That he understands the charges against him as set out in the in the charge sheet.

b. That he was in no way unduly influenced or threatened to plead guilty nor were any promises made to him should he plead guilty, other than the terms of this agreement.

c. That he is in his sound and sober senses while entering into this agreement.

COUNT 1

ATTEMPTED ROBBERY WITH AGGRAVATING CIRCUMSTANCES AS DEFINED IN SECTION 1 OF THE CPA

12. **IN THAT** on or about the 1 November 2015 and at or near Democratic Way, Joe Slovo, in the District of MILNERTON, the accused unlawfully and with the intent to force her into submission, assaulted **NOKUBONGA M**, a female person and/or threatened to do her harm and/or caused her to believe that harm would be done to her by threatening her with a knife and did then attempt to take money, her property or property in her lawful possession.

AND THAT aggravating circumstances as defined in section 1 of the CPA are applicable as the accused, while committing this offence, be it before, during or after the commission thereof, handled a dangerous weapon, to wit a knife.

COUNT 2

KIDNAPPING

13. **IN THAT** on or about the same date and place mentioned in coun1 1, the accused did unlawfully and intentionally deprive **NOKUBONGA M**, a female person, of her freedom of movement by dragging her at knife point into a toilet.

COUNT3

RAPE

14. **IN THAT** on or about the same date and place mentioned in count 1, the accused did unlawfully and intentionally commit an act of sexual penetration with the complainant to wit, **N M**, by putting or pushing his penis into or beyond the mouth and vagina and of the said **N M**, without the consent of the said complainant.

AND FURTHER THAT the provisions of the CLAA are applicable in that this crime is mentioned in section 51(1) and Part I of Schedule 2 of the said Act as it was committed in circumstances where the victim was raped more than once whether by the accused or by any co-perpetrator or accomplice; and that the minimum sentences of life imprisonment is applicable.

COUNT4

ASSAULT WITH INTENT TO DO GRIEVOUS BODILY HARM

15. **IN THAT** on or about the same date and place mentioned in count 1, the accused did unlawfully and intentionally assault **N M**, a female person by threatening her with a knife.

COUNT 5

KIDNAPPING

16. **IN THAT** on or about the 10 February 2016 at or near Umthuma Crescent, Joe Slovo in the district of MILNERTON, the accused did unlawfully and intentionally deprive **N P**, a female person, of her freedom of movement by dragging her to a place in the street at knife point.

COUNTS

ROBBERY WITH AGGRAVATING CIRCUMSTANCES AS DEFINED IN SECTION 1 OF THE CPA

17. **IN THAT** upon or about the same date and place mentioned in count 5, the accused unlawfully and with the intent to force her into submission, assaulted **N P**, and/or threatened to do her harm and/or caused her to believe that harm would be done to her, by threatening her with a knife and did then and with force take the following items from her, to wit; a wrist watch and Samsung cellular phone, her property or property in her lawful possession.

AND THAT aggravating circumstances as defined in section 1 of the CPA are applicable as the accused, while committing this offence, be it before, during or after the commission thereof, handled a dangerous weapon to wit, a knife. **AND**

FURTHER THAT the provisions of section 51(2) of the CLAA are applicable in that this crime is mentioned in Part II of Schedule 2 of the said Act.

COUNT 7

RAPE

18. **IN THAT** on or about the same date and place mentioned in count 5, the accused did unlawfully and intentionally commit an act of sexual penetration with the complainant to wit, **N P**, by putting or pushing his penis into or beyond the vagina of the said **N P**, without the consent of the said complainant.

AND FURTHER THAT the provisions of section 51(2) of CLAA are applicable in that this crime is mentioned in Part 11 of Schedule 2 of the said Act.

COUNT 10

RAPE

21. **IN THAT** on or about the same date and place mentioned in count 8, the accused did unlawfully and intentionally commit an act of sexual penetration with the complainant to wit, **T R**, by putting or pushing his penis into or beyond the mouth and vagina of the said **T R**, without the consent of the said complainant.

AND FURTHER THAT the provisions of CLAA are applicable in that this crime is mentioned in Section 51(1) and Part I of Schedule 2 of the said Act- as it was committed in circumstances where the victim was raped more than once whether by the accused or by any co-perpetrator or accomplice; and that the minimum sentences of life imprisonment is applicable.

C. AMPLIFICATION TO PLEA OF GUILTY

22. In amplification of his plea of guilty to the charges the accused admits the following facts:

I. Between August 2015 and March 2016, the accused robbed and raped young women in Joe Slovo, Milnerton. The accused's *modus operandi* was to accost women walking alone at night. He would threaten them with a knife, rob them of their belongings and then drag them to a secluded place where he would sexually assault them repeatedly.

II. During early hours of 1 November 2015, **N M**, the complainant in counts 1 to 4 was in Joe Slovo location, walking home from a friend's place when she was accosted by the accused. The accused produced a knife and placed it against M's stomach and instructed her to give him all her money. M told accused she had no money and offered him her shoes which she started taking off. The accused told

complainant to put her shoes back on and dragged her to toilet and told M, he was going to have sex with her. At the toilet, the accused raped the complainant, vaginally, orally and anally. After the rapes, the accused opened the toilet door and left. M then attempted to leave the toilet when the accused came back and threatened her with a knife. The accused is known to M as his brother's friend.

III. During early hours of 10 February 2016, in Joe Slovo, N P, the complainant in counts 5 to 7 was walking to her home. She was grabbed by the accused from behind. P tried to scream but accused muffled her screams by holding her mouth. P identified the accused as someone she knew and considered a friend. P asked the accused what he was doing and accused swore at her. The accused robbed P of her watch and cellular phone and then he raped her vaginally.

IV. On 26 March 2016 at night, T R, the _complainant in counts 8 to 10 was in Joe Slovo, walking home. Whilst walking R was accosted by the accused who grabbed her by her jacket and demanded her money and cellular phone at knife point. After taking these items from the complainant the accused forcefully dragged R to a toilet where he raped her, vaginally and orally.

V. The accused accepts that his actions were wrongful and unlawful.

23. **NOW THEREFORE** the accused admits that he is guilty of the aforesaid charges as set out in the charge sheet.

D. AGREEMENT IN RESPECT OF A JUST SENTENCE

It is agreed that the following is a just sentence in the circumstances of the charges mentioned above:

1. ATTEMPTED ROBBERY WITH AGGRAVATING CIRCUMSTANCES

(COUNT 1) - the accused is sentenced to 4 years imprisonment.

2. KIDNAPPING (COUNT 2, 5 and 8), the accused is sentenced to 6 years imprisonment on each count.

3. ASSAULT WITH INTENT TO DO GRIEVOUS BODILY HARM (COUNT 4), the accused is sentenced to 6 months imprisonment.

4. RAPE (COUNT 3, 7 AND 10), the accused is sentenced to **LIFE IMPRISONMENT** on each count.

5. ROBBERY WITH AGGRAVATING CIRCUMSTANCES (COUNT 6 AND 9), the accused is sentenced to 15 years imprisonment on each count.

The accused is further declared unfit to possess a firearm in terms of section 103 of the Firearms Control Act, No. 60 of 2000.

E. SUBSTANTIAL AND OTHER RELEVANT FACTS

24. The gravity of the offence, the interests of the community and the personal circumstances of the accused have been taken into account and duly considered by all parties.

25. The aggravating factors are as follows:

a. The offences are serious and prevalent in our society.

b. The accused has two previous conviction of THEFT and one conviction of POSSESSION OF ILLEGAL SUBSTANCES IN CONTRAVENTION OF OF THE PROVISIONS OF SECTION 4(a)/4(b) READ WITH SECTIONS 1, 13, 17 TO 25 AND 64 OF THE DRUGS AND DRUG TRAFFICKING ACT 140 OF 1992, see annexure 'B'.

c. The accused was known by the three complainants and they considered him a friend and/or acquaintance.

d. The complainants wrote Victim Impact Statements, in which they expressed the aftermath of the attacks against them. The reports are attached as annexure 'C' to 'E'.

26. The mitigating circumstances are as follows:

a. The accused has shown remorse by pleading guilty.

b. The accused is 27 years old.

c. The accused is currently unemployed.

d. His plea of guilty has brought to a conclusion the investigation and prosecution which spared the Court and the State the expense and difficulty of a prolonged trial;

SIGNED at CAPE TOWN on this 23rd day of JUNE 2017.

A handwritten signature in black ink, appearing to read 'David Damarell', written over a horizontal line.

ADV. DAVID DAMERELL

DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS



ACCUSED: MASIXOLE MPEVU

ADVOCATE HENK CARSTES
LEGAL REPRESENTATIVE FOR THE ACCUSED

S v MASIXOLE MPEVU

The agreed sentence is as follows:

- 1. ATTEMPTED ROBBERY (COUNT 1)** -the accused is sentenced to 5 years imprisonment on each count.
- 2. KIDNAPPING (COUNT 2, 5 and 8)**, the accused is sentenced to 6 years imprisonment on each count.
- 3. ASSAULT WITH INTENT TO DO GRAVE BODILY HARM (COUNT 4)**
the accused is sentenced to 6 months imprisonment.
- 4. RAPE (COUNT 3, 7 AND 10)**, the accused is sentenced to **LIFE IMPRISONMENT** on each count.
- 5. ROBBERY WITH AGGRAVATION CIRCUMSTANCES AS DEFINED IN SECTION 51(1)(b) OF THE CPA (COUNT 6 AND 9)**, the accused is sentenced to 15 years imprisonment on each count. All the sentences are to run concurrently.

DATE: JUNE 2017

THE HONOURABLE
JUDGE PRESIDENT

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: SS17/2017

DATE: 2 JUNE 2017

In the matter between:

THE STATE

And

MASIXOLE MPEVU

JUDGMENT

HENNEY, J:

The Court is then satisfied on the admissions made and as contained in the plea agreement and sentence agreement that the accused admits his guilt unequivocally on all these charges, the Court then **FINDS HIM GUILTY ON ALL TEN CHARGES AS SET OUT IN THE INDICTMENT.**

HENNEY, J