



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GRAHAMSTOWN)**

Case no: 27/2021

Date heard: 24 January 2022

Date Delivered: 01 February 2022

NOT REPORTABLE

In the matter between

THE STATE

and

NICHOLAS HENDRICKS

ACCUSED

JUDGMENT

GOVINDJEE, J

Background

[1] The accused was charged with attempted murder and rape. It is alleged that he unlawfully and intentionally attempted to kill M..M.. (the complainant), by repeatedly hitting, kicking and stabbing her with a knife and fork all over her body between 13 and 17 September 2020. On 17 September 2020 the accused

allegedly raped the complainant, who was 18 years of age at the time, by inserting the handle of a mop into her vagina without her consent and against her will.

[2] The accused pleaded guilty to attempted murder and not guilty to rape in contravention of s 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.¹ His guilty plea was not accepted by the state. Various admissions were made in terms of s 220 of the Criminal Procedure Act, 1977.² These include the contents of the J88 medical form completed by Mr Fezile Mtini, the copies of the complainant's hospital files and correct reflection of her injuries, treatment received and physical condition.³ The accused also accepts that a photograph album containing photographs of the complainant taken immediately before the accused's arrest on 17 September 2020 correctly reflect the complainant, the injuries he inflicted upon her and the interior of the flat where she lived at the time.

[3] Those injuries are serious in nature, reflecting the complainant in a badly beaten state, with numerous stab wounds and punctured skin. The accused admits that he caused these injuries by assaulting the complainant by hitting her with closed fists, trampling her and stabbing her multiple times with a fork and knife. He admits further that he foresaw the possibility that the complainant could die as a result of the injuries she suffered at his hands, and that he reconciled himself to this possibility. The key issue in dispute is the alleged rape of the complainant. The accused also denied assaulting the complainant on more than one day.

The evidence

[4] The complainant testified that she had been romantically involved with the accused for approximately nine months. On 13 September 2020 she accompanied the accused from Alexandria to purchase a television in Gqeberha. Upon their return the accused noticed a crack in the television screen while at his shop. He

¹ Act 32 of 2007.

² Act 51 of 1977.

³ The complainant was treated at Port Alfred Hospital on 15 September 2020 and between 17 and 19 September 2020. She was transferred to Livingstone Hospital on 19 September 2020 and treated there until 2 October 2020, when she was discharged.

took out his anger on the complainant, also alleging that she was having affairs with other men, and assaulted her by hitting her face with his fists. The couple returned to their flat in Jakiya Street. The accused became angrier, again assaulting the complainant with his fists, before stabbing her with a knife and fork.

[5] The complainant's face became swollen and she started to bleed. The accused sprayed deodorant on the wounds and in her eyes. The complainant was unable to fight back given the accused's strength. He hit her harder with his fists, most blows being directed towards her face and some to her body. The floor of the flat was covered with blood. The complainant was instructed to clean the blood and had difficulty doing so because her eyes were burning. The accused also trampled on the complainant when she fell.

[6] At some point the accused calmed down and the assault ceased. The complainant spent the night at the flat. The accused left the premises the following morning. When he returned, the accused informed the complainant that she would be taken to bath at the accused's other place of residence, where he resided with his wife and child. When they arrived, the complainant tripped and fell, resulting in another bout of anger and accusation about the television and the alleged affairs. The accused again hit the complainant with his fists, also on her shoulders where she had been stabbed. She bled on the couch and was instructed by the accused to clean the blood.

[7] A friend of the accused, James, then arrived, before being sent out. The complainant was again assaulted, being hit on her back and chest, pushed against the wall and thrown against the ground and against gym equipment. The reason for the assault, according to the complainant, remained the same accusations of infidelity and the broken television. James returned and the accused explained that the complainant had been unfaithful towards him. The accused then assaulted the complainant by hitting her with a standard-looking mop with a wooden handle, approximately two centimetres in diameter, and instructed her to clean the blood on the floor. The tip of the mop broke off during this assault. James sat by passively as the complainant tried to clean the blood. The accused then instructed the complainant to take a bath.

[8] While in the bathroom, the accused took some water from a kettle, poured this into a cup, and then onto a wound on the complainant's arm causing a burn. That wound was still visible at the time of testimony. Once she had bathed and dressed, the complainant accompanied the accused to his shop, where she fell asleep on the couch. The accused instructed James to assist the complainant to wear a spiderman mask to cover her facial swelling and they proceeded to return to the flat. The complainant felt dizzy and lay on a bed while the accused had a discussion with James. The accused left the complainant with James for a few hours. James left for work at daybreak, by which time the accused had returned. He informed the complainant that they were to go to Kenton-on-Sea, so that the complainant could be left with a friend of his, unknown to the complainant.

[9] Before they arrived, the accused instructed the complainant to lie about what had occurred. She was to explain that she had been assaulted and stabbed by two robbers and did so when the friend's mother made enquiries. That lady explained to the accused that the complainant was seriously injured and should be taken to the clinic. Accompanied by his friend, the accused acceded. Once there he repeated the story to be told by the complainant. After she had been seen by a nurse at the clinic, who recorded that the complainant had been hurt during a robbery, the accused offered to take her to hospital instead of her travelling by ambulance. He explained to the staff that she would be transported quicker that way, and indeed transported her to Port Alfred Hospital.

[10] The accused treated the complainant with some kindness once she had been admitted to hospital, bringing her yoghurt and water. The complainant was placed under observation as an in-patient. The accused and his friend were informed of this development. He instructed the complainant to advise the nurse that it was unnecessary for her to remain in hospital and that he would obtain medication for her from a pharmacy. The complainant signed herself out of hospital.

[11] In the vehicle, the accused indicated that he had demonstrated kindness thanks to his friend, who was dropped off at his home. The accused and complainant returned to their flat. The accused assisted by bringing water and by

taking the complainant to the toilet. She washed and lay on the bed while he went to the pharmacy to collect some medication, which she was given to use. The accused subsequently advised the complainant that the landlady was looking for her, and that she was to repeat the story about the robbery to her.

[12] On Wednesday 16 September the accused specifically mentioned that he believed the complainant had had an affair with somebody named Chestan. She was to call Chestan and tell him she was expecting his child. When she denied this she was again hit with fists and trampled on her legs and knees. The complainant contacted her best friend by telephone to obtain Chestan's number, at the accused's insistence. The complainant was barely comprehensible given the facial swelling. She eventually received Chestan's number and called him based on the accused's instructions. Chestan told the complainant that they had never had a love relationship. The accused grabbed the phone, switched it off and assaulted the complainant in a similar fashion. When the complainant was seated on the couch, the accused started stabbing her with the fork and knife on her legs, face and head. He also made movements with a knife on her forehead. The complainant would later learn that the accused had cut the profanity "POES" into her forehead.

[13] The complainant lost the feeling of pain and could not describe everywhere she had been stabbed and slashed. At one point the complainant was stabbed in her thigh, the knife being pulled down her leg while still inside her causing a tear. She was also stabbed above both knees and in the chest. That evening the accused gave the complainant some medication and she heard him talking on the telephone to some family members.

[14] The following morning the accused blamed the complainant for the police's arrival, with Chestan, the previous evening. He again hit her with his fists. The landlady entered the premises sometime later and the accused fetched water from an outdoor tank. The complainant used this opportunity to tell the landlady that the accused was the cause of her condition. The landlady departed, the accused returned and enquired as to whether the complainant had said anything about his assault. She denied this and was hit and then stabbed in the head with the fork. The accused then tied the complainant's hands and said he would now do to her

what had been done to her friend, who she knew had been raped a few years previously.

[15] The accused then removed the complainant's trousers, took the broken mop stick that was close by and pushed it into her vagina, took it out and repeated this twice. The complainant, who was crying, was told to keep quiet and untied. Her top was removed and tied to her head and she put on different pants. The landlady returned with another lady and brought clean clothes, asking about the cloth tied to the complainant's head. When this was untied, the landlady saw the marks on the forehead and her friend told the complainant about the word that had been cut into her. The complainant was advised that the police had been called and would be there soon.

[16] The accused hit and stabbed the complainant again once the ladies had departed, and boiled water in a kettle. He told the complainant that she would soon see her mother, who had died four months previously. She understood this to mean that he was going to kill her. The accused went to fetch the kettle once the water had been boiled. A knock on the door caused him to pick up the knife and fork from the floor and to throw this into a cupboard. Fortunately for the complainant, the police had arrived.

[17] A policewoman instructed the accused to leave the premises so that they could talk to the complainant alone. As she was unable to speak clearly because of the facial swelling, the landlady sat close to her and communicated with the police. The complainant indicated that the accused had been the one to attack her and stab her. She was taken to hospital in Port Alfred and admitted.

[18] The policewoman returned to take a statement from her the following day, but she was unable to speak. The complainant conveyed, for the first time, that the mop handle had been inserted into her vagina, in the presence of a nurse and doctor. She was subsequently transferred to Livingstone Hospital in Gqeberha and remained in hospital between 19 September until 2 October 2020, including time undergoing an operation. A variety of medical problems have followed: the complainant is unable to stand for long periods of time, which makes it difficult for

her to work, she experiences shortness of breath and the scars where she was stabbed remain visible. Given the publicity that followed, the complainant also struggled emotionally and testified that it had taken her a long time to accept the scars on her body and to being seen in public. She consulted a psychologist once per week for between three to four months, had to take medication for sleep and to lower stress, and no longer has any interest in men or relationships.

[19] The photograph book, containing pictures taken by the police, conveys the complainant's sorry condition, including the letters incised into her forehead, better than words can. They also show a great deal of toilet paper, that the complainant had used to clean her own blood, inside the toilet.

[20] The accused admits the thrust of the assault and requested his counsel to convey his apologies to the complainant during his cross-examination. They had been in love and the assault had been based solely on his disappointment at news of the complainant's infidelity. The accused had even moved out of his marital home to be with the complainant, who had wanted him to leave his wife. He had never taken the complainant to Gqeberha to buy the television. He had not inserted any weapon or item into the complainant's vagina. The version he put to the complainant denied the use of a fork in the assault. The accused believed that the complainant had had a relationship with his friend, Stuart Meyer, as they had been seen together at a tavern. On the version put, the first assault took place at his house and not at the shop and he had no recollection of crafting any word on the complainant's forehead.

[21] The complainant was unshaken during cross-examination. Her evidence was clear and unequivocal and her responses measured. It was difficult for her to accept the accused's apologies. But she confirmed that they had been in love and that the accused had supported her after her mother's funeral. She denied that the rumours about her infidelity were true. When the accused told James about her affairs, she had denied it, resulting in the continued physical assault. The accused barred the complainant from visiting taverns during their relationship, so she could not have been seen there. The complainant confirmed that she had accompanied the accused and two of his friends to Gqeberha to buy the television, and that was

part of the reason for the initial assault, which had taken place as she had described.

[22] Constable Magorosi testified that she had received a complaint from Chestan on 16 September 2020. He had received a threatening WhatsApp message from the accused, alleging an affair with the complainant. Accompanied by a colleague and Chestan, Magorosi visited the accused at his flat, who confirmed sending the message and promised to refrain from doing so in future. The complainant was visible in the background and clearly asleep. The accused indicated that the complainant had taken sleeping tablets.

[23] A complaint of assault was received the following day from the complainant's landlord. Magorosi returned to the accused's flat. He was standing in the doorway holding a kettle with boiling water in his hands. The complainant was seated on the couch with her swollen face covered with a T-shirt. Whenever she tried to respond to questions the accused spoke before her and she would repeat the answer. The message conveyed was that the complainant had been robbed.

[24] As a result of his intervention, Magorosi requested a colleague to escort the accused out of the flat so that she could question the complainant together with the landlady. The complainant had also given some hand and eye signals suggesting to Magorosi that the accused should not be present. Once the accused had left, the complainant indicated her assault at the hands of the accused, adding that he should not be told what she had said, as he had threatened to kill her. The complainant was afraid of the accused and was reluctant to speak.

[25] Magorosi relayed what the complainant had told her at the time about her assault, including having been stabbed with a knife and fork. Those items were found in the house, covered in dried blood. Her injuries were clearly visible all over her body and once the T-shirt bound on her head was removed. The word 'POES' had been cut into the skin on her forehead with a knife. Magorosi had taken the photographs contained in the album presented to court, including the toilet paper with blood. The complainant explained to her at the time that the accused would

clean her up after assaulting her. She had difficulty communicating but was audible. The accused was then arrested.

[26] Magorosi visited the complainant in hospital on 18 September 2020 to take a witness statement. The complainant was in pain, the conversation was short and a statement was not taken. The complainant did, however, confirm that the accused had assaulted her, adding that he had taken a broken mop stick and inserted it into her vagina.

[27] A forensic nurse based at Dora Nginza Hospita, Fezile Mtini, testified that he had examined the complainant on 22 September 2020 and completed the 'J 88 report on a medico-legal examination by a health care practitioner'. She was heavily sedated at the time so that a patient history could not be obtained. He confirmed the multiple lacerations covering the body from head to toe, some of which had been sutured.

[28] The gynaecological examination revealed nothing abnormal, but Mtini had added on the report that this did not mean that no sexual penetration had occurred. He explained this comment during his testimony, which was unchallenged. An object may have been inserted into the complainant's vagina causing injury, but he had examined her five days later. By that time, as with the inside of a cheek, swelling and bruising may have healed, if indeed those injuries were present in the first place. The medication prescribed to the complainant would have assisted with any reduction in swelling in this area.

[29] Dr van Jaarsveld testified that she worked in the Port Alfred Hospital and treated the complainant on 19 September 2020. The complainant was struggling to breath, her blood levels were very low and she required blood transfusion to remain alive. She was critically ill, also suffering from Crush Syndrome, which could result in acute renal failure. Perusing the photographs, Van Jaarsveld described the various indications of bruising, blunt force trauma, puncture wounds caused by the fork and lacerations caused by the knife and confirmed that the injuries depicted would have caused the Crush Syndrome. The inevitable consequence, if untreated,

was mortality and the complainant would not have survived had she not been brought to hospital for treatment on 17 September 2020.

[30] The witness testified that the complainant's wounds depicted in the photographs were at different stages of healing, so that it was clear that the assault which caused her condition had occurred over a period of a few days. The complainant also had a fractured nose and blood collection in her sinuses at the time of examination. She required a further blood transfusion on 22 September and was kept sedated until 25 September 2020.

[31] The accused testified in his own defence. He was 27 years old, married with two young children and self-employed. He had been involved in a love relationship with the complainant for eight to nine months. He had heard rumours about the complainant's infidelity and confronted the complainant in the presence of James at his home. She had admitted sleeping with one of his best friends. This caused the accused to snap, and he hit and kicked the complainant in the presence of James, who asked him to stop.

[32] The accused, complainant and James then went to the flat. The accused questioned her about affairs with other men. The complainant confessed to this, resulting in the accused stabbing her with a knife and fork all over her body for a period of approximately an hour and a half. James then indicated that he did not want to remain involved, and left the premises. The accused attended to some of the complainant's injuries, providing bandages and pills, and realised he had made a mistake.

[33] The assault had resulted from his anger and disappointment in the complainant, whom he loved deeply, so much so that he was willing to leave his wife for her. The next day, the complainant was taken to Kenton-on-Sea, and entered the clinic on her own. The accused thought that the complainant would explain what had happened; instead she returned to indicate that she had said that she had been robbed, without the accused having instructed her to do so.

[34] The accused took the complainant to the Port Alfred Hospital. Her condition was very serious. The accused stepped out to pick up some food for the complainant and she discharged herself in his absence. They returned to the flat and James arrived. The accused visited his home, returning to the flat at midnight. The following day the accused contacted Chestan, who was his customer, directly by sending him a threatening message. Magorosi's version of the police visit that followed this threat was confirmed.

[35] The complainant had repeated her lie about a robbery to the landlady, who offered some assistance with a friend. The police arrived while the accused was boiling water for washing. They indicated that they had received a complaint from the landlord about an assault and were invited by the accused to talk to the complainant, who was seated on the couch. The complainant repeated her lie to the police, the accused assisting with communication because of the complainant's condition. The accused was asked to step outside and was arrested after a few minutes.

[36] The accused denied that he had raped the complainant with the broken mop stick or any other object. He made the point that a broken stick could not have smooth edges on both sides. He had, however, contrary to the version put to the complainant, used a knife and fork during his sustained assault. The accused testified that he never instructed the complainant to convey a robbery in order to cover his conduct. He accepted that the injuries he had inflicted were serious and he felt bad about this and tried to assist her. He also disagreed with the version that the assault had been motivated in part by the broken television, as the complainant had never accompanied him to Gqeberha for that reason. The complainant may have been motivated to lie about these aspects because of her family's dislike for the accused.

[37] Under cross-examination, the accused could not explain the reason for the discrepancy between the version put on his behalf to the complainant, regarding the fork, and his own testimony. The complainant had admitted to her affair with Meyer in front of James, and he had only slapped her several times and trampled her at his house, before they moved to the flat. The accused could not explain

properly why the complainant would then confess to affairs with other men, having just been assaulted for an alleged affair with Meyer. He indicated that he had lied to her by promising that she would not be assaulted again. Once she confirmed the other affairs, he had punched, kicked and stabbed her.

[38] The accused displayed emotion when explaining his love for the complainant. He accepted that he could have broken off their relationship instead of attacking the complainant, but was emotional and angry at the time. The two sets of assaults occurred on the same day after which the accused tried to obtain medical assistance for the complainant. He could not explain the entries contained in the Port Alfred Hospital folder for 15 and 17 September 2020, the correctness of which had already been admitted. The former entries reflect bruises to the face, three lacerations on the legs, facial swelling and bruises on the hands. No mention was made at that stage of the word cut on the forehead or the voluminous other wounds she eventually sustained. The accused could only suggest that the T-shirt wrapped around the head may have covered this and that the examination had been brief. He was unable to explain why the hospital would selectively reflect only some of the complainant's injuries if these had all been incurred before 15 September 2020, and denied assaulting her after that date.

[39] The accused maintained that he had taken the complainant to the nearest facility, which was a clinic, and that she had lied of her own free will to protect him, also when she was taken to hospital and spoke to the police. He was unable to explain why the complainant had subsequently identified him as the perpetrator and remained silent when it was put to him that she was scared of him.

[40] As to the mop, the accused testified that, as far as he could recall, he had not used a mop handle to penetrate the complainant. He questioned the presence of the mop at the flat, indicating that he understood the complainant to have testified that he had struck her with the mop at his home. There was no mop at the flat at all and, on the complainant's version, he would have had to travel with the mop from his home, which was unlikely. It was alleged that the complainant's step-father, an investigating officer in Alexandria, may have influenced her to lie about the rape given his dislike for the accused. The accused accepted that the complainant had

not waited long to reveal the alleged rape, doing so when questioned by police the day after his arrest. He maintained that she had access to a mobile phone and may have been influenced to allege rape, which he denied.

[41] When pressed on the word on the forehead, the accused now indicated that, having thought about the matter, he did recall cutting the word into the complainant's skin out of anger and disappointment and because he had snapped. He assumed this was inflicted with the knife and later admitted doing so to make the complainant feel pain, accepting the gross connotation of the word. But the accused would not have penetrated the complainant with the mop handle, knowing that he would sleep with her again in future. He felt bad about the attack and was prepared to hand himself over to the police. He had not done so at the complainant's insistence that they would sort matters out between themselves.

[42] According to the accused, the complainant had discharged herself because her mother had passed away in the same hospital and she would prefer to die at home. His version was now that he had tried to convince her to remain at the hospital for treatment and that he had intended to take her back on 16 September, before the flat owner's intervention the following day. The accused had not handed himself over to police because of the complainant's insistence that they would resolve matters themselves. He was surprised when she eventually told the truth.

[43] When confronted with the medical evidence suggesting a prolonged attack on his part, the accused testified that he only recalled assaulting the complainant on one day. He could not explain how the pictures and testimony revealed wounds at different stages of healing, some wounds containing fresh-looking blood and others with dried blood. He denied boiling water in order to burn the complainant and merely wanted to wipe her with a facecloth.

Analysis

[44] The complainant was an excellent witness who provided a consistent and accurate version of the events to which she had been subjected. She gave the impression of a person testifying honestly and openly about her ordeal. She

consistently denied having ever admitted to any affairs and there was no reason for her not to take the court into her confidence if in fact she had been unfaithful to the accused.

[45] The evidence shows that the accused was suspicious and jealous, and responded to his own emotions by resorting to a tortuous, sustained attack, intentionally designed to inflict harm that would ultimately result in the complainant's death. Despite admitting the charge of attempted murder, the accused demonstrated a selective recollection of events, and had no qualms about modifying his version and the admissions he made to suit his own purposes. The accused, for example, initially denied attacking the complainant with a fork, despite incontrovertible photographic evidence to the contrary, and only vaguely recalled cutting the vulgar word into the complainant's skin when pressed during cross-examination. He also suggested that at one point he had only slapped the complainant, rather than punching her, when this was never put to her during cross-examination.

[46] His version that he only assaulted the complainant on a single day is completely contrary to the available evidence, including the complainant's testimony and medical evidence confirming wounds at different stages of healing. The medical evidence demonstrates clearly that only some wounds and lacerations were visible on the complainant's body on 15 September 2020, with many more, including the carved word, appearing two days later. To suggest that the plethora of wounds could have been overlooked courtesy of a cursory examination on 15 September 2020 is fanciful at best. The accused also maintained, improbably, that the complainant admitted to further affairs even when a first admission had resulted in her assault at the hands of the accused.

[47] It must further be accepted that he repeatedly threatened the complainant to lie about the cause of her wounds in order to protect himself, taking no steps himself to confess his crimes and hoping that the complainant would protect him, even while he accepted that she might die as a result of the injuries he had inflicted. His offer to transport the complainant to the Port Alfred Hospital from the clinic as opposed to allowing her to travel by ambulance must be viewed in that

light. He had ample opportunity to assist the complainant on the road to recovery between 15 and 17 September 2020 if this was his true intention. Instead, he continued with his attack, which intensified when he suspected that the complainant had told the truth about her attacker to her landlady. She was naturally scared of a person who proclaimed his love, only to repeatedly attack her for no good reason. When it was safe to do so, and once the accused was out of earshot, she confirmed to the police that he had caused her condition. Even then, it was the evidence of Magorosi that the complainant was scared of the accused becoming aware of her disclosure and reluctant to speak.

[48] A person is guilty of attempting to commit a crime if, intending to commit that crime, he unlawfully engages in conduct that is not merely preparatory but has reached at least the commencement of the execution of the intended crime. 'Intention' in this connection bears the same meaning as intention to commit the completed crime, and *dolus eventualis* is therefore sufficient.⁴ In *R v Huebsch*, the Appellate Division considered the level of proof required to support a conviction for attempted murder. The court held that there need not be a purpose to kill proved as an actual fact and that it was sufficient if there was an appreciation that there was some risk to life involved in the action contemplated, coupled with recklessness as to whether or not the risk was fulfilled in death.⁵

[49] Importantly, there is no rule that prescribes that a person will be guilty of attempt only if he has taken the last step possible in the execution of the crime.⁶ A decision to kill another person slowly over a long period of time may result in a finding of guilt of attempt even on the first occasion when the person puts events into motion.⁷

[50] This is precisely the position in this instance. The accused went beyond the stage of preparation and proceeded to torture the complainant by hitting, kicking, tramping, stabbing, cutting and piercing her body over the course of a few days. In doing so, he appreciated the risk to her life fully, and nevertheless persisted with

⁴ CR Snyman *Criminal Law (5th Ed)* (LexisNexis) (2008) 294.

⁵ *R v Huebsch* 1953 (2) SA 561 (A) at 567.

⁶ Snyman *supra* at 287.

⁷ *Ibid.*

his conduct, reckless as to the outcome. It follows that the state has proved beyond reasonable doubt that the accused is guilty of the crime of attempted murder.

[51] The state must also prove the charge of rape beyond reasonable doubt, and if the accused's version is reasonably possibly true in substance the court must decide the matter on the acceptance of that version.⁸ An accused's version may be tested against the inherent probabilities but cannot be rejected merely because it is improbable but only if it is so improbable that it cannot reasonably possibly be true.

[52] In this case the state relies on the evidence of the complainant as a single witness in respect of the alleged rape. A court can convict an accused on the evidence of a single witness even if that witness' evidence is unsatisfactory in some or other respect.⁹ S 208 of the CPA provides confirmation that conviction may follow on the competent evidence of a single witness, who is expected to have delivered credible testimony. It is the duty of a trial judge to weigh this evidence, consider its merits and demerits and to then decide whether it is trustworthy and whether, despite any shortcomings or defects or contradictions in the testimony, the truth has been told.¹⁰ The exercise of caution must not be allowed to displace the exercise of common sense.¹¹

[53] In addition to the significant merits of the complainant as a witness, already identified, the inherent probabilities favour the acceptance of her version of events, also in respect of the rape. The accepted sustained period of torture and attempted murder, and the vicious anger that resulted in the accused carving the word "POES" into the complainant's forehead, supports the complainant's version that the accused's rage translated into her unlawful and intentional sexual penetration with the handle of the mop without her consent.

[54] While the complainant did not mention her rape when she was rescued at the flat, she did so the following day at the earliest subsequent opportunity. She consistently maintained that version in her testimony, explaining that the mop

⁸ *S v Shackell* 2001 (2) SACR (SCA) at 194g-i.

⁹ *S v Sauls and Others* [1981] 4 All SA 182 (A) 185-187.

¹⁰ *R v Bellingham* 1955 (2) SA 566 (A) at 569.

¹¹ *S v Sauls supra*.

handle had broken cleanly and was inserted into her vagina on more than one occasion after the accused had verbally threatened her with rape. Mtini's evidence in this regard was neutral and I accept that any physical injuries suffered by the complainant as a result of the rape had healed by time he examined her some five days later, even if there was any slight unevenness in the end of the mop as a result of the break. The complainant had no reason to lie about the rape given the overwhelming other evidence of the accused's conduct, and her evidence is accepted as truthful. She certainly displayed no overt hostility towards the accused and readily, and somewhat forlornly, conceded that it would be difficult to accept his apology. She conceded her previous love for the accused and accepted that he had loved her. Her testimony was notably free of malice and was that of a person speaking honestly.

[55] By contrast, the accused's denial of rape is so improbable when considered against the graphic background of the attempted murder that it must be rejected as being not reasonably possibly true. In coming to this conclusion, I am unable to accept the accused's version that the broken mop could not have made its way from his home to the flat during the course of the prolonged attack, given his state of mind and determination to cause physical harm and pain to the complainant to the point of killing her. The overwhelming probabilities favour the conclusion that he at some point took the broken mop with him to the flat, using it to cause further harm to the complainant.

[56] Considering the evidence holistically, and bearing in mind that the complainant was a single witness in this regard, I am satisfied that the state has proved that the accused is guilty of rape beyond reasonable doubt and that this involved the infliction of grievous bodily harm as charged. This conclusion flows largely from the credible, consistent and measured testimony of the complainant in relation to her experiences at the hands of the accused, including her rape. While the accused continued to deny the rape with the broken mop handle, this denial must be rejected as being not reasonably possibly true on a conspectus of all the evidence.

Order

[57] I make the following order:

- a. The accused is found guilty on counts 1 and 2.

A GOVINDJEE
JUDGE OF THE HIGH COURT

Appearances:

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