

In the High Court of South Africa

KwaZulu-Natal Local Division, Durban

Case No. CCD7/19

In the matter between:

The State

Applicant

and

Frans Mahumane

Accused

Judgment

Lopes J

[1] The accused in this matter, Frans Mahumane, was charged with 14 counts:

- Count 1 - Contravening the provisions of the Immigration Act, 2002 in that he entered the Republic of South Africa without permission, and remained in the Republic in contravention of the Act.
- Count 2- The kidnapping of N[....] M[....] M[....] on the 23rd June 2016.
- Count 3 - Contravening s 3 of the Criminal Law (Sexual Offences and Other Related Matters Amendment Act, 2007) ('the Act') – the rape of N[....] M[....] M[....] on the 23rd June 2016.

- Count 4 - The robbery of N[....] M[....] M[....] on the 23rd June 2016.
- Count 5 - The sexual assault, as defined in s 3 of the Act, of K[....] N[....] M[....] on the 10th July 2016.
- Count 6 - The robbery of K[....] N[....] M[....] on the 10th July 2016.
- Count 7 - The rape, in terms of s 3 of the Act, of S[....] M[....] on the 19th August 2016.
- Count 8 - The robbery of S[....] M[....] on the 19th August 2016.
- Count 9 - The rape, in terms of s 3 of the Act, of S[....] H[....] on the 12 October 2016.
- Count 10 - The theft of a tablet/mobile device and money from S[....] H[....] on the 12 October 2016.
- Count 11 - The rape, in terms of s 3 of the Act, of N[....] N[....] on the 6th August 2017.
- Count 12 - The robbery with aggravating circumstances of N[....] N[....] on the 6th August 2017.
- Count 13 - The rape, in terms of s 3 of the Act, of N[....] N[....] M[....] on the 15th August 2017.
- Count 14 - The robbery with aggravating circumstances of N[....] N[....] M[....] on the 15th August 2017.

The charges in counts 3, 7, and 9 (rape) are all read with the provisions of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, ss 256, 260 and 261 of the Criminal Procedure Act, 1977, and s 51 and Part 3 of Schedule 2 to the Criminal Law Amendment Act, 1997.

Counts 11 and 13 (rape) are read together with the provisions of s 51 and Part 1 of Schedule 2 to the Criminal Law Amendment Act, 1997.

Counts 12 and 14 (robbery with aggravating circumstances) are read with the provisions of s 51 and Part II of Schedule 2 to the Criminal Law Amendment Act, 1997.

- [2] Mr Mahumane pleaded guilty to count one, and not guilty to the remaining counts. Mr *Mlotshwa*, who appeared for Mr Mahumane, confirmed that the pleas were in accordance with his instructions. Accordingly, in terms of 112 (1)(a) of the Criminal Procedure Act, 1977 Mr Mahumane was convicted of contravening s 49 (1)(a) of the Immigration Act, 2002.
- [3] The six complainants listed in the counts set out above all testified. I shall provide but a brief summary of the evidence of each of them, because their evidence was uncannily similar when testifying to the *modus operandi* of Mr Mahumane. All the witnesses were subjected to a short and cursory cross-examination, recording in each case that Mr Mahumane denied having ever seeing any of them before they testified in court. It was a significant feature of the evidence of all six witnesses that the giving of the evidence presented a most unpleasant ordeal to them, and they were all emotional when describing what had happened. I have set out the evidence of the six complainants below. I have done in the order they were attacked, and not in the sequence in which they gave evidence. I have done so in order to present a more logical timeline.
- [4] On the 23rd June 2016:
- (a) N[...] M[...] M[...] was on her way home from her boyfriend's house. On the way she met Mr Mahumane who was in the company of her neighbour, Mrs N[...]. Mr Mahumane referred to himself as Frans.

- (b) Mrs N[...] told her that Mr Mahumane was looking for an employee for his employer, and Ms N M M[...] said that she was looking for a job.
- (c) Mr Mahumane then wanted to take her to see his employer but she replied that she had to take her child home.
- (d) Ms M[...] then went to her home leaving Mr Mahumane in the company of Mrs N[...]. She fetched money, her bag and cell phone and returned to go with Mr Mahumane to his employer.
- (e) Mr Mahumane then said he first had to fetch something at his house at a nearby primary school. Ms N M M[...] went with him to some cottages where he said he lived. He went into the premises and Ms N M M[...] waited on the road. When he returned he said that they must go to Gledhow Station. Ms N M M[...] refused to do so because Mr Mahumane had said that the job was at Ballito, and why were they going to Gledhow. Mr Mahumane retorted that they had to do so in order to take a taxi to Ballito. Ms N M M[...] then said that she had no money to pay for a taxi and Mr Mahumane had to pay for the taxi fare.
- (f) When they alighted from the taxi, they walked some distance past a football ground until they reached a residential area where Mr Mahumane greeted people as they passed him, as if he knew them. Eventually they reached a secluded forest and Ms N M M[...] asked why he had brought her there. He explained that the only other way was by car which was a long way around. Ms N M M[...] then decided that she wanted to return, but Mr Mahumane grabbed her by the neck and dragged her into the forest and told her to undress. Mr N M Mahumane then raped her. Mr Mahumane left Ms N M M[...] sitting naked in the forest and said that he was going to call a friend to fetch them by car. As he was speaking on

the phone Ms N M M[...] sneaked her dress on, and ran towards a nearby church. As she was running screaming towards the church a man came out of the church and asked her what was wrong. She told him and he pressed the alarm and the security guards arrived and pursued Mr Mahumane. Ms N M M[...] and her rescuer then telephoned the South African Police Services. She was taken to a doctor who examined her and took swabs from her. No condom was used in the assault.

- (g) Ms N M M[...] testified that Mr Mahumane had taken her Nokia cell phone which she had purchased for R1200.
- (h) Sometime later Ms N M M[...] heard news that someone had been assaulted at a taxi rank for raping women after offering them jobs. She went down to the court where the person was appearing to see if it was the same person. When she realised that it was, she told the investigating officer in her case. This was approximately three to four months after the incident.

[5] On the 9th July 2016 K[....] N[....] M[....]:

- (a) Told her sister that she was looking for a job.
- (b) On the 10th July 2016 she was told by her sister that someone was offering three job opportunities, one of whom had to start work on a Sunday. They called the person concerned and asked how they should meet him in Ballito. She was then told not to take transport to Ballito but rather to meet him at 7:00am in Stanger. When Ms K[....] M[....] arrived there she waited at the Ntshaweni Taxi rank, from 7:00am to 8:30am, when Mr Mahumane phoned and said she must go to the Maphumulo Taxi rank. She waited there for a few minutes, and Mr Mahumane again called her and asked her where she was. He said she must take the road in the direction of Hesto.

She did so, and as she was walking there she met Mr Mahumane near the fire station. A motor vehicle then arrived and took them in the direction of Stanger. It appeared to Ms K[...] M[...] afterwards that Mr Mahumane must have arrived in that vehicle and then sought her on foot. He introduced himself as 'Frans' and gave no surname. At Stanger they turned off onto a gravel road and she asked Mr Mahumane where they were going. He said that they were going to Gledhow to pick up his employer and some employees. They then drove for a long distance between cane-fields. The motor vehicle stopped and Mr Mahumane alighted. Thinking that he was simply going to urinate K[...] M[...] remained in the car. Mr Mahumane then returned to the car and told her to accompany him. She was uncomfortable about going in the direction of the forest and asked him what he was doing. He then grabbed her by the hand and dragged or moved her away from the car. After a distance they reached a place where he had prepared a place by flattening the sugar cane. He told her to lie down and she refused. He then grabbed her by the neck with both hands, and she did the same to him and held on until they both fell down. Ms K[...] M[...] was the first to rise up and Mr Mahumane stood in front of her with his fists raised - he hit her and she did the same. He hit her again and she retaliated again. He then kicked her and she kicked back with her right foot. At that stage Mr Mahumane moved back and grabbed her by the neck as he had done the first time. She again grabbed him by the neck and they both fall backwards. He fell on top of her and she pushed and kicked him away.

- (c) At that stage Ms K[...] M[...] was able to stand up, and started screaming, crying and praying. Mr Mahumane again came to her

and said that she must lie down or give him ‘her back’. She refused and said that he had not told her what he really wanted and she was not going to comply. Mr Mahumane then moved a distance away, and then ran at and kicked her. She stood up and he asked what was in her handbag. He insisted that she had money in her bag but she indicated that she only had R26 and bank cards. He then told her to switch on her phone which she did. He told her to take out her sim card and throw it away. As she was doing so Mr Mahumane was distracted and Ms K[...] M[...] placed her sim card in her breast. She then switched the cell phone off and gave it to him. He insisted that she switch it on because of the pin code. She again switched it on and gave it to him. When she had given him the cell phone Mr Mahumane moved away. Ms K[...] M[...] quickly collected her items and slowly moved away from the place, but watching out for Mr Mahumane who went and got back into the motor vehicle from which he had alighted. The motor vehicle travelled back towards Stanger with the people who had accompanied them in the car. He had taken her cell phone and R20.

- (d) Ms K[...] M[...] had hidden in the sugarcane a short distance from the motor vehicle, peeping through to see what was happening. She related that Mr Mahumane had spoken in the Zulu language, although she could detect that his Zulu usage was incorrect. They were, nonetheless, able to understand one another.
- (e) From there Ms K[...] M[...] walked to the freeway and a private car was parked there with a male alongside, urinating. He asked her what she was doing there because, he said, the place was dangerous. She told him what had happened to her and he conveyed her to the Stanger Taxi rank.

- (f) The next time she saw Mr Mahumane was when she was called by the South African Police to attend an identity parade in November of 2017 when she identified Mr Mahumane. She stated that she remembered his face.
- (g) She never recovered her cell phone. She did not sustain any open wounds when Mr Mahumane kicked her, but her body was swollen and painful for a long time. She had not seen a doctor because of a lack of money. She said that she had reported the matter to the South African Police Services but they had not done anything.
- (h) In cross-examination, Ms K[...] M[...] said she able to identify Mr Mahumane by the gaps in his teeth and the fact that they were black, as if rotten. But she said she could never forget his nose. She reiterated that she had pointed Mr Mahumane out at the identity parade because he was the man who had attacked her.

[6] On the 19th August 2016 S[...] M[...]:

- (a) Was sitting under a tree with her friend, a hair dresser. Mr Mahumane arrived in the company of another lady to whom Ms M[...] referred to as an 'Aunt'. Mr Mahumane had offered her Aunt a job, which she had been unable to accept, and she was referring him to her. Mr Mahumane said that there was a job available at his employer for whom he worked as a gardener.
- (b) Ms M[...] immediately went and got ready and went off with Mr Mahumane to speak to his employer. Although somewhat apprehensive, she had relaxed when Mr Mahumane said that they must take a taxi to Ballito. They alighted at a taxi stop near the Spar in Ballito and went up a series of stairs to a park-like arena. Ms M[...] then became apprehensive because they were near a

church and had not reached the employer's home. Near the church she could hear the voices of people talking and Mr Mahumane instructed her to stop to enable him to urinate. Ms M[...] walked on a little so as to avoid embarrassment and Mr Mahumane grabbed her from behind around the neck so hard that she could not breathe or scream.

- (c) As he attacked her she fell and her cell phone started ringing. Mr Mahumane threw the cell phone a distance away, undressed Ms M[...] and then raped her. He then picked up her cell phone, said she must look the other way as he dressed, and then left.
- (d) Ms M[...] then ran towards the church premises where she found a family having a picnic and a male cleaner at the church. When the male cleaner saw her running, he stopped her and asked what had happened to her. The family who were picnicking came over and enquired as well. One of the family members gave her the use of a cell phone and Ms M[...] phoned her father. At that stage she was extremely traumatised. The South Africa Police Services were then contacted.
- (e) The journey from Shakashead, where she had been sitting under the tree with her friend, to Ballito, had taken approximately 15 minutes. The cell phone which was taken from her was a Nokia valued at approximately R500. At the church local security officers arrived at the scene and started searching for her attacker, but never found him. The South African Police Services then subsequently arrived. Ms M[...] was then taken to a doctor to be examined.
- (f) Approximately two months after the incident. Ms M[...] was at a taxi rank in Stanger where she witnessed Mr Mahumane being assaulted by other people. After the assault Mr Mahumane had

been taken by ambulance to a hospital which was a short walk from where he had been assaulted. Ms M[...] followed the ambulance on foot and stood outside. She phoned the Investigating Officer. When he arrived they went together into the hospital and she was able to confirm that Mr Mahumane was the man who had raped her. When she identified him, Mr Mahumane turned his face away and would not look at her. This was a matter upon which the nurses, attending upon Mr Mahumane, remarked at the time.

- (g) No condom was used by Mr Mahumane when he raped Ms M[...]. When she was attended to by the doctor, samples were taken from her.

[7] S[...] H[...] testified that:

- (a) On the 12th October 2016 she had been on her way to the shop when she met Mr Mahumane. He told her that he was looking for a person to go with him to his employer to obtain a job. He said that he had spoken to one Maria but could not find her. When he did so he pointed to a nearby place where people rent cottages.
- (b) Ms Hlongwane had never met Mr Mahumane previously, and did not know who the person Maria was, to whom he was referring. Mr Mahumane told Ms Hlongwane that he was working for an elderly couple and that they needed a domestic worker. She then returned to her home together with Mr Mahumane in order for her to bathe and prepare to meet his employer. At her home she introduced Mr Mahumane to her mother, who asked him to clarify the position. Mr Mahumane repeated to Ms Hlongwane's mother what he had told her. He also told Ms Hlongwane's mother that he worked for the elderly couple as a gardener. He advised Ms Hlongwane to take more clothes with her because her employer

may require her to live in. He told Ms Hlongwane that her starting salary would be R3000 per month. Whilst Ms Hlongwane was changing, her mother made tea and bread for Mr Mahumane. He told them that they would proceed to Ballito by way of taxi, and when she was ready, Ms Hlongwane left with him. On the way he received a phone call and spoke to someone. He then told Ms Hlongwane that the call had been from a secretary of the company owned by his employer. They were to go to Tinley Manor, collect a motor vehicle there, and then proceed to his employer. Because there were no taxis travelling to Tinley Manor, they travelled there by train and alighted. Mr Mahumane then pointed out a factory building and he told Ms Hlongwane that that was where they would fetch the motor vehicle. It was raining at the time, and to avoid the muddy path, Mr Hlongwane suggested they walk along the railway line to reach their destination.

- (c) At some stage along their journey Ms Hlongwane became concerned because they were going through a place with bushes on each side. She expressed her concerns to Mr Mahumane who told her to relax because whilst she was with him she was safe. Mr Mahumane then pointed out a place with trees and bushes and said that that is where they were going. Ms Hlongwane then became suspicious and afraid. She told him that she was not going to continue and that he could fetch the car and return to the station to find her.
- (d) Whilst talking to him Ms Hlongwane was in front of him and she then turned and noticed that he was carrying a gun in his hand which he pointed at her and ordered her to go where he commanded her to go. They then went through a bushy area on the side of the railway line and then along a path into the sugar cane.

They entered a thick forest and he told her to go into the forest and then suggested to her that it was time that they had sex there. Ms Hlongwane then became afraid, threw aside her bag and started crying and screaming. He said that her crying and screaming would not help her because there was no one there to assist her. He said that if she resisted him he would kill her and no one would ever find her body. She agreed that she would do what he wanted, but asked him to put the gun away which he did. When Mr Mahumane put the firearm down, Ms Hlongwane started running away but the grass was wet and slippery. He pursued her, and grabbed her and struck her in the face with his open hand. He then pulled out a screw driver and scratched her with it and said he would kill her, dig a hole and bury her, and no one would ever find out. He then pulled her back to where they had left her bag and his gun. He then raped her, penetrating her from behind. When he was finished Ms Hlongwane rose up, pushing him away and ran away. As she ran she could hear his footsteps from behind her. Eventually she reached a thick bush of thorny shrubs, and she ducked and crawled under them until she saw a rivulet which she then crossed. She continued until she emerged from the forest and saw an electronic fence around the buildings of the company which Mr Mahumane had been indicating to her. Ms Hlongwane then grabbed the fence, slid underneath and entered the premises. She then ran to where the security officers of the company were situated.

- (e) The security officer immediately queried how she had got into the premises and she pointed out the place to him. She then explained her story to him and he told her how lucky she was, because they were about to arm the electric fence, and because everything was

wet, she could have died. He then took her to the security office and called his boss. After relating her story to the security officers they called the South African Police who arrived and took her to Umhlali Police Station where a case was opened. She was then taken to the Thuthuzela Clinic which forms part of Stanger Hospital. She was examined there by a doctor who took swabs from her. No condom had been used by Mr Mahumane when he raped her.

- (f) After three days Ms Hlongwane returned to the scene of the crime together with the investigating officer Warrant Officer Blose. There they found her bag, and the only items which were missing was her tablet or phone and the amount of R100 which Ms Hlongwane had intended to use for transport.
- (g) The next time Ms Hlongwane saw Mr Mahumane was at an identity parade at the Inanda Police Station where she was able to point out Mr Mahumane.

[8] W[....] N[....] N[....] testified that:

- (a) On Sunday the 6th August 2017 she was at home when she received a call from a friend T[....] S[....] who told her that ‘a brother’ with her needed a domestic worker for his employer. She asked where the job was and was told that it was in Salt Rock. After receiving information from T[....] , Ms N[....] took a taxi to Ntshaweni to meet the person looking for an employee at the home of T[....] .
- (b) Ms N[....] was uneasy because the person to whom she was introduced was a stranger, and she asked why he had not dealt with his own community in seeking to find an employee. He told her that he was not a criminal and they would go to see one Philo where he had rented a place. They went there and Ms N[....] asked

Philo whether she knew the person concerned and she said yes. She asked her whether she knew anything bad about him, and she confirmed that she did not. All the while, Ms N[...] had been accompanied by T[...] S[...] who now went home, and Ms N[...] went off in a taxi with the man to Tinley Manor. He had introduced himself to her as Albert, but given her no surname. At Tinley Manor she was taken to a sugar cane field which led to a forest. Ms N[...] became suspicious and afraid when she saw that the area led to a dead end. The male person told her that he did not have an access ticket to the area which could be accessed from the road, and they had to use an unofficial entrance. Ms N[...] was concerned but as she did not know the way to Salt Rock, she was not certain where they were going. When they entered the forest the male person told her to take off her clothes and when she refused he started hitting her with his clenched fists and started strangling and kicking her. He then pulled off her clothes and told her that her stubbornness, and not wanting to do what she was told, would cause him to kill her. He then made her lie down and raped her. He then did so again. He then took her cell phone, a Samsung and R500 in cash. He then told her to go back home and not to return to Ntshaweni. He then gave her R20 to be able to return home. She eventually found her way back and boarded a taxi to the home of T[...] S[...] where she related to her what had happened. They then went to see Philo and told her what had happened. They asked her whether she knew Mr Mahumane, because he had raped her. They then called the police who arrived and took Ms N[...] to the Thuthuzela Clinic at Stanger Hospital where she was seen by a doctor who took swabs from her. Mr Mahumane had not used a condom when he raped her.

- (c) Ms N[...] testified that she had absolutely no doubt that the man who raped her was Mr Mahumane. She said that she had seen him after the 6th August 2017 when she identified him at the Inanda Police Station at an identity parade. She never received her cellphone back.
- (d) In cross examination Mr *Mlotshwa* confirmed to Ms N[...] that Mr Mahumane had indeed been renting a place at Philo's house, but denied that he had at any stage been introduced by T[...] S[...] to her. He also confirmed that he had been a suspect in an identity parade at the Inanda Police Station and did not know why she had pointed him out. Ms N[...] replied that she would never forget the man who had done such a dreadful thing to her. It was put to her that she had mistakenly identified Mr Mahumane. Ms N[...] then stated that she was not mistaken and referred to the rotten teeth in Mr Mahumane's mouth as part of the way in which she identified him. Ms N[...] confirmed that she had told the South African Police that he had rented a cottage at Philo's place, but she did not know whether they had followed up that lead. It appears that he was no longer residing at Philo's place when she had gone there with Mr Mahumane and Ms T[...] Sithole.

[9] N[...] N[...] M[...] testified that:

- (a) On the 15th August 2017 she had met Mr Mahumane on the road as she was returning to her home after walking someway with a group of ladies who had been at her home. Mr Mahumane was walking in the opposite direction and blocked her path. She moved aside and he again blocked her. She asked him why he was doing so, and he said that she looked like someone he used to know and he said that person was Mandisa Magubane. Ms Magubane then said since

he is able to see that she is not Mandisa Magubane why was he blocking her way. He asked her whether she was working, and when she said no, he said he would be able to provide her with a job at Ballito where he was employed as a driver. She then asked him to go to a nearby street light which was near her sister's home. She then called her sister who came out and she introduced her to Mr Mahumane and she asked him his name to which he replied that it was 'Julius'.

- (b) Ms Magubane then asked to see Mr Mahumane's driver's licence and Mr Mahumane replied that he was normally a drinking person and that is why he had left his licence at work. He said he was working for an elderly person who needed a domestic employee. He said that the person who had been working for his employer was in temporary employment because she was still attending school, the school had reopened, and she had returned to school.
- (c) Ms Magubane asked him how she would get to his place of work and asked whether he had a contact number. He said he did not but he would meet her the next day at 5:30am and take her to the place.
- (d) Ms Magubane returned home. She told her family that a man had given her a job opportunity and he would take her on the 6:00am train to Ballito to meet his employer.
- (e) At 5:30am the next morning Ms Magubane was at her sister's home and approximately five minutes later Mr Mahumane arrived. Mrs Magubane was with her husband who had said that he wanted to see the man himself. Because he did not know Mr Mahumane, he intended to accompany Mrs Magubane and Mr Mahumane to the station. Mr Mahumane then said the he had forgotten something at his home and he would go and fetch it, and meet them at the station. While he was doing so Ms Magubane and her

husband continued to the station. They had missed the 6:00am train and her husband returned home to attend to their children. Ms Magubane and Mr Mahumane waited together for the 7:00am train. They took the train and alighted at the Tinley Manor station. Mr Mahumane indicated to her that because they had missed the 6:00am train they also missed his employer's motor vehicle at Tinley Manor station, and they would now have to walk on foot to the place of his employment. As they were walking along on foot and having passed a hostel and a place where ladies were watering flowers, Mr Mahumane picked up a dumpy bottle. When she enquired why he had done so, he said to her that the place they are going through is scary and there are many criminals loitering there. A short time after that he pointed to a white building which was in the distance, and said that that was where they were going. There was a forest between them and the building and he said that they should go through the forest. At that stage he grabbed her from behind and dragged her into the forest. (At this stage the witness demonstrated an arm locked around her neck from behind in a strangling motion. The witness indicated exactly the same motion which had been demonstrated to the court by Ms M[...]).

- (f) When Ms Magubane tried to break away he slapped her in the face and she fell down. When she regained consciousness she started crying and screaming and said that he had promised to take her to a job but there was no job there. Mr Mahumane then pulled off her panties and raped her. All the while Ms Magubane was crying and screaming. When he had finished doing so he slapped her again and again. After a while he started raping her again. When he ejaculated for the second time, Ms Magubane begged him not kill her because he had said he was going to do so right there. He said

that when he normally rapes people they have a tendency of laying charges against him afterwards, and that is why he was going to kill her. He said he would take the bottle, break it and use it to cut her throat and kill her and no one would find her. Lions from the area would come and eat her body. Having said all this, Mr Mahumane then raped Ms Magubane for the third time. He then asked her what she had with her and he went through her bag and removed her Samsung J2 phone and cash of R80.

- (g) He then told her to go off in a particular direction and he went off in another direction. When she was running away she became aware that he was following her, and he then told her to stop but she did not and continued running. He outran her and caught her and then asked her why she was running away. They then walked together to a road which was a long distance away.
- (h) They went back along the road towards the hostel they had passed and Ms Magubane saw two men standing there. When they were close to them, she asked for water and one went to fetch her water and returned. When he did so and was to give it to her, she grabbed hold of Mr Mahumane crying and screaming and saying that this man had been raping her in the forest and that her phone and money are in his pocket. The two men tried to grab Mr Mahumane but he ran for his life leaving his sandals behind. The one who had assisted Ms Magubane with water was shouting for assistance. Another man arrived and the three of them chased Mr Mahumane but he escaped. The man then took her to the Umhlali Police Station where she related what had happened to her and opened a case. She was then taken to the Thuthuzela Clinic at the Stanger Hospital where she was seen by a doctor who took swabs from her.

- (i) Thereafter Ms Magubane had related to the ladies with whom she had been walking after they had left her home, about what had happened to her. They had said to her that the rapist was Mr Mahumane, who stayed near her home. She had then gone to the place where he was allegedly staying but he was no longer there. Eventually, members of the community caught Mr Mahumane and called her and she confirmed his identity. She then phoned the South African Police and Mr Mahumane was arrested. This was approximately a week after the incident. Her phone was never recovered.
- (j) It was put to Ms Magubane in cross-examination that the ladies had been mistaken in identifying Mr Mahumane as a rapist. It was put to Ms Magubane that if he had been a rapist he would have been caught a long time ago. It was put to her that she thought he was her rapist only because she had been through a traumatic experience. Ms Magubane denied this, and maintained that Mr Mahumane was lying and that he had raped her. When Ms Magubane had phoned the South African Police Services, they asked her whether she had opened a case and she gave them a case number, and they then came and arrested Mr Mahumane.

[10] In addition to the complainants on the rape charges, the following four witnesses testified:

- (a) Ms Q[....] E[....]N[....] testified that she knew Nothando M[....] very well. She told the Court that she had been doing her washing in June of 2016 when a man arrived in a working overall carrying some books. He said that he was looking for a domestic employee for his employer in Ballito. Wanting to give the job to her own

child, she tried to find her contact number to phone her but could not do so and she had left her yard to look for her child, leaving the man behind. Because she could not find her child, she had spoken to various other relatives to enable them to take up the employment. She then told Mr Mahumane that she wanted the job herself but he said she was too old. As they were walking, they came across Ms M[...] M[...] and she then spoke to her about getting the job with Mr Mahumane. She told the Court that she had done so with a jealous heart because she had wanted the job for her own child. When she heard that a man had been arrested for rape, she had gone to the Umhlali Court to see if it was the same person to whom she had introduced to M[...] M[...]. She was unsure as to the identity of that person. She told the court that she had warned M[...] M[...] to be sure that she that she knew where the man stayed before leaving with him to go and visit his employers.

- (b) T[...] M[...] testified that she was the mother of S[...] H[...]. In October 2016 S[...] had returned to her home with a person who introduced himself as Frans, who told her he was a looking for a domestic worker for his employer, for whom he had worked for 12 years. He said his employer was willing to pay a salary of R3500 per month. She had asked him if he was fooling them because she had heard about women who get raped by people who offered job opportunities and he said no he could not have done such a thing. Whilst talking to her his phone rang and he had ignored it. S[...] had asked why he did not answer and he said it was his employer phoning to see where he was. He told them that elderly people give trouble calling now and then. She was keen that her daughter should get a job because she had been looking for a job for five years' after she had left school. When S[...] was ready, Ms M[...]

had walked half way to the gate with them. She then asked her daughter whether she had her identity card with her, and she had gone back to fetch it. At some stage she had made coffee and a polony sandwich for Mr Mahumane. Although she had last seen the man who had left with her daughter on that day, she was convinced that it was Mr Mahumane. About two hours after they had left she received a call from S[...] telling her that the man who had taken her away had raped her in a forest. She was at Ballito Crushers where she had obtained help after she had been raped. In cross-examination T[...] M[...] was adamant that she remembered Mr Mahumane very well because he had taken away her daughter and he had rotten teeth in his mouth.

- (c) T[...] Z[...] S[...] told the court that on the 6th August 2017 she was at home doing her washing when a ‘brother’ arrived and told her he was looking for domestic workers. She told him that she could not take up the position because she was pregnant and at school. He asked her if she knew any others who could help him, and if so, would she phone them. He even went to the lengths of purchasing airtime for her to do so. She then phoned W[...] N[...] N[...] who later arrived at her home. When Mr Mahumane arrived back, N[...] wanted to photograph him because she did not trust him, but he refused, saying that they should rather go to see someone who knew him. They then walked to the home of one Philo, who said she knew him as ‘Albert’, and that he had once rented a room from her. She returned home and phoned N[...] who said that she had got the job and was on her way to Doringkop, to fetch her clothes. Later N[...] returned in a distressed state, saying that Mr Mahumane had raped her and robbed her of her cell phone and money. Later, together with Philo

they went to Qubo because they had ascertained that Mr Mahumane's brother lived there. They saw Mr Mahumane, but he fled the scene.

- (d) Promise Mbokazi told the court that she was also known as Philo. Her evidence confirmed what Ms Sithole and Ms N[...] had told the court. She was emphatic that she could identify Mr Mahumane as she knew him.

[11] Some twenty-one police officers testified to the roles which each of them played in their part in the investigations. For the most part, their evidence consisted of conveying samples taken from the five rape complainants from the clinic at the Stanger Hospital to the police station, the storage of those exhibits and the eventual delivery of the exhibits to the Forensic Science Laboratory of the South African Police. This included the taking of buccal samples from Mr Mahumane and the conveyance of those samples to the Forensic Science Laboratory. There is no point in my trolling through their evidence, save to state that no objections were raised by the legal representative of Mr Mahumane that the chain of evidence established by the witnesses was not broken

[12] Four medical doctors testified to their examination of the five rape complainants at the Thuthuzela clinic attached to the Stanger Hospital. They had taken swabs from the five complainants, and sealed those swabs in Sexual Assaults Kits provided to them. The sealed kits were delivered to police officers.

[13] Warrant Officer PAC Mogoshoa testified to his analysis of the DNA tests which were carried out on the samples taken from the five complainants who were raped, together with the analyses of the buccal samples taken from Mr Mahumane. The samples taken from Mr Mahumane were taken on six occasions, and all they were all identical, and matched the other samples. He expressed the probability of another person having the identical DNA to Mr Mahumane as one in 2.2 trillion people. Considering that there are only approximately 6 billion people on earth, he stated that the DNA samples established a link between Mr Mahumane and each of the five rape complainants beyond any doubt.

[14] That was the case for the State. Each of the six complaints, and the additional four factual witnesses gave their evidence in an honest and forthright manner. The complainants were clearly distressed in having to do so, and I have absolutely no hesitation whatsoever in accepting their evidence. They were effectively unchallenged in cross-examination, and it was put to them that prior to their testifying, Mr Mahumane had previously never met one, never set eyes on three of them, and that the other two were mistaken as to his identity.

[15] Mr Mahumane then testified. Suffice it to say that he was a hopeless witness who refused to answer almost all the questions put to him by his legal representative, the prosecutor and the Court. I have no doubt that his obtuse and obstructive manner was an act in order to avoid having to deal with the awful truth of his conduct. Such explanations as he did proffer contradicted what had been put to the various witnesses by his legal representative.

[16] It is necessary for me to comment on the evidence of one of the State witnesses – Warrant Officer Vusumuzi Ndodo Blose. He was stationed at the Umhlali Police Station, and was part of the Family Violence Child Protection and Sexual Offences Unit. He has been in the unit since it was formed in 2008. He had been extensively involved in the transference of samples taken from the complaints, having carried those samples from the hospital to the police station, as well as performing other duties relating to the complainants and the investigation of the case.

[17] It was a curious feature of the case that the rapes had occurred in 2016 over a period of five months', and then again over a period of two weeks' in August 2017. Warrant Officer Blose testified how he had gone to the assistance of Ms M[...] on the 19th October 2016, at the Stanger Hospital. Pursuant to her report he had arrested Mr Mahumane at the hospital. He was then asked how it was that more rapes had occurred in August 2017. His response was that the present Investigating Officer, Warrant Officer Deepa Naidoo would explain how it came about that the cases against Mr Mahumane were withdrawn, and he was released and able to commit further offences.

[18] When Warrant Officer Naidoo testified, she stated that in 2017, when Mr Mahumane had to appear in court, Warrant Officer Blose was the Investigating Officer, and she had been off sick. She was told that the witnesses did not attend the pre-trial hearing at the Stanger Magistrates' Court, when the witnesses were to have been interviewed by the public prosecutor. The charges had then been withdrawn and Mr Mahumane released. She was certain that by then buccal samples had been taken from Mr Mahumane, and a comparison of them and the samples taken from the three 2016 rape complainants would have proved a

match (as they subsequently did), and Mr Mahumane would not have been released. The two complainants in the 2017 rapes would have been spared their dreadful ordeals.

[19] I then requested that Warrant Officer Blose be recalled. He testified that after the arrest of Mr Mahumane on the 19th October 2016, Mr Mahumane had been remanded in custody from time to time. No bail was granted, and Mr Mahumane eventually abandoned his application for bail. Buccal samples were taken by Cst Mgobhozi on the 6th February 2017. During the times of the various remands Warrant Officer Naidoo was the Investigating Officer of three cases against Mr Mahumane, and Warrant Officer Blose was handling Ms M[....]'s matter. Both the investigating officers were aware of each other's cases. On the 2nd May 2017 Warrant Officer Blose was notified that the pre-trial hearing would be held at the Stanger Magistrates' Court on the 23rd May, 2017. He was required to present both himself and the complainants to the prosecutor, for him or her to evaluate the merits of the matter.

[20] Despite being aware of the foregoing, Warrant Officer Blose did not appear at court himself, nor did he ensure that the complainants were present. Because of their non-appearance the learned magistrate presiding refused a further remand, and provisionally withdrew the cases against Mr Mahumane, who was released. Warrant Officer Blose expressed amazement that the other three cases were not dealt with.

[21] The excuse proffered by Warrant Officer Blose was that he had no transport to fetch the complainant, or to take himself to the Stanger Magistrates'

Court. He related that he and Warrant Officer Naidoo had been involved in a motor collision during April 2017. In May, 2017 she was still booked-off sick, but he was not. He had told Captain ZV Mchunu of his transport problems when Captain Mchunu had brought him the docket on the 3rd May 2017. Warrant Officer Blose was based at Umhlali, but his accounting station was Kwa Dakuza. He said that each unit was allocated motor vehicles and there were three vehicles between fourteen officers. When he asked Captain Mchunu what he must do, he was told to sort it out. It was clear that Warrant Officer Blose made no effort whatsoever to sort out the transport problems, not even discussing it with his fellow officers. He then stated that there were four or five vehicles, and that the Kwa Dakuza cluster had ten police stations.

[22] Warrant Officer Blose miserably failed to fulfil his duties to the complainants and the public by his supine attitude to his work and his responsibilities. His crass disregard for his duty has occasioned tragic consequences.

[23] Mr *Mlotshwa* submitted that the rape charge concerning Ms N[...] should only be read with the provisions of Part III of Schedule 2 of the Criminal Law Amendment Act 1997, and not Part I, because the conduct of Mr Mahumane, at best for the State, constituted one continuous act of rape, and not two separate acts of rape. He sought support for this in the matter of *S v Tladi* 2013 (2) SACR 287 (SCA), where the Court held that where there was evidence of two acts of rape closely connected in time with no reason to distinguish the acts to show two different intents, the two acts of rape should be considered as one. We have listened again in open court to the tape of the evidence of Ms N[...] . She stated that Mr Mahumane raped her until he ejaculated, and then

‘started again for a second time. When he started the second round, he took his time until he ejaculated’. Ms *Dube* conceded (correctly in our view) that there is little in this evidence to suggest a clear break between the two acts of rape, save for the fact that Mr Mahumane ejaculated. There is even no evidence that he withdrew from Ms N[...] after ejaculating. Support for the proposition that the ejaculation of the rapist is, standing alone, insufficient to conclude that two acts of rape had taken place, is to be found in *S v Mavundla* 2012 (1) SACR 548 (GNP).

[24] Mr Mahumane has already been convicted on count one. Ms *Dube* (correctly in my view) conceded that there was no basis for a conviction on count two, and count twelve fell to be reduced to the competent verdict of theft. Taking into account the foregoing, Mr Mahumane is guilty of the following offences:

- (a) Count three – the rape of Ms N[...] M[...] M[...], as charged, and read with Part III of Schedule 2 to the Criminal Law Amendment Act 1997.
- (b) Count four – the robbery of Ms N[...] M[...] M[...] – a Nokia cell phone worth R 1200.00.
- (c) Count five – the attempted rape of K[...] N[...] M[...], as charged.
- (d) Count six – the robbery of Ms K[...] N[...] M[...] – a cell phone and R20.00.
- (e) Count seven – the rape of Ms S[...] M[...] as charged, and read with Part III of Schedule 2 to the Criminal Law Amendment Act, 1997.

- (f) Count eight – the robbery of Ms S[....] M[....] – a Nokia cell phone worth R500.00.
- (g) Count nine – the rape of S[....] H[....] as charged, and read with Part III of Schedule 2 to the Criminal Law Amendment Act, 1997.
- (h) Count ten – the theft of a tablet/cell phone and cash of R100.00.
- (i) Count eleven – the rape of N[....] N[....], as charged, and read with Part III of Schedule 2 of the Criminal Law Amendment Act, 1997.
- (j) Count twelve – the theft of a Samsung cell phone and R500.00.
- (k) Count thirteen – the rape of Ms N[....] N[....] M[....], as charged, and read with Part I of Schedule 2 of the Criminal law Amendment Act, 1997 – three separate acts of rape.
- (l) Count fourteen – the robbery with aggravating circumstances of Ms N[....] N[....] M[....] – a Samsung J2 cell phone and R80.00. The aggravating circumstances was the threatened use of a broken bottle.

Mr Mahumane is found not guilty and discharged on count two.

Lopes J

Date of judgment: 10th December, 2019.

Dates of hearing: 11, 12, 13, 14, 15, and 18th November, 2019, and the 4, 9 and 10th December, 2019.

For the State: Ms Dube.

For Mr Mahumane: Mr Mlotshwa, instructed by Legal Aid South Africa.