



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 512/2015

In the matter between:

THE STATE

and

KHOTHATSO LAWRENCE TAU

Accused 1

THABISO ERIC THEKISO

Accused 2

CORAM: BOKWA, AJ

HEARD ON: 5 DECEMBER 2016

JUDGMENT BY: BOKWA, AJ

DELIVERED ON: 9 DECEMBER 2016

A INTRODUCTION:

[1] Accused no 1, Mr Khothatso Lawrence Tau and accused no 2, Mr Thabiso Eric Thekiso stand charged with:

1.1 One count of robbery with aggravating circumstances as defined in Section 1 of the Criminal Procedure Act 51/1977 (CPA).

1.2 Four counts of rape, in Contravention of the Provision of Section 3 and 14 read with Section 1, 55, 56(1), 58, 59 and 60 of the Criminal Law Amendment Act 32/2007 (rape).

[2] The State was represented by Advocate Giorgi, with Mr Molatedi, a local attorney for accused no 1 and Advocate Tshabalala for accused no 2. The accused pleaded not guilty to all charges and denied all the allegations against them with regard to count 1 – 5, in terms of Section 115(1) of the Criminal Procedure Act, 51/1977 hereinafter called the Criminal Procedure Act.

[3] At the commencement of the trial, evidence was admitted by consent of all the parties being exhibit “A”, the photo album, exhibit “B” being the statement of the complainant, exhibit “C” being the statement of M J M (the complainant’s deceased sister) with an abridged death certificate, exhibit “D” being the Medico-

Legal Report (J88), exhibit “E” being the Affidavit in terms of Section 212 of the CPA (DNA analysis).

B SUMMARY OF ORAL EVIDENCE FOR THE STATE:

- [4] Ms M M M is the victim and the complainant in respect of count 1 -5. On 7th June 2013 she received a telephone call from her boyfriend at about 20H00 in the evening, requesting her to meet up with him at a nearby tavern in her neighbourhood called Siwelele. She immediately set on foot to the tavern which was not so far away from her house at [...] Section [...], Botshabelo. It was already dark in the early evening of the winter month.
- [5] Three young men approached her from the front in the opposite direction. They immediately accosted her. All 3 young men held out knives. They asked her for money as they simultaneously grabbed and searched her body. They also instructed her not to make any noise as they searched her. They took her to an area of the water pipes, which is more clear from the sketch plan in exhibit “A”. The point where they accosted her is more depicted by photo’s no 1, 2, 3 and 5 at point A. From this point, the suspects took the complainant to various places where they raped her and which will be dealt with later. The water pipes area is depicted on photo 4, point B of the sketch plan. According to the points measurement point A – B is about 100 m. At point B, which is more clear on sketch plan and photo’s 1, 2, 4 and 5, her 3 assailants instructed her to remove her jeans and panties. All 3 had sexual intercourse with her by penetrating her vagina with their penises and without her consent. She tried to scream but

nobody noticed. This was the first point where the complainant was raped by her 3 assailants.

- [6] From point B, the 3 suspects forced her at knife point to the area of the lake near a dumping site. According to annexure “A”, the measurements from point B – C is approximately 3.1 km, which shows a far distance between the two points. On the complainants’ version, she testifies that after the rape at point B, she had to walk a long distance before the next incident.
- [7] On arrival at point C, the dumping site near the lake, the complainant was instructed by the same men to undress her jeans and panties. She was asked to bend forward in a kneeling position and was thus penetrated in her vagina and anus by all 3 assailants whilst taking turns. In the process they told her that they were members of the BTK gang. Her rape ordeal lasted for a while and when they had finished raping her at that area, she complained that she was getting cold, which was not surprising because of the winter season. At this stage, she had not clearly identified who her assailants were. Point C on the sketch plan is clearer from photographs 5, 6, 7, 8 and 11. This is where the complainant was raped for the **second time** by the 3 suspects.
- [8] One of her assailants phoned a friend, requesting that they come over to the friend’s house. She was taken to house No 3060 F Section, Botshabelo, which is more depicted on the sketch plan point D, photo’s no 8, 9, 10 and 11. This photo’s indicates the alleged house, where the complainant was raped for the **third**

time by the suspects and which belonged to Tshidiso Litsamela, the second state witness.

- [9] On arrival at that address, accused no 2 knocked at the door. When the owner opened, a short conversation ensued where after the complainant, no 1, 2 and one Mzwandile Tola, who has already been convicted and sentenced for the rape of the complainant in this case, entered the house. They entered the house through the kitchen and proceeded to the lounge area. There was enough light in the kitchen to enable the complainant to identify the faces of her assailants. Subsequently she was taken into a dark room where the two accused and Mzwandile Tola continued to raped her. When they were finished raping her, she demanded her cell phone and requested the intervention of Thabiso Litsemela, the house owner, whilst also crying. She tried to tell Thabiso Litsemela what was happening, however he was reluctant to assist her and rather pressed her to resolve her dispute with her assailants. The attitude of Thabiso is understandable because the accused were his friends and therefore he would have been inclined only to assist them rather than the complainant at the time. Inside the kitchen, she was able to observe that accused no 1 was wearing a blue top and dreadlocks. No 2 had a light complexion and her 3rd assailant had gold teeth. Whilst she was being raped by these 3 men, she noticed a flashlight from a cell phone indicating one of them was taking photo's of the rape incident. When they were finished raping her, Thabiso Litsemela, asked them to leave his house. She then left in the company of no 1 and Mzwandile Tola.

- [10] From Thabiso's house they proceed to another house, which was later discovered as the house of no 1's parents. This house is depicted more clearly on the sketch plan and on photographs particularly point E on the sketch plan and photo's 8, 12, 13 and 14. It is house no 2093 F Section, Botshabelo where the victim was raped for the **fourth time** by the two suspects namely no 1 and Mzwandile Tola.
- [11] In the morning, the complainant arrived at her house at about 9H00 according to the statement of her deceased sister, M J M, who was the first person who received the report of rape from the complainant. Her statement is exhibit "C" which was accepted by consent. It corroborates the complainant's version in a material way, regarding the rape incident itself, the various places where it occurred, and the time of her arrival at home in her evidence in chief.
- [12] The police were summoned to her house and she made a report of robbery and rape to them. She could feel injuries in her lips as her assailants forced their penises in her mouth as well as on her anal area. She was given tablets at the hospital. Subsequent hereto, the police took her to various places where the rape incident took place and ultimately the 3 suspects were arrested.
- [13] Under cross examination on behalf of accused no 1, a version of no 1 was proffered to her, which was completely in sharp contrast to her evidence in chief. It was put to her by Mr Molatedi that no 1 never raped her on that night. According to the version of no 1 the complainant was the girlfriend of Mzwandile Tola. On the

night in question she was at Masubeng Tavern, where no 1 joined them. From Masubeng Tavern the 3 had proceeded to Siwelele Tavern, where no 2 joined them after 45 minutes. From Siwelele, they went back to Masubeng Tavern, bought beers for take away and proceeded to Tshidiso's house now known as the RDP house in photo no 10, because Mzwandile needed accommodation to overnight with the complainant. All of this version she denied vehemently under cross examination.

- [14] It was furthermore put to her by legal counsel for no 1, that she went into the room only with Mzwandile Tola at Tshidio's house. She denied. She was emphatic that what actually happened at Tshidiso's house, was a miraculous revelation of the identity of her assailants in the kitchen before they took turns raping her.
- [15] Tshidiso Litsemela resides at house no 3060 F Section, Botshabelo more depicted on the photo plan namely photo 10. Whilst sleeping at home in the morning of 8 June 2013, he received a call from no 2 who claimed to be with a girlfriend and also requesting accommodation for himself. His response was that although he had a spare bedroom he did not have blankets. Nonetheless it appears from his testimony that the request by no 2 was not met with a blunt refusal. 30 Minutes thereafter no 1 called him, also making a similar request to that of no 2. Shortly no 2 knocked on his door. He opened and noticed four people being no 1, 2, Mzwandile Tola and the complainant.
- [16] Thabiso Litsemela corroborated the evidence of the complainant at the point where she alleged that one of her assailants phoned

a friend, where subsequently they arrived at an RDP house and which belonged to the witness. The evidence of the complainant is further corroborated by Thabiso Litsemela regarding count 1 (robbery of the cell phone). He and the complainant had a conversation about the complainant's cell phone which she alleged was taken by one of her assailants that night. On his version the complainant was crying looking for her phone and asking to get it back. She was at the gate of his house. He told her to come back the following day if the accused did not give her the phone. Not only is his testimony corroborative to the evidence of the complainant regarding count 1, it also places all 3 accused at a place where the complainant alleges that she was raped for the **third time** by the 3 suspects on the night in question in terms of count 4.

- [17] He provided the accused with accommodation and later went to sleep in his own room. He was awoken by their noise after his own girlfriend had complain and subsequently he instructed them to leave although he noticed that no 2 had already left.
- [18] He learned subsequent thereto, that his house was an alleged place for a suspected rape incident of the complainant, on Tuesday when the police came to his house.
- [19] Under cross examination by no 1's legal representative he was adamant that the complainant cried when she demanded her phone from the accused.

- [20] Under cross examination by Mr Tshabalala, on behalf of no 2, he was asked if he recalled hearing a conversation between no 2 and the complainant when no 2 would have asked the complainant for her phone for safe keeping. His recollection was that he could not remember.
- [21] **Obakeng Johannes Chwane** is a warrant officer in the South African Police Services in Selosesha, Thaba Nchu. He is an official draftsman and photographer. He visited the crime scene on 11th June 2013 where he took photographs on the open space at address No 3060 F & 2093 F extension, Botshabelo. He also drafted a sketch plan with key photo's, being exhibit "A". In brief, he confirmed the version of the complainant regarding the various places where the alleged rape took place. He confirmed the contents of the photo album, sketch plan and key to photo's.
- [22] **Violet Nyakele Maleke** is attached to the South African Police Services in a rank of a constable. On 8th June 2013 she was on duty and arrived at the complainant's house where she found the complainant and her elder sister. The complainant was crying as she informed her that she had been raped. The complainant was visibly traumatized and she had to give her enough time to compose herself. She took the complainant to the police station and to the hospital.
- [23] **Constable Ponto Petrus Pantse** was on duty on the 9th June 2013 and accompanied the complainant to places where the rape incident allegedly took place being at the pipe lines, the dumping site, an RDP house in photo 10 and a house 2093 F Section,

Botshabelo. They discovered that no 1 stayed at this house and also arrested him. Mzwandile Tola was arrested when no 1 took them to his house. Tola and no 1 took the police to the house of no 2. He was pointed out by the complainant and arrested at his house.

- [24] **Constable Wilfred Leeuw.** On 9th June 2013, he was on duty with constable Pantse and was present when no 1 and 2 were arrested. He did not hear no 2 mentioning the cell phone that would have been taken from the complainant because if he did so he would have investigated the matter further relating to charge 1.
- [25] **Seotsa Paulus Mokoena** is a Chief Forensic Nurse who completed the medico-legal report, exhibit “D”, after examining the complainant on 8th June 2013 at Botshabelo Hospital at 18H40. His educational training and further academic qualifications are elaborate and indicative of a person experienced in forensic nursing in the medical field. According to Mokoena’s evidence, the clothing condition of the complainant was intact but dirty. The complainant alleged that she was sexually and anally penetrated by 3 males the night before at various places in Botshabelo. His clinical findings recorded that there was no physical injuries reported or observed. Furthermore, he was able to discover with the aid of the Toluidine blue solution, abrasions at a 6 o’clock position on the Fossa Navicularis, during the gynaecological examination of the complainant. Furthermore, abrasions in the anal area as indicated in the J88 during the examination of the complainant, also indicates forced penetration in the anal area.

- [26] He also observed that the cervix was bruised with a discharge although there was no bleeding. His clinical findings was consistent with the history of sexual penetration. It was further common cause that the complainant was a sexually active women with 2 children, and her last consensual intercourse having occurred on 1st June 2013 during the night with her boyfriend.
- [27] Under cross examination on behalf of no 1, Mr Molatedi asked him about the exact time that he examined the complainant. Initially he recorded it as 14H40 and when he was shown the original J88 he corrected himself that the examination was at 18H40. In my view any contradictions emanating from his testimony were essentially minor and he impressed the court as a witness. The state closed its case.
- [28] Mr Molatedi moved an application in terms of Section 174 of the CPA on behalf of no 1 and asked the court to acquit him on the basis that there was no prima facie case established by the state. Mrs Giorgi opposed the application. The court gave a brief judgment dismissing the application.

**C SUMMARY OF THE ORAL EVIDENCE ON BEHALF
OF THE DEFENCE:**

- [29] Accused no 1, **Khothatso Lawrence Tau**, proceeded, to testify in his own defence that, on the night in question he was earlier in the company of his brother, Solly Tau at home where after he left

for Masubeng Tavern. At the tavern, he met up with a friend, Mzwandile Tola who was in the company of the complainant. Mzwandile Tola has already been convicted and sentenced for the rape of the complainant in this matter. Mzwandile was seated with another person wearing dreadlocks. Shortly he left the tavern to go outside for a smoke break and Mzwandile joined him where he informed him that the complainant was his girlfriend. The complainant also joined them outside for a smoke. They went back to have some more drinks in the tavern until 20H00 when Mzwandile suggested that they should go to Siwelele Tavern. On arrival, he noticed people playing pool and decided to call accused no 2 whom he knew as a good pool player.

[30] Accused no 2 arrived at Siwelele Tavern where he found the 3 of them. No 2 asked about the complainant and no 1 clarified that she was Mzwandile's girlfriend. They had drinks and decided to go back to Masubeng Tavern and all 4 subsequently left. On arrival at Masubeng the tavern was closing and guards did not allow them in. No 1 pleaded and was allowed to buy drinks for take away. As they left the tavern no 1 had a quarrel with a person named Pule, resulting in no 2 intervening to quash the quarrel and everything was normal. He noticed that Mzwandile had a knife because he tried to stab Pule with it before no 2 could intervene.

[31] They were wondering where to enjoy the 2 beers they had bought and no 2 phoned his friend Tshidiso to inform that they are coming with drinks at his place and furthermore, requesting him to

provide accommodation to Mzwandile with his girlfriend for the night.

- [32] At Tshidiso's house no 2 knocked and they all went inside. Inside the house there are two sofas which no 1 sat on the one whilst no 2 sat on the other whilst busy on his phone. Mzwandile and the complainant went into a room whilst no 1, no 2 and Tshidiso remain behind drinking beer. Shortly hereafter Tshidio went to his room whilst no 1 passed out on the sofa.
- [33] He suggested to Mzwandile that the 3 of them, complainant included should rather go to his house and sleep there. On arrival at his house his brother opened the door. The complainant complained that she was cold and hungry and he proceeded to make food and tea for all of them.
- [34] He used a separate room to sleep whilst the complainant and Mzwandile shared the other room. In the morning of the 8th June 2013, they left for a shebeen known as Delamonong and arrived there at 07H00 and remained there drinking until between 11H00 am and 12H00. They all left the shebeen and walked the complainant towards her home but parted ways with her along the way.
- [35] It was put to him under cross examination by Mrs Giorgi that his evidence in chief was riddled with material contradictions in many respects compared to the version that his attorney put to the complainant. A version was put that at Masubeng Tavern the witness was with the complainant and Mzwandile. In chief he

mentioned that there was other people including a gentleman wearing dreadlocks. He struggled to defend a version that the complainant was drinking alcohol whereas the clinical findings in the J88 stated that no alcohol was found on the complainant by Mokoena. On his version, he had called no 2 to play pool with him at Siwelele tavern. In his evidence in chief he had called no 2 to collect them. He failed to give a credible explanation of these glaring contradictions. He closed his case without leading any further evidence.

- [36] **Thabiso Eric Thekiso** is a 27 year old male who consulted with his legal representative on 25th October 2016 in preparation of the trial. On Friday 7th June 2013 he receive a call from accused no 1 at past 1H00 in the morning that he should come to Silwelele tavern to fetch them. No 1 informed him that he was in the company of Mzwandile and the complainant and that they needed a place to sleep. He told him that he knew of a friend who lived alone who could accommodate them. He arrived. They left Siwelele tavern and proceeded to Masubeng tavern. He noticed that they were drunk. Along the way there was a quarrel which he managed to resolve. They bought beers at Masubeng and proceeded to Tshidiso's place. On arrival at Tshidiso's house he asked permission if the people could sleep there. Tshidiso gave him one blanket. He passed it to Mzwandile in the spare bedroom. No 2 was seated on the sofa in the lounge already passed out. As he left, he asked the complainant to give him her cell phone for safe keeping because he realized that she was intoxicated. She duly complied. He left and returned the following day where he gave the phone to Mzwandile.

[37] Under cross examination he was confronted with the many contradictions in the version put by his legal representative to the witnesses, the contradictions in his evidence in chief and the evidence of no 1. He was unable to defend these obvious contradictions.

D COMMON KNOWLEDGE AND UNDISPUTED FACTS

[38] It is uncontested that the complainant was robbed of her cell phone during the night of the 7th June 2013.

38.1 She was raped by 3 unknown persons, the **first time** near a gravel road at the pipe lines. This is the area depicted more on point B of the sketch plan.

38.2 She was raped the **second time** by 3 unknown men at a lake behind a hill. This is the area depicted more on point C of the sketch plan.

38.3 The complainant was furthermore raped by 3 unknown men for the **third time** at house no 3060 F Section, Botshabelo on the morning of the 8th June 2013. This is more depicted more on photo's 8, 9, 10 and 11 of the sketch plan at point D.

38.4 The complainant was raped by 2 suspects at house no 2093 F Section, Botshabelo for the **fourth time** on the

morning of the 8th June 2013, which is depicted on photo's 8, 11, 12, 13 and 14 at point E.

38.5 The complainant presented for medical examination on 8th June 2013 at Botshabelo Hospital at 18H40, where she was observed by the Chief Forensic Nurse S P P Mokoena who documented her physical and gynaecological observations in the J88, and which findings concluded that her allegations are consistent with the history of sexual and anal penetration.

38.6 That, Tshidiso Litsamela resides at house no 3060 F Section, Botshabelo, where the complainant alleges that she was raped the **third time** and where all the accused confirmed that they were with the complainant on the night in question. That the complainant complained to Tshidiso about her phone which was taken by the accused on the night in question.

38.7 That accused no 2, admitted taking the cell phone of the complainant at Tshidiso's house though, for safe keeping (according to his version).

38.8 That house no 2093 F Section, Botshabelo is the residence of accused no 1, a place the complainant alleges she was raped for the fourth time by 2 suspects.

38.9 It is further common cause that the DNA of accused no 1 and 2 does not link them to the sexual offences in this matter.

F POINTS OF CONTENTION:

[39] The identity of the 3 assailants who robbed and raped the complainant on the night of the 7th June 2013 and the morning of 8th June 2013 is disputed.

G ANALYSIS AND APPLICATION OF THE LAW

[40] It is a well-established principle of law that for the state to secure a conviction it must prove the guilt of accused persons and all the elements of the charge beyond reasonable doubt. It is of vital importance for the state to adduce cogent evidence linking the accused to the commission of the offences as well as proving lack of consent by the complainant in a rape case.

[41] In **S v Van der Meyden** 1999 (1) SACR 447 (W) at 448f-g, Nugent J dealt with the issue of onus in a criminal case. He stated as follows:

“These are not separate and independent tests, but the expression of the same test when viewed from opposite perspectives. In order to convict, the evidence must establish the guilt of the accused beyond reasonable doubt which will be so only if it is at the same time no reasonable possibility that an innocent explanation, which has been put forward might be true. The two are inseparable, each being the logical --- of the other.”

[42] It is trite that where a group of persons are involved in the commission of a crime and it cannot be established which of them was the actual perpetrator, the prosecution must rely on the doctrine of common purpose to establish criminal liability.

[43] The principle laid out in *Mgedezi Supra and S v Sefatsa and others 1988 1 SA 868 (A) at 896C-E*, were reaffirmed by the Constitutional Court in *S v Thebus and another 2003(2) SACR 319 (CC)* at 341 d-h, where the following is, *inter alia*, said:

“The doctrine of common purpose dispenses with the causation requirement. Provided the accused actively associated with the conduct of the perpetrators in the group that caused the death and had the required intentions in respect of the unlawful consequence, the accused would be guilty of the offence ...”

[44] In *S v Van Aswegen 2001 (2) SACR 97 (SCA)* the court clearly stated that when evaluating evidence before the court, one must look at all the evidence placed before it. The court must also weigh the evidence of the state and that of the accused.

[45] It is well settled in our law that where identity is in issue, the fallibility of human observation must be borne in mind and the reliability of such evidence must be tested in relation to all the surrounding factors, such as the opportunity for observation, visibility, the extent of the prior knowledge of the witnesses of the accused, the mobility of the scene, suggestibility of the witnesses, etc. It is indeed important for the court to be alive to the fact that such evidence could be due to mistake or even dishonesty.

“In *S v Mthetwa* 1972 (3) SA 766 (A) at 768A-D Holmes JA said the following:

Because of the fallibility of human observation, evidence of identification is approached by the Courts with some caution. It is not enough for the identifying witness to be honest: the reliability of his observation must also be tested. This depends on various factors, such as lighting, visibility and eyesight; the proximity of the witness; his opportunity for observation, both as to time and situation; the extent of his prior knowledge of the accused; the mobility of the scene; corroboration; suggestibility; the accused's face, voice, build, gait and dress; the result of identification parades, if any; and, of course, the evidence by or on behalf of the accused. The list is not exhaustive. These factors, or such of them as are applicable in a particular case, are not individually decisive, but must be weighed one against the other, in the light of the totality of the evidence, and the probabilities; see cases such as *R v Masemang* 1950 (2) SA 488 (A); *R v Dladla and Others* 1962 (1) SA 307 (A) at 310C; *S v Mehlape* 1963 (2) SA 29 (A)."

- [46] Ms M M M (the complainant), made a good impression to the court. Her evidence was consistent and coherent. She answered all the questions put to her to the satisfaction of the court. She did not try to falsely incriminate the accused especially where she could not identify them. It is clear from the evidence that she was unable to identify the people who raped her in the most brutal manner at least on 2 occasions, being the rape at the pipe lines and the lake behind the hill. She was only able to do so at Tshidiso's house because of sufficient light in the kitchen.
- [47] The evidence of the forensic nurse, Mr Mokoena, corroborated the complainant's version in material respect in as far as the J88 is concerned and in outlining her injuries during the rape. The fact that her clothes were dirty, according to the J88 description, indicates that she was raped, consistently with her version of being raped the first time at the gravel road (water pipe lines) and at the lake behind the hill. The genital and anal injuries indicated a forceful penetration consistent with intercourse without consent.

[48] She reported the incident at a reasonable opportunity to her deceased sister when she arrived home in the morning. She was crying when she made the report which is a behaviour consistent with somebody traumatized.

[49] All the state witnesses impressed the court. It is true that the evidence of the complainant is a single witness regarding the allegations of rape. Section 208 of the Criminal Procedure Act 51 of 1977 provides that an accused person may be convicted of any offence on the single evidence of any competent witness provided that such evidence is satisfactory in all material aspects.

[50] In **S v Banana** 2000 (2) SAR 1 (ZSC) the court stated the following:

“There will need to be an evidential basis for suggesting that the evidence of the witness may be unreliable. An evidential basis does not include mere suggestions by cross-examining counsel.”

“In essence a common sense approach should be applied regarding a single witness.”

“Where the evidence of the single witness is corroborated in any way which tends to indicate that the whole story was not concocted, the caution enjoyed may be overcome and acceptance facilitated. But corroboration is not essential. Any other feature which increases the confidence of the court in the reliability of the single witness may also overcome the caution.”

[51] Both the accused’s version fall significantly short and as such, it cannot be said to be reasonably possible true. The evidence show that the accused acted in common purpose, their aim and object being to rob and to rape the complainant on the night in question. They foresaw the possibility of their conduct causing

harm to the complainant and were reckless to the consequences. They were properly identified and they are the same people before court. It is clear that the third person who was in the company (Mzwandile Tola), was one of the assailants who has already been convicted.

- [52] Having regard to the evidence that has been adduced and the analysis set out above I am satisfied that the state succeeded in proving the guilt of the accused beyond reasonable doubt. The evidence also exonerates accused no 2 in respect of count 5.

H ORDER:

- [53] In the result I make the following finding:

- 53.1 That accused 1 raped and robbed the complainant on the night in question. He is accordingly found guilty on count 1 – 5.
- 53.2 Accused no 2 raped and robbed the complainant on the night in question. He is accordingly found guilty on count 1 – 4.
- 53.3 I therefore reject the accused's version as false in so far as it is in conflict with the state's version.
- 53.4 I, therefore find the accused guilty of rape in contravention of the provisions of section 3 and 14 read with sections 1, 55, 56(1), 58, 59 and 60 of the Criminal Law Amendment

Act 32 of 2007, read with sections 92(2), 94, 256, 257 and 261 of the CPA 51 of 1977.

I.R.O BOKWA, AJ

On behalf of applicant:

Instructed by:

On behalf of accused 1 & 2:

Instructed by: