

**IN THE HIGH COURT OF SOUTH AFRICA  
BISHO**

**CASE NO. CC22/2006**

In the matter between:

**THE STATE**

**and**

**XOLILE BRIGHTMAN QUPE**

**ACCUSED**

---

**JUDGMENT**

---

**DHLODHLO ADJP:**

1. The accused, a 45 – year – old male person, is charged with one count of rape.
2. It is alleged that on or about the 2<sup>nd</sup> day of September 2005 at or near unit 13 in Ma. he unlawfully and intentionally had sexual intercourse with N.S., an adult female person without her consent.
3. The charge is accompanied by a warning to the effect that the provisions of section 51(1) of the Criminal Law Amendment

Act 105 of 1997, relating to minimum sentences, will be applicable if he is convicted, as the offence involved the infliction of grievous bodily harm.

4. The accused pleaded not guilty to the charge and added:  
    "I can be found guilty of assaulting her with intent to do grievous bodily harm"
5. Mr Dukada who represents the accused clarified the statement by stating that the accused stabbed the complainant after she had stabbed him.
6. The complainant's evidence may be summed up as follows:
  - 6.1 She knows the accused because he used to visit her neighbour's house. She knows him as Sigebenga.
  - 6.2 On Saturday the 2<sup>nd</sup> day of September 2005 at about 16h00 she arrived at her home at Unit [number] Ma. from where she had been socialising with friends and drinking beers.
  - 6.3 She lay on her bed and did not close the door to her house.
  - 6.4 Shortly after she had lain on the bed the accused entered the room in which she was.
  - 6.5 She told the accused to leave and asked him what he intended to steal from her house.
  - 6.6 The accused proceeded to her, undressed himself, got

on top of her, took off her panty and inserted his penis into her vagina.

- 6.7 She resisted. During the struggle the accused produced a knife and stabbed her on the left shoulder and behind the left ear.
- 6.8 She screamed and the accused throttled her, thereby causing her to froth and defacate.
- 6.9 When she was about to lose consciousness she heard Siphokazi calling people.
- 6.10 She regained consciousness in hospital when she was being attended to by a doctor.
- 6.11 She was discharged from hospital on the following day which was a Sunday.
- 6.12 When she returned to her house she found the accused's tracksuit, a skipper shirt and a cap. She recognised the clothes as those the accused had on when he entered her house on the previous day. The clothes were later handed over to the police.
- 6.13 Even though she had taken beers she was not drunk.
- 6.14 She denied that the accused had done her garden and that she owed him an amount of R70,00.
- 6.15 She further denied that she stabbed the accused with a knife when he demanded his money.

6.16 She further denied that the accused throttled her in order to get a knife from her.

6.17 Her apron, dress and petticoat were left in hospital where she was admitted.

6.18 As she was lying on her bed she was unable to observe the accused's state of sobriety.

6.19 When the accused was having sexual intercourse with her he was not wearing a condom.

7. Nonkululeko Caroline Sogcwayi lives at Unit 15 in Ma.. Her evidence may be summed up as follows:

7.1 She first knew the accused in 1975 when she was staying at Unit 10. She and the accused belong to the same church.

7.2 She knows the accused as Brightman and also as Sigebenga. On 03 September 2005 the accused lived in her house.

7.3 On Saturday 03 September 2005 in the afternoon the accused arrived at her house covered in blood. He had no clothes on except a grey underwear.

7.4 The accused told her that he had been attacked at the shack area at Unit 13 in Ma. by residents of that Unit.

7.5 The accused told her that the residents attacked him

because he had raped a girl at Unit 13 but he did not give the name of the girl he had raped.

7.6 She reported what the accused told her to the police.

7.7 Under cross – examination, Ms Skogcwayi said that she did not see wounds on the body of the accused because he was covered in blood from the head to the chest.

7.8 The accused did not tell her that he had been stabbed by a certain lady and that he had lost his clothes.

8.1 On 02 September 2005 Siyamthanda Ngqothoza saw the accused enter the complainant's house.

8.2 He later saw the accused walk out of the complainant's house wearing only an underwear and covered in blood.

8.3 He suddenly went to report to his mother what he had seen. His mother later went to the complainant's house.

8.4 Residents chased the accused. He said that they could not catch up with him and that he does not know whether they assaulted him.

8.5 Under cross – examination, Ngqothoza said that the accused was wearing an apron on his waist when he saw him move from the complainant's house. He said that he did not see that the accused was wearing a bikini.

9. Siphokazi Ngqothoza is Siyamthanda's mother.

- 9.1 On 03 September 2005 she received a report from Siyamthanda to the effect that he had seen the accused walk out of the complainant's shack.
- 9.2 She said that Siyamthanda told her that the accused had only a bikini on his body and that there was blood on the body. Siyamthanda did not say anything to her about an apron.
- 9.3 She summoned committee members who arrived and summoned an ambulance.
- 9.4 She went into the complainant's shack and found her lying down. She was naked on her upper body and was unconscious.
- 9.5 She saw what appeared to her to be a stab wound on the body of the complainant.
- 9.6 She further saw a pair of a man's pants and a shirt.
- 9.7 She knows that the accused was chased by residents. She said that it was incorrect that residents assaulted the accused and removed his clothes.
- 9.8 She was present when her son Siyamthanda made a statement to the police. She said that he told the police that the accused was wearing only a bikini when he moved from the complainant's shack.
10. Dr L S Ngobo examined the complainant on 03 September 2005 after allegations of physical and sexual assault. The

doctor whose present whereabouts are unknown, could not be called to testify. The doctor found that the complainant sustained multiple lacerations to some parts of the body including the left cheek. The report states "rapid test negative". It is unfortunate that the doctor could not be traced. He could have clarified certain aspects of his report which are not clear.

11.1 In his / her affidavit in terms of section 212 of the Criminal Procedure Act of 51 of 1977, dated 12 June 2006 Hugh-Marie Alicia Damon states that a stained cutting with possible blood from a tracksuit pants and another removed from a T-shirt correspond to the STR-profile obtained from the control blood sample of the accused

11.2 The report goes further and says that the STR-typing result obtained from swabs corresponds to the STR-profile obtained from the control blood sample of the complainant.

11.3 Possible seminal fluid could be detected on the swabs. The report goes further to say that the possibility of penetration and / or ejaculation cannot be excluded. In her evidence the complainant said that she had last had sexual intercourse with her boyfriend some weeks before the incident.

12. The accused's version is briefly as follows:

12.1 He knows the complainant from Mahlangu area at unit 13 in Ma..

12.2 He said that he would be employed by residents at unit 15 in Ma. to do their gardens.

12.3 The complainant used to visit her aunt at unit 15 and would drink liquor there.

12.4 When the complainant would be under the influence of liquor she would accuse him of having stolen her meat from her shack. In her evidence earlier the complainant said that she did not want him to come to her shack because he had stolen her meat.

12.5 The complainant asked him if he could do her garden. He agreed to do so on the understanding that she would pay him an amount of R70,00.

12.6 This took place on a Thursday preceding the date of the incident.

12.7 On the following day which was a Friday he cleaned the complainant's yard. The complainant said that she should return in the afternoon or evening to collect his R70,00.

12.8 He went to the complainant's shack on a Saturday at about 16h00.

12.9 He saw that the complainant's door was slightly open and he heard people talking inside the shack.

12.10 He entered the shack and found the complainant and another lady.

12.11 He told them that he was there to collect his money from the complainant.



12.12 The complainant said to him that she was expecting him on the previous day (Friday) and asked:

“What is the day today?”

12.13 They exchanged words as he was standing near the door.

12.14 The complainant went to a drawer and the other lady ran out of the shack.

12.15 Both ladies were mildly drunk.

12.16 The complainant who was holding a knife grabbed hold of him and pushed him. He fell near a bed.

12.17 She quickly stabbed him with her knife on the right side of his chest. He showed a healed scar on the right side of the chest.

12.18 They struggled for possession of the knife and he eventually got hold of it and he said:

“Sisi, you see the wound on my chest.”

12.19 He said that he would not lay charges against her but he would make her feel what he felt when she stabbed him.

12.20 He started stabbing her with what he said was a bread knife which would bend as he was stabbing her.

12.21 He cried because he was angry and the knife was

bending.

12.22 He did not throttle her.

12.23 When he went out of the house there were neighbours who were watching him. They saw blood on him and they entered the complainant's house.

12.24 he was wearing a black lumber jacket and a tracksuit.

12.25 Before he could walk a distance from the shack he heard a whistle being blown and saw many residents who were shouting:

"Sgebenga, there he is"

12.26 The residents chased him and he ran to unit 13.

12.27 Residents caught up with him, caught him and hit him. Those residents appeared to him to be drunk.

12.28 He was dragged and his pants were taken off.

12.29 He ran to unit 15 where his sister lives. His sister is Nonkululeko Sogcwayi.

12.30 Siyamthanda Ngqothoza is one of those who chased him.

12.31 He was stabbed and he bled. Blood dropped onto his clothes. He was not wearing the complainant's apron.

13. Under cross – examination the accused said that:

- 13.1 The complainant visited his aunt frequently. She would smoke his tobacco and she would ask him to visit her place if he did not have tobacco.
- 13.2 They would contribute money to buy liquor which they would share.
- 13.3 Many people saw him working on the complainant's premises. He said that he would "cause some to testify."
- 13.4 He knows the lady he found in the company of the complainant. She is Nokuzola. If the police informed her to come to court she would come and testify.
- 13.5 He bled from the wounds inflicted by the complainant inside her shack.
- 13.6 He stabbed her "may be three times" after he had dispossessed her of the knife because he was angry. At that stage she was covered in blood.
- 13.7 He stabbed her on the left side of the neck. He is uncertain whether he stabbed her on the head as well.
- 13.8 He was seriously intending to stab her because she had stabbed him.

- 13.9 He said that he could not have had sexual intercourse with a woman who was bleeding.
- 13.10 He told his sister that he was being chased by people and he later ran to the police station.
- 13.11 Responding to the question:  
"Did you tell your sister that the lady (complainant) stabbed you?, he responded:  
"I said that I was stabbed at NU 13"
- 13.12 He denied that he told his sister that he had raped a lady.
- 13.13 He further denied that his sister summoned the police and added that he went to the police on his own.
- 13.14 He further denied that he was wearing only underpants when he arrived at his sister's place. He said that he was wearing a black lumber jacket and a T-shirt. He said that residents who attacked him only took off his pants and that his shoes remained there.
- 13.15 He later said that a pant and a T-shirt were removed from him when he was beaten up. He said that when he went to unit 15 he was wearing an elma shirt and a lumber jacket.
- 13.16 He said that under the lumber jacket he was

wearing a skipper shirt which is an elma. When he went to his sister's place he was still wearing the elma shirt.

- 13.17      Responding to the question:  
"You said earlier that residents took off those clothes and took them to Nonkinki's (complainant's) place", he answered in the affirmative and added:  
"my pair of pants and my shoes were taken by residents."
- 13.18      When told by State Counsel that at the complainant's house a pair of trousers and an elma were found, he responded by saying that he was wearing an elma and a skipper shirt on top of the elma. He said that at the complainant's place a skipper, a pair of pants and a pair of shoes were found.
- 13.19      He said that he told the police that he was being chased by members of the community and asked them to keep him.
- 13.20      When the police asked him why he was covered in blood, he said that "I was being beaten by people and that I ran away".
- 13.21      He said that he told the police that he did not rape the complainant but admitted that he stabbed her, defending himself after she had stabbed him.

- 13.22 He said that he is uneducated and that he signed a police statement but did not know what he was signing.
- 14.1 Under re-examination, he said that he came out of the complainant's house walking normally. He thought that no one saw what he had done.
- 14.2 He said that after stabbing the complainant he left the knife there. No evidence has been adduced to whether there was a knife and what happened to it.
- 14.3 When he stabbed the complainant she was near a bed.
- 14.4 When asked what the name of the lady is who he allegedly found in the complainant's shack, he said that he had forgotten the name "but I know it"
- 14.5 He said that the only witness he wanted to call was the lady he found in the company of the complainant. The court was later told that the lady is not known to the complainant and that the police could not find a lady with that name.
15. The only person who allegedly saw the accused enter and leave the shack of the complainant is Siyamthanda Ngqothoza. He said that the accused was wearing only a man's underwear when he walked out and that he was covered in blood. Later Siyamthanda said under cross-examination that the accused had an apron on his waist when he left the accused's shack. This is contrary to what the complainant said that her apron, dress and petticoat were left

in hospital.

16. It is common cause that residents chased the accused. According to Siyamthanda Ngqothoza they did not catch up with him. The accused said that the residents hit him when they caught up with him.
17. According to Nonkululeko Sogcwayi the accused arrived at her home wearing only a grey man's underwear and was covered in blood from the head. He told her that he had been attacked by residents at unit 13 in Ma. because he had raped a girl. He did not give the name of the girl.
18. The accused did not tell Ms Sogcwayi that he had been stabbed by a lady.
19. Ms Sogcwayi had lived with the accused at her home for a long time because they belong to the same church. She offered him accommodation. It is inconceivable that she would give false evidence against him.
20. One would expect that the accused would have told Ms Sogcwayi who he refers to as sister, that he had gone to collect his money from the complainant for cleaning her yard, that she stabbed him with a knife and that he dispossessed her of the knife and stabbed her.
21. If the version of Siyamthanda that the accused was covered in blood when he left the complainant's shack is correct, how did this come about?
22. If the accused was preparing to rape the complainant, did he

have to strip himself naked? It is highly improbable that he would have undressed himself even of the T-shirt.

23. It is highly probable that the accused was stripped naked by the residents who chased and hit him. Hence the finding of the DNA expert that blood found on the T-shirt and the tracksuit pant of the accused corresponds to the control blood sample of the accused.
24. Siphokazi Ngqothoza saw what appeared to be a stab wound on the complainant and a man's pants and a shirt.
25. Whether residents had already chased the accused and returned to the complainant's shack when Ms Siphokazi went there and saw the clothes is uncertain.
26. That the complainant was in the company of a lady by the name of Nokuzola when the accused entered the complainant's shack, seems to be a fabrication. This fact was not put to the complainant when she was cross examined but was introduced by the accused when he testified.
27. Ms Sogcwayi appears to have been an honest and reliable witness. There is no reason to doubt her testimony.
28. It is doubtful that Siyamthanda Ngqothoza told the whole truth.
29. There is no reason to doubt the evidence of Ms Siphokazi Ngqothoza.
30. The complainant was under the influence of liquor and, on her



own version, lost consciousness during the alleged attack. She sustained some injuries in her shack. The accused did not deny that he stabbed her but he said that he did so after he had been stabbed by her.

31. What compounds issues is the evidence of Siyamthanda Ngqothoza that when the accused left the complainant's shack he was covered in blood. As a result, the court cannot say with certainty what happened inside the shack.
32. The report of Dr Ngobo is not helpful. For instance, it is not known what he meant by "Rapid test negative".
33. It cannot be said that the State has proved beyond reasonable doubt that the accused raped the complainant, especially because of "Rapid test negative" and the seminal fluid detected on the swabs could not be linked to the accused.
34. What the State has proved beyond reasonable doubt which the accused admitted is that he stabbed the complainant with a knife several times with intent to cause her grievous bodily harm.
35. Accordingly the accused is not guilty of rape but guilty of assault with intent to do grievous bodily harm.

---

**A E B DHLODHLO**

**ACTING DEPUTY JUDGE PRESIDENT**

**23<sup>RD</sup> JUNE 2006**

**HEARD ON: 20 AND 22 MARCH 2006, 19 AND 20 JUNE  
2006**

**FOR THE STATE: MS C de KOCK**

**FOR THE ACCUSED MR P DUKADA**