

IN THE HIGH COURT OF SOUTH AFRICA**(WESTERN CAPE HIGH COURT, CAPE TOWN)****CASE NUMBER:**

SS31/2009

5 **DATE:**

20 FEBRUARY 2011

In the matter between:

THE STATE

and

10 **RASHAAD KRUGER**

J U D G M E N T15 **SABA, AJ:**

The accused is an adult male charged with the following crimes:

- 20 1. Attempt to commit a sexual offence.
- (a) First alternative to count 1, sexual violation.
- (b) Second alternative to count 1, incitement, to commit a sexual offence.
2. Assault with intent to do grievous bodily harm.
- 25 3. Murder.

Accused is represented by Mr Delbrooke-Jones and in respect of count 1 and the alternatives, the accused is charged under the Sexual Offences & Related Matters Amendment Act 32 of 5 2007 ("Sexual Offences Act") and in contravention of S55(a) and (c) of the Act. The count of murder is subject to provisions of section 51(2) of the Criminal Law Amendment Act 105 of 1997 ("the Act"). In count 1 it is alleged that on 28 February 2008, the accused unlawfully and intentionally held a 10 panga against the throat of Porchia Soekers and ordered her to take off her panty with the intent to penetrate her sexually without her consent.

In respect of the first alternative to count 1, it is alleged that 15 the accused unlawfully and intentionally violated Porchia Soekers sexually by holding a panga against her throat and ordering her to take her panty off. In respect of the second alternative to count 1, it is alleged that on 28 February 2008, accused unlawfully and intentionally inspired the belief that 20 Porchia Soekers would be sexually violated by calling her to the toilet, holding a panga against her throat and ordering her to take off her panty. In respect of count 2 it is alleged that on 28 February 2008, accused unlawfully and intentionally caused grievous bodily harm to Porchia Soekers by chasing her with a 25 panga. In respect of count 3, it is alleged that on 20 March /bw /...

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2008, the accused caused the death of Moniba Kruger by slitting her throat with a sharp object. The state further alleged that the murder was planned or premeditated. The accused pleaded not guilty to all counts and did not give any plea-
5 explanation. For purposes of easy reference Porchia Soekers will be referred to as "the complainant" and Moniba Kruger as "the deceased".

The state's case regarding the events of 28 February 2008 can
10 be summarised as follows. On 28 February 2008 the complainant was at the accused's house with the deceased, Kayline Alexander, Rashaad Kruger junior, the accused, Mansoer Rosenberg and two other ladies. They drank one bottle of brandy. She did not drink a lot. Her companions went
15 to the shop and she was left alone with the accused. The accused called her to the toilet and said he wanted to say something to her. She went to him in the toilet, because she wanted to hear what the accused wanted to say. When she was inside the toilet, the accused closed the door and locked it
20 with a sliding tower bolt. He placed a panga against her throat, demanding that she pull off her panty.

She became scared and feared that the accused would hurt her, but refused to pull off her panty. She cried so that other
25 people could hear her. She then heard the toilet door being

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kicked opened and she saw Igshaan and Mansoer Rosenberg. She got a chance and ran to the Wendy-house in the backyard of the house. The accused chased after her with the panga. Igshaan locked her inside the Wendy-house. When she came
5 out of the bungalow, the police officers were outside. She informed them that the accused wanted to rape her. Accompanied by the deceased, she went to open a case. She described the panga as being sharp and estimated it to be approximately 45 centimetres. Under cross-examination it was
10 put to her that the accused denied having been in the toilet with her and being in possession of a panga.

Igshaan Kruger, the eldest son of the accused was at the Wendy-house with his girlfriend and two friends when he
15 received a report from his girlfriend. Acting on the report, he ran up to the toilet and found the door of the toilet locked. He shouted at his father to open the door, but his father did not respond. He heard the complainant screaming inside the toilet. He kicked the toilet door open and saw the accused
20 with a panga placed against the complainant's throat. He grabbed her and the accused lost his balance and fell halfway over the bath. He noticed that the accused was drunk and under the influence of drugs. He came to this conclusion because the accused was not steady on his feet and the house
25 smelt strongly of drugs. He took the complainant, who was

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freaked out, to the Wendy-house and then locked the security gate of the Wendy-house.

Charne, his girlfriend, phoned the police, who arrived and found accused still in possession of the panga. Police
5 instructed the accused to put the panga down, but he refused. An officer pinned him down and he was arrested. He said he had a normal relationship with the accused, but there was no communication between them after this incident. According to him, deceased also had a good relationship with the accused.
10 The day the deceased died, he slept the whole day in his bungalow, because he was not working and had used "TIK". His mother woke him up at 17:00 and told him that the deceased was lying dead in her room.

15 Rashaad Kruger junior, also called Bal, is the son of the accused and a brother of the deceased and Igshaan. At about 14:00 on 28 February 2008 he was at home in the company of Mansoer, the complainant, the accused, the deceased, Kayline, Nicole and Shireen. They were all drinking liquor.
20 The accused and Mansoer were the only ones using drugs, loosely termed "buttons". At about 14:30, he took Kayline home. Mansoer also left with them to buy cigarettes, leaving the complainant and the deceased in the house. When he returned home, his father was already taken away by the
25 police. He only saw the deceased, the complainant and

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Mansoor again on the way back from the police station. The deceased and the complainant were crying when they saw them. He saw the accused again the following day after he was released from court. The deceased cried, saying she no longer
5 wanted to live at home. He, the deceased and Igshaan told the accused that he was not welcome at the house, because of what he had done to Porchia. Accused went to stay at their aunt's house. A week later the accused moved back into the house. The relationship between the deceased and the
10 accused deteriorated, because she did not like the fact that the accused was back at the house. The deceased stopped sleeping in her parents' room and moved into his room.

On 29 March 2008, it was decided that after knocking off from
15 work the following day, he would take the deceased to live with their sister, Fadelah. On 30 March 2008 he went to work at 05:30 in the morning. He came back from work before 12 p.m. and found the front door locked. Shafwaan, who was inside the house, told him that the keys were with the deceased and
20 she had left with Shireen. He went to look for the deceased at Shireen's place, at Linda's place, at Irene's place, lastly, he went to look for her at Kayline's place, but did not find her. He asked Angelo at the day hospital to phone his mother. He informed his mother that he was locked outside and could not
25 get hold of the deceased. His mother told him to get through

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the window. He went home and asked Shafwaan, his nephew, who was 13 years old then, to open the window. He and Kayline were lifted through the Vibracrete wall and they got inside the house through the window.

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Once he was inside, he noticed that his father's padlock of the toolbox was on the door of the room he and the deceased occupied. He went to his parents' room and fell asleep. Later at about 16:55, he went out through the toilet window to go
10 and collect money from his boss. He met his mother on the walkway, but did not speak to her. On his way back home he saw Kayline, who asked him to come home. From her expression, he could tell that something was wrong. On reaching home, his mother showed him the deceased, who was
15 lying on her stomach in a pool of blood. He went out to look for his father. He found the accused between 17:00 and 17:40 and asked where he was. The accused asked him to give the phone to the mother. He told him that his mother was not there. He never saw his father again that day, he only heard
20 that he was arrested. After he was shown Exhibit 2, which is a small padlock, he identified it as the accused's toolbox padlock. He said before the incident with the complainant, their family was very close.

25 Then Petula Petersen, a constable at Steenberg Police

Station, came to the accused's home after receiving an attempted rape complaint from the radio. She met the deceased, who informed her that the victim and the accused were downstairs in the backyard. She went there and saw the
5 accused having a panga in his hand. The blade of the panga was plus/minus 32 centimetres and the handle plus/minus 17 centimetres long. The accused, that was standing next to the bungalow, advanced towards her with the panga, forcing her to take out her pistol and cock it. Accused's eyes were big and
10 he was aggressive. She called for help and Constable Lackay came. Lackay wrestled with the accused to the ground and dispossessed him of the panga.

Complainant emerged from the Wendy-house and indicated
15 that the accused is the man who wanted to rape her. Her eyes were swollen from crying and were red. She then informed the accused of the charge of attempted rape, as well as his rights against him. The accused did not say anything. She took him to the police van and transported him to Steenberg Police
20 Station. At the police station she booked the panga in the SAP 13 register. She later took a statement from the deceased, who also came to the police station. She identified the panga in court and it was marked Exhibit 1. She also handed in a rough sketch plan of the scene where the accused
25 was arrested and it was marked Exhibit E.

Shane Lackay, a constable at Steenberg Police Station, confirmed what Petersen said, that he gave assistance to her at the crime scene when the accused was aggressive and
5 wanted to attack her whilst carrying a panga. According to him, the complainant looked terrified when she emerged from the toilet behind the Wendy-house.

The following is a summary of evidence relating to a murder
10 charge. On 20 March 2008, Constable Donovan Prins, an official at Steenberg Police Station went to the accused's house at 27C Walton Road, Retreat. On getting there, Nadia Kruger pointed to the bedroom and also showed him the sliding tower bolt and the padlock that she broke. He went inside the
15 bedroom and saw a body of a female covered in blood. Nadia told him that she is the one who broke the padlock and opened the door, only to find her child, Moniba Kruger, who was 13 years old then, lying dead. He observed the wounds appearing on photos 6 and 7 of Exhibit F from the deceased. He called
20 support service officers and later handed the scene over to them.

On the same day between 17:20 and 18:20, Inspector Barry Mark Davids from the Local Criminal Record Centre, was taken by Constable Prins to the room where the deceased lay on her
25 stomach in a pool of blood. He took photographs of the crime

scene and they are contained in the photograph album marked Exhibit F. According to Inspector Davids, he turned the body of the deceased in photo 6 and 7 to enable him to take photographs of the face and neck of the deceased. Except for
5 the bedroom, he did not find any other blood elsewhere in the house.

Dr Liebenberg, who is a specialist in forensic pathology at the medical faculty of the University of Cape Town, conducted a
10 *post-mortem* examination on the body of the deceased at the Salt River Pathology Laboratory at 08:30 on 21 March 2008. Her examination and findings with respect to the body of the deceased are set out in her *post-mortem* report which was admitted as Exhibit B. She found that the throat of the
15 deceased was cut deep, involving the vertebrae and that she suffered massive blood loss, as well as injuries to the face. She concluded that the cause of death was a cut throat and the consequences thereof. From the nature of the cut to the deceased's throat, she formed an opinion that a very sharp
20 instrument was dragged to the right and back and then from the back to the right of the deceased's neck. According to her the depth of the cut to the vertebrae indicates that a large amount of force was used to cut her throat.

25 She said the scratches on the deceased's cheeks indicated

that the deceased was alive when she was attacked and tried to defend her throat by grabbing hold of the instrument that was used to slit it. The injuries to her fingers suggested that the deceased had curled her fingers around the instrument used and that the injuries caused to her lips could have been caused by her lips being pushed against her teeth, such as when a hand is used to close a mouth. According to Dr Liebenberg, the deceased would not have been able to cry or speak out in such circumstances. She did not find any evidence of sexual assault. She said the severance of the artery in her neck resulted in massive bleeding and the cutting opened up the airways, so that blood flowed into the lungs. According to her, the massive blood loss combined with the deceased's drowning in blood, caused the deceased's death in minutes. She took blood and urine samples, exhibits and other samples, which she placed in a sexual assault evidence kit and handed all to Forensic Officer Barends on 21 March 2008. Inspector Gregory Raymond Parker took photographs of the *post-mortem* examination and these are reflected in Exhibit G.

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At the time of the murder, Nadia Kruger, the mother of the deceased, had been married to the accused for 27 years and they lived at 27C Walton Street, Retreat, a two bed-roomed house. One bedroom was used by herself, the accused and Shafwaan, her grandson. The deceased and Rashaad shared

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the other bedroom. The only people who had keys to the entrance door of the house were she and the accused. She gave her keys to the deceased as she was usually at home during the day. The accused always carried his bunch of keys and amongst the bunch, was a key for the padlock which he used to lock his toolbox, and only he had a key to open the padlock. She identified the bronze padlock marked with a red star as the padlock used by the accused to lock his toolbox. The padlock was accepted and marked Exhibit 2. She identified a bunch of keys which she said belonged to the accused. Amongst his bunch of keys, which were admitted and marked Exhibit 3, was the key to the front door, a key for the food cupboard and a key of the toolbox padlock.

Attached to the ring of the bunch of keys was a gold coloured pendant that she got from her workplace and later gave it to the accused. She said it was her birthday on 28 February 2008 and that on her arrival at home from work, Igshaan told her what the accused did or tried to do to the deceased's friend. The deceased later came from the police station and told her that the accused attempted to rape her friend. The deceased further told her that she was scared because of what the accused did to her friend. According to her, her family had always been closed, but after the incident with the complainant, the family broke up and the relationship between

the deceased and the accused changed. The deceased became short tempered with the accused.

On Friday after the incident with the complainant, the accused phoned her at her workplace and told her that he had been
5 released and was coming home. She told him that he could not come after what he did. Two days thereafter the accused phoned again and told her that he was staying with his sister. He stayed two weeks with his sister and on Monday after that, the accused forced his way back to the house, saying that he
10 was the owner of the house. Everyone in the house was very unhappy about his return, especially the deceased. On Wednesday evening, the day before Moniba was killed, everything went smoothly at their home and the deceased went to sleep in her bedroom. The deceased had packed her bag as
15 she was going to stay at her sister's place the following day.

Shafwaan, who slept on a mattress in her bedroom, was in pain as he had cut his foot in a trench earlier that day. She gave him Panado, but Shafwaan could not sleep because of
20 the pain. The accused got up from bed and gave him a pill. She does not know what pill it was. On Thursday, 20 March 2008, she borrowed a sum of R4,00 from the accused before she left for work at six in the morning. She noticed that the deceased was fast asleep on her bed. While she was at work,
25 she phoned her home at about nine in the morning, but no one

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picked up the phone. She phoned again at about 10:00 and spoke to Shafwaan. She asked for the deceased and Shafwaan told her that she was not in the house. She phoned the accused and asked where the deceased was. The accused
5 told her that the deceased went to her friend in Lavender Hill.

She called home again and Shafwaan informed her that the deceased was not at home and her door was locked with two padlocks, so he could not get into her room. At about 12:13,
10 Rashaad, her son, phoned her, enquiring for the key as the front door was locked. He informed her that he looked everywhere for the deceased, but could not find her. She then instructed him to enter through her bedroom window. She returned home at about 17:00 and met Rashaad, who told her
15 that he did not find the deceased at Lavender Hill. She proceeded to the house and asked Kayline to use a knife to try opening the door. When Kayline failed, she called the accused on his phone and asked for the keys. Accused told her that the keys were under the mattress. She instructed Kayline to go
20 and look for the keys there. Kayline found the keys and opened the front door.

On entering the house, she noticed the two padlocks on the deceased's room. One padlock belonged to the accused and it
25 was locked. The other padlock was bigger and it was used by

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the deceased and Rashaad junior in their bedroom and it was just hanging and not locked. She noticed a torn sheet, a screwdriver and scissors on her bed. Shafwaan was lying on the mattress next to her bed and his eyes were swollen. She
5 noticed the red toolbox next to her bed. It was closed, but the padlock was not there. She had seen the toolbox locked with the golden padlock before she left that morning. She used a screwdriver and a hammer and forced open the door to the deceased's bedroom, that is when she found the deceased's
10 body lying on the floor in a pool of blood. She was still dressed in the pyjamas she had on the previous night and her room was untidy with several items scattered on the floor. The scene that confronted her was reflected in photo 2 of Exhibit F.

15 Kayline phoned the police and also called Igshaan and Rashaad. When the police arrived, she told them what happened. The police took fingerprints and photographs and while the police were busy in the house, she saw the accused through the window at a distance of 12 to 15 metres. The
20 morgue van later took the deceased's body away. The police drove around the area looking for him, but did not find him. She gave the police the accused's cellular number, as well as his sister's address in Delft. The deceased was buried the following day and the accused did not attend the funeral.

25 Kayline Alexander confirmed the evidence of Rashaad Kruger

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and Nadia Kruger with respect to her whereabouts and the role she played on 28 February 2008 and 20 March 2008.

Shafwaan Kruger is the grandson of the accused and Nadia. He confirmed Nadia's story that he was given sleeping pills on
5 the night before the deceased's death, because he was in pain. He slept and woke up the following day around 10 in the morning. Only he and his bedridden grandmother, called Haija, were in the house. He said Nadia phoned and asked for the deceased. He later went to the deceased's room and
10 shouted for her, but there was no reply. The door was locked and he noticed two padlocks on her door, the one belonged to the accused and the other to the deceased and Rashaad. Rashaad came later and asked him to unlock the front door, but he told him he did not have a key. Rashaad and Kayline
15 came through the bedroom window. He went back to sleep and only woke up when Nadia came home from work. He said he was very close to the deceased and did not see her that particular day. When he was shown the padlock with the red cross, that is Exhibit 2, he identified it as the accused's
20 padlock for the toolbox. He said no one was allowed access to the toolbox and the accused always had the key for the toolbox.

Maria Magdalene Anthony, Nadia Kruger's sister, said, after
25 the body of Moniba was discovered, she went to Nadia's place

with her daughter, Alvinia. She left in the evening and went to sleep at her home. While asleep at home, she heard a knock on the window of her bungalow. She peeped through the window and saw the accused. The accused asked her to open
5 the door as he had a parcel that he wanted to leave with her, so that she could in turn give it to Nadia. She told him that it was late and that he should bring it the following day. She thereafter went back to sleep. At the deceased's funeral the following day, she told Nadia about the accused's visit and
10 also about the parcel.

In cross-examination, she was asked to read the statement that she had given to the police. She looked at the statement and repeated everything she had earlier said in her evidence
15 in chief. When she was confronted about including what was not in the statement, that is seeing the accused through the window, she said she could not read the handwriting on the statement and was not reading from the statement, but was actually narrating the story from her memory. The statement of
20 this witness was handed in and marked Exhibit K.

Constable Dibela attended the scene of murder on 20 March 2008. He took statements from Nadia Kruger and later made a report to Warrant Officer Brandt, who had given him
25 instructions to go to the scene. He could not recall what other

information he collected at the scene. On 20 March 2008, Warrant Officer Nichol Henry Brandt, who is a warrant officer of the detective branch at Steenberg Police Station, sent Constable Dibela to attend to a scene of crime at 27C Walton
5 Road, Retreat. As a result of a report made to him by Constable Dibela, he conducted patrol duties looking for the suspect around the crime scene at number 27C Walton Road in Retreat. He did not find him and on 21 March 2008 at 18:00, he and Captain Arends went to look for him at number 25
10 Essenhout Street in Delft, but did not find him.

As they were driving off, he saw a patrol van from Delft, surrounded by a group of persons. The driver of the patrol van asked them to follow their van to the police station. They
15 followed the patrol van to Delft Police Station, where the accused was handed over to him. Accused smelt of liquor, but was steady on his feet. He was wearing black pants, cream *tekkies*, a red T-shirt, a grey and black T-shirt under the red T-shirt. He noticed an abrasion on his right upper eye and did
20 not look for other injuries. He informed the accused about the charge of murder against him and also about his rights. Accused did not say anything about the murder. With his consent he searched him. In his left back pocket he found an identity document. In his front pocket of his pants he found a
25 bunch of keys, which is Exhibit 3 and the keys were about 10

in total, in a brown leather holder. A silver pendant was also attached to the keys. He then arrested the accused and took him to Steenberg Police Station.

5 At Steenberg Police Station he put the keys in a forensic bag with seal number FSC521085 and registered the bunch of keys in SAP 13/450/2008. Accused was handed over to Officer Solomons and then locked up. Because there was a sworn statement that a padlock was broken from the door at the
10 crime scene and a bunch of keys found on the accused, he asked Constable Dibela to accompany him to 27C Walton Street to check if one of the keys from the bunch fitted on the padlock which was broken. He and Dibela went to the crime scene where the mother of the deceased handed a padlock,
15 which is Exhibit 2, to Constable Dibela. They took this padlock to the police station where they sealed it with seal number FSC521085 and registered it in SAP 13/50/2008.

David Le Roux van Wyk, a general practitioner and part-time
20 district surgeon, examined the accused on 21 March 2008 at 21:15, after he was brought to him by Inspector Solomons. The accused smelled lightly of liquor, but was not drunk. He asked the accused to take off his clothes before he examined him. He then examined him and compiled a report on form
25 J88, which was admitted as Exhibit J. He found the following
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fresh injuries which, according to him, were one to 12 hours old on the accused:

1. On the right eyebrow ridge he had an abrasion which was 6 x 12 millimetres and as well as a five millimetres laceration which was not deep.
2. The left eye had subconjunctival bleeding.
3. Under the right eye were abrasions.
4. The left shoulder had superficial abrasions.

The accused told him that these injuries were inflicted on him by the South African Police. He also found the following older injuries, which were plus/minus 24 hours old, that is:

1. The right upper leg, on the front side, had a three centimetre scratch mark.
2. The left upper leg had a two centimetre scratch on the inside a 2,5 centimetre scratch on the outside.
3. The right upper arm, on the outside, had an eight millimetre, a four centimetre and a 2,5 centimetre scratch marks.

Accused told him that his injuries were caused by his sister's four year old child. According to the doctor, this was not probably true. He was of the opinion that these injuries were
5 caused by a sharp object or somebody else's fingernails. On the accused's index fingernail - the nail on one side of the thumb was broken and was quite sharp and a piece was left over. On the left middle finger he had a notch which was not as sharp as the previous one. He took a blood specimen from
10 him. He did some scratching underneath the nails and also pulled some pubic hair. He placed all these in a special container for forensics. This container was sealed with seal number 06D1AB0880XX and given to Inspector Solomons. He gave the accused an old T-shirt to wear, since his clothes were
15 to be taken for forensic testing.

Francois Swart, a sergeant in the South African Police Services attached to the Biology Unit of the Forensic Science Laboratory, then testified that he holds a Bachelor of Science
20 Degree from the University of Stellenbosch and has had in-service training in the presumptive testing of body fluids. He has more than five years experience and he is an assistant forensic analyst at the forensic laboratory. In the course and scope of his duties he received sealed bags containing
25 exhibits relating to the murder of the deceased in this matter.

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Among the exhibits was a blood sample of the deceased which he marked Exhibit E48017/08 victim. A control blood sample of the deceased which he marked D48017/08(2) victim and a grey coloured T-shirt that had two possible bloodstains. He
5 cut out the bloodstains and placed them in separate envelopes, each with its own identifying reference number. He returned the exhibits, which were sealed in a docket, to the administrative component where they were taken by Captain Koenze for DNA analysis.

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He confirmed the contents of his affidavit in terms of section 212 of the Criminal Procedure Act 51 of 1977. The affidavit was admitted as Exhibit L. The control blood samples of the deceased are reflected in paragraphs 3.1.16 and 4.1.2 of
15 Exhibit L. The bloodstains on the grey T-shirt are reflected in paragraph 4.2 of Exhibit L. The sealed number of the evidence bag containing the grey T-shirt was admitted as Exhibit M and the photograph depicting the grey coloured T-shirt was admitted as Exhibit N, it shows where the two bloodstains are.

20 Ulrich Koenze is a captain in the South African Police Services attached to the Biology Unit of the Forensic Laboratory since August 2000. He has a Bachelor of Science Degree from the University of the Western Cape. He received training in the opening of cases, presumptive and confirmatory testing of
25 bodily fluids and has 15 years experience in biological

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science. On 9 December 2008 he received case files from Sergeant Swart, who did a preliminary analysis pertaining to the murder of the deceased in this case. He interpreted the DNA results of the crime scene and reference samples pertaining to Steenberg CAS 446/03/2008 with laboratory numbers 48017/08 and 149943/08 respectively. He found that the DNA result of the bloodstains on the grey coloured T-shirts, depicted in Exhibit N, matched the DNA result of the deceased's blood sample. His findings are reflected in his affidavit admitted as Exhibit O.

Warrant Officer William Alfred Solomons, stationed at Steenberg Police Station and an investigating officer of this case, also took over the docket of attempted rape relating to the complainant in count 1. He said the statement of the deceased was not filed in the docket and he did not succeed in tracing it. On 21 March 2008, he took the accused to Dr Van Wyk, a district surgeon, for examination. The doctor asked the accused to undress and leave only his boxer shorts. He examined him and noted his findings on the J88. Then accused took out a black top, a red T-shirt he was wearing under the top, a light blue T-shirt, a black pair of jeans and boxer shorts.

When the accused was putting on his clothes after
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examination, the doctor observed that there was a blood spot on the blue T-shirt. The doctor handed that T-shirt to him and asked him to send it, as well as the other clothes of the accused, for tests to be conducted. The accused remained
5 with the boxer shorts and *tekkies*. He was given an old T-shirt by the doctor to wear. From the district surgeon, he fetched the accused's clothes from his house and then went back to Steenberg Police Station where the accused was detained. He then registered the sexual kit and the clothes in the
10 SAP 13/451. A certified copy of the exhibit register was admitted and marked Exhibit P.

He collected further exhibits relating to a blood sample of the deceased from the forensic laboratory in Woodstock. It was
15 marked Steenberg CAS 446/03/08 and it was sealed with seal number FA017607. He registered the shirt in the SAP 13 register 525/2008. He received a sealed bag marked FSC462780. Inside the bag was an envelope containing one light blue T-shirt, which was cut out. It was marked Exhibit
20 4.1. The following clothes were also handed in, a red coloured T-shirt which was marked Exhibit 4.2, black jeans which were marked Exhibit 4.3, a long sleeved black T-shirt which was marked Exhibit 4.4, a grey coloured tracksuit marked Exhibit 4.5.

During his investigation duties he checked whether one of the keys from the bunch, that is Exhibit 3, fitted in the padlock. He discovered that one of the keys fitted and opened the padlock. He further secured the record of calls pertaining to
5 cellular number 0785229226, which belonged to the accused during that period from MTN Service Provider. He later took a video footage of the accused's home and the surroundings. The said video was viewed in court and the video clip was marked Exhibit 5. He contacted Constable Hill, who
10 apprehended the accused in Delft Police Station. He could not get any positive information regarding the arrest from him, because Hill said he was suffering from loss of memory.

On cross-examination it was put to the witness that the
15 accused was going to say he was not wearing the clothes marked Exhibits 4.1 to 4.5 when he was arrested, instead he was wearing a blue tracksuit, a top and a bottom, and that he was wearing the same tracksuit the day before and also when he was examined by the doctor. An affidavit made in terms of
20 section 213(3) of the Criminal Procedure Act 51 of 1977 by Hilda du Plessis, an analyst employed at MTN, was handed in by consent between the state and the defence and was marked Exhibit Q. The following admissions in terms of section 220 of
25 the Criminal Procedure Act 51 of 1977 and contained in a document which was marked Exhibit R, were read into the
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record and they are as follows:

1. The deceased was certified dead on 20 March 2008 at 27C Walton Road, Retreat.
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 2. The body of the deceased was received at the Forensic Pathology Laboratory on 20 March 2008 at 22:00.
 3. Rashaad Kruger, the accused, was in possession of a
10 Nokia cell phone during March 2008 till 21 March 2008 with phone number 0785229226.
 4. André Baard, a forensic analyst at the Forensic Laboratory in Salt River sealed the blood sample of the
15 deceased WC11/599/2008 with seal number FAO176/07 on 2 April 2008.
 5. On 2 April 2008, André Baard handed the blood sample with seal FAO176/07 to Warrant Officer Solomons for
20 DNA analysis.
 6. The work telephone number of Nadia Kruger is 0214340841.
- 25 That concluded the case for the state. Rashaad Kruger, the
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only witness for the defence, said the following. On 28 February 2008, he found the complainant, Mansoer, Yusiem, the deceased and Rashaad junior drinking liquor at his house. He does not know what happened thereafter, but what he
5 knows is that the detectives came and picked him up. He denied attempting to rape Porchia. He said when the police came to pick him up, he was at his sister's place in Delft. He arrived there on a Thursday. He said he could never cut his child's throat. He denied any knowledge of the clothes that
10 were handed in as exhibits, saying he was wearing a blue tracksuit when he was arrested. He denied knowledge of the keys that were also handed in as exhibits.

On cross-examination, the following was revealed. After
15 finding Rashaad and the others drinking liquor at his house on 28 February, he joined them, but later went to sleep in the bedroom with Nadia. He said he didn't take any liquor nor did he smoke Mandrax, because he liked his Drink-O-Pop cool drink, his sweets and biscuits. He said he would never call
20 and threaten the complainant in the toilet, because the complainant was like a daughter to him. He admitted that on 28 February, Igshaan kicked open the toilet door, while he and the complainant were locked inside. He said the police later came and dived at him. He admitted that a panga was found
25 at the scene by the police and confiscated it. He also admitted

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that he had a toolbox at home, which was normally kept at his and Nadia's bedroom. He denied that he was the only one who had a key to the padlock of the toolbox. He said the key for that padlock was normally hung on a hook near his bed or in
5 the passage.

He recalled the morning Nadia asked for R4,00 before she went to work and this is the morning of 20 March 2008. He said he gave her the R4,00 and went back to sleep. On that
10 day he woke up at daybreak and went to sit on the stairs. The people who were at home, according to him, were Rashaad, Igshaan, the deceased and Kayline. The deceased and Kayline then left together. He again changed and said he could not recall where the deceased was. He could not say
15 whether Shafwaan was at home or not. He said he then went to his sister's place at about 10:00. On his arrival there, his sister told him that his daughter was dead and people were alleging that he killed her.

20 She said the deceased's throat was cut open with an Okapi like knife, which was 13 centimetres long and that the knife was later found by Inspector Brand from him, when he searched him. He demonstrated to court how the deceased was cut on the throat. He kept on saying he was arrested for
25 the crimes he committed and had to be punished for his deeds.

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When he arrived in Delft at about 10:00, Sadia, his sister, told him that people are alleging that he killed his daughter. He asked his sister to phone the police and investigate that. He denies giving Shafwaan sleeping tablets, saying it is Nadia 5 who gave Shafwaan tablets the previous night. He said he knew that the deceased was going to leave home and stay with her sister and had already packed her bags. He said he did not attend the funeral because he wanted to practice his own *kubur*, which is a prayer ritual about a deceased person. He 10 lastly said he wanted to make sure that the deceased was safely put under ground and that concluded the case for the defence.

Ms Kortje for the state argued for the accused to be found 15 guilty of attempted rape, assault with intent to do grievous bodily harm and murder. Mr Delbrooke-Jones argued for the accused to be given the benefit of the doubt and be acquitted on all counts. I thank both of them for their submissions. The following facts are common cause with regard to the incident 20 of 28 February 2008:

1. Rashaad Kruger junior, Igshaan Kruger, are the accused's sons who had a good relationship with their father before 28 February 2008. Kayline Alexander, the 25 girlfriend of Rashaad junior then, also had a normal

relationship with the accused. The accused took her as his daughter. The complainant was known to the accused as she used to come to the accused's house.

5 2. The accused was at his house at 27C Walton Road, Retreat with Rashaad, Kayline, the deceased and the complainant.

3. Liquor was consumed at the house.

10

4. The accused and the complainant were inside the toilet after Igshaan kicked the door open.

5. The accused was arrested by the police later that day
15 after a complaint of attempted rape and the police confiscated a weapon, which is a panga, that they found at the premises.

The following facts are in dispute:

20

1. That the accused consumed liquor with those present at his house on this particular day.

2. And that the accused threatened and locked the
25 complainant in the toilet, placed a panga against her

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neck and asked her to pull off her panty.

3. That the accused chased the complainant with the panga after she was rescued from the toilet by Igshaan and was also found in possession of the panga when police arrived.

The complainant is a single witness regarding what took place before and during the time she was in the toilet. Section 208 of the Criminal Procedure Act 51 of 1977 provides that an accused may be convicted of any offence on the single evidence of any competent witness. It goes without saying that the single witness must be credible. A trial court should, therefore, guard against the dangers inherent in accepting the evidence of a single witness. With this in mind, I evaluate the evidence tendered.

The complainant gave a clear account of what took place at the accused's house, despite the fact that she had consumed liquor. Her version was consistent and corroborated to a large extent by Igshaan, Petersen and Lackay. As Holmes, JA stated in S v Artman & Another 1968 (3) SA at 339 (A):

"Her testimony was clear and satisfactory in all material respects."

I find her to be a competent and credible witness for the reasons that will follow hereunder. The fact that Igshaan heard the complainant screaming inside a locked toilet and
5 later saw his father with a panga, confirms that the complainant was locked in that toilet against her will. Igshaan had no reason to say the accused chased the complainant with a panga to the backyard if that was not the case. One will bear in mind that it was never disputed that the accused's
10 family was a close-knit family and that the accused had a good relationship with Igshaan.

Throughout the proceedings it was not shown that Igshaan had any motive to lie about his father. Of importance is that the
15 complainant and Igshaan's versions on the issue of the panga was confirmed by Petersen and Lackay who came to the scene and found the accused in possession of the panga. I accept the version of Igshaan as true. I also accept the versions of Petersen and Lackay as reliable insofar as the fact that the
20 accused was carrying a panga, as well as the distressed condition they found the complainant in at the scene. Igshaan saw the accused placing the panga against the neck of the complainant, but there was no one who heard the accused asking the complainant to pull down her panty.

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The accused confirmed the version of the state witnesses that a police officer dived at him when he was next to the Wendy-house. Although he does not say why the police officer dived at him, it is clear from the evidence that it was at the time he
5 was refusing to put the panga down and was challenging Petersen. The accused could not have locked the complainant inside the toilet if he meant good. He also could not have refused to open the toilet door, if he was honestly treating the complainant as his daughter inside the toilet. Moreover, the
10 complainant had no reason to scream for help if the accused was not doing something unusual inside the locked toilet. I, therefore, reject the accused's version and find that he threatened the complainant with a panga and asked her to pull off her panty.

15

The question that follows is whether the accused's actions amount to a crime defined in section 55(a) of the Criminal Law (Sexual Offences & Related Matters Amendment Act 32 of 2007). This section reads as follows:

20

"Any person who attempts to commit a sexual offence in terms of this Act, is guilty of an offence and may be liable on conviction to the punishment to which a person convicted of actually committing
25 that offence would be liable."

From the evidence tendered, it is my respectful view that when the accused asked the complainant to take off her panty, he inspired the belief that sexual violation was going to take effect. I, therefore, find that the state has succeeded in proving the guilt of the accused on the second alternative count to count 1 and THE ACCUSED IS, THEREFORE, FOUND GUILTY OF CONTRAVENING SECTION 5(2) OF THE CRIMINAL LAW SEXUAL OFFENCES & RELATED MATTERS AMENDMENT ACT 32 OF 2002, WHICH IS THE SECOND ALTERNATIVE TO COUNT 1.

I now turn to consider the charge of assault with intent to do grievous bodily harm. It is so that the complainant's evidence is that the accused chased her with a panga. The accused did not do anything else beyond chasing the complainant. He did not inflict any injuries on the complainant with this panga. C R Snyman on Criminal Law, which is the 5th Edition at page 462, states the following about an intent to do grievous bodily harm:

"Whether X in fact had the intent to do grievous bodily harm is a factual question. Important factors which may indicate that X had such intention are, for example, the degree of violence, the part of the

body aimed at, the persistence of the attack and the nature of injuries inflicted, if any."

In casu I am of the view that had the accused wanted to cause any grievous bodily harm on the complainant, he could have
5 done so while they were locked in the toilet. I am, therefore, not satisfied that he had an intention to cause grievous bodily harm on the complainant when he chased her to the backyard of the house. I, therefore, find that he merely inspired the belief that an impairment of her bodily integrity was
10 immediately going to take place. In the circumstances he is not found guilty of assault with intent to do grievous bodily harm, but **GUILTY OF ASSAULT COMMON**.

On the count of murder, which is count 3, there is no direct
15 evidence before court. The state relies on circumstantial evidence. In S v Reddy 1995 (2) SACR 1 (A) at 8c-g the following was said:

"In assessing circumstantial evidence, one needs to
20 be careful not to approach such evidence upon a piecemeal basis and to subject each individual piece of evidence to a consideration of whether it excludes the reasonable possibility that the explanation given by the accused is true. The
25 evidence needs to be considered in its totality. It is

only then that one can apply the oft quoted dictum
in R v Blom 1939 AD 188 at 202-203, where
reference is made to two cardinal rules of logic,
which cannot be ignored. These are, firstly, that
5 the inference sought to be drawn must be consistent
with all the proven facts and secondly, the proved
facts should be such that they exclude every
reasonable inference from them save the one
sought to be drawn."

10

It is clear from the evidence tendered that the motive for the
murder of the deceased was not robbery, theft or
housebreaking, because nothing was found to be missing from
the house after the body of the deceased was discovered.

15 Nadia Kruger, Shafwaan Kruger, Rashaad Kruger junior and
Kayline Alexander corroborated each other that it is the
accused's padlock that was found locking the deceased's door.
They had no reason to lie about him. Moreover, it does not
make any sense that members of the family who used to get
20 along well, would just decide to gang against the accused and
falsely implicate him. Although the accused pretended not to
have any knowledge of the padlock at first, he later admitted
that it belonged to him. The bunch of keys which included the
key for the padlock, points strongly to the fact that he is the
25 one who locked the deceased's room with his toolbox padlock.

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Although Solomons, who took over investigations in the sexual assault charges, could not trace the deceased's statement, it is clear from the evidence that things changed between the deceased and the accused after 28 February 2008. She was no longer the love of her father as the accused put it. The accused also confirmed that the deceased had already packed her bags, preparing to go and stay with her sister on the day of the murder. The attitude of the deceased towards the accused after the incident on the complainant, coupled with the fact that she no longer wanted to be in the same house with the accused, implies strongly that she was willing to testify against him and that the accused could see that clearly.

15 The accused's evidence has been shown to be lies, improbable and irreconcilable. He changed his version each time he was put in a corner. I fully agree with the counsel for the state that he was an actor of note. He cried for no apparent reason each time the name of the deceased was mentioned. What appeared to be interesting is that he would cry and look towards the bench with no tears in his eyes as if he was looking for sympathy from the court. He denied any knowledge of the crimes in his evidence in chief. He denied being phoned by Nadia on the day of the deceased's death, saying he had left his cellular phone at home.

Later during trial, section 220 admissions stating that he had his phone with him that day, were made. There is also undisputed evidence of cell phone records from MTN showing
5 that on 20 March 2008, the accused's number which is 0785229226 was phoned from Nadia's work telephone number 0214340841 from 09:59, while the accused was within the vicinity of Hanover Park area. Then at 10:43 while the accused was within the vicinity of Guguletu and another one at
10 11:12 while the accused was in the vicinity of Philippi, River Street and so on. This information shows that the accused was no longer in the vicinity of Retreat when Nadia phoned and he was moving from one area to another. It also confirms what the accused said that he left his home at about 10:00. It
15 also confirms that he had his phone with him when he left.

The accused dropped bombshell when he described how the accused was cut on the throat. His description was consistent with the manner in which Dr Liebenberg said the throat was cut
20 from back to front and from front to back. When he described the type and size of knife used in cutting the deceased's throat, the accused seemed to be having a picture, a clear picture, of what he was talking about. He first denied that the grey T-shirt he was wearing when he was arrested was his,
25 although he was found by Brand wearing it and was locked up
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still wearing it. This is the same T-shirt he was wearing when he was booked out of the cells by Inspector Solomons and taken to the doctor for examination. It is also the same T-shirt he was wearing when the doctor examined him and found
5 blood spots on. He later, to our surprise, admitted that the T-shirt was his.

He lied to the doctor about the scratches that he had on his face and said they were caused by a four year old sister's
10 child. When he was confronted about this here in court, he denied that he said that to the doctor. What he said, that Sadia informed him on 20 March 2008 at 10:00 that his daughter was dead and he was suspected of killing her, is found by this court to be improbable. At 10:00 on 20 March
15 2008, Sadia could not have known about the deceased's death, because the body of the deceased was only discovered after 17:00 when Nadia broke the key of the padlock.

Even though the accused earlier said he did not attend the
20 deceased's funeral because he was not aware that she was dead, he later changed on cross-examination and said he knew about the funeral and wanted to practice a *kubur* in private. He again said he did not attend the funeral because he was already arrested and was in custody during the time of the
25 funeral. This cannot be true, because Warrant Officer Brand

only arrested the accused after 18:00 on 21 March 2008. From the totality of evidence, I find that all the evidence points to the accused as the murderer. The only reasonable and possible inference this court can draw from the afore-
5 mentioned facts is that it is the accused who killed the deceased on 20 March 2008. From the injuries sustained by the deceased, it is clear that the accused had a direct intention to kill the deceased.

10 On the issue of whether the murder was planned/premeditated or not, I am of the view that it was planned for the following reasons. On the day of the murder, the accused waited for Rashaad junior and Nadia to leave the house. He knew that Shafwaan was fast asleep from the sleeping tablets he had
15 taken for pain on his foot. He also knew that Haija was sick and bedridden and would not cause any problem for him. He knew that with her attitude, the deceased was sure to testify against him. He was also aware that the deceased was going to leave the house that particular day and stay with her sister.
20 To him it was a question of now or never. He made sure that there would be no noise coming from the deceased as he was executing his plan, because he covered the deceased's mouth tightly, as Dr Liebenberg indicated from her observations.

25 He cut the deceased's throat as he demonstrated to the court.

After doing so, he made sure that his tracks were covered in that he locked the door with his padlock, knowing that he was the only person who had a key for the padlock. He took the front door key that Nadia gave to the deceased and hid it under the mattress in his bedroom, so that no one would be able to come in the house and discover the body of the deceased in time. He made sure that he was away from the scene when the body was discovered. I am, therefore, satisfied the murder was indeed planned or premeditated.

10 **THE ACCUSED IS, THEREFORE, FOUND GUILTY OF COUNT 3 AS CHARGED**, and this is the unanimous decision of this court.

15



SABA, AJ