(10)

THE HIGH COURT OF SWAZILAND

CRIM. CASE NO.74/02

In the matter between:

REX

VS

SEAN BLIGNAUT

CORAM	**: MASUKU J.**
For the Crown	**: Mr N.M. Maseko**
For the Accused	**: Mr D.A. Kuny S.C. (Instructed by Millin & Currie)**

JUDGEMENT
1st November, 2002

(i) Indictment

The 25th November 2000 will go down as a day that may materially and eternally change the live of two families, the Groblers and the Blignauts. It was in the early hours of that day that Tanya Grobler, a young Zimbabwean female died, her throat being slit with a sharp knife. She met her death on the bed in a bedroom in the accused's home at Pine Valley. Her first cousin, Sean Blignaut, hereinafter called, "the accused", has been indicted on a crime of murder, it being alleged by the Crown that he is responsible for her death.

(ii) Nature of Evidence

Mr Maseko for the Crown, in his opening address indicated that the nature of the evidence to be led in support of the indictment was both circumstantial and scientific. Before

considering the evidence in any detail, I find it apposite at this juncture, to enumerate those facts which I find to be common cause.

(iii) Factor's which are common cause

The following are facts which are common cause in this matter:-

1. That Tanya and the accused are first cousins, their mothers being sisters;
2. That Tanya had visited her aunt (the accused's mother) in Pine Valley having arrived from her home in Zimbabwe; a week before she met her death.
3. That the deceased, the accused and one Jacobu de Souse (PW7) went out on the night of 24th November 2000, returning in the early hours of the 25th November, 2000 to their respective homesteads in Pine valley, where de Sousa and the accused's family were neighbours.
4. That later that morning i.e. 25th November Tanya died on a bed in her bedroom at the accused's home as a result of an injury which cut her throat. She further sustained a deep wound to her left hand palm.
5. The accused's bedroom (which was adjacent to Tanya's) had its window broken and under it outside the house was found a knife with blood stains and a sharpener, which were part of a set of cutlery which belonged to the accused's family.
6. The distance from the window sill of the accused's room to the ground, where the knife and sharpner were found is 4.8. metres, considering that the bedrooms, including Tanya's and the accused's were on the first floor of the double storey house.
7. The accused's clothes, which he was wearing on that day i.e. a navy blue t-shirt, a pink pair of bermuda shorts and a blue pair of underpants had blood stains, particularly the shorts, which were heavily soaked with blood.
8. The accused had certain lacerations and/abrasions on both sides of his neck, chest and certain of his fingers.
9. The accused's homestead had a parameter wall fence with five strands of electric wire running almost right round the entire property. Furthermore, there was an electric gate being the only entrance into the property.

10. It is also common cause that at the time, there were three dogs on the property.

(iv) Description of the scene of crime

Early during the proceedings, the Court conducted an *inspectio in loco* of the Blignaut homestead and in which the deceased was found dead. The house is situated in Pine Valley on a slope. It has a perimeter wall fence surrounding the entire property, painted pink the same as the house. Because of the varying gradient in the different areas covered by the wall, it is impossible to say how high the wall is around the entire property. Above the wall are five (5) strands of electric wire being an additional form of security over the wall. At the gate is an electric gate operated by remote control. The area from the gate to the front of the house is paved with cement.

The house is a double-storey with the kitchen and other rooms on the ground floor, the four (4) bedrooms being on an upper floor. On entering front door is a flight of steps immediately to the left which leads to the bedrooms. Facing the passage leading from the steps is a bedroom for the accused's parents and as one turns to the right is a passage that leads to three other bedrooms. On the left is a bedroom ahead of which lie two bedrooms adjacent to each other. On the right hand side, before reaching the adjacent bedroom are a bathroom and a toilet which are separate.

Regarding the adjacent bedrooms, the one on the right as one approaches is the one in which the deceased was found dead and will hereafter be referred to as Tanya's bedroom. There are two windows in this bedroom. One is on the right as you enter the door and the other facing the door. During the *inspectio in loco*, the bed in Tanya's room was facing the southern direction but it was agreed that at the time of her death, it was facing the Northern direction, the feet towards the Southern direction.

In the accused's room, there is a large window. The middle point measuring 1.6 x 1.16 metres was broken on the day of Tanya's death. The distance from that window to the ground outside is 4.8 metres. Next to the main gate on the left as you enter is a small footgate which leads to the garden area where there is a well maintained lawn, covering the rest of the property.

The kitchen has one large window and has two small windows measuring 89cm x 55cm on both ends. The small windows are capable of being opened to some extent. This window is 1.10metres from the ground and there is a drainage block in front of the small window to the left.

Towards the top corner of the property are two green water tanks with some steps inside which can make scaling the fence from the inside easier. At that point, the distance from the ground outside the wall to top stand of wire is 2.04 metres. Standing next to the water tanks, which are on a high gradient, one notices that the ground level where the tanks stand is at the same level with the roof of the kitchen.

The necessity of pointing out some of the details that I have will become apparent as the matter unfolds both in examination in chief and cross-examination of the various witnesses called by both parties.

(v) The cause of death

A post-mortem examination report was admitted by consent, and it records the findings and observations in terms of the provision of Section 221 of the Criminal Procedure and Evidence Act No.67/1938. Actions of Dr R.M. Reddy, who conducted the autopsy on the deceased. This report was marked Exhibit "I"

According to Dr Reddy, the deceased died as a result of a cutthroat injury, which involved the blood vessel, windpipe and oesophagus. The following ante-mortem injuries were observed;-

(a) Bruise 0.5cm over chin, below left ear 2.5 x 0.1cm
(b) Cut injury over front of neck, lower half horizontally present left to right 13 x 4.1cm, exposing muscles, windpipe, oesophagus, carded blood vessel vein, nerves, vertebral ligament on left side edges clean cut angle sharp. Effusion blood in soft tissues of neck.
© Cut wound over right side neck below above injury 2.5 x 1cm muscle deep with tailing present.

(d) Laceration over lower lip 1 x 0.3cm lip deep present

(e) Cut wound over right palm 6 x 0.1cm skin deep present with scratch – middle 2 x 0.1cm index finder lower end 1 x 0.2cm and scratch at base of ring finger dorsum 0.4cm.

According to the report, the following specimen were removed from the deceased for further investigation:-

(i) Test tube – blood
(ii) Stomach contents
(iii) Liver
(iv) Kidney pieces
(v) Tampon pad with string recovered from vaginal in-let and two vaginal swabs
(vi) scalp and pubic
(vii) nail tip cut preserved in envelopes with suspected scratched tissue

The items (i) was taken for grouping. Items (ii), (iii) and (iv) were taken for presence or otherwise of poisoning/narcotics. Item (v) was taken for presence of spermatozoa whereas items (vi) and (vii) were taken for the presence of stains and foreign tissues.

CHRONICLE OF EVIDENCE

In support of its case, the Crown paraded fifteen witnesses, who comprised of Police Officers, forensic experts, security guards and a civilian.

PW1 was 966 Inspector Elphas Nkambule, who testified that he is a member of the Royal Swaziland Police (RSP) stationed in Mbabane. He testified that whilst on duty on the 25th November 2000, he received a report from an anonymous caller at around 04h30 informing him of a death in Pine Valley. PW 1 then called the vehicles which were on patrol and instructed the officers to find the place where the death was said to have occurred and that on finding it, they should then call PW 1. The officers located the place and then called PW1, in the company of 3910 Constable Sibusiso Dlamini, proceeded to Pine Valley to the accused's home where they found one Jackie de Souza, who offered to assist the RSP as

members of the family were unable to speak. De Sousa (PW 7) offered to show PW 1 whatever he wanted to see. PW 1 testified that he noticed a carpet on the floor as he wanted to see any signs of mud indicative of somebody coming into the house from outside as it was raining then and the soil was wet with dew.

PW 7 led PW 1 to a bedroom, where on the bed lay Tanya. PW1 examined the body for injuries or wounds and it was his evidence that he noticed the injuries reflected in Exhibit I. He also noticed a lot of blood on the pillow and a pink bed sheet which were on the bed where Tanya lay. It was PW1's further evidence than on inspecting the deceased's body further, he noticed a bruise on one of her thighs. Tanya's hands were somewhat closed, indicating that she had been grabbing on to something at the time of her death.

Next to the bed was a white floor mat which had no traces of mud, save bloodstains. PW 1 proceeded to accused's bedroom and found that a windowpane had been broken therein. The room was also carpeted but had no signs of mud or soil to indicate that somebody from outside had come into that room. Looking through the broken window, PW 1 noticed broken pieces of glass on the lawn outside lying on the ground undisturbed. PW 1 then proceeded to the kitchen where he had been informed that a window had been left open to enable the family cats to egress and ingress during the course of the night. On inspection of the kitchen, PW 1 found no signs of entry by a person into the kitchen using the said window.

PW 1 then went outside to the broken pieces of glass which fell from the accused's bedroom. There he saw a knife and a knife sharpner. In that vicinity, PW 1 noticed a small opening on the lawn. His intention was to find any evidence or traces that something had jumped out or fallen from the accused's window, which according to his estimation was about (5) metres from the ground. Looking at the small mark on the lawn opposite the accused's window, PW 1 formed the opinion that no human being could have jumped from that window and that had that be so, a clear and big visible mark would have been left on the ground.

Next to where the knife and sharpner were, PW 1 noticed some marks in the flowerbed, which appeared to have been tilled recently. The marks were not footmarks and PW 1 was unable to ascertain the type of marks. PW 1 then went to inspect the wall fence around the

entire property to see if there was any area of the wall that had been broken. The wall was intact. A search for marks armed on the wall suggestive of a person having entered or exited the premises also yielded nothing. PW 1 also went outside the property in order to inspect the wall and again, he saw no indication whatsoever that the wall had been broken or scaled, as there were no marks to indicate such.

PW1 then raised the Mbabane Police Station over radio and requested that they call the scenes of crime and CID officers to attend to the scene for purposes of investigation, examination and collecting of the necessary evidence. The witness proceeded to describe both the knife and sharpner as silver and that they looked like they are for domestic use. He estimated the knife to be about 15-20cm. According to him, the sharpner was shorter. The knife and sharpner were marked Exhibits 1 and 2 respectively.

PW 1 proceed to testify that the accused was in the house at that time and he was being attended by a Doctor as he was said to have sustained certain injuries. This witness proceeded to describe the gate, the electric wire on top of the wall fence. He confirmed that the scenes of crime officer Sgt. Magagula arrived whilst he PW 1 was there. Magagula inspected the scene and took some photographs of the scene.

PW 1 was cross-examined at some length. He testified that he went to the scene at 4h30 and arrived there when it was going for 05h00 and that there was enough light then. He found 3226 Constable Mtsimunye and 3698 Constable Kunene already at the scene as he had instructed them earlier to go and find the scene which they did and reported its location to him.

PW 1 was asked if he or any Police Officer took possession of the pillow, pillowcases, sheets and the blankets for forensic investigation. He told the Court that he had not done it but was not aware if it was done and if so by whom. He was also unaware of what had happened to Tanya's clothes. It was put to PW 1 that the main electronic gate was capable of being pulled easily open by hand. This the witness did not know and did not test whether it operated properly.

He was further asked if a person could have entered the house through the kitchen window referred to above. His view was that it was unlikely that a person could enter through it. It

was further put to him that it is easy for a person to get onto the roof from the water tank area and enter the house using the upper windows. PW 1 agreed. He testified that he never checked for this at the time because he was never asked to check that and nothing along those lines was indicated to him suggesting that entry could have been gained through the upper windows on the top floor of the house. He agreed however when put to him that a person can step on the lower part of the roof at the back of the house next to the tanks and from there, move along the roof towards an upper level where it is possible to gain entry into the house through one of the upper windows.

An *inspectio in loco* was conducted where the residence was inspected together with the various places and locations referred to in the evidence. I need not outline the observations made at this juncture. One issue worth mentioning is that Mr Don Blignaut demonstrated how he could open the front gate using his hand, so as to allow a person on foot to enter through it.

PW 2 was 2327 Det. Sgt Lucas Magagula. He testified that at the material time he was stationed at Mbabane Police Station in the scenes of crime unit. He testified that on the 25th November 2000, at or about 05h15, he received a telephone call in his house instructing him to rush to Pine Valley where a crime had been committed. He went to the Police Station and there collected his equipment and proceeded to the scene, where he found PW 1 and members of the Blignaut family. PW 1 explained to him what had happened. He was let into the remote controlled gate by Blignaut Senior.

He proceeded to Tanya's room in the company of other officers and took photographs, including those of the scene before it was interfered with. He then drew a sketch plan which was not handed in to Court. He proceeded to examine the deceased's body and noticed the injuries reflected in Exhibit I. He also noticed some few bruises which were not serious though.

He testified that he was later led to a room in which there was a broken window and was informed that it was through that window that the assailant left the house. He took photographs of the broken window and also tried to determine whether there were any marks made by foot or shoe at or near the window. He also wanted to see if there was any

foreign material left on the window. No marks or foreign material was found. Standing in the accused's room, PW 2 saw Exhibits 1 and 2.

He testified that he went outside to inspect these items. He first inspected the area where the items were, took photographs of the position of the knife and sharpner, (which unfortunately were spoilt). He noticed that Exhibit 1 had bloodstains on it whilst exhibit 2 had some spots on it which looked like rust. He examined the surrounding area in order to determine if anything heavy had landed there, consistent with the story that the assailant had exited through the window but to no avail. All he saw was a small indentation on the ground, clearly inconsistent with marks expected to be made by a person jumping from the broken window or falling therefrom. It was PW2's evidence that the mark he saw was about the size of his fist.

PW 2 then returned to Tanya's bedroom where he took blood samples, using a test tube. He then proceeded to search for fingerprints in the accused's room but found none. In the kitchen, he was shown a window which was slightly ajar and from which he found a mark thereon, which he referenced JML 1. He took and preserved this mark and later forwarded it to the Police Headquarters.

He also saw a cutlery box from which he was informed the Exhibits 1 and 2 are part and must have been removed therefrom for purposes of killing the deceased. It was PW 1's evidence that he failed to find any fingerprints on that box. He thereafter returned to the Police Station having completed his business. Sometime after his arrival at the Police Station, he received another call requesting him to return to the scene.

He obliged and on arrival, Blignaut Senior handed a dagger-like knife to PW 2 and was told that it had been found between the base and the mattress where the deceased was. PW 2 told Blignaut Senior that he had collected all the evidence that he required and could therefor not take the knife with him. Blignaut however prevailed on PW 2 to take the knife as its mere sight evoked shivers down his spine as it were. He told PW 2 that he should take that knife even if he would later throw it away. PW 2 eventually relented.

This knife was about 30cm long had a black handle and fixed blade and looked like it had never been used. It was eventually handed in and marked Exhibit 3. PW 2 then exhibited all the photographs taken from the scene and these were marked accordingly.

It was PW 2's further evidence that as he carried on his investigations and examined the scene, he also looked for marks in the house indicating that a person from outside had been in the house through unorthodox means. This he testified would be easy to see because it had been raining or drizzling outside. All these efforts bore no fruit. It was PW 2's evidence that if the intruder had gone through the broken window as alleged, he would have stepped on the window in order to be able to jump outside. Furthermore, the broken window had sharp edges left intact in the frame and that if any body could have gone through it, some foreign matter, be it pieces of cloth or splinters of hair would have been left on the sharp edges.

PW 2 testified further that an autopsy was conducted on Tanya's body and that he was present there. He took photographs of the proceedings. He further asked for certain samples from the Pathologist Dr Reddy. These were to be collected for purposes of matching with the other samples collected from the scene. In this connection, the following items were obtained from Tanya's body – fingernails which had some foreign matter. The other specimen taken from the deceased appear fully in Exhibit I. After completing this assignment, PW 2 returned to the Police Station and took other exhibits from Supt. Mike Zwane (which were already sealed), packaged them together with those obtained from the post-mortem, sealed them and forwarded them to the Police Headquarters for onward transmission to Pretoria where they would be subjected to forensic examination.

In cross-examination, PW 2 informed the Court of his qualifications and training and his responsibility as a scene of crime officer. He was asked as to how many fingerprints he lifted on the date in question. He answered that he lifted only one from the entire house i.e. from the kitchen, Tanya's room, the accused's room on the window sill and protruding pieces of glass which remained on the wooden frame. He also searched for these on the broken pieces of glass to no avail. It was put to him that his was to search for visible fingerprints, take samples thereof and give these to the examiner for purposes of

identification. PW 2 informed the Court that according to his training, he must be certain to lift fingerprints which would be clear enough for comparison.

It was further put to him that he did not do much looking in light of the one fingerprint he lifted. PW 2 testified that he must also be sure that the surface is one on which fingerprints can be lifted and if it is, he must find the correct powder to use in order to lift the fingerprints. He informed the Court that he searched for fingerprints on the side table in Tanya's bedroom but had no suitable powder for lifting these, hence he did not dust that surface for purposes of lifting up the prints.

He testified further that the surface on the cutlery box was such that he could not lift fingerprints. This necessitated that he looked for fingerprints inside the box. He testified further that he was not able to lift any fingerprints on the knife (Exhibit 1) because it had been left in the rain. After drying it at the Police Station he found no fingerprints. He testified further that no fingerprints could be found on the handle of the sharpner either.

It was put to PW 2 that not only was his fingerprint investigation totally inadequate but that he lied when he said he did not find finger prints anywhere in the house save the kitchen. PW 2 informed the Court that he told the Court the truth.

When asked why he initially refused to take Exhibit 3 from Blignaut, PW 2 told the Court that he did not know why he had to take the knife and also did not know where it was from. Furthermore, when he came earlier he did not see it and was surprised to be told to take it. He was severely criticised by Mr Kuny for his initial reluctance. He also testified that he examined the knife in his office for fingerprints the same day but found none.

It also emerged in cross-examination that the following items were not taken for forensic or other examination, namely the pillow, sheet, duvet cover, the deceased's panties and t-shirt. The answer given was that photographs of these items were taken and were sufficient for purposes of evidence.

He was asked why he did not take blood from various items and parts of the bed, particularly in view of the allegation that there was an intruder in the house. PW 2's response was that the blood he collected was found to be sufficient for his investigation and

that what he did was in line with his training. He denied a suggestion that his investigation was superficial and inadequate.

PW 2 under further cross-examination was asked if he and his police colleagues did take off their shoes when they entered the Blignaut residence. He told the Court that they did not and also left no wet marks on the carpet. When asked why an intruder would be expected to leave wet or mud marks, PW2 told the Court that Police Officers came driving and alighted on the cemented part of the yard before entering the house.

It was put to PW 2 on instructions that the Police never removed their shoes and walked all over the house and may or may not have left marks but took no steps to avoid leaving marks of shoes which may have been wet or muddy. PW 2's response was that PW 1, a senior officer reported to the scene and is *au fait* with procedures at scenes of crime i.e. that scene must be preserved so that unnecessary walking on the scene and contamination is avoided.

It was also put to PW 2 that he could not say what type of marks would have been left by the intruder outside the accused's window, given the state of the lush and green lawn and the fact that it was wet. PW 2 said it was possible in view of those factors that a mark would not have been visible.

PW 3 was Det. Constable S. Dlamini who is based at the Police Headquarters fingerprint section. His main duties are to identify people by their fingerprints, boasting of some ten (10) years experience in this field. Shorn of all the frills the upshot of his evidence was that he received a fingerprint lift referenced JML1, which from the evidence, was lifted by PW 2 from the Blignaut kitchen. He also took possession of a finger print form of the accused and on comparing the two discovered that they were made by the same person. He demonstrated how he came to his conclusion.

In cross-examination, it was put to him that the fingerprint lift was obtained from the kitchen window in the accused's place of residence. He said he did not know but could not deny that it was so. It was stated, in that connection that the accused could have opened and closed that window a number of times in the days or weeks before it was lifted. PW 3 agreed with this.

PW 4 was 1692 Superintendent Mike Zwane, the Regional Crime Branch Officer (R.C.B.O.) of the Hhohho Region and based the Regional Headquarters. He testified that on the 25th November 2000, he received the report of a murder from the erstwhile R.C.B.O. (Hhohho) Supt Aaron Thabo Mavuso, who was then leaving for Manzini and was to be replaced by PW 4.

Together with Supt Mavuso, PW 4 proceeded to the Blignaut homestead at around 06h00, where they found the gate locked. They rang a bell and were let in by Mrs Blignaut. They proceeded to Tanya's room where the injuries on her body, as described elsewhere above were observed. It was PW 4's evidence that he also noticed some blood stains on the bedding and on the carpets and mats on the floor. He was also taken to the accused's room and shown the broken window. Looking outside that window, PW 4 saw broken pieces of glass on the lawn and some inside the room on the floor.

PW 4 testified that he also saw exhibits 1 and 2 on the ground outside. He returned to Tanya's bedroom to ascertain if there were any traces showing that there had been an intruder as explained to them. It was his evidence that the bedding was very clean save for the blood on it. From his observation, there was no indication that somebody who was either barefooted or wearing shoes had been on the bed. On the floor, next to the bed was a white floor mat, which PW 4 thoroughly inspected for marks by a person who could have walked in from the outside as it was raining the previous night. The mats were clean, bearing no sign that somebody from outside would have stepped on it.

PW 4 testified further that he then went outside to where Exhibits 1 and 2 were. His chief intention was to see if there were any marks indicating that a person from the upper floor had jumped from the window in the accused's room. Like PW 1 and PW 2, he testified that he saw a small mark, which he described as one consistent with having been made by the heel of a shoe. He testified that the ground was very wet and for that reason, if something fell from the upper floor to the lawn, a mark would have been left on the ground where it had landed.

PW 4 also looked around the flowers to see if he could find any foot or shoe marks leading to the wall fence but to no avail. The only ones he found were those he was informed had

been made by Police Officers before he arrived on the scene. His next assignment was to walk within the entire yard, searching but again to no avail. He went outside the yard and walked right around the wall to ascertain if there were any marks on the wall outside. Again, his efforts bore no fruit. PW 4 testified further that he also went to the kitchen where the window had been left open during the night according to information given to him. He however found the kitchen to be very clean at the time with no marks suggestive of an intrusion. A thorough inspection of that window did not show any shoe or footmarks. The wall outside the kitchen was very clean, spotlessly clean, to use his exact expression.

PW 4 testified that he thereafter sought to speak to the accused but was informed by Mrs Blignaut that he was asleep as he had been given some sleeping tablets. PW 4 returned to the Police Station without having spoken to the accused therefor. At the Police Station, 3910 Const. Sibusiso Dlamini handed to PW 4 one pink pair of shorts, a blue t-shirt and a pair of blue male underwear. These were sealed and he (PW 4) handed these over to the scenes of crime office for processing. PW 4 testified further that on the 31st December 2000, he, in the company of other Police Officers went to the accused's home to look for him but they did not find him. They went to Dalriach where they found the accused, cautioned him in terms of the Judges' Rules and arrested him for the charge he is presently facing. He was taken to the Police Station where he formally charged.

PW 4 testified further that other than looking at the kitchen window as a possible entry point for the alleged intruder, he looked at the accused's room and found that windows capable of being open were in fact closed. He also proceeded to the main gate and formed the opinion that it was impossible for a person to walk in there, as the gate is electronic and there were vicious dogs within the yard at the time.

PW 4 testified further that during his inspection of the wall, he proceeded to the tank area where it was suggested by the Blignauts that the intruder may have entered the premises. He searched for marks there unsuccessfully. PW 4 confirmed that there is an electric wire on top of the wall consisting of three (3) strands. His conclusion, regarding the security of the premises was that the premises were highly secured and that it would not be easy for any criminal to gain entry, particularly in view of the vicious dogs, the wall and the electric wires on top of it. He stated that the house itself was very clean and well looked after. Spotlessly clean, to again use his terminology.

In cross-examination, PW 4 was asked about what happened to the deceased's clothes and bedclothes. His response was that he did not know and that it was not his responsibility to collect them. He also informed the Court that he did not attend the post-mortem examination and for that reason did not know what happened to some of the specimens, including vaginal swabs and a tampon, removed from the deceased.

It was put to PW 4 and he agreed that it was raining that night; most of the property is covered by lawn save certain flower beds and some of it by cement and concrete paving. He was asked if he removed his shoes when he walked into the house and his answer was in the negative and this applied also to the other officers. Their shoes did not leave any wet or mud marks on the carpet. This he attributed to the fact that Police are disciplined people who cannot walk into a clean house with dirty shoes. He answered, and stated that before entering the house they were clean. When suggested to him that an intruder who wanted to conceal his identity would take the same precautions as the RSP, PW 4 said the same can not apply because the latter would have had to climb over a wall and would not walk in through the door.

It was further put to PW 4 that the security at the Blignaut residence was poor, particularly at the tank area where the wall can easily be scaled and climbed over. It was put to him further that a person with any degree of agility could climb up a pole, step over the wires and step into the property. This PW 4 denied, stating that if it were possible, then he would have seen the marks showing on the wall. He even denied that climbing over the wall was possible without touching the wires.

It was further put to him that the gate was not the most modern and was rather rickety, imprecise in the way it opens and closes, such that it is possible to open it to some extent with one's hand. This PW 4 denied and stated that Mr Blignaut told him that may be the gate was not properly closed but when PW 4 tested it, he found that it was hard to open. During the test, according to PW 4, there was no space left sufficient for a person to go through on foot.

It was further put to PW 4 that a person could easily step onto the roof next to the water tanks and enter the house. At first, PW 4 denied this but later conceded after being shown

some photographs. He stated that although possible, it is not as easy as Defence Counsel depicted it. PW 4 agreed that once a person was on the roof, he could gain access into the house using windows that had not been closed upstairs.

It was suggested also to PW 4 that the three dogs were not vicious, the vicious dog having been put down several weeks earlier. PW 4 denied this. He told the Court that they were told that the dogs were vicious and had to be locked inside the garage every time they visited the homestead. All suggestions that the dogs were not vicious, but noisy and look formidable were vehemently denied by PW 4, maintaining that the dogs were vicious and that Mrs Blignaut had told them so.

It was also suggested that after the Police failed to locate the alleged intruder, and when it became apparent that no one could be arrested, they then arrested the accused. PW 4 informed the Court that they did not fail to apprehend the suspect, rather they conducted investigations, replayed the events in their mind and became convinced on circumstantial evidence that the accused was responsible.

It was also put to PW 4 that a person could or could not leave a mark on the ground below the broken window, depending on how he/she landed, the nature of the soil, the wetness or dryness of the surface. PW 4 disagreed, reasoning that no matter how one landed, a mark would have been left. He stated that the grass had not fully grown and a mark would have been left on the ground.

PW 4 was also asked as to why certain items were taken for forensic examination twice and this he attributed to the fact that some officers from the Laboratory in South Africa came to the crime of scene thus necessitating that some of these be sent back to the laboratory.
PW 4 also informed the Court that he instructed Inspector Maphosa to obtain blood samples from the accused through a Doctor and this blood was sent for tests in the Republic of South Africa. Nothing important turned on the re-examination.

PW 6 was Jacoba de Sousa, who presently resides in Johannesburg. She told the Court that in November 2000, she lived in Pine Valley and was a neighbour to the Blignauts. She knew the Blignauts very well and would normally visit them, as Mrs Blignaut was her friend. It was her evidence that she and the accused had an affair at that point in time. She

testified further that she knew Tanya well and that she had met Tanya during her visits. She described Tanya as a likeable person and with whom she got along very well.

Relating the events of the fateful day, PW 6 told the Court that she, Tanya and the accused went out during the evening of the 24th November 2000, to Mantenga Restaurant. Tanya and the accused had supper and they later decided to go and have coffee at a gentleman' s house, whose name was Paul. They left in separate motor vehicles, she and the accused travelling in one vehicle.

On the way back to Mbabane, the accused's vehicle overheated, necessitating that they stop at a garage to put in some water. They also bought some cigarettes. From there, the accused took a turn, stopped off at a house and bought some drugs. They then proceeded to Paul's house where they picked up Tanya, whereafter they proceeded to Pine Valley, arriving there between 01h45 and 02h00. Later that morning, at 3h38, her husband got a telephone call from Mrs Blignaut. PW 6 called Mrs Blignaut who told her that Tanya is dead and the accused is hurt.

PW 6 quickly put on her jeans and shoes and then ran out, took her first aid kit and proceeded to the Blignauts. At the gate, she rang the intercom and the gate was opened for her. On entry, she found Mrs Blignaut and the accused sitting on the floor. PW 6 proceeded to Tanya's bedroom to ascertain if she could do anything to assist but found that she had stopped breathing and was already cold, ice cold, as she stated. Tanya had lost a lot of blood which had already coagulated.

PW 6 then went to the accused and his mother on the passage floor where they were sitting. She attended to the wounds on the accused's hands. Both could not speak to her because of shock. The accused was bleeding from the wound on his hand and PW 6 dressed the wounds. They then sat waiting for the arrival of Dr Mills, who did arrive some ten (10) minutes after PW 6's arrival. Dr Mills went to Tanya's bedroom and returned to sit with PW 6, the accused and his mother. They waited for the arrival of the Police.

When the Police arrived, they started their investigations and asked PW 6 to go into the Tanya's room with them to identify Tanya and she obliged. After completing their business and taking statements from the accused, they left and the coroner came to collect

Tanya's body. Dr Mills picked up Tanya's body and found a knife under her (Exhibit 3). He put it down and the Police were called according to PW 6. The knife was found by Dr Mills under Tanya, which evidence I then adjudged inadmissible as PW 6 had been told about that aspect.

PW 6 proceeded to describe the scene in Tanya's bedroom and I may say accurately as her description tied in with the photographs handed in by PW 2. She proceeded to describe the security measures at the Blignaut homestead, which included the perimeter wall fence which she said was 6 foot, electric fencing on the wall and an alarm system in the house. PW 6 also mentioned that the Blignauts had three (3) dogs, which she described as vicious, particularly to people who did not know them. Reverting to the alarm system it was her further evidence that if people touched the electric fence, it would trigger an alarm. There were also panic buttons in the house.

PW 6 further testified that she made enquiries about the broken window in the accused's bedroom and was informed that the accused heard Tanya screaming and he proceeded to her room to investigate and there found somebody on top of her. He attacked that person, who attacked the accused in return with a knife. As the accused backed out of the room, he fell down and this person ran into the accused's room and jumped out through the broken window. According to PW 6, all this information was given to her by Mrs Blignaut but a description of the man was not given, whether big, small, colour or race.

The main points of cross-examination were the following:- PW 6 denied that she showed the RSP around the house except for taking them to Tanya's bedroom. PW 6 told the Court that after the Police were through, she took off the accused's clothes and bathed him as he would have had difficulty because of the injured hands. PW 6 confirmed that the accused's clothes were soaked with blood, particularly the pants and underpants. It was her evidence that after she took the clothes off the accused, she put them altogether on the bathroom floor. Dr Mills later requested one of the nannies to bring a bag and he was provided with a plastic bag in which the clothes were put and later handed to the RSP.

PW 6 was asked if she was aware that the electric gate did not always operate efficiently. In response, she told the Court that one could open it by hand but one had to used excessive force to pull or push it open. She also testified that the electric fence could be triggered by

bad weather or a lethal blow to it and in which case the alarm would be triggered. She further testified that she could not say whether the alarm was operating efficiently that night. She confirmed that the house had no burglar bars and was also aware that a window was on occasions left open in the kitchen to allow the cats to enter the house.

When it was put to PW 6 that the three dogs at the accused's home may be large and make noise and bark but were not vicious, PW 6 disagreed. She singled out one as not lacking in viciousness. She testified further that the dogs are never locked up at night but they do have kennels in which they sleep at the back of the house. It was her further evidence that she did not see the dogs that morning.

PW 6 also agreed as suggested to her that because of the disapproval of her affair with the accused, particularly by his father, the accused on occasions would climb over the electric fence at the corner next to the water tanks, to leave and enter the premises. She also agreed to the suggestion that the accused avoided leaving the premises through the main gate because it made a lot of noise and which would alert the accused's parents.

It was also put to PW 6 that the accused denied acquiring drugs on the night in question but PW 6 remained steadfast that the accused did obtain drugs because although he left her in the motor vehicle when he went to acquire them, on his return, he asked PW 6 to move over to the drivers seat as he tried to smoke the crack in a coke tin. She testified that the accused definitely acquired the drugs that night although he tried unsuccessfully to smoke the crack cocaine.

PW 7 was Dr Allen Dumsane Mazibuko of the Mbabane Government Hospital. He testified that on the 26th November 2001, the accused was brought to him and he was requested to obtain blood samples from the accused by two Police Officers. He obtained consent to do so from the accused and he proceeded to take the accused's blood and put it into two test tubes, which he labelled and handed over to the RSP. He also testified that he noticed two scratch marks one on each side of the accused's neck and three on the chest above the left nipple. Other injuries of note were two cuts on the back of the right hand across the middle and index fingers. Another was across the left thumb. Dr Mazibuko prepared a report of his observations and findings which was marked Exhibit G. He

referred to above as abrasions which he described as a skin injury whereby the superficial layers of the skin are peeled off.

Nothing much turned on the cross-examination of this witness, save to mention that Mr Kuny sought to establish the exact nature of injuries on the accused's body i.e. whether they were lacerations or abrasions. The Doctor testified, having made a caveat that he is not an expert in forensic examination, that an abrasion is a superficial skin injury which results in the superficial layers of the skin being peeled off. Further, this may be caused by a sharp or rough object. Lacerations on the other hand were described by PW 7 as injuries which would actually leave the skin open and could also result in bleeding sometimes considerably, depending on whether blood vessels have been interfered with.

PW 8 was Dr Mark Gary Mills of the Mbabane Clinic. He testified that on the fateful morning at about 03h30, his wife received a phone call said to be from a neighbour Mrs Blignaut, who informed her that an intruder had entered the house and stabbed her niece. PW 8 was requested to come quickly. PW 8 took his emergency bag and proceeded to the Blignauts where he arrived at about 03h45. Blignaut Senior was waiting for PW8 outside and proceeded to usher him inside the house.

He found the accused in the centre of the passage upstairs and was very distressed and was kneeling on his haunches with his face in his hands. His hands were bandaged. PW 8 quickly looked at the accused and Blignaut Senior showed PW 8 into Tanya's room where it immediately became evident that she was dead. He felt for a pulse and noted that she was cold. PW 8 noted the injuries described in Exhibit I, save to add that in her left hand, a thin gold chain had been caught in the laceration. He observed that there was a large amount of blood around her and which, as established earlier in evidence, had already clotted. PW 8 left the room to see if he could assist the accused.

It was his evidence that he tried to console the family as they were distressed and in a state of shock. He mentioned seeing PW 6 there. PW 8 testified that a cursory look at the accused suggested that he was in no danger from the wounds he had sustained. He waited for the arrival of the RSP. After the RSP had completed their business, PW 8 examined the accused's injuries and arranged that he gets better treatment at the hospital. He also filled in a RSP assault form. He also arranged for the removal of the deceased's body to Mbabane

Burial Society Mortuary. As they removed the body, they discovered another knife underneath the sheets, between sheets and the duvet on the right side of the body. It was then that Blignaut Senior called the RSP, as testified by PW 2.

PW 8 also described the scene in Tanya's bedroom. Regarding the accused's injuries, it was PW 8's evidence that the injuries which were of the greatest concern was a laceration he had on his finger on the first and second digits of the right hand and which were about 4 to 5 mm deep and were not bleeding. There was also a laceration on one of his thumbs which was deeper. Dr Mills also mentioned some very superficial lacerations on both sides of the accused's neck and on the left shoulder in the front. These injuries were recorded and drawn in a report prepared by PW 8 marked "H". In his opinion, these injuries were made with a sharp instrument.

PW 8 also informed the Court that the accused was wearing a t-shirt and a pair of shots but could not remember the colours thereof. It was his evidence that there were no cuts on the t-shirt in particular, and none corresponded with the lacerations on the shoulder. His observation was that the shorts were heavily stained with blood. He testified further that it did not look like there was any major struggle on the bed and what was most surprising was that the pattern of blood on the mattress was quite contained, considering the nature of the injury.

It was his evidence that he expected, in view of the carotid artery having been cut that much more blood would have been sprayed around where Tanya lay. If you cut the carotid gland, he continued and which is one of the major arteries supplying blood to the head, the pressure of the blood in that vessel, which is the same as one's blood pressure, blood would squirt out and it could shoot anywhere up to a metre or so into the air. Further, once cut, the artery contracts thereby spraying the blood further. It was his further evidence that if the blood is unimpeded, these injuries generally become messy. He observed that the blood around Tanya seemed to have been contained.

PW 8 further told the Court that Blignaut Senior explained to him what they thought had happened. PW 8 went also to take a look at the broken window through which the assailant was alleged to have jumped. From that window, he confirmed having seen Exhibits 1 and 2 on the ground outside.

In cross-examination, PW 8 mainly confirmed his evidence in chief. He confirmed that the accused's clothes were all in a black plastic bag. It was his evidence that when the RSP left, they left the plastic bag with the clothes behind and the witness suggested that the clothes be given to the RSP as they could constitute crucial evidence. PW 8 therefor took the bag and gave it to the Police.

PW 8 further informed the Court that PW 6 had done a good job on the accused. He only removed the bandages, looked at the injuries and re-applied the same bandages. He testified that he did not remember if the bandages were bloodied but the wounds were not bleeding that is why he found it safe to re-bandage them until he saw the accused later. When suggested to him that the wounds may have been bleeding at an earlier stage, PW 8 testified that they could have been although when he examined them, they were not bleeding. He was quick to point out that from his recollection, the bandages were actually dry.

He further testified although the wounds would have bled, they were fairly superficial cuts which did not necessitate sutures. As a result, when he dealt with them later, he used plaster sutures or butterfly sutures. Regarding the marks on the accused's chest which he called lacerations, PW 8 testified that they had very linear edges and were superficial, not deeper than 2mm. He formed the opinion that they looked like they had been done with a scalpel and that is how sharp the instrument had to be. In contrast to PW 7's opinion, PW 8 was of the view that those injuries were not abrasions but lacerations and that although they were bleeding, it was not more than a little ooze.

According to PW 8, the injuries had just gone through the dermis of the skin and were superficial. He added that to make a mark that superficial and with such a linier edge, you needed to use a sharp instrument. It was PW 8's opinion, looking at the scene that it looked possible that she had a pillow over her head because that is where most of the blood had been absorbed. It was also surprising to him that there were no bloody footprints and that from the pictures, it was clear that this was a very contained assault. PW 8 also found it quite strange, that her right side of the face was clean as it would be expected to be covered in blood. PW 8 also testified that people who suffer these injuries normally move around, pouring blood everywhere in the process.

Describing how he found the accused, it was PW 8's evidence that the Blignauts were in a state of distress and that the accused was shocked and mumbling saying he tried to do this and that. He was rocking back and forth saying "why, why, why?"

PW 9 was Det. Constable Sibusiso Dlamini, an officer based at the Hhohho Regional Headquarters in the 999 unit. It was his evidence that on the 25th November 2000, he received a report concerning a death in Pine Valley. This was at or about 04h30. He proceeded to Pine Valley in the company of 966 Inspector Nkambule (PW 1) where they arrived at around 05h00. PW 1 had sent some officers to the scene ahead of them.

PW 9's evidence regarding the scene and what he observed ties in neatly with the evidence of PW 1, PW 2 and PW 4. It was his further evidence that he obtained the accused's clothes from PW 8 which were in a black plastic bag and he separated these, placing each in a plastic bag and put them in envelopes. He sealed them with a sealing wax and handed them over to PW 4. PW 9 described these clothes and identified them in Court.

In cross-examination, PW 9 confirmed that when he received the clothes, they were still wet with blood and were bundled together before he separated them. He confirmed that when he entered the homestead the motor gate was open slightly so that a person could walk through.

PW 10 was 0444246-6 Senior Superintendent Peter White of the South African Police Services (SAPS). He is attached to the Forensic Science Laboratory as a Control Forensic Analyst. It was his evidence that PW 4 handed to him a set of photographs of the deceased, the accused's statements to the RSP, Mrs Blignaut's statement, the statement of PW 5, the statement of Russell Morgan Jones, the reports of PW 1 and PW 2, all appertaining to the matter under scrutiny. White was requested to study above-mentioned documents and further requested to visit the crime scene to determine the following: -

(i) Possible places where a person could enter and leave the premises

(ii) Possible places where a person could enter the house

(iii) The possibility of a person leaving the house through the window in the accused's bedroom; and

(iv) to reconstruct the events of the night in question from observations at the scene, the photographs, statements and the reports.

Regarding (i) above, Supt. White was of the opinion that at the north western corner of the property next to the main gate, a person could enter the property between the neighbour's gate and the wall of the property. He opined that this could be possible as there are no metal spikes on the metal fence. Another area identified as a possible exit point is the area next to the gate where a Jacaranda tree grew at the time. A person could leave the premises by climbing onto the tree onto the overhanging branch and jump down outside the premises (see Photograph 6). The tank area was also identified as one of the areas from which a person could possibly leave the property. An electricity pole outside the property was also identified as possible conduit for entering the premises.

Once inside the property, White opined that a person could get onto the roof of the house from the terrace on the western side of the house and enter through one of the windows on the first floor i.e. bedroom area. White also identified the kitchen window as possible point of entry into the house.

White prepared and filed an affidavit concerning his mandate, investigations, observations conclusions and opinions, marked Exhibit "M". He also handed in a photo album marked Exhibit "K", depicting various sites and places in and around the Blignaut homestead. Supt. White, in his conclusions and opinion, found that the story about the exit of a person through a window is false and gave reasons for therefor. He was also of the view that the wounds on the accused were self-inflicted and gave reasons for his opinion. An objection was raised by the defence on the propriety of accepting these opinions.

In cross-examination, it was put to PW 10 that it was possible that some object was used to break the window in the accused's room. PW 10 agreed. He further agreed that the opening on the broken window was big enough for a person to jump or dive through.

When suggested that there are a number of possibilities as to how this person could have exited, including climbing on to the ledge and hanging by his fingers on the ledge and dropping to the ground, PW 10 said this possibility would be unlikely in view of the fact that there were items visible on the ledge i.e. glass (see photograph B3). His view was that

ordinarily, these items would fall off the ledge, particularly on the left side of the broken window where the intruder must have exited.

It was further suggested to him that the glass on the ledge may have come into contact with a person or was left after the person exited the window. White stated that he did not know whether all the glass fell when the person exited but it was important for one to look where the glass is on the sill *vis a vis* the opening. When suggested that a person could have held on to the ledge with his fingers and then dropped off from there, White regarded this as a possibility. He was however quick to point out that the ledge is not wide and that it would be difficult for a person to have done so, although it is possible for persons with special skills.

When questioned about whether the person exiting through the window would leave a mark, White was of the opinion that if the ground was as wet as described, then an impression would have been left on the lawn but because the RSP said none was left, he would not comment. It was suggested that whether a mark would or would not be left and if so what type was dependent on how the person fell. PW 10 stated that this would depend but was quick to point out that the risk of injury would have been there if there was little contact with the ground.

Asked as to the reason why so many samples were taken during his visit and why so few were examined, PW 10 testified that as many samples as possible must taken from the scene and you can later decide which ones to analyse. He agreed, when put to him that he could have taken all the items of bedding, clothing and carpeting, including the jagged glass both inside and outside the room to examine for any sign of flesh, blood, clothing or hair to give a clue that somebody had jumped out of the window.

PW 10 further testified that he would have taken the accused's clothes and separated them and would not have put them into a plastic bag as that could have the debilitating effect of destroying some of the DNA evidence because of the green house effect. He cited the danger of contamination as the reason for keeping the items of clothing separate.

The next witness in this catergory of evidence was David Sabelo Christie (PW 12) an employee of Guard Alert Security. He testified that he is the Control Room Officer in the

Operations Department, where alarms are monitored and complaints and/or requests for guards and such other services are received. In that room is a computer which shows signals and once that happens, he telephones the client whose signal has been activated and ascertains the nature of the problem and determines the assistance necessary.

PW 12 confirmed that this company has a client Mr Don Blignaut and that on the 26th November 2000, he received a signal from Mr Blignaut's residence at 04h32 as he was on duty that morning. It was his evidence that on receipt of the signal, he called the Blignauts and was told to come. PW 12 sent inspectors to attend at the Blignaut homestead. He testified that the computer produces a printout and in which entries relating to signals received are recorded. The printout reflected that on the 25th November 2000 at 04h32 a signal from the Blignauts was received.

PW 12 also testified that an occurrence book is maintained and in which information relating to signals is entered manually together with any action taken thereon and reports thereto anent. Regarding the above entry, PW 12 read from the book the entry he made namely that he received the alarm at 04h32 and at 05h36, he received feedback to the effect that Mr Blignaut refused to sign the reaction form, could only turn back inspectors, no broken window pane, black man killed from RSP, reaction phone number 133898 – time 04h39 to 05h35 Police on site.

Explaining the process of receiving signals in cross-examination, PW 12 stated as follows: - that signals are received by the decoder with four (4) numbers coming through. You look at the number showing and you punch it in and it tells you the number of the client you have to call. This signal can be activated by somebody pressing a panic button or an intrusion into the house or by the client if he opens his door but is late in punching in the code. He testified that in certain instances, a false alarm is given as evident in the printout on the 24th November 2000 at 11h04 and on 24th December 2000 at 15h58. Both these signals related to the Blignauts.

When asked whether the computer indicates whether it is activated by a panic button, the alarm itself or some other reason, PW 12 testified that if it is a panic button, the word 'emergency/panic' sometimes appears on the screen but not always. PW 12 informed the

Court that the inspectors dispatched to attend at the Blignauts were Metro Simelane and Alfred Malinga.

PW 13 was Lucky Alfred Malinga, an employee of Guard Alert Security. He testified that on the date in question at 04h32, he received a message through radio that there was an alarm signal from the Blignauts. Together his colleague, a Mr Simelane, PW 13 rushed to the scene and before turning into the driveway, they found Blignaut Senior sitting on the pavement on the road smoking a cigarette. He paid no attention to the two, hence they went past him and proceeded to the house. Mrs Blignaut came to the gate and they enquired from her the extent of the damage but she never responded to this question. Instead she told them that PW 13 and his colleague could not assist her in anyway and that she wanted the RSP. She turned back and proceeded into the house.

Faced with this unhappy situation, PW 13 and his colleague left and went to an area from which they could catch a signal in order to inform their office of the developments. After informing the office, PW 13 then left in order to convey the staff to their duty posts as time for that was nigh. Nothing turned on the cross-examination save that PW 13 clarified that when he asked about the extent of the damage, he had in mind that in most cases when they respond to alarms it is normally cases of break-ins or attempts and that there is some damage associated therewith.

For the sake of convenience, I will proceed with the evidence of PW 15, Zakhele Simelane, which ties in neatly with that of PW 13. He is also employed by Guard Alert and confirmed having attended to the Blignauts with PW 13. His testimony is on all fours with that of PW 13. He proceeded to inform the Court that after dropping PW 13, he returned to the Blignaut residence and entered the premises as the RSP were already in attendance. He went into the yard with them but he never entered the house.

It was his testimony that as he walked around with RSP, they were shown a certain window which was said to have been broken. He then reported back to the office about the broken window and that somebody was reportedly killed in the homestead. He testified further that he was unable to leave a reaction form with the Blignauts as Mr Blignaut was reluctant to sign it. He returned with it to the office.

Under cross-examination, PW 13 informed the Court that he returned to the premises on his own and that the time was shortly after 05h00. He further informed the Court that in his report on the second visit, he informed the office that he was unhappy as he had not checked all the areas he would have liked to and also the fact that he had been informed that somebody had died or was killed in the homestead. He was not informed who had died nor was the description of the deceased given. He testified that a white male was showing the Police around the home but that it was not Mr Blignaut. There were no questions in re-examination.

PW 14 was Themba Sukati, the Director of Electrical Engineering and Auto Gate and Power Fencing in Matsapha. He informed the Court of his qualifications and experience in electrical fencing, house alarms and automatic gates. I do not propose traverse PW 14's expert testimony in great detail. He explained the operation of electric fencing and stated that it is designed in such a way that when a person tries to climb, they must not be able to jump over the wires and if a person gets hold of the electric fence, the energiser gives a pulse every second and this would give a sharp pain and would push the person away. The moment the person touches a wire, they create a short within the body and the monitor senses a problem and sends a signal and a siren then goes off. It was his evidence that if one puts a blanket on the wires or touches the wires with gloves on, the alarm will be triggered.

PW 14 also testified about house alarms. It was his evidence that there is a control box which operates with infrared detectors placed on walls. Once a person breaks a beam in a certain area, the alarm is triggered. He also spoke of "door contacts" placed on doors that open such that if you open the door, you break the beam between the top and bottom contacts thus triggering the alarm. The contacts can be placed on both doors and windows such that if an intruder breaks a window a signal is given. He also referred to a 3rd system by which a house owner is given a secret code which is punched into arm or disarm the alarm. Panic buttons are included in this system so that if one sees an intruder, one would press the panic button which sends a signal to a security company or RSP as the case may be.

PW 14 also testified about automatic gates designed for safety and use a remote control to open and close them. When closed, it should not allow somebody to push it open and if closed and you push it hard, you can break the motor or whatever is welded.

In cross-examination, it was put to PW 14 that the electric gate at the Blignauts left a gap between the post and the gate which is wide enough to enable a person to enter through if opened by hand. PW 14's response was that that could result from poor installation but he would not comment thereon as he had not seen the gate then. It was also put to him that there are bolts which can become loose depicting on the efficiency of the gate and arm when it closes. PW 14 agreed that once the bolt fastening the arm gets loose, the motor turns slightly when one opens or closes the gate such that it does not open and close fully.

A second *inspectio in loco* of the security systems and the appraisal thereof was carried out at the Blignaut residence. PW 14 showed the Court the various components of the electric gate and how it operated. He locked the gate using the remote and was unable to force it open to any degree using his hands. Mr Kuny pointed out that one can use one's hand to move the gate and PW 14 testified that there is a small amount of play but it is more difficult when one comes from outside because the pressure is from inside. PW 14 observed that it looked like somebody was forcing the motor open. His opinion was that the gate was good and that it would be difficult at that time for a person to come inside from outside.

Regarding the electric fence on top of the wall, it was PW 14's evidence that the wires were well erected and that from outside, the wall was high enough, with the electric wires at the centre. He opined that it is difficult to enter from outside over the wall. He further observed that the wires are not the right height and assessed the installation as good but one that could be improved by increasing the height of the wires to prevent people from going outside easily. The wall was well erected and quite high from the outside.

PW 14 was asked if it was possible for a person to climb into the property by scaling the post on the right at the main gate, stepping onto the wall and jumping inside without touching the electric wire. This was said to be possible. Regarding the post on the left it was PW 14's evidence that it was possible if a person could put something to climb on in

order to enter the property. Without using any such thing to assist, it would take somebody with Bruce Lee's agility to successfully perform that feat.

Dr Kletzow made a demonstration and pushed the gate from inside and went out and vice versa. This according to PW 14 was possible because the motor is broken. Moving to the water tank area, it was put to PW 14 that the accused climbed over the wall. PW 14 after a demonstration by the accused stated that it was possible but not easy. The accused demonstrated how he would leave and enter the premises at the tank area. My observations will follow in due course.

In the main house, PW 14 showed the Court the contacts to the doors and also pointed to sensors which were littered at various corners in the house. It was his evidence that if there is an obstruction to the sensor, it would know there are people but would not trigger the alarm but there is buzzer. If the alarm is on, it can be triggered. The witness also showed the Court a keypad next to the main door and that if a beam was broken, the keypad would flash and reflect that position and show where the beam is broken. The accused also volunteered information that there was another keypad in his parents' bedroom. The Court was also shown panic buttons, notably in Tanya's bedroom and the accused's bedroom. PW 14's appraisal of the alarm system is the house was an emphatic excellent.

Chronicle of Scientific Evidence

In support of this catergory of evidence, the Crown called Superintendent Edward Khomba Ngokha (PW5) of the Forensic Laboratory of the SAPS. He is employed there as a Chief Forensic Analyst and a Recording Officer. It was his evidence that on the 23rd February 2001, he received certain exhibits including blood samples, the deceased's nail scraping, and the accused's clothes. On the 6th July 2001, they received Exhibit 1 and the deceased's clothes. On the 22nd August 2001, further exhibits were received, including a multi-coloured mat, plastic carpet, Exhibit 5 (black knife), Exhibit 2 and various carpet fibres distinctly packaged.

It was his evidence that on receipt of these exhibits, a preliminary test was conducted to ascertain whether the stains were blood or not. DNA was extracted from those exhibits. The first analysis was on Exhibit 1 and the blood found thereon was that of Tanya and the

accused. The accused's underwear contained Tanya's blood only, whilst the t-shirt and bermuda shorts contained the accused's blood only. The nail clipping contained blood of the deceased.

I must mention that PW 5 carried his analysis on some of the items mentioned above on two occasions and obtained the same results. In cross-examination, it was established that not all the exhibits were analysed because PW 5 said it is costly, considering that some investigating officers are untrained and therefor bring exhibits which will be meaningless to the Court. He said he did not analyse everything always so as to save the taxpayers' money.

PW 5 testified further under cross-examination that items to be examined for DNA must be taken good care of, dried appropriately and packaged and that contamination is to be avoided at all costs. He testified that as *in casu,* the accused's clothes were put together initially, the likelihood of contamination was present. It was also established that some items like vaginal swabs and the deceased's tampon were not received by PW 5 for forensic examination.

It was also PW 5's evidence that he did not receive the bedclothes, pillowcases, sheet, duvet cover and the deceased's clothes for examination. PW 5 informed the Court and this could be seen from the deceased's clothes that certain portions thereof were cut for purposes of forensic analysis. It was put to PW 5 that he could not say merely from the parts analysed that the rest of the portions of the accused's clothes which contained blood were from the same sources. To this PW 5 agreed.

PW 5 accepted the suggestion that since the accused is supposed to have worn the underwear under the bermuda shorts, the blood on the shorts would possibly soak onto the underwear and that if the accused's clothes were all put together, there is a high probability that there would have been contamination. To the latter suggestion, PW 5 testified that the profiles established on each of the items were clean i.e. of those he analysed. There was no indication of any contamination, which would in any event have been established by the tests.

It was also established in cross-examination that when PW 5 conducted the second analyses of the accused's clothes, he cut out different sections and analysed them. He got the same results.

Another witness who tendered scientific evidence was superintendent Helena Johanna Ras, a Forensic Analyst at the Forensic Laboratory of the SAPS. She testified that on the 3rd August 2001, she proceeded to the Blignaut residence to look for forensic evidence in the house and there collected some exhibits for forensic analysis. These items of evidence are mentioned in PW 11's affidavit marked Exhibit "M" and include presumable blood from various spots in the accused's room i.e. carpet and door frame, window sill, from the lobby and from the deceased's room. She also collected exhibits, presumably glass and took it together with the others for analysis. PW 11 also prepared a photograph album, depicting certain portions of the house both outside and inside. The album was marked Exhibit "L".

In cross-examination, PW 11 explained the painstaking care she took in collecting and packaging the exhibits which was in part to avoid contamination which is possible if exhibits come into contact with one another. It was her further evidence that not all the items she collected were actually examined although according to her they were important. She testified that she did not know why only six (6) of those items were examined and that if she was in PW 5's position, she would have analysed all the items.

Assessment of the Crown's Evidence

Circumstantial Evidence

Save and except what I will mention herein below, I am of the view that the evidence tendered by the Crown was reliable, truthful and therefore credible. Most of the witnesses, notwithstanding searching, tactful and sometime forceful cross-examination stoop up well thereto and gave their answers in a forthright manner and in the process maintaining their evidence in chief. Witnesses who impressed me in particular were PW1, PW 3, PW 4, PW 8, PW 9, PW 10, PW 12 and PW 14. PW 14 adduced his evidence fairly, professionally, detachedly and independently. He was highly impressive as a witness. I do not however hold any particular criticism against PW 13 and PW 15.

PW 2 was unimpressive as a witness especially when dealing with the question of his search for fingerprints and his reasons for being unable to lift more. It is inconceivable that one, if diligently and conscientiously searched for fingerprints in as many places as PW 2 did, in a house with inhabitants, so early in the morning before any cleaning is done, that one would manage to come up with only one finger print. Regarding the reason why he was unable to lift more fingerprints in some of the crucial areas, PW 2 first told the Court that the surfaces did not permit of fingerprints being lifted. In other instances, he stated that he was trained to only lift clear and identifiable fingerprints which is to say the least doubtful.

One would expect, as suggested by Mr Kuny that as a fingerprint lifter you pick up what ever you can and leave it to persons like PW 4 to decide what is decipherable and what is not. More importantly, PW 2 later changed his testimony under cross-examination and stated that the reason why he did not lift more fingerprints from the other surfaces was that he did not have the powder suitable for those surfaces with him. Surely, the lifting of fingerprints in a case such as the present was crucial so much so that efforts to obtain the missing powders should have been made.

In view of the above, the evidence regarding fingerprints is wholly unsatisfactory and PW 10 Supt. White himself expressed surprise at how the entire process was carried out or how it failed to fulfil its purpose. In this regard, it is my view that the fingerprint of the accused lifted does not advance the Crown's case and would actually prove nothing, as conceded even by some of the Crown's witnesses, in view of the fact that the accused lived in that house and would have had access to the window in question from where the print was lifted in particular.

This witness in my view failed to collect all the necessary pieces of evidence as borne by the record. This would include the bedding, the deceased's clothes, broken pieces of glass and I should mention that if it was not for Dr Mills' quick remedial action, even the accused's clothes would not have been submitted for forensic examination. This *lackadaisical* approach to investigation should be strongly discouraged. It is worth noting that some exhibits collected e.g. the tampon and vaginal swabs submitted for forensic examination and this is unsatisfactory. One never knows what evidence was contained therein.

PW 2 was also strongly criticised by Mr Kuny for his initial reluctance to accept Exhibits 5 as an exhibit. I entirely understand the reasons for his reluctance as he had been on the scene, turned the deceased over but never saw this knife. When he had left, he was then called, not to be shown that a knife had been found but told it had been found and where it had been found. The whole finding of the knife was suspicious and I find his attitude in view of the foregoing not untoward and finding of knife highly smacks of the situation of the scene. I will address this later on in the judgement. In any event, he eventually took this knife and subjected it to whatever tests he deemed necessary.

PW 4 was impressive as a witness. The only note against him was that he testified that there were 3 strands of electric wire on top of the Blignaut's residence. In point of fact there five. There was in my view no intention on the part of the witness to mislead the Court. In my view he had either forgotten the number or was mistaken.

PW 6 was largely credible and reliable as a witness in my view. The only point that caused spasms of disquiet was regarding the evidence of PW 1 and PW 4 in particular, who informed the Court that she is the one who explained to them what had occurred and also took them around, obviously at different times to show them the various places in the house connected with the deceased's death.

The following exchange took place between PW 6 and Mr Kuny in cross examination.

Q: And when the Police arrived, it seems that they relied on you to show them around because at that stage, Mrs Blignaut and Sean were not really in a a state to do so.

A: That is true.

Q: And you showed the Police the scene upstairs as you described in your evidence; Tanya's bedroom, Sean's bedroom, the hallway and so on

A: No. When the Police arrived, I only took them to Tanya's bedroom and from thereon, they took over from there. I did not show them anything else.

Firstly, it is clear that PW 6 changed her answer. If it was her case from the onset that she only showed the RSP Tanya's room, she should and would have said so when the first question above was posed. She clearly contradicted herself, whereas both PW 1 and PW 4 were clear in their evidence that she took them around. I do not understand how the RSP could have taken over from Tanya's room on their own, as they had to check Sean's bedroom and see the kitchen. I therefor disbelieve PW 6 in this regard and believe PW 1 and PW 4 regarding PW 6's role. In any event, I do not understand what harm she stood to suffer if she had told the Court that she took the RSP around which I believe was the case, as that was not a crucial issue. PW 1 and PW 4 would have no reason in my view to invent the story that she took them around, particularly in view of the emotional turmoil then experienced by the Blignauts as testified by PW 6 and PW 8 and which is understandable.

In disbelieving PW 6 on this aspect, I however hasten to add that this does not however mean that the balance of her evidence must be disbelieved. This would also apply with equal force to PW 2's evidence as well. In addressing this very issue, Solomon J. had this to say in **R VS KHUMALO 1946 AD 480 AT 484**: -

> *"Now it is no doubt competent for a Court, while rejecting one portion of the sworn testimony of a witness to accept another portion; but, where a witness is clearly perjuring herself in matters of great importance, there should be very strong reasons to justify a Court in finding that in other respects she is speaking the truth."*

See also **S VS OOSTHUIZEN 1982 (3) SA.571**

Regarding PW 12, David Sabelo Christie, he appears to have made a mistake regarding the date when he received the signal from the Blignauts. He was asked by Mr Maseko as follows:-

> Q: On the 25th November 2000, did you receive an alarm message?
> A: Yes on the morning of the 26th November 2000 at 04h32.

It is common cause from the documentary evidence handed in and the balance of Christies evidence that this message he refers to was received on the morning of the 25th November

2000. This would appear to have been nothing but a slip of the tongue on Christie's part and I draw no adverse inference therefor, in view of the clear nature of the evidence regarding the date.

PW 10 Supt White also gave impressive evidence. The only point of criticism was how ever in connection with the conclusions on his affidavit about the falsity of some aspects of the defence case. These offensive aspects were readily and correctly conceded by Mr Maseko, which if allowed would have amounted to PW 10 usurping the functions of the Court in deciding on issues of truthfulness or the falsity of accounts adduced before Court. See **S VS VAN AS 1991 (2) SACR 74 (w)**. In other respects, PW 10's evidence was admissible as PW 10 is an expert in examining scenes of crime and could form opinions regarding the facts proved or matters observed by him during an inspection of the scene of crime which would assist the Court.

The other contradiction that I should mention was regarding the nature of the injuries sustained by the accused on his body. PW 8 Dr Mazibuko described these as abrasions while PW 9 Dr Mills described them as superficial lacerations. Faced with two different opinions medical practitioners, it is my view that this Court will have to decide the most preferable opinion. It is however important to note that both practitioners are *ad idem* that these wounds were observed on the body of the accused. Both were also *ad idem* that the injuries on the accused's hands were lacerations and they expressed their opinions regarding how much bleeding would have been expected from the wounds.

Analysis of Scientific Evidence

Evidence in this category was adduced mainly by PW 5 Supt. Ngokha and Supt. Ras (PW 11). Strictly speaking, the evidence of the two Doctors should have been considered here but I am of the view that their evidence fitted best in the earlier catergory. Both PW 5 and PW 11, in my view adduced their evidence fairly impartially. I have no reason to criticise their evidence, save to point out that Mr Kuny took issue with PW 5's failure to analyse all the exhibits brought to him. This attack, in view of the peculiar circumstances of this case is justified but is no reflection on PW 5 as a witness. As I have said, he acquitted himself commendably as a witness. I should however reiterate the comments in **S VS NTHATI *EN'N* ANDER 1997 (1) SACR 90 (OPA)**, the head note of which reads as follows;-

"Expert witnesses ought to undertake their investigations with the utmost care and accuracy especially in criminal cases where the guilt or innocence of the accused often depends, largely and sometimes exclusively, on the evidence of such witness."

Lother Bohn, in his article "Implementation of DNA – Fingerprinting as a forensic identification text in South Africa, SALJ Vol.104 Part II, May 1987 at page 307-308 had this to say about DNA:-

"Heeman DNA embodies the complete genetic make-up of an individual; accordingly, any trace of human material should yield sufficient information necessary for unequivocal identification .... The test consists of a comparison of the DNA extracted from human material, including skin, blood, semen, sputum, and hair roots found at the scene of the crime or upon (or in) the person of the victim, on the one hand, with the DNA extracted from a sample of any human material taken from the suspect, on the other."

D.N.A. evidence is now becoming widely accepted in many jurisdiction as evidence on which the Court may exclusively rely for determining the guilt or innocence of an accused. D.N.A. stands for disoxyribonucleic acid, a chemical in the form of long-chain polymers and is found in all living organisms, where it represents the code of life.

In *casu*, the defence in this case did not contest the admission of this evidence nor the results of the tests carried out. In dealing with DNA evidence, Van Oosten J. had this to say about the in **S VS MAQHINA 2001 (1) SACR 241 (TPD) P** in the head note:-

*"Where the State's proof of the accused's guilt depended on the results of scientific analyses, the testing process, including the control measures applied, had to be executed and recorded with such care that at any time later it could be verified by any objective scientist and **fortiori** eventually also the trial court."*

This in my view was done by PW 5 and his results could have been verified. DW1 himself confirmed that the tests had been correctly done. It is my view that DNA evidence should be admissible in appropriate cases as conclusive evidence, regard had to PW 5's

uncontroverted statistical evidence, which I unreservedly accept. *In casu* doubts were expressed about the sampling in order detract from the conclusions of the evidence, and I will deal with that aspect later.

In **S VS R AND OTHERS 2000 (1) SACR 33 (WLD) at 39C,** Willis J. had this to say about DNA testing.

> *"In my view there are substantial benefits to be derived from harnessing the advances in modern science to the law. When it comes to rape cases DNA testing can be especially helpful."*

I share the above sentiments and add that DNA testing can also be extremely helpful in cases like the present when collection of exhibits, packaging, sampling and testing is properly done.

The Defence Case

The defence called Dr David Joseph Klatzow (DW1), a forensic expert of considerable experience and training. He informed the Court on how scenes of the crime should be treated in order to preserve the integrity of the evidence. He also informed the Court of the details of how evidence should be properly collected from a scene of crime. It was his evidence, in view of the accused's evidence that there was an intruder and that there was a struggle between the accused and the intruder - the latter killed the deceased that the deceased's clothes should have been impounded and examined for some sign of the alleged assailant. The bedclothes should, he continued also have been examined for hair and fibre in order to trace the alleged intruder.

DW 1 also punched holes in the manner in which the deceased's clothes were handled and eventually packaged, which would have made it highly likely that contamination would have occurred. DW 1 did however conclude that PW 5 had done his analysis correctly but failed to state why contamination did not occur as it was clear that all the accused's items of clothing gave a clean profile. He suggested that this could have been due to a sampling problem.

DW 1 also criticised PW 5 for not examining all of the exhibits brought to him. It was his view that had PW 5 done that the accused's allegation that there was intruder could have been proved or disproved immediately, particularly by analysing the items of evidence collected by PW 11.

DW 1 was also asked to comment on the ability of a person hurriedly leaving the accused's room. DW1 informed the Court that it would be difficult for him to adduce expert evidence on that issue but would comment purely from observation. It was in his view unlikely that a person could have dived through the window as the person would have been severely injured in that process and there were no signs, I must mention of injury. It was his view that if a person had used an object in the room to break the window, jumped onto the window and dropped the remaining distance, it would have been a considerable feat which would have been bolstered by an examination of all the items in the accused's room e.g. chairs, and other objects for the presence of glass. Furthermore, the broken pieces of glass would have had to be carefully collected. DW 1 was careful to emphasise that he was, in giving the answer venturing into the realm of speculation.

In response to PW 10's evidence that if the intruder had left through the window by climbing onto the window sill, he would have dropped the glass on the window sill, DW 1 agreed with that proposition. He was however quick to point out that not every single piece of glass would have fallen off in the process. It was important also to examine the remaining pieces of glass and the window sill for evidence.

DW 1 was asked to comment on whether in view of the rain on the night in question any traces would have been left by the intruder when he jumped or fell out of the window. DW 1's view was that the rain could possibly enhance the evidence of an intruder. In this regard, if the grass was hard, it is possible the intruder could have left the barest of impressions. If on the other hand, the grass was soft and sodden with rain, it would be more likely that he would have left a mark, depending on how he fell. He also pointed out that the rain could have had the effect of degrading some of the evidence by washing away bloodstains off the grass and glass fragments. In short the rain could preserve or destroy the evidence, depending on the circumstances.

In cross-examination, DW1 confirmed that PW 5 had correctly done the analysis and the test worked correctly. Regarding the contamination, DW1 stated that given the facts there was a high likelihood of contamination which would have however been detected but there was no contamination. DW 1 could not explain why there was no contamination given how the accused's clothes were packaged and handed to RSP. He testified that he could give no good and rational explanation and said it could have been one of those rare cases of chance or the reflection of a sampling problem and that if additional samples had been analysed the issue may have been cleared.

DW 1 testified that given the fact that there was no cross-transfer between the bermuda shorts and the underpants did suggest that at some time the accused was wearing the underpants only. He however reverted to the issue of sampling as having been a probable cause for the difficulty.

Taxed further on the question of there being no contamination from the accused's Bermuda shorts to the underwear, DW 1 concluded that it defies logic and suggests that those were not worn at the same time, meaning that the evidence given is wrong. There was no re-examination of this witness.

DW 2 was the accused person who adduced sworn testimony. He testified that at the time of his arrest in December 2000, he was working with his father in the family business, supplying office equipment. He told the Court that the deceased was his first cousin in that their mothers are sisters. It was his evidence that Tanya's parents live in Zimbabwe but at some stage they lived in Nelspruit, South Africa, where they stayed on Farm. During this time, the accused who, was studying in Nelspruit would visit Tanya's parents from time to time and would stay with them on weekends.

The accused further testified as follows: - That he is a year older than Tanya and that at the time of her death he was 23 years old and she was 22. Tanya had come to South Africa to complete her final examination in accountancy and took time to visit some friends in Nelspruit. She thereafter decided to visit the accused's family at Pine Valley after her final examinations and had been in Swaziland for a week before her death. This was not Tanya's first visit to the accused's home.

Regarding Tanya's relationship with the accused, the Court was informed that he considered Tanya as the sister he never had and that she was particularly close to his mother and was close to Blignaut Senior and the accused's brother. There had never been any conflict or disagreement between Tanya and the accused. Tanya, would normally hang around with the accused's mother during the day and the accused would only manage to see her after work in the evenings or during the lunch hour if he went home for lunch.

According to the accused, Tanya did not have a friend and only knew two (2) people in Mbabane. He denied that there was anything more between him and Tanya except that they were very close friends. The accused confirmed that around November 2000, he had an affair with PW 6, a married woman who lived next door to the Blignauts. It was his evidence that his parents did not approve of this relationship, particularly his father.

Regarding the events of the evening of the 24th November, the accused testified that he, Tanya and PW 6 went out in his car to Mantenga Hotel. His parents also left for another engagement. At Mantenga, the accused and Tanya shared a meal, while PW 5 did not eat any food. They all enjoyed some beverages, the accused imbibing beer, while the ladies had cider. They were in the company of Paolo Seabra and Sergio Villa Pouca who had also come with their friends. The accused and the ladies stayed for about an hour, playing the game of pool. They had arrived there at or about 7-8pm.

They later proceeded to Malandela's Restaurant, where young people of the accused's age group congregated on Fridays at night. One Russell Jones, the accused's friend kept Tanya's company as they had met the previous Wednesday. Their meeting was by pre-arrangement. The accused's mother was a worrying parent, particularly if they were out. For that reason, Tanya called her on the cellular telephone and told her where they were. In all it was the accused's evidence that he had about four to five beers that night at Malandela's, while the ladies drank cider.

It was the accused's evidence that a relationship, albeit new, had developed between Jones and Tanya and that both were very interested in each other, which according to the accused made him happy. To see Tanya happy made the accused happy, he said. In particular, this was because he knew Jones very well. Tanya was happy that night and so was he and PW 6.

Around 01h00, they left Malandelas. The accused and PW 6 left in the accused's motor vehicle, in order to have some private time together. Tanya and Jones were to have their private time too and it was arranged that they would travel back to Mbabane in different motor vehicles – the accused with PW 6 and Tanya with Jones. Before leaving, Paolo Seabra had joined them at Malandelas and it was agreed that they would all meet at Paolo's house in Mbabane behind the Swaziland College of Technology.

The accused's car had to stop at the Engen Garage in Mbabane due to over heating. They poured water into engine there and also bought some cigarettes, as both the accused and PW 6 were smokers. On arrival at Paolo's house, the accused saw Paolo's vehicle and rang a bell to alert Paolo of their presence but to no avail. The accused decided to drive away from Paolo's house as his car was attracting the attention of some dogs. They stopped some distance away from Paolo's house.

Shortly thereafter, Tanya and Jones arrived in the latter's motor vehicle. The accused's vehicle had by then developed a starting problem. Jones undertook to tow the accused's vehicle but it soon returned to working order. The trio, i.e. Tanya, PW 6 and the accused then drove home arriving at around 1h30. It was misty and drizzling well; infact raining heavily that night. They dropped PW 6 at her gate and entered their property.

On arrival, they entered the house and immediately announced their arrival to the accused's parents, assuring them they were fine. Both Tanya and the accused went down to the kitchen to get glasses of water which they took to their respective rooms. In the kitchen, the accused noticed that that the top half of the stable door was open and he had been asked by his mother to lock it before but he had forgotten. It was the accused's evidence that it was not unusual for them to leave the doors and windows open as they felt very secure in that house.

The accused testified that the burglar alarm was not armed that night and that this was a regular occurrence because from previous experiences, there was a number of false alarms for which the security company charged. The accused's parents therefore decided that the alarm would only be armed if they were all away on holiday or there was nobody in the house.

It was the accused's further evidence that quite a few windows were left open in the house to allow the cats entry and exit to and from the house. In particular, the kitchen window and one in the accused's parents' bedroom were left open for the cats. The accused could not recall if the kitchen window was open that night.

The accused, who did not usually brush his teeth before going to bed went straight to his bedroom while Tanya was brushing her teeth. The accused took off his jeans before sleeping and put on the clothes referred to above earlier i.e. the bermuda shorts and t-shirt. He slept with his underwear on. An hour later, whilst deep in sleep, the accused heard a scream for help, which woke him up. He decided to check on Tanya and noticed that her door was opened whereas she usually closes it i.e. leaving a little space.

When looking into the room, although it was dark, the accused noticed a figure on top of Tanya, facing the direction of the wall. According to the accused, there was some light coming through the window facing the road and which enabled him to notice the deceased in the room. It was the accused's evidence that he could not see whether the figure was that of a man or woman. No sounds were emanating from that room and the accused could not see what the figure was doing.

On realising that there was the figure on the bed, the accused immediately realised it was an intruder and he dived onto the bed, calling for his father at the same time. He dived onto the intruder, who felt like he was strong and agile. A struggle ensued between the two and it was then that the accused noticed that the intruder had a weapon. The intruder got off from the accused's grip. The accused then got off the bed with a view to blocking the door. The intruder confronted the accused, at the sometime swinging arms at him. The accused retreated towards the door then fell down. The intruder ran past and entered the accused's room.

It was the accused's evidence that he does not recall when he sustained the cuts on his hands; whether whilst on the bed or when retreating. He fell next to the toilet door outside Tanya's bedroom. The accused said he lost sight of the intruder but immediately thereafter heard the glass break. By then Blignaut Senior had arrived and he switched on the lights in the hallway. On arrival, Blignaut Senior proceeded to Tanya's bedroom to check on her.

Mrs Blignaut also came. Blignaut Senior told his wife to call the RSP and the ambulance but she was too shocked to do anything. Blignaut Senior had to telephone the RSP himself.

It was the accused's further evidence that he did not recall whether he went into his room to see in relation to the broken glass. He stated that he faintly remembered looking out of the broken window whilst it was still dark. The only time he realised his hands were cut was when his father switched on the lights in the passage. The accused further testified that he was bleeding and the blood from his hands went onto his shirt and shorts. They were however not bleeding much, but just painful.

The accused testified also that he did not see whether any of his blood fell on to the carpet but presumed that it did. The accused was shown certain photographs depicting blood on the hallway. It was his evidence that he could not tell which blood was his. He testified that he was in a bewildered state as he sat in the hallway and it was his first time to experience real fear and shock. Asked if he thought of running out to trace the intruder's tracks, the accused told the Court that he was afraid and after his father arrived, he allowed him to take over as the authoritative figure.

Thereafter, PW 6 came and bandaged his hands and PW 9 also arrived. The RSP also arrived and he made a statement to the RSP. PW 6 assisted take off his clothes and bathed him. It was the accused's story that he was aware of the blood on his clothes but did not believe the actual amount of blood, especially on the clothes because the hands were not bleeding much. The only presumption was that the blood on the shorts came on the shorts when he dived onto the bed. The accused said his clothes were placed on the floor outside the third bedroom in a plastic bag. Dr Mills changed the bandages after the RSP left and the bandages and clothes were put in the plastic bag although he was not aware who did so.

The accused told the Court that he jumped over the wall to meet PW 5 and did not use the main gate as his parents' bedroom was close to the gate and when it closes it makes noise which would have drawn their attention. He left the property and again entered in the tank area.

It was his evidence that he had to be very careful in climbing the electric fence at it would otherwise trigger the alarm. It took him a bit of practice though. He mentioned that a pole

which assisted him in re-entering the property was no longer there. The accused further told the Court that he was not aware how and when he sustained the injuries on the shoulder, arms and neck. He denied that these were self-inflicted. It was his evidence that he presumed that the injuries resulted from the incident that night. He could not tell whether those injuries were bleeding or not and did not know whether they were of any significance.

The accused denied having bought drugs and trying to smoke them that night. It was his evidence that he was unaware as to why PW 5 said he did. He confessed to having had drug problems in the past but kicked the habit after attending a rehabilitation centre in Johannesburg for six (6) weeks. The accused told the Court that he did not have any reason to attack and kill Tanya.

In cross-examination the accused was taxed on why he decided to have an affair with a married woman and to not to keep it a secret. He proceeded to also confirm the relationship between members of his family and Tanya and the events of the night in question, as testified in his evidence in chief. On the issue of the purchase of drugs that night, the accused told the Court that he did not know why PW 5 said that he did purchase them but confirmed that PW 5 had been with him on a number of occasions when he went to buy drugs at the same house previously. He was of the view that she was mistakenly referring to one of those previous incidents.

When asked why PW 5 would lie against him, especial regard being had to the fact that she was very clear about the events of that night and informed the Court that the accused even asked PW 5 to come over to the driver's seat, the accused said he had no idea why she would concoct a story against him. He told the Court that PW 5 used to visit him in prison but at some stage stopped. He said he was in no position to comment on her reason for concocting the story.

It was put to the accused that she had no reason to lie against him and that she was in fact telling the Court the truth. The accused told the Court that he had no comment on that. He was extensively cross-examined on the use of drugs and his reasons therefor I will not dedicate much to time to that.

On the events leading to the discovery of Tanya dead in her bedroom, it was the accused's story that he heard her scream and that must have been shortly after 03h00. Asked to recount the events of the morning in question, the accused did so and told the Court that he noticed a figure in Tanya's bedroom on the bed and it was in a sitting position facing the left hand wall. The accused informed the Court that when he dived onto the bed in a bid to apprehend the intruder, he encountered the intruder face to face on the bed. The accused could not recall on which hand the intruder was holding the weapon. According to the accused's estimation, the scuffle between him and the intruder lasted roughly 30 seconds.

The accused was asked as to why he did not close the door in order to keep the intruder in the room, the accused mentioned that many thoughts were crossing his mind and looking at the events in retrospect, there are many other options he could have exercised e.g. closing the door, reporting to his parents first and pushing the panic buttons.

Asked to describe the intruder, the accused told the Court that the intruder was smaller than the accused in stature and was very agile and strong. He was also not taller than the accused. He was asked where exactly on Tanya the intruder was i.e. in relation to the photographs of the scene and the accused said he could not give an exact answer as it was dark. When reminded that there was actually some light coming through, this the accused conceded but told the Court that his attention was not focussed on the intruder's position *vis-à-vis* Tanya but on the intruder himself. Asked how he could divide his attention between the intruder's position on Tanya's and the intruder himself, the accused was hard pressed to say. He ended up telling the Court that the intruder was in a sleeping position on top of Tanya.

The accused confirmed having stated in his evidence in chief that he could not tell whether the intruder was male or female. He also confirmed that immediately thereafter, he referred to the intruder as a "he". It was his evidence that could not recall the stage when he realised that the intruder was male but told the Court that it was during the struggle. The agility and strength of the intruder convinced the accused that the intruder was a male person.

The accused confirmed that after the struggle and as he retreated from the bed, he fell down or was pushed by the intruder and the intruder ran past him into the accused's bedroom.

When asked as to where the intruder went past him, the accused told the Court that he could not remember the place but that it was near the door of the toilet. The accused confirmed that there was a considerable distance between Tanya's bedroom and the toilet door but he could not recall as to where he fell because it was not important to him.

The accused further told the Court that he did not try to follow the intruder after he heard the glass break in his bedroom. Taxed as to his reasons for not pursuing the intruder, the accused attributed this to his state of bewilderment resulting from what had taken place i.e. struggle with intruder. It was his evidence, when put to him that he did not put up a fight against the intruder, that he tried his best under the circumstances but admitted that the was slow.

The accused was also asked whether he heard the dogs bark after the intruder escaped and he told the Court that he did not recall the dogs barking. When asked to confirm that the dogs are vicious, the accused said that the word vicious is strong and that the dogs were just under vicious but were adequate to scare people. He testified that the dogs would bark in such a way as to scare strangers and that he could ordinarily hear them bark from his room.

The accused further confirmed that during the scuffle with the intruder he had his clothes on i.e. t-shirt, bermuda shorts and underwear and that he at no stage took them off. It was the accused's evidence that he did not remember when he sustained the injuries on his upper body but confirmed that he did not have them before he went to bed. He however presumed that he sustained the injuries during the scuffle. The accused emphatically denied having been injured after the struggle and after the intruder had escaped.

The accused told the Court that he did not recall when he sustained the injuries on his fingers. He only realised that he had been injured when his father turned on the lights in the hallway. It was his evidence that they were however from his encounter with the intruder. When asked if he does not feel pain whilst he is sustaining a cut, the accused said from previous experiences you do feel the pain when you get cut, but if you know you are going to cut. In this case however, it was the accused's evidence that he felt the pain from the wounds after his father had entered the hallway and had switched the lights on.

It was the accused's evidence that he noticed the wounds on his upper body when he was in the bathroom about to be bathed. He confirmed that he must have been wearing the t-shirt when he sustained the injuries on his upper body. The accused was asked as to whether he had any other physical contact with the intruder save the encounter on the bed and he confirmed saying in his evidence in chief, it was once and on the bed. He now hinted at a second instance and during which he could have sustained injuries on the hands and upper body. This he said could have been when he was backing away from the intruder, and as the latter was coming towards the accused swinging his hands.

It was put to the accused that the injuries on his upper body were self-inflicted in order to simulate the scene as if somebody had attacked Tanya. The accused said he had no comment. He later said it is untrue and when asked why he took long to give a straight answer, the accused blamed this to nerves. He denied, when put to him that he had killed Tanya. He further denied when put to him that there was no intruder in the house that night. The accused was asked if he was attracted to Tanya and he, after some hesitation denied this.

When asked if he was wearing the bermuda shorts when he went to attack the intruder, the accused told the Court he was. It was his evidence that he was surprised that the blood on the underwear was the deceased's whereas that on the bermuda shorts was his. He denied having worn the underpants on top of the shorts.

In re-examination, the accused was asked if during the dive onto the bed he did come into contact with the blood on the bed and he confirmed this. He further told the Court that the t-shirt was hanging out on top of the bermuda shorts. The accused further told the Court that when he returned with Tanya, he closed the stable door and locked it. He also informed the Court that after coming into physical contact with the intruder, he then knew that it was a male.

Assessment of the Defence Evidence.

Dr Kletzow (DW 1) was in my view a good witness, who due to experience in Court and his knowledge of the subject gave a good account of himself. He tendered good, fair and balanced evidence and was loathe to commit himself on matters that were not within his

sphere of competence and would give his answers in those matters subject to that basic and overriding understanding.

The accused was in my view unsatisfactory as a witness. In some cases, he was very shifty and at times avoided proffering straight answers to questions which would be regarded as straight forward. In other cases, I formed the distinct impression and came to the conclusion that he was lying and trying to mislead the Court. There is a litany of examples regarding the above catergory of cases.

Firstly, the accused contradicted himself on the question of the intruder's posture on the bed. In examination in chief, he testified that the intruder was on top of Tanya facing the direction of the wall. In cross-examination, he said the figure was on the bed, in sort of a sitting position facing the headboard of the bed and he had no idea what the intruder was doing. Later, still in cross-examination, the accused now said the intruder was sitting on Tanya, the accused answered as follows: -

> "My Lord, I apologise, I will try my very best. I think my Lord, what I can say is that one becomes accustomed to a shape that is sleeping in a bed. That is how I can say the intruder was on top of her. That is why I can say I have become accustomed to the shape of her body in bed."

The above extract suggests that the intruder was lying on top of Tanya. Earlier, and leading to the above answer, the accused said the intruder was sitting on top of Tanya.

He had grave difficulty explaining if Tanya made any movements whilst the intruder was on the bed or on top of her, attributing this to the fact that his concentration was on the intruder and not on Tanya. He could also not give an exact answer as to which part of Tanya the intruder was sitting on because it was dark. When reminded of the light coming through the window he then confirmed that he could see where Tanya was from that light but his attention was not focussed on the position of the intruder on Tanya. He was focussing on the intruder. He could not explain how he could separate the two.

The manner in which and how he sustained the injuries was also highly unsatisfactory. He gave the Court the impression that he only feels the pain when being cut only if he knows

that he will be cut, which is absurd. There is no way that one could sustain the injuries that the accused sustained and would not feel the pain until afterwards. This is a lie. This is more so if one considers the manner in which Dr Mills described the injuries and the sharp nature of the weapon used.

It was also clear from the accused's demeanour that he was lying when he told the Court that the dogs were not vicious. He described them as "less than vicious and not vicious vicious". The expression on his face clearly gave him away. In one instance, he blamed his uncomfortableness to nerves when his idling was raised by cross-examination. This, I reject as previous to the, the accused had given a good account of himself, both in examination in chief and under cross-examination.

The accused also testified that Dr Mills removed the bandages from him when he examined the wounds at the accused's home and put them together with the deceased's clothes. However, according to both Dr Mills and PW 5, the bandages were not removed. It was not even suggested to any of the two that the bandages were removed from the accused and placed in the black plastic bag. Even PW 9 did not find these amongst the deceased clothes. If he had, he would undoubtedly have said so. The accused's evidence is in this regard untrue and is accordingly rejected.

There was also the issue that the house alarm had been disarmed because of the frequency of false alarms and that on the day in question, the alarm had not been activated. Clearly, this is a lie as it is clear from the evidence of Christie and the documentary evidence filed by him that there was a false alarm on the 24th November 2000. The accused informed the Court that a decision to switch it off had been taken some time before. In fact, this aspect, which must have been known to the accused should have been put to the Crown's witnesses, including the RSP, de Sousa and PW 14 Sukati, and the officers from Guard Alert, particularly Christie. This falls to be regarded as an afterthought.

It should be remembered that cross-examination does not only entail challenging particular items of evidence adduced by the other party's witnesses. It also entails putting important and crucial aspects of one's case to the other party's witnesses. To the extent that views may differ as to whether the aspects to be put or not put are important, it is preferable to put

the entire defence case as will advance the accused's case and prove his innocence. Anything less will inevitably justify an adverse inference being drawn.

As far as the accused's defence is concerned in this case, it should have put or at the least suggested to the witnesses referred to above that the accused will say that the alarm was not functional and had been disarmed some time ago to avoid the costs incurred as a result of false alarms. The failure to do so by the defence clearly justifies adverse inference advocated for by Mr Maseko that this was an afterthought. This was in my view a very crucial issue which at least de Sousa who knew a lot about the Blignauts and to some extent the security measures and Christie, who operated the control room had to be given an opportunity to comment on. I agree with Mr Maseko and I accordingly draw that inference.

Another unsatisfactory aspect of the accused's evidence was with regard to the manner in which the intruder came to the accused swinging his arms. Asked as to how the movements were made, the accused informed the Court that he could not remember how the movements were and that it was dark. Later in cross-examination, the accused is on record stating that he saw that the intruder was swinging arms at him and he proceeded to demonstrate to the Court the swinging movements made by the intruder. Can his evidence on either issue be believed then? The whole question of how dark it was in the Tanya's room the effect of the light coming through the window on his ability to see was to say the least very shifty and unimpressive.

In one instance, when the accused was asked about whether he felt rejected, in connection with his drug problem, he pretended not to know what the word rejection means. I had to intervene to get to him to answer that question and which he did without any further explanation of the word being rendered necessary. I should mention also that the accused failed to challenge PW 5's evidence that he bought drugs on the fateful night. She had no reason to concoct this story and when put to the accused that what she had told the Court was in fact true, the accused said he had no comment. I do find for a fact therefor that the accused did purchase drugs during that night. All in all, I was unimpressed with the accused as a witness, although his euphony may have led an unwary mind to other conclusions.

Was this a homicide or a suicide?

This is a question that was not raised by either party, as both sides, as I understand were *ad idem* that this was a case of homicide, the only outstanding issue being the identity of the perpetrator. I do however find myself in duty bound to enquire into and rule upon this issue, lest it be argued or submitted that this was a possibility to which the Court paid no attention.

Bernard Knight, in his work entitled, "Simpson's Forensic Medicine," 10th Edition, 1991 at page 121 states the following regarding suicidal knife wounds;-

> *"Suicidal knife wounds have a characteristic pattern, though very occasionally even these can be simulated by a murderer. The hallmark of self-infliction (whether suicidal or self-mutilating) is repetition, there being a number of group incisions, usually parallel or closer together. The most usual place for these in suicide or suicidal attempts is on the inner surface of wrists and on the throat, where they are called 'tentative' or 'trial' incisions. The cuts are made superficially at first, often deepening as determination increases."*

Vernon J. Geberth, "Practical Homicide Investigations – Tactics, Procedures and Forensic Techniques", 3rd Edition CRC Press, 1996 at page 364 states as follows:-

> *"If the victim used a knife to commit suicide the wounds will usually be on the throat or wrist...The investigator should closely examine slashing type wounds for evidence of hesitation marks which appear as parallel slashes alongside the mortal wound and are indicative of suicide."*

At page 123, the above author records that a homicidal cut throat is usually more severe and lacks tentative trial incisions. In this regard, one should also consider the differences in suicidal and homicidal throat wounds as found in Simpson, "Taylor's Principles and Practice of Medical Jurisprudence," Vol.1, 12th Edition, Churchill Ltd, 1965, at page 213 to 214. One of the factors indicative of the fact that Tanya's death was homicidal is the location of the weapon. In suicide, the weapon should be present, indeed often firmly grasped by cardiac spasm. In homicides, the weapon is sometimes present but usually

removed by the murderer. *In casu*, the weapon was found outside the house, some distance from the scene of the deceased's death. There is also no indication from the evidence that there was anything in the deceased's behaviour, whether on arrival from Nelspruit or thereafter, which could have set suicide alarm suspicion bells ringing. To the contrary, the evidence is that Tanya was joyous and happy up to the last minute when she was seen alive. There was also no suicide note found explaining the reasons why she would have opted to commit suicide.

In view of the foregoing, I am of the view and firm conviction that the deceased's death was homicidal rather than suicidal and I expect that Counsel on both sides should agree.

The Law Applicable

This, being a case which in large measure is predicated upon circumstantial evidence, it is inevitable that the Court has to reason by inference. In this case, there are clearly disputed facts which the Crown seeks to prove by inference. In **R VS BLOM 1939 AD 188 at 202 – 203**, Watermeyer J.A. stated the following trenchant remarks regarding reasoning by inference: -

> *"In reasoning by inference there are two cardinal rules of logic which cannot be ignored:*
>
> *(1) The inference sought to be drawn must be consistent with all proved facts. If it is not, the inference cannot be drawn.*
>
> *(2) The proved facts should be such that they exclude every reasonable inference from them save the one to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct."*

In seeking to rely on reasoning by inference, I will caution myself, not to venture into the realm of conjecture, or surmise assumption or speculation, as carefully pointed out by Lord Wright in **CASWELL VS POWELL DUFFRYN ASSOCIATED COLLIERIES LTD**

1940 AC 152 at 169 [1939] 3 ALL ER 722 AT 733. Lord Wright formulated the admonition in the following language:-

> *"Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish...But if there are no positive proved facts from which the inference can be made the method of inference fails and what is left is mere speculation or conjecture."*

The question to be asked and eventually determined is whether the inference to be drawn in this matter, regard had the conspectus of facts is that the accused killed the deceased and that no other reasonable inference can be drawn from the objective facts proved. In drawing the inference on the accused's guilt or innocence, as the case may be, I take due cognisance of the instructive remarks of Davis A.J.A. in **REX VS DE VILLIERS 1944 AD 493 at 508** where the following lapidary remarks appear: -

> *"The Court must not take each circumstance separately and give the accused the benefit of the doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and it is only after it has done so that the accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can be reasonably be drawn. To put the matter in another way; the Crown must satisfy the Court, not that each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence."*

Applying the Law to the Facts

The Crown seeks the Court to draw the inference of guilt from both the circumstantial and forensic evidence. The Court can only come to that conclusion if it rejects as not only improbable but beyond reasonable doubt false the accused's story that there was an intruder in the house who must have killed the deceased.

Alleged Entry into the Property.

The members of the RSP, notably PW1, PW 2, PW 4 and PW 9, carefully looked around the wall, some of them both inside and outside in order to ascertain if there were any signs of an intruder who could have scaled the wall and jumped over the fence. This painstaking search could not yield results. According to their evidence, and they were not shaken in this, there were no signs of marks over the wall where this intruder could have entered and/or left the premises.

One should not lose sight of the fact that it was a wet day, it having rained heavily the previous night and was raining intermittently on the day in question. According to PW 1, the ground outside the wall was wet and slippery. It is my finding, in view of the evidence that had an intruder entered the premises by scaling the wall, then some mud marks on the wall would have been visible, given the weather that night and the bright colour of the paint, which is pink. According to PW 9, it appeared that the wall had been recently painted.

The absence of the marks aside, there is an electric fence on top of the wall, which has the effect of electrocuting an intruder if he touched it, thereby setting off the siren at the gate at the same time. Clearly, the siren did not go off otherwise evidence of it having done so would have been adduced. Furthermore, having been to the premises on two separate occasions during inspections *in loco*, it is my finding that climbing the wall, particularly from the outside is extremely difficult, especially in view of the electric fence on top. There is no way that an intruder, who would have been making the first attempt over the wall and fence would, not only leave no marks, but also fail to touch the wires, thus causing the siren to go off. In point of fact, the accused testified that he had to perfect the stunts in order not to touch the wires and this took a lot of practice according to him. He did, during the demonstration touch the wall and would have left marks had he not taken off his shoes. Secondly, he did touch the electric wires during his attempts, both when jumping out of the property and when he climbed in. If a great deal of training is required to perfect it for a resident in the house, how much more for the intruder, in his one off attempt?

It was suggested by Mr Kuny that the intruder could have jumped in next to the main gate using the gateposts in part to gain entry. Again, there were no signs of mud marks on the wall in those areas. Furthermore, the wall there is quite high, if no marks could be imprinted on the wall, then, the intruder would have used something to assist him to climb. There was no sign of such an item, which the RSP would have readily seen. According to PW 14, the wall was well erected and was high enough to present a formidable obstacle to an intruder, particularly one coming from outside.

Another possibility suggested, which could have provided egress and ingress to the alleged intruder was the main gate which, it was submitted could be pushed open by a person on foot, allowing enough play to enable that person to enter on foot. In this regard, a demonstration was undertaken by Mr Blignaut Senior and Dr Kletzow on two separate occasions. It is clear though that for one to do that, excessive force must be applied. This was confirmed by PW 6 under cross-examination.

Mr Blignaut Senior had to use so much force that some part of the motor appears to have been damaged. I saw small metal fragments on the ground, immediately after the gate gave way. This could account for the observation by the expert PW 14 that the gate could be opened "because the motor is broken and that is why one can be able to move in and out although the gate is supposed to be closed". Dr Kletzow also had to use excessive force to open that gate.

I come to the conclusion that on the evidence there is nothing to suggest that the intruder could have used the gate for the following reasons:- Firstly, as observed and as confirmed by testimony, excessive force was required to be applied to force the gate open by a person who knew it can be forced open. Would an intruder do the same? I think not. Secondly, it was the accused's evidence that he avoided entering or leaving through the gate during his immoral escapades with PW 6 because it made noise and was overlooked by the accused's parents' bedroom and toilet.

If the gate was forced open by the intruder, then, the accused's parents would have probably heard, considering that they had slept barely an hour earlier, as according to the accused, he woke them up to announce that they were back and safe. More importantly, there are dogs on the property. According to the evidence, which was not controverted,

these dogs are allowed to roam around the entire property during the night and a foot gate which would otherwise limit their access to the entire yard is kept open at night. The accused is on record as having testified that the dogs did not bark that night. I may add that and it is a finding of fact that the dogs are vicious from the evidence of PW 6 and the fact that they had to be locked up during the time the RSP made investigations and I may mention, even during both times when the Court conducted an *inspectio in loco*.

One may mention that even in the accused's attempted understatement of the dogs' vicious propensities, they would bark to scare a stranger away. In this case, it would mean that the intruder entered the property, leaving no mark and raising no siren, or if he went through the gate, he was not heard and not detected by the dogs, went into the house (and I will examine this later) undetected, left the house, still undetected by the dogs, left the property, again without leaving any mark or trail. Only supernatural beings are capable of achieving this feat, particularly where one is in danger of being detected at any time and has to do everything in haste. Room for mistakes and traces is just inevitable.

Alleged entry into the House.

From the evidence, nobody saw where the alleged intruder entered the house. The story told to the Police on arrival at the scene was that it was suspected that he entered through an open window in the kitchen and which is left open to enable cats to enter and leave the house during the course of the night.

According to the evidence of PW 10 Supt. White, it is possible for a person to enter using this window and it is common cause that there are no burglar bars on all the windows. From my observation, these are not the ordinary windows that can be opened to their full extent. There is a latch which allows them to open to a limited extent. Whilst a person may be able to enter through the window, I must mention that for fully grown and normal human beings, entry through that window should pose grave difficulties.

According to the evidence of the RSP mentioned above, there was no trace whatsoever of or a mark left by the intruder whether on the window sill, sink or on the floor tiles in the kitchen. One should bear in mind that the ground was wet and muddy, whichever way he entered. It is my view, given the conspectus of facts that the intruder would have left some

marks in the kitchen. He clearly was not an invited guest who would have had the time and opportunity to meticulously wipe and clean his shoes to avoid detection. This is the marked distinction between the RSP and the alleged intruder, when Mr Kuny enquired why the intruder would be expected to leave some marks behind when the RSP did not. As PW 4 eloquently answered, the RSP are in any event disciplined people.

The other difficulty with the theory that the intruder could have entered the house using the kitchen window is that the vicious dogs have their kennels situated next to the kitchen. If indeed the dogs, vicious as they are, were unable to hear the person enter the yard which I have discounted, they certainly would have had no difficulty with an intruder presenting himself to them as it were, next to their kennels. Even if they are docile, and according to the evidence they are far from that, they would at least have barked vociferously to at least draw the attention of the occupants that something was amiss. This would have caused the intruder to panic a great deal.

I also consider that if the intruder did in fact enter through the kitchen window alleged, there is a sensor on the corner directly facing that window. For reasons adverted to earlier, I have rejected the accused's story that the alarm was not armed as a lie. If indeed the intruder had evaded all the other impediments referred to earlier, he certainly could not have evaded detection by the sensor. As a result, the alarm would have been triggered, not only attracting the attention of the accused and his parents but it would also, as testified by PW 12 Christie and PW 14, also transmitted signals to the control room of Radio Link Security. I therefore hold, in view of the foregoing, that the assumption that the intruder may have entered through the kitchen window is insupportable and I accordingly reject it.

Mr Kuny further suggested entry into the house by walking on the roof near the tank area and entering into one of the windows either in Tanya's room or in the bathroom or toilet. From the evidence led and purely from observation, it is clear that this would have been possible. I say this though not in oblivion to the earlier consideration and conclusions I arrived at, concerning the absence of the marks on the wall, the electric wire and of course the vicious dogs.

The one difficulty that would cause me to discount this as having been a possibility is that from the evidence, none of the windows were opened, that morning. An intruder entering a

house that he would not be familiar with and as big as the Blignaut homestead would be expected to leave the window through which he entered open as an escape route should he find no other exit route. Mention was made by the accused of another window being left opened in his parent's bedroom. No credence can be attached to this evidence as it came up for the first time when the accused adduced evidence in chief. It was never put to any of the Crown's witnesses. In any event, I am of the view that this could not have been a possible point of entry as the intruder would have landed in the accused's parents' bedroom and would have been detected by them immediately.

Moving into the deceased's bedroom, again, the RSP are on record that there were no indications of mud or wetness, grass or fibre from outside the house which would have been expected to be visible on the floor. It is worth noting in particular that next to the deceased's bed was a white floor mat on the side where the deceased would have been killed. From the photographs particularly Exhibit "A1", it is my view that there is no way that the intruder could have killed the deceased without stepping on the white mat. According to the evidence of PW 4, that mat only had blood spots. Had the intruder stepped onto the mat surely, some trace, however minute would have been left.

Mr Kuny criticised the RSP for not taking the bed sheets, the deceased's clothes for forensic examination, particularly in the face of the allegation that there was an intruder. There is force to this criticism. This would have made assurances about the non-existence of the intruder doubly sure. Again, the conduct of the RSP must not be viewed in total oblivion to the other impediments, findings and observations referred to earlier.

I found the fingerprint evidence presented by PW 4 as taking the Crown's case no further. The evidence of PW 2 on the search for fingerprints, his failure to find them and the reasons therefor is completely unsatisfactory and is not worth relying on for finding and holding that there were no fingerprints of a person other than the occupants. If a diligent and conscientious search had been made using all necessary powder, some finger prints ought to have been lifted as there were people living in that house and who had at the latest, the previous night touched some items in the house where a search for finger prints was allegedly made with no success.

In my assessment, the manner in which the accused testified about the intruder was wholly unsatisfactory. Firstly, he informed the Court that although it was dark, he noticed a figure on top of Tanya. He said that there was some light in the room from which he could notice the deceased. Later in his evidence, he told the Court that the intruder was sitting on top of Tanya and when questioned by the Crown where on Tanya's body the alleged intruder sat, the accused was very shifty. It was his evidence that he could not see whether the intruder was a man or woman but immediately referred to the intruder as a "he". There was in my view no reason for him to tell the Court in his evidence in chief that although at first he did not see whether the intruder was male or female, after the encounter, he felt that it was a male. This was only stated in re-examination.

According to the accused, he ran and dived onto the bed and dived on the intruder and as I have mentioned, he could not tell where on top of Tanya the intruder was. He stated that he landed on the bed and that is how he got the blood on his shorts. I will return to this later. Of immediate interest is Exhibit "A4", which shows the direction of the door *vis-à-vis* the bed where the deceased lay. If the accused ran and dived on the bed and in the process stained his shorts with the blood, one would expect that he would have had difficulty because of the headboard drawer. He would have knocked himself against it when he landed and in the process, one would have expected the books, MTN water bottle and the other items on the drawer to fall off. One should also consider that there was a scuffle between the accused and the intruder. According to Dr Mills and as confirmed by the picture, there was no sign of a serious struggle on the bed. The pillows and other items were not seriously disrupted as is normally the case during scuffles however short. I will return to that later.

The accused also failed dismally to explain to the Court as to when and how he sustained the injuries on the hands and on his body, be they lacerations or abrasions and I will not embroil myself in that debate. Surely, if one gets injured, it does not take a while to know that you are injured, particularly where a weapon like a knife is used. The one inescapable conclusion is that these injuries were self-inflicted or were inflicted with the assistance of others there present. I say this because if indeed the injuries were suffered in the manner alleged, particularly those on the deceased's body, which Dr Mills described as follows under cross-examination:-

> "I looked at them very carefully. They had very linear edges and they were also very superficial, not deeper than 2mm but they definitely had linear edges and not ragged edges which would indicate a scratch or abrasion and as I said, I remember that they had almost looked like they were done with a scalpel. That is how sharp the instrument had to be."

The interesting features, in considering the Doctor's evidence is that according to the accused, he was wearing the t-shirt from the moment he undressed at around 02h00 and at no time did he take it off. Surprisingly, the t-shirt does not have any cut consistent with the route of the injuries (lacerations) on the accused's body. One would have expected if indeed the accused was wearing the t-shirt and such a sharp instrument was used to injure him that the t-shirt would itself have sustained some cuts along the route of the injuries. According to the evidence of Dr Mills, confirmed by my own observations, there are no cuts on the t-shirt, save the cuts made on it by Supt. Ngokha for purposes of DNA analysis.

In this regard, I refer to Keith Simpson, "Taylor's Principles and Practice of Medical Jurisprudence" Vol.I, J & A. Churchill Ltd, London, 12th Edition, 1965 at page 197, where the following appears: -

> *"In self-inflicted or imputed wounds, if of the nature of cuts or stabs, there is often lack of correspondence between perforations of the clothing and the wounds on the person; this is one way in which the correctness of a statement may be tested."*

Surprisingly in this case as adverted to above, there were no perforations whatsoever on the t-shirt which could be compared to the injuries to find correspondence, if any. The other reason for finding that these wounds were self-inflicted is that an intruder, who had brutally killed Tanya in a maniac-like fashion, would hardly have made superficial cuts sustained by the accused. The intruder would by that time mostly likely to be in a murderous mode and the accused would have constituted a danger that he would be caught. A telling injury, even if not with intent to kill would have sufficed for the intruder's purposes to scare the accused away.

According to the accused, the scuffle took about 30 seconds and if that estimation is considered, it is clearly inconceivable that a person could have inflicted all those wounds and scratches in that time, which is less than a minute. A look at the injuries on the hands as appears from Exhibit "01" and "02", shows that these wounds do not in anyway correspond in order to give credence to the unsatisfactory explanation proffered as to how these were sustained. According to the accused, these may have been sustained when he was retreating and the intruder closing in and swinging arms at the accused. I am not an forensic expert, but it would appear that swinging movements would result in cuts rather than the irregular injuries depicted. How the accused got injured on the outside of the left thumb remains something of an enigma. One also wonders how the intruder, in the time given could have scratched the accused on both sides of the neck in the manner depicted as according to the accused, the intruder was carrying a weapon, presumably a knife. About the scratches, one should not forget the evidence of PW 1 that the deceased's hands were found in a position indicative of her grabbing something. I acknowledge however that female DNA was found on her nail clippings.

Analysis of Bloodstains

Authors Eckert and James, "Interpretation of Bloodstain Evidence at Crime Scenes, "CRC Press, 1993 state the following at page 216: -

> *"The careful examination of bloodstained clothing and footwear often provides valuable information for accurate reconstruction of a violent crime. Bloodstain patterns on the clothing of a victim and assailant may represent the activity, position and movement of each during and subsequent to an attack or struggle after blood has been shed...Bloodstain interpretation of patterns on a suspect's clothing will help confirm or refute explanations offered by the suspect concerning the reason for his bloodstained clothing."*

According to the evidence of PW 5, from the samples taken from the accused's clothes, the DNA results, some of which were repeated twice, indicated that the blood on both the shirt and shorts was that of the accused whereas, the blood on the underwear was the deceased's blood only. From the results, it is clear that there was no contamination although the clothes were initially bundled together. There was, according to PW 5 a clean profile. DW

1 told the Court that this was inexplicable and could have been a matter of chance. In the alternative, he attributed this to a sampling problem. I must hasten to add though that this was a clean profile and had there been contamination, the tests would have revealed that. Mr Kuny argued that because PW 5 cut only certain portions of blood on the accused's clothes, one could not exclude the possibility that there was blood on the accused clothes which was neither his nor the deceased's and therefor could be an intruder's blood.

The t-shirt had six (6) portions cut off from different parts. Four were large portion cut off from the front and two (2) cut off from the back. The bermuda had three (3) large portion cut off from the front. The underwear was cut on the front, in fact more than half of it was left. There were bloodstains left in all these items and which were analysed. The question is whether there is any force in the criticism of the sampling by the defence. Clearly, one cannot say whose blood is left on the spots that were not examined.

Is it possible to say, in view of the analysis that the blood could have belonged to a third person. As will be noted, the blood was the deceased's and the accused from the portions analysed. Whether it is possible that there was blood from a third person must in my view be considered against the conclusions I made on the possibility of an intruder entering the premises and eventually the house. There is no indication from the evidence that the intruder was at all injured in Tanya's room and there appears to have been no traces of blood on the broken pieces of glass which PW 2 says he examined. The portions cut off from the clothes were in most cases large and taken from different areas of the items in question. That notwithstanding only the blood of the two was found. I cannot make any finding on the portions not analysed, save to mention that it is unlikely from the evidence and results that blood from a third person was on the clothes.

In this wise, it is also worth considering that the knife itself from the DNA analysis revealed blood of both the accused and the deceased. If the intruder was injured and there is no evidence of this, it would have been by the knife, which showed two sets of blood as aforesaid. Sadly, some exhibits presented for analysis were never analysed to see whose blood was in them. But as I say, little value can be added to this in the light of the earlier conclusions to which I came.

Another perturbing aspect to this matter is that notwithstanding that the accused's clothes were blood-stained, he does not explain satisfactorily how this came about. In cross-examination, he suggested that the blood from the t-shirt and shorts would have dripped from the injuries on his hands. The accused's own evidence in chief about the wounds on his hands was as follows;-

> "I was closing my hands to try and stop them from bleeding. A lot of it went into my shirt and onto my shorts. If I may add there my Lord, they weren't bleeding that much. They were just painful."

When cross-examining Dr Mills, PW 8, the following transpired in the battle of wits with Mr Kuny:-

> "Q: Were the bandages bloodied?
> A: I don't remember if they were, but the wounds weren't bleeding. That is why I thought it safe to re-bandage them and they could be dealt with at a later stage.
>
> Q: They presumably must have been bleeding at an earlier stage?
> A: They could have been but not when I examined them. They were not bleeding and from what I can remember, the bandages were dry.
>
> Q: But the nature of the injury to his hand could have resulted to bleeding?
> A: Yes. They would have bled but as I say, they were fairly superficial cuts and if I, remember, we didn't even apply sutures to them. We just used plaster sutures or butterfly sutures when we dealt with them later."

Regarding the wounds on the accused's body, i.e. lacerations, according to Dr Mills, the following interchange occurred between Mr Kuny and Dr Mills:-

> "Q: They were not bleeding?
> A: No. Not more than a little ooze."

Dr Mills continued to say these wounds were "extremely superficial."

The question, in the light of this evidence is where the accused could have obtained so much of his blood as could be seen on the shorts and t-shirt. Certainly that much blood could not have emanated from the injuries described above. What compounds matters is that the blood on the t-shirt was splattered even at the back. The same applies to the shorts. How could this blood have come to those areas, as according to his evidence, the blood from his hands went on to the t-shirt and the shorts. What about the back, as I have asked?

According to the accused, in one of his puerile attempts to explain how he got the blood, he said it was when he dived onto the bed. From what one could gather, that blood would have been on the front of the t-shirt and shorts. In point of fact, not much blood should have been on the front of the shorts because the t-shirt had not been tucked in. The reality however is that the shorts were heavily stained in the front but not the t-shirt. Furthermore, the blood on the front of the shorts was his blood only and not that of the deceased or any other blood for that matter. If it was indeed true that he got that blood during the diving episode, he should have landed on the deceased's blood. His explanation is accordingly rejected as false and liable to be rejected.

Another vexing aspect is that the blood on the shorts was heavy in the front but strangely did not soak onto the corresponding part of the underwear. On the shorts was the accused's blood only, whereas the underwear contained the deceased's blood only. There is no way of explaining this than as DW1 suggested, namely that at some stage, the accused was wearing his underwear only when he came into contact with the deceased's blood. I agree with this inference which renders the accused's story false and misleading. It is accordingly rejected.

There is also the question of the ponds of blood on the hallway, as depicted in Exhibit "A". From the evidence, this could not have been the deceased's blood because she was killed on her bed in the bedroom. There is no evidence that she walked out of the room or even moved from the bed after she was severely injured. Had that been the case, and according to the evidence of Dr Mills, the blood would not have been as contained as it was. Furthermore, that blood could not have been that of the intruder, (if he was injured at all, and there is no such evidence) because according to the accused, after he (accused) fell on the floor next to the bathroom, the intruder went into the accused's bedroom and escaped. Clearly, he could not have gone to the toilet/bathroom area to bleed there. The only

inference is that this blood belonged to the accused. This again leads to another question, how so much blood when the evidence is that his wound were not bleeding mush and the blood from his hands was soaked into the shirt and shorts. This is a mystery and points to one conclusion that scene was seriously simulated by the accused, either alone or with some assistance. The latter appears more attractive and probable though.

Coming again to the intruder's escape, it is the accused's evidence that he did not see how the intruder got out of the house. He presumed that the intruder broke the window in the accused's room and made his escape. The problem is that on the ground where he landed, given that it was wet and the ground soft, some mark, indicating that a person fell or jumped from about five (5) metres landed should have been visible. According to the RSP, no mark consistent with such landing was made. Mr Kuny suggested that it would depend on how the person landed. No concrete positions were suggested which given the rain and the state of the lawn would have left no indentation.

Furthermore, there were broken pieces of glass on the sill which were left intact. Clearly, the window is about .80m above the floor and the intruder, if he used the window to escape would have been expected to step on there, dropping the broken glass and some foreign material but it was not so. Furthermore, the dogs would, from the description given, probably have pursued him, particularly after the glass broke. No barking was heard from the place where the intruder would have fallen. Again, there is no trace of his climbing over the fence and having killed the deceased, and troubled by the accused, he would have been expected to be panicky, thus increasing his chances of touching the electric wire and which would have caused the siren to go off.

The accused, in his evidence described how close he was to the deceased and an impression was painted that he would have gone to great lengths to ensure that she was safe. He admitted that in looking in retrospect, he did not do enough to at least apprehend the assailant of the sister he never had. What is however puzzling and telling in my view is the decision not to run outside, if not to attempt to apprehend the suspect, to at least try and trace his footsteps and show these to the RSP when they came. From the evidence, it would appear that none of them, including the accused's parents did so. The story that the accused left things to his father to take control does not impress me at all.

The conspectus of all the above quagmires leads me to the one inference that it is the accused who brutally murdered Tanya and cause her life to expire at her prime. No other reasonable inference can be drawn from these facts. The story about an intruder, I should mention, appeared to be regarded as a possibility by the defence and was never put to the Crown's witnesses – e.g. where and when the accused saw the intruder; what he did; the ensuing struggle etc. This issue was surprisingly mentioned and very vaguely even then by DW1. It was the accused who for the first time described his encounter with the elusive intruder. This story must therefor and in view of the evidence be rejected as false. One will notice when going through the record that Mr Kuny in cross-examination of the Crown's witness consistently referred to the intruder as "the alleged intruder". This would not have been so if his instruction were that there definitely was an intruder as the accused later testified.

In cross-examination, the accused was asked if he was attracted to Tanya and the following occurred.

> A: My Lord, we were just friends and that was it
> JUDGE: The question is, did you feel attracted to Tanya?
>
> C.C. Did you feel attracted to Tanya, it is a very simple question?
> A: No, my Lord.
>
> C.C. Why the hesitation Mr Blignaut
> A: I was waiting for my Lord to finish writing down the question.

The accused's demeanour in this regard gave him away and this the Crown's representative noted. It reminds one of the old Chinese saying with the following rendering:-

> *"The witness speak...not with words alone....Their faces their changing expressions may be pictures which prove the truth of the ancient Chinese saying that a picture is equal to a thousand words..."*

The same reaction was witnessed when put to the accused that the injuries were self-inflicted. He became very shifty and was somewhat disoriented in giving his answer.

The inference to be drawn is that the accused must have gone into the deceased's bedroom in his underwear, killed the deceased using a knife from the house. It is inconceivable that an intruder would supposedly come into a house with such hitech security unarmed, opting to open cutlery boxes to find a knife and this is what the Court must believe occurred in *casu*. If can also reasonably be inferred that after killing the deceased, the accused then simulated the scene by inflicting the injuries on himself and may have been assisted in this regard. He somehow got his own blood and sprinkled it on his own clothes, and then put them on. This explains why the blood analysed on the underwear was the deceased's own, whereas that on his clothes was his own. The window was also broken and the knife and sharpner thrown outside in order to obfuscate the whole episode. The proved facts however have shown these efforts to have failed.

Whilst all this was being done, it can be inferred that the deceased had already died. It is after all this preparatory work that Jackie and Dr Mills were called. According to their evidence, particularly PW 5, who came about ten (10) minutes before PW 8, the deceased was ice-cold. In this wise, it is also worth considering that according to the accused's evidence, Tanya knew very few people and would have made no enemies during her time in the country as she was with Mrs Blignaurt at most time. Also curious is that the intruder would break into the house to kill Tanya when down stairs property normally the target of thieves like the television set, VCR, Hi-fi set was available but never interfered with. No thief or intruder would, in my view enter that house just to kill Tanya.

The above proven facts lead me to the only inference that it is the accused who committed this offence. The motive for the accused killing Tanya is unknown to this Court but the absence of a known motive is not *per se* sufficient to persuade the Court in the face of such evidence that the accused is not guilty.

CONCLUSION

It is my view that the Crown has in *casu* discharged the onus upon it as adumbrated by Rumpff J.A. in **S VS RAMA 1966(2) SA 395 (A) at 401**, cited with approval by Diemont J.A. in **S VS SAULS AND OTHERS 1981 (3) SA 172 (AD) at 183:-**

"In my opinion, there is no obligation upon the Crown to close every avenue of

escape which may be said to be open to an accused person. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. He must, in other words be morally certain of the guilt of the accused.

An accused's claim to the benefit of a doubt when it may be said to exist must not be derived from speculation but must rest upon a reasonable and solid foundation created either by positive evidence or gathered from reasonable inferences which are not in conflict with, or outweighed by, the proved facts of the case.

Moreover, if an accused deliberately takes the risk of giving false evidence in the hope of being convicted of a less serious crime or even perchance, escaping conviction altogether and his evidence is declared to be false and irreconcilable with the proved facts a court will, in suitable cases be fully justified in rejecting an argument that, notwithstanding that the accused did not avail himself of the opportunity to mitigate the gravity of the offence, he should nevertheless receive the same benefits as if he had done so."

This case proves the truthfulness of the remarks that fell from the lips of Mokama C.J. of Botswana in **S VS KALALETSWE AND 2 OTHERS CR. TR. 49/1992**, citing with approval Lord Hewitt C.J. in **REX VS TAYLOR AND OTHERS 1930 21 CRIMINAL APPEAL R 20**, where the following is stated: -

".....circumstantial evidence is very often the best. It is evidence of surrounding circumstances which by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial."

In the premises, I return the verdict of guilty as charged.

I must however draw to the attention of the RSP the inadequacies correctly pointed out and I say fairly by Mr Kuny in this matter - i.e. failure to properly lift fingerprints, failure to take certain exhibits from the scene, failure to get collected evidence analysed and the result thereof submitted. Had circumstances been different, these signs of ineptitude may have led to the benefit of the doubt ensuring to the accused's benefit and he would be acquitted. The scapegoats once an acquittal is made will be the Courts who are described as too ready and happy to acquit "criminals". Shoddy investigations will never feature as the prime candidate. Unfortunately, it is beneath the dignity of the Court, when such baseless accusations are made to defend itself. The Court, judgements are sufficient for finding the Court's reasoning. It should also be remembered by all that Judges, in such cases speak in Court concerning their judgements. No other forum is appropriate or desirable.

T.S. MASUKU

JUDGE