IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE **CRIMINAL CASE NO. 40/2001**

In the matter between:

REX

VERSUS

DAVID THABO SIMELANE

CORAM	:	ANNANDALE J
FOR THE CROWN	:	THE DIRECTOR OF PUBLIC PROSECUTIONS, MRS. M. DLAMINI
FOR THE ACCUSED	:	MR. L. HOWE; POSTEA MR. M. MABILA *(PRO DEO)*

JUDGMENT
23rd MARCH 2011

Case Note: *Criminal trial — Multiple murders : — Admissibility requirements of confession and pointing out — sufficiency of evidence pertaining to identification of deceased persons — evidence aliunde to prove commissioning of crimes admitted in confession*.

[1] Around the turn of new millenium, untill the month of April 2001, reports about women and some children who suddenly disappeared from their homes in Swaziland frequented the media. One after the other, the missing women were reported to have left their homes in apparent good health, never to be heard of again. In some instances, they were accompanied by their infants as they left, invariably in order to take up employment offered to them.

[2] The disappearances caused a stir of some magnitude in the Kingdom and sparked a massive manhunt as well as widespread rumours. These intensified when the remains of human bodies began to be discovered early in the year 2001, culminating in intense fear and speculation when a number of further decomposed bodies were discovered in the SAPPI forests near Malkens. Police investigations eventually narrowed down to a search for a specific person, whose description was widely circulated.

[3] Eventually, late in April 2001 and at Nhlangano, a civilian noted the presence of a man fitting the description of the wanted suspect and alerted the local police. They then apprehended the suspect, took him to the police station and alerted the specially constituted task team which in turn promptly responded and on their arrival, found the man they had come to suspect of being the perpetrator. In all, some 45 disappearances were initially investigated and ultimately, it resulted in 34 charges of murder being prosecuted against the accused.

[4] The resultant trial turned into a most protracted and difficult to manage affair. It would be remiss of me to overlook the duration of the matter and the causes of it, which is dealt with below, but suffice to say that the number of witnesses and multiple indictments of murder do not justify the duration of the trial. In our jurisdiction, the presiding judge has no say in the allocation of different trials to his or her court, nor in the setting of court rolls and allocation of dates, nor in the decision of how

many counts are to be included in the indictment, or what an arraigned accused is to be prosecuted for.

[5] Comparatively, the International Criminal Court functions in the opposite manner. As mere example, the trial of Saddam Hussein ran continuously for a short period of time and the number of counts could be counted on a few fingers, instead of hundreds or thousands of potential prosecutable charges. In the present instance, each of the prosecutable charges were included in the indictment, with only the instances where no link at all which could be connected to the accused, being excluded. The allocated trial dates were haphazard and piecemeal, with numerous other criminal and civil trials scheduled inbetween, for hearing in the same court.

[6] Prior to the commencement of the trial, the accused person was twice referred for pscychiatric evaluation. The initial report of a single pscychiatrist indicated fitness to stand trial. Due to the magnitude of facing 35 counts of murder, and with joint concurrence of prosecuting and defending counsel, the

accused was again examined, but by a panel of pscychiatrists in which he was given a choice in its composition.

[7] Again, the pscychiatric report confirmed, in more detail, his cognative and conative ability to distinguish between right and wrong, as well as to an apparent ability to act in accordance with such perceptions. Also, that he was certified to be sane and fit to stand trial.

[8] The trial itself commenced on the 29th day of May 2006 when the first witness was heard and it was concluded on the 31st day of January 2011 when initial oral submissions by counsel was heard. Inbetween this inordinately long period of time, 83 witnesses called by the Crown were heard, as well as the single witness for the defence, the accused himself.

[9] In all, proceedings in open court streched over a total of 157 days, excluding numerous days when one or the other counsel was not present in court, or when video evidence was viewed by counsel in absence of the presiding judge, when

preparations were made for a number of interlocutory applications, or when the Court viewed various scenes *in situ.* In addition, the recording equipment often malfunctioned, resulting in additional and unnecessary delays and postponements.

[10] Initially and up to almost the end of the matter, when the case for the prosecution was eventually closed, attorney Mr. Howe represented the accused on a *pro deo* basis at first, and towards the end of his appearance in court, on direct or private instructions. The symbiosis between attorney and client soured when *pre deo* instructions were terminated by the Registrar of the High Court. The reasons for termination were euphemistically stated by him to be that the attorney was not "able to accommodate the daily schedule of this case as directed by the Chief Justice".

[11] Once private and direct instructions originated from the accused, the second port of call was an intended application for discharge following the case of the prosecution. When the

initially appointed day for hearing of that application was *mero motu* held by the court, on reflection, to be too far in the future, it was changed to a date close to the year end of the session. This did not go down with defence counsel, who then threatened with a noted appeal against the date as amended, as well as an appeal against the first port of call, an application for recusal of the trial judge, which was refused. The written judgment relating to the application for Recusal is separately recorded.

[12] When it was clearly indicated by the Court that such a notice of appeal cannot be allowed to further delay the trial untill it is ultimately pronounced to be irregular by the Supreme Court, some further five or six months in the future, the Court was then confronted with a different tack of delay, namely a threatened application to interdict continuation of the trial untill the purported appeal had been heard. When this also did not cause the Court to accede to the inevitable irregular and unprocedural attempts at further delay, the final straw came

when the trial judge was accused of “Judicial Misconduct” in open court.

[13] These futile delaying tactics would not be acceded to by the Court, having dismissed the series of attempts at further delay as well as a belated addition, being that the court is not allowed to continue with a part heard criminal trial prior to the official opening of a new legal year. The defence counsel thereafter announced that he could no longer represent the accused in the court of the incumbent judge. He was then given leave to withdrawn from the case.

[14] In turn, Mr. Mabila then took over as defence counsel on a *pro deo* basis. He immediately grasped the futility of seeking discharge of the accused at closure of the prosecution case, due to there being “no evidence” on which a conviction could follow. Instead, in recognition of the vast body of evidence, including evidence of two statements made by the accused to judicial officers and of various pointings out, he called the accused as witness, but limited it to only five counts, in which

part of the *prima facie* evidence is that the accused was present when the alleged victims were last seen by witnesses.

[15] This was done after the Court allowed six witnesses to be recalled for further examination, more specifically to put the instructed version of the accused to them. The importance of this, in order to ensure fairness in the trial, was imperative. By the time the Crown closed its case, it remained a mystery as to why the accused pleaded not guilty to all counts, or what defence he relied upon. The crown vigorously opposed any notion that the witnesses be recalled.

[16] Throughout the months and years preceding, despite most protracted cross examination and production of a phletora of Police and Correctional Services forms and registers, the challenge to evidence adduced by the prosecution was devoid of putting a direct defence to the witnesses, with the resultant and almost inevitable argument that when the court was to first hear of it when the accused gave his own evidence, that it

should be rejected as an "afterthought" or a "recent fabrication".

[17] When the accused testified, he stated that he indeed instructed his erstwhile attorney accodingly but that his instructions did not materialise. Even so, one should be careful not to blame an attorney too readily for such stated anomalies. I did not regard it proper or useful to call attorney Howe to testify as to whatever instructions were indeed given or not given to him. Apart from the obvious infringement of privilege between attorney and client, or the probable introduction of a hostile or recalcitrant witnesses called by the Court, it also would have been unfair to solicit the details of privileged instrutions which could well have been viewed as a skewed "taking of sides" by the presiding judge.

[18] The point of this is that inasmuch the original defence counsel procrastrinated and caused significant delays in the protraction of the trial, adversely affecting the course of justice, it cannot result in the accused person having to bear the brunt of it. The

right to a fair trial obviously includes the application of legal remedies as advised to the client, and if such remedies are hollow and devoid of merit, such as the noting of an irregular appeal in the course of ongoing proceedings, or refusing to accept that part heard criminal trials may be continued with during a formal recess period, the accused person cannot shoulder the blame. Equally so, the accused person cannot be blamed for the manner in which witnesses are cross examined or the way in which his defence is brought to the fore.

[19] However, it does not also imply that the alleged failure to comply with given instructions is of no consequence. The client and his or her attorney might well be two separate individuals, but the statements made on behalf of an accused, the ventilating of his defence and the inverse thereof remains to be attributed to the accused person, as if he did or did not conduct his defence in a particular manner.

[20] Equally so, an attorney cannot be blamed for a failure to dispute crucial evidence, or to put a particular aspect of the

defence case to a prosecution witnesses insofar as he or she might be able to respond to it, unless the stated facts originate from the mouth of the accused. It would indeed be grossly unethical and unacceptable for a lawyer to create an imaginary line of defence and purport to say so on behalf of an accused person who never so briefed the defence counsel.

[21] The upshot of this is that the court has to give regard to all of the attenuations of evidence as brought about by defence counsel in the acceptance that the instructions as to the facts to dispute and the defence to be stated originate from the accused person personally. In the present case, numerous and ongoing consultations and taking of instructions punctuated the proceedings on a most frequent basis. The accused before court explicitly stated his ongoing continued faith in his erstwhile attorney and most reluctantly accepted his non-ability to continue representing him.

[22] It is therefore that the course of the trial cannot be reversed. It is *fait accompli,* a done thing, which stays as it is . One aspect

in particular impacts on the question of admissibility or otherwise of evidence contained in two statements made to two judicial officers, both soon after the arrest of the accused. I revert to this vexed issue below but in view of the abovestated position, for instance, a trial within a trial to determine its admissibility is not embarked upon during the course of hearing argument at the end of a trial, or during the course of the defence case.

[23] A trial within a trial is a deviation from hearing of evidence on the merits, usually pertaining to alleged evidence of ponitng out or of confessions, which would incriminate the accused. If the admissibility is placed in issue the defence counsel will lay a brief foundation as to why it should not be allowed and rejected as evidence and request that a mini trial, or trial within a trial, be conducted to decide the issue of its admission as evidence. The Crown bears an onus to prove it to be acceptable which the accused could rebut on a mere preponderance of probabilities. If admission of the evidene is left unchallenged, for instance when the defence counsel has not been instructed

that incriminating evidence of an alleged confession was not voluntarily or freely obtained, such as under duress, threat or other taint, wherefore he does not ask for a trial within a trial to be conducted to first determine admissibility, such evidence is heard and received just the same as any other. At the conclusion of the trial, the presiding officer decides the probative value of all evidence placed before the court, from which findings of fact and law are then made.

[24] As said, the onus of proof that a confession was not made freely and voluntarily, is on the acused (S v Nyembe 1982 (1) SA 835 A at 840-G; S v Ndzamela 1989 (3) SA 361 (Tk) at 366-D; S v Mphahlele and Another 1982 (4) SA 505 (A) at 514 H – 517B; S v Msani 1987 (1) PH H18 (A) at 41 and numerous similar authorities). This is in line with the general principle that he who avers is to prove. There is no legal presumption or rule of practise that it could be assumed that every statement in the form of a confession which an accused has made to a magistrate is tainted with irregularities or that threats of violence, assault or suchlike induced involuntary confessions.

Therefore, it is also not a standard practise for the courts to automatically and *mero motu* decide the admissibility of a confession by first conducting a trial within a trial before the contents is received as evidence. It is only when the accused or his legal representative makes such allegations and request that a trial within a trial be held, that it is done.

[25] The prosecution, acting under the provisions of section 226 (1) of the Criminal Procedure and Evidence Act, 1930 (Act 67 of 1938) – "the Criminal Code" – is ordinarily only required to prove it to have been freely and voluntarily made by such person, in his sound and sober senses and without having been unduly influenced thereto. Once that is done, any confession of any offence shall, if such confession is proved by competent evidence to have been made by any person accused of such offence, be admissible in evidence against such person.

[26] Section 238 (2) of the Criminal Code goes to the extent that it allows any person being tried on any charge of any offence to be convicted of any offence alleged against him in the

indictment by reason of any confession of such offence proved to have been made by him, although such confession is not confirmed by any other evidence as long as such offence has, by competent evidence other than such confession, been proved to have been actually committed.

[27] It is therefore clear that admitted evidence contained in a confession may readily lead to a conviction. It is also clear that evidence of a confession, and the confession itself, may only be admitted and relied upon it if is properly proven by competent evidence.

[28] In practise, in order to prove a confession, the prosecution calls the magistrate who recorded the statement of the accused, as well as the interpreter if applicable, and the investigating police officer plus other witnesses insofar as is necessary. It needs to be stated that it is not every statement which is made to a judicial officer in applicable circumstances, that will amount to a confession as such. The magistrate would then testify as to how he or she determined that the person was of sound and

sober senses, that the person indeed wanted to make a statement which is of his own free will and volition, without undue influence or threat, that it is voluntarily made. Usually, the judicial officer would make use of a *pro forma* document, which lists a range of questions in order to determine the identy of the deponent, the interpreter and the judicial officer. It also serves to record a caution and the potential consequenes of such statement and furthermore forms a guideline to ultimately determine whether the statement would be made freely and voluntarily, without undue influence or duress. If so satisfied, the deponent would then be given the opportunity to have his statement recorded and if not so satisfied, the magistrate would terminate the event without recording a statement.

[29] All of this is then deposed to by the magistrate *qua* witness in court and like any other witness, be subjected to cross examination. If this is done in the ordinary course of a criminal trial, the contents of the recorded statement is received as evidence on the merits whereas in a trial within a trial, the recorded statement itself will be held in abeyance, not disclosed

to the court, untill admissibility has been positively ruled upon by the trial judge. If the court holds otherwise, declining the admissibiity of the statement, it is not produced as evidence and the court takes no cognisance of its contents.

[30] *Prima facie*, the evidentiary burden on the prosecution is satisfied once competent and acceptable evidence has been adduced to the effect that a statement which amounts to a confession was freely and voluntarily deposed to the accused in his sound and sober senses, without having been unduly influenced thereto and having been cautioned that the recorded statement might be used in court as evidence against him. This is what happened in the present trialin respect of both statements, as recorded by Magistrates Nkonyane and Masango.

[31] Throughout all of the above, it remains an elementary task to determine whether the statement which was made by an accused person to a judicial officer and sought to be proven as evidence on the merits by the crown, indeed amounts to a

confession in the strict sense. Not all of such statements amount to confessions.

[32] In S v Elliot 1987 (1) PH HI7 (A) at 39, Jacobs JA held that:-

> *"The test to apply to determine whether or not a statement is a confession under Section 212 (1) of the Criminal Procedure* Act (or, under Section 226 (1) of the Swazi Criminal Code, insert) *as laid down in R v Becker 1929 (AD) still applies. Referring to Becker's case, Trollip JA in S v Grove Mitchell 1975 (3) SA 417 (A) at 419E–F said that the test ' is simple and straightforward: is it an unequivocal acknowledgement by the accused that he is guilty of the offence in question, the equivalent, in other words, of a plea of guilty thereto' ".*

[33] It seems to me that the Crown regards both statements made by the accused as confessions *strictu sensu.* However, when the contents of the first such statement, made to magistrate Nkonyane (as he then was) and recorded in exhibit No. 1 is

read, it does not, in my judgment, amount to a confession, an unequivocal acknowledgement, the same as a plea of guilty. The recorded statement, which follows the initial enquiries as to whether it could be regarded as freely and voluntarily made, without undue influence etcetera, reads thus:-

> *"I have come to say that I am connected to the crimes that were committed at Malkerns. The crimes were committed by me since November 1999. The crimes were committed until the middle of last month. The crimes were committed because I was once arrested for rape and convicted. I had not committed that crime for which I was convicted. I then thought to myself that it means women are my enemies as I had been convicted of rape which I never committed. That was what drove me to commit the crimes. I did tell the police the details of how the crimes were committed. The police asked me why the dead bodies were found facing down. I told them that I did not know how that came about. I told them that if they did find some dead bodies facing down it had no*

particular meaning. The police also asked me if I am sick and I told them that I am normal. The main reason for me to commit the crimes was revenge as I stayed in jail for a very long time when I had not committed the crime for which I was convicted.

That is all."

[34] The statement does not disclose which specific crimes were committed by him, at Malkerns, since 1999 untill the middle of March 2001. What he does say is that he did whatever he did out of revenge, since he considered women to be his enemies, due to him being convicted of rape, jailed for a long time for a crime he did not commit.

[35] It is not a confession, the equivalent of a plea of guilty, to any specific charge, however framed in an indictment. One cannot extrapolate the contents of the charges against the accused to deduct and conclude which "crimes" he refers to and even less so that the elements thereof are unequivocally admitted.

[36] The only real evidentiary value in the statement recorded by the magistrate on the day after the accused was arrested is that whatever crimes he referred to, having been committed over the stated period of time now have a motive, namely revenge. That in itself also does not qualify the statement contained in exhibit No. 1 to be deemed as a confession.

[37] From the foregoing, I conclude that it is superfluous to detail and deal with the defferent aspects of argument raised by Mr. Mabila as to why this particular statement should be excluded from the evidence, expunged as it were. The phletora of authorities referred to by counsel takes the matter no further, essentially so because whichever way one need to consider its admission or otherwise, is not applicable to a “confession” which is not a confession at all. The authorities on admissibility of confessions are thus of no assistance when there is no confession in the first place.

[38] I now turn to deal with the second documentary exhibit, which is a different kettle of fish altogether.

[39] The Late Magistrate Charles Masango testified as witness called by the crown that he recorded a statement deposed to by David Thabo Simelane on the 8th day of May, 2001.

[40] He said that a police officer brought the person to him and that he then ensured that no police officer remained within sight or hearing distance and that behind the closed door of his office were only the deponent, himself and an interpreter.

[41] He then informed Simelane that he was a judicial officer, that Simelane was not obliged to say anything unless he wished to do so but whatever he said would be recorded in writing and might be used as evidence at his trial. He further told him that he had nothing to fear and that he could speak openly and with complete frankness.

[42] Prior to deciding whether to record a statement or not, he asked some questions, as printed on a *pro forma* questionaire and recorded the responses thereto. From this, his evidence is that

Simelane, the then deponent and present accused, told him that the purpose of his visit was “to tell you that other people that I killed were found at other places in Malkerns”; that Mr. Ndlangamandla, a police officer told him that he could come to the magistrate “but that he did not force me”; but said “That if I felt a need to come and explain to the court (sic) where the other people were found I can come to you but he did not force me”.

[43] I find it difficult to criticise the late magistrate of construing this in any other manner than that the accused freely and voluntarily wanted to record a statement, without being forced to do so, or that he was unduly influenced, threatened, assaulted or coerced to do so. The accused then went on, in question and answer form, to tell the magistrate as to when he was arrested, some two weeks prior to then, and that he had been kept in custody at the Matsapha Police Station. He said that no promise was made to him in order to induce him to make a statement, also that nothing was said or done to induce him, that he was not promised his release from custody, nor that any

threats were made to him which induced him to make a statement. He further said that he has not been assaulted by anyone since the start of the investigation or since his arrest, nor that he received any injuries, wounds or bruises. He said that he had previously made statements regarding this matter to Ndlangamandla and Mavuso, both being police officers, as well as a written statement to Magistrate Nkonyane (Exhibit No. 1, *supra*).

[44] If Magistrate Masango could be criticised at all, other than the unwarranted criticisms raised by the accused's counsel with regard to where the accused had to be detained at that time, in Police or Prison custody, it would be to not also have made further enquiries from the accused as to the reason why he again wanted to make a statement to a judicial officer. A salient rule of practise would have been to then deviate from the standard *pro forma* and continue on a separate sheet of paper to record an additional enquiry as to this fact and establish just why a second formal deposition was sought to be made.

[45] However, this omission is not fatal. No limit is placed on the number of statements made to magistrates by arrestees, and as such, it is not an obvious potential irregularity to not also embark on an *excursus* as to why a second statement was sought to be recorded. From the face of the *pro forma* document and the additional information recorded on it, it would rather have been an irregular dereliction of duty for the magistrate to have refused to record a statement by the accused who was brought to his office. There was no indication that the statement would be made anything but freely, voluntarily and without undue influence.

[46] Magistrate Masango then went on and recorded a statement of David Thabo Simelane, deposed to in Siswati and translated by his interpreter, Mr. Nimrod Fakudze, into the English language. This he wrote on an annexure of some ten pages in longhand, re-read it to the deponent, translation and all, whereafter all present agreed it to be accurate and correct. The typed version of this follows below, having been admitted as Exhibit No. 2. It reads:

ANNEXURE 'A'

"On the charges I am facing, I did not explain where the other people were found. Two people have been found at Mankayane at ka-Capha. Four of them were found at Macetjeni. One was found at Ntondozi at Khalangilile area. Three of them were found at Golden Forest. Fourteen of them were found at Malkerns at the Bhunya forest.

I remember the surnames of those found at Macetjeni but I do not recall their names. One of them, was a Mkhwanazi and her homestead was at Ntondozi. I left with her from Malkerns after I had promised her work. We got to Macetjeni and I killed her. When we got to Macetjeni, I killed her by strangling her with my hands.

The other one was a Mngomezulu whom I found at Ka-Khoza. She told me that her homestead was at Ka-Phunga. I left with her from Manzini Bus Rank after I had

promised her work. I went with her to Macetjeni and when we got there, I killed her by strangling her with my hands.

The third one was from St. Phillips and her surname was Sibandze. I left with her from Siphofaneni after I had promised to borrow her money. I went with her to Macetjeni where I strangled her with my hands until she died.

Then there was Vosho Dlamini who was my girlfriend from St. Phillips. I also went with her to Macetjeni where I strangled her with my hands until she died. That is all about Macetjeni.

Then there was Dumsile Tsabedze from Ncangosini area whom we stayed together. She was my live-in-lover. I left with her and told her that we were going to my parental homestead. We used to stay together at Malkerns. We left and proceeded to Mankayane. When

we got to Capha Mountain, I strangled her to death with my hands.

There was another one from Kukhulumeni in Mankayane whose surname was Vilakati. I went with her after I had promised her work. I got with her to Capha where I strangled her to death with my hands.

Another one was from Khalangilile but I have forgotten her surname. We both alighted from the same Bus at Khalangilile area and I strangled her with my hands to death.

Then there was Fikile Motsa from Sidwala area. She was with her child who was one year or just above one year old. I found her at Manzini Bus Rank and she said that she was looking for work. I promised her work and we left Manzini to Malkerns. We got to Golden Area where I killed her and her child by strangling them with my hands.

There was another one who is Manana by surname whom I found at Manzini Park next to City Council Offices. I left with her to Malkerns at Golden Area where I strangled her to death. We got there by Insuka Bus Service after I had promised her work.

Another one was from Malkerns area who is a Magagula by surname. I also promised her work. We then left and got next to Eagles Nest at Malkerns where I strangled her with her with my hands to death in the forest there.

There was also one Sizakele Magagula from Malangeni area whom I found at the Park next to Manzini City Council Offices. I also promised her work. I then went with her to Malkerns and when we got to the forest, I strangled her with my hands to death.

There was one Thandi Dlamini who was with her child. She was from St. Phillips and was my sister-in-law. I also promised her work. I got to her homestead and told her

to come to Manzini where we will meet. We met at Manzini and we left for Malkerns area. When we got to the Bhunya Forest, I killed her and the child by strangling them with my hands to death.

There was then La-Kgosi of Malkerns but whom I think stayed at Ka-Dvokolwako area. I also promised her work. I went with her and told her that we were going to the person that will hire her. I went with her to Malkerns and when we got to the forest there, I strangled her to death.

There was one Sindi Ntiwane who told me that she was from Mbabane City. I found her at the Park next to the City Council Offices and I promised to borrow her money. I left with her and when we got to the forest at Malkerns, I strangled her to death with my hands.

There was another one Num by surname, whom I found at the same Park next to City Council Offices at Manzini

City. She had a child with her of about eighteen to twenty two months. She was looking for a job and I promised her one. We left for Malkerns and when we got to the forest, I strangled her to death with her child with my own hands.

Then there was Zanele Thwala of Mambane area who was my live-in-lover. We stayed at Luyengo. We left Luyengo to Malkerns. We were just walking around until we got to the Bhunya Forest where I strangled her with my hands until she died.

Another one was from Sigombeni and she was a Malaza by surname. I found her at Malkerns looking for a job. I promised her a job at Eagles Nest and we proceeded there. When we got to the Bhunya A6 Forest, I strangled her with my hands to death.

There was also one Fikile Dlamini or Ndlela. I do not know which one was her surname. One of them was hers

and the other was her husband's. I found her at the Parks next to Manzini City Council Offices. She was looking for a job and I promised her one. I left with her to Malkerns and when we got to the Bhunya Forest, I strangled her to death with my hands.

Then there was another one Gamedze by surname from Siteki area. I also found her next to the City Council Offices in Manzini at the Park there. She was also looking for a job. I also promised her one. We proceeded to Malkerns and when we got to the Bhunya Forest, I strangled her to death with my hands.

There was one Twana Dlamini from St. Phillips. She stayed at Lubulini area. I promised her a job and I told her to meet me at Manzini Bust Rank. She came and we met. I then proceeded with her to Malkerns where I strangled her with my hands to death.

Another one was Nelisiwe Dlamini from Siteki area who was also looking for a job. I found her at the same Park next to Manzini City Council Offices. I promised her a job and I left with her for Malkerns. When we got to the Bhunya Forest, I strangled her to death.

Then there was one a Khumalo by surname from Manzini whom I found at the same Park at Manzini. I promised her work and we proceeded to Malkerns. When we got to the Bhunya Forest, I strangled her with my hands to death.

There was one Ntombinkulu Maseko from Ngwempisana in the Mankayane area. I also promised her a job. I left with her for Malkerns. I proceeded her to the Bhunya Forest where I killed her by strangling her with my hands.

There was one Thabile Dlamini from Ngwempisana. I promised her a job and told her to meet me at Luyengo area. *We met there and we proceeded to Malkerns after I*

had promised to give her a job there. I proceeded with her to the forest where I strangled her to death with my hands.

Another one was Simelane by surname from Mancubeni in Mankayane area. I found her at Malkerns looking for a job. I proceeded with her to the Bhunya Forest where I stabbed her to death. I stabbed her on the neck.

Then there was Thembi Kunene from Ngwempisana. I left with her from Ngwempisana after I had promised her work. We proceeded to Malkerns and we went to the forest where I strangled her to death with my hands.

There was also Sizeni Ndlangamandla from Ngwempisana, whom I found at Vukuzenzele next to the Bus Rank at Manzini City. She was also looking for a job and we proceeded to Malkerns. I went with her to the Bhunya forest where I strangled her to death with my hands.

There was another one whose name and surname I do not recall. I found her at the same Park next to Manzini City Council Offices. I proceeded with her to Malkerns after I had promised her a job. I went with her to the Bhunya Forest where I strangled her with my hands to death.

There was another one stayed at Matsapha but was from Malindza area. Her surname was Tsabedze. I found her at the Manzini Bus Rank looking for a job. I promised her one and we proceeded to Malkerns. I went with her to the Bhunya Forest where I strangled and stabbed her to death.

There was another Tsabedze by surname from Ka-Hhohho area. She was my sister-in-law. She stayed at the same homestead where I was renting a house. She came there looking for a job. I was renting the house at Malkerns area at Ka-DuPont. I told her tha I can organise her a job. We proceeded to Malkerns. We went to the

Bhunya Forest where I strangled her to death with my hands.

There was Lizzy Mhlanga from Bhunya area. We met aboard a Kombi. We both alighted at Luyengo area and she became stranded because there was no public transport to take her to her destination. I promised her a place to sleep. I told her that I would organise her the place from my sister. We proceeded to Malkerns and I went with her to the Bhunya forest where I strangled her to death with my hands.

There was another one Mlotsa by surname from Siphofaneni. We met at Siphofaneni and I promised her a job. We boarded a Kombi from Siphofaneni to Manzini. We got another Kombi from Manzini to Malkerns. We got to Malkerns and I proceeded with her to the forest where assaulted her and stabbed her to death.

I did all this because I was convicted in the nineties for robbery of another woman. I was also convicted for raping the same woman. I did rob the woman of the money but I did not rape her. Even the doctor's report did not confirm the rape. Her evidence was also not corroborated by that she first made the report to. I then told myself that I will revenge to any woman if the chance avails itself.

I was incarcerated for these offences from 1992 to 1998. If I could have met her first, I might have not killed all these women. All the people that I killed were women.

The Bhunya forest I am talking about, is the A6 Forest. To convince the women to go with me to the forest, I would tell them that beyond the forest, there were houses for rent and that the people that would hire them, were staying there.

All the women did not know the way there and what was beyond the forest. I stabbed those that I stabbed because they would fight back at me. I had the money to gamble at the lotto machines, play cards for money or play the dice game for money.

That is all."

(Signed) *(Signed)*

THABO DAVID SIMELANE *N.M. FAKUDZE*
DEPONENT *INTERPRETER*

(Signed)

CHARLES MASANGO
MAGISTRATE(MANZINI)

2001-05-08

[47] In order to try and persuade the court that this statement should not be part of the body of evidence against the accused, Mr. Mabila has advanced most spirited, well presented and prepared though lengthy oral argument, in a most ingratiating presentation by a skilled, experienced and respected lawyer:

This in itself makes it more difficult to not accept it than what otherwise could possibly have been the case.

[48] Various heads of argument focus on different aspects of this second statement to a judicial officer, in which different grounds are proposed as to why it should not be admitted as evidence. The reason and motivation is obvious: In this trial where circumstantial evidence is the main course, the Crown is desperately in need of admission of a confession and evidence of various pointings out to prove its case. If the defence were able to bat away the two balls consisting of confession and pointing out, a victory in the series of some 35 innings per side is as good as fait accompli.

[49] With evidence relating to pointings out in itself being of highly persuasive nature if admitted and if it ties in with the context of the remaining body of evidence, the challenge to the statement recorded by the late Magistrate Charles Masango becomes pivotal to the conviction or acquittal of the accused, hence the intense attack on its admissibility.

[50] Before dealing with the aspects raised by Mr. Mabila, there is one particular and pertinent difference between his and the instructions given to the former defence counsel, Mr. Howe. In cross examination, Mr. Howe put it to the investigating officer, Mr. Solomon Mavuso who substituted Ndlangamandla, that the accused sustained a quite visible cut on his head, an injury caused by the police in the course of assaulting him during interrogations.

[51] When the accused gave his own evidence, he did not mention a word about this stated injury. Although the crown did not cross examine him about this anomaly, it seems to me that on the one hand, when it suited him, the accused told his lawyer that he sustained a head injury, but when time passed and he had a new lawyer, he totally forgot about such purported head injury, although it was initially endeavoured to be elevated to the extent that it would suffice to render his statements to judicial officers and subsequent pointings out *in situ* to the police as inadmissable, the results of violence and assaults

directed against him, worthy of labelling his conduct involuntarily and influenced by violent assault.

[52] The scar still visible on the forehead of the accused was stated by his erstwhile counsel to be another and old long gone injury, different from the cut caused by the police during interrogation. Conflicting instructions to different attorneys, just like conflicting statements in the evidence of a witness, be it the accused himself or any other, goes hand in hand with disbelief and rejection.

[53] Presently, it places a question mark on the evidence of the accused, when he says that police officer Jomo Mavuso threatened him to play to gallery, so to speak, otherwise his fate would be to also die under the hands of the police, as befell some youngsters at Makayane. This fear, he said, caused him to record a second statement, this time before Mr. Masango.

[54] None of this was told to the magistrate. In turn, the accused testified that once the police get to know what he told the

magistrate, he again would be in line to be killed by the police at worst or otherwise to again be suffocated.

[55] But the question remains: if indeed he sustained an injury to his head as he instructed his former attorney to say, why then did he not testify about it himself and instructed his second attorney accordingly and why was it not visible to the magistrate, or recorded on the video cassettes, why did he not mention it in the magistrate's court at any of the various occasions instead telling the court how well he was treated by the police.

[56] This aspect, the purported injury to his head, remains to cast a measure of doubt on his remaining version.

[57] A second but more pertinent doubt about the veracity of his assertions is founded in the following anomaly: A great deal of argument and evidence is devoted to assert that the accused was briefed on just what to tell the magistrate.

[58] The accused testified, and his attorney was evidently instructed accordingly, that the police were dissatisfied with the statement he made to Magistrate Nkonyane, as he then was. That statement does not amount to a confession, as held above. Whereas the accused, according to himself, had no knowledge about the string of murder cases being investigated against him, he testified that the police gave him the names of the victims, which he was then made to copy in his own handwriting, while he was locked up in a police cell.

[59] This list, he says, was made in accordance with what he was obliged to do, under threat of being executed like the " boys at Bhunya". Involuntarily and without his own volition or personal knowledge of the names, places or events, he then copied the details of the deceased persons, as provided to him by the police, on the paper they provided.

[60] This list, he says, was then used by him in order to be able to make a statement, a forced confession to the magistrate, about something which he had no knowledge of. It is on this main

basis that Mr. Mabila argues that the statement cannot be accepted as evidence, that it has to be rejected as inadmissable due to being false, promted by the police under duress and undue influence.

[61] It requires to be recalled that no such challenge was initially levelled against the statement at the time Magistrate Masango testified. Instead, a long list of spurious attacks were limited to procedural aspects which are of no consequence to admissibility. For instance, attorney Howe seemed to have it that formalistic register entries and the production of unspecified documents relating to the accused were of prime importance, challenging the right of the police to bring a person to record a statement. He also queried the absence of a charge sheet at the time the statement was made and thereafter, what was recorded onto the charge sheet itself. The procedural aspects which were mooted as creating a bar against admission of the statement remain relegated to just that — procedural issues, real or imagined, which are of no consequence to the question of admissibility.

[62] The main point which Mr. Howe seemed to want to make, as well as later on by Mr. Mabila, is that they want the accused to have been brought before the magistrate from Matsapha Prison and not from police custody. The factual impression which I get is that both lawyers, without stating it in so many words, want to rely on American jurisprudence termed “the fruit of the poisoned tree”. In this way, the argument and line of cross examination seek to establish that since the accused was brought before Magistrate Masango to record his statement from the custody of the police and not from the custody of Correctional Services, the statement itself is “fruit from the poisoned tree” and hence it must be rejected.

[63] Counsel relies on the tree being poisoned because prior to the date of the statement, the magistrate’s court ordered him to be detained “in custody”, which they argue to by necessity imply that the accused could no longer have been detained by the police at the date he recorded the statement, due to necessary implication that unless it was specifically ordered that he be

detained by the Police, he automatically had to be held in prison by the Correctional Services Department.

[64] What this amounts to, according to the defence argument, is that the police acted irregularly and unlawfully by detaining Simelane in a police cell instead of a prison cell, with the inevitable result that the statement, the “poisoned fruit”, becomes inadmissable.

[65] Whatever the merits and demerits of the place of detention might be, this protracted line of argument misses the essence of the statutory test of admissibility. Section 226 (1) of the Criminal Code states that a confession of the commission of any offence proved by competent evidence to have been made by the person accused of such offence, before or after his apprehension, shall be admissable in evidence against the person who made it provided that it is proved to have been made freely and voluntarily by him, while in his sound and sober senses without having been unduly influenced thereto.

[66] All of the authorities on the admissibility of confessions restate the law in similar and comparable terms. Neither the Act nor the authorities support the argument raised by Mr. Mabila, as initially canivassed by Mr. Howe, to the effect that the statement made before Magistrate Masango must be refused as evidence because of perceived irregularity and tainted with unlawfulness, because the accused came before the magistrate from police custody instead of from the prison. If that was indeed to be accepted, this Court would set an unjustified and unwarranted new precedent, adding an additional requirement for the admissibility of a confession.

[67] The requirements for admissibility have been stated and formulated over many years. It is also formalised in our criminal legislation. It remains that it must be freely and voluntarily made, without undue influence, by a person in his sound and sober senses. Peripheral safeguards to ensure that these requirements are met, are for instance a prior caution to the deponent by a judicial officer that if a statement is recorded, it might be used as evidence against him at his or her trial. It aslo

encompasses the list of questions, in the present case found in printed form on the *pro forma* document which was used by the learned magistrate, to ascertain whether there could perhaps be an impediment against the requirements of admissibility. I find none.

[68] The basis for rejection emanating from the place from which the accused was brought before the magistrate cannot be upheld and elevated to the level where it renders the contents of the statement to be inadmissable.

[69] The further leg on which admissibility is contested has already been alluded to above, namely that the accused was prompted on what to say, given a list of names and details which he had to rewrite and that he merely regurgitated it before the magistrate.

[70] I find it hard to believe that such an important allegation would only surface right at the tail end of such a long trial. Surely the accused would have instructed his initial attorney to

exhaustively ventilate it in cross examination of the investigating officer, Mr. Ndlangamandla. It would have been central, highlighted in its exposure. I am acutely aware that cross examination of Ndlangamandla had not yet been fully completed by the time of his unfortunate demise, but it also did not take its central place when Mavuso, the substitute for Ndlangamandla, was also extensively and minutely cross examined.

[71] This aspect came to the fore when Mavuso was recalled for further examination, after the Crown's case had already been closed, at the time when newly appointed counsel put it to him. The accused repeated it in his own evidence. Yet again, it is repeated that the appropriate time to have embarked on this challenge to the confession would have been prior to its admission on the 29th May 2006. This fiery contention would then have been raised during a trial within a trial, together with all other challenges against its admission. Fact remains that the confession was admitted as duly proven evidence at that

time and that counsel now and belatedly want it to be expunged and disregarded.

[72] For some reason, the Crown did not raise an obvious discrepancy in cross examination of the accused, nor in argument. Nevertheless, it does not follow that the court must disregard it too. If the story of the accused could reasonably possibly be true, namely that he was spoonfed or prompted by the police as to just what he was tell the magistrate about something he did not have any knowledge about, the obvious and normal natural result would be that he would have made use of the list of names copied by himself as provided by the police, because he did not know the victims, in order to convey it accordingly to the magistrate. Otherwise put, the provided list of names would be transformed into his statement. Speculatively, had he used the list when making the statement, it could as well have been attached to the statement, which it was not. In any event, the magistrate did not note it anywhere that the deponent used a list of names, written on four pages of

a “Subordinate Court Evidence Pad”, “SC 27”, which he had with him.

[73] The most obvious discrepancy between the list and the statement is that the former consists of some 31 deceased whereas the latter speeks of 35 deceased. Given the fact that the confession refers to two deceased of which he said he did not recall their names and a further two infants, no serious adverse inference can be drawn from the numbers, *per se.* Strangely though, the list of “names” which the accused says was provided by the police omits the names of some five persons, merely referring to them as “women”.

[74] However, a comparison between the list of names which the accused says he wrote overnight in the police cells from information given to him by the police, and the contents of his statement made to Magistrate Masango, shows a completely different sequence of the names.

If the list had to be used, as he contends, it is most unlikely that a totally different sequence of the names would have resulted. Also, the list does not include some details about the deceased persons, which is part of the details about each person as related to the magistrate. A further difference between the two is that the "list of names" almost invariably include a stated date of death, or over a stated period, while the statement recorded by the magistrate is devoid of that.

[75] One random example is the first name on the list, that of Dumsile Tsabedze, which is the 5th name recorded by the magistrate. The list only reads that she died or was killed at Ngcoseni mountain on the 30th November 1999. To the magistrate he said that she was from the Ncangosini area, and that they stayed together as live-in lovers at Malkerns, that he left with her and that he said that they were going to his parental homestead. They proceeded to Mankayane and at Capha mountain, he strangled her to death with his hands.

[76] The discrepancies between the list of names, under the heading “People who died from my hands” and the contents of the confession are at such odds that I cannot but reject the evidence of the accused as well as the argument supported by it, that it was used in order to be the foundation of the recorded confession, all about something which the accused knew nothing about, and moreover that the contents of the list was given to him by the police, to write with his own hand. A comparison of the two ducuments makes this assertion flimsier with every subsequent reading.

[77] Consequently, this attack on the admissibility of the confession also falls to be rejected as an untruth devoid of any merit. The same applies to the evidence of the accused that he was suffocated (“tubed” in common parlance) at the police staton during interrogation. This allegation was also left to the last minute, to belatedly be “exposed”, instead of being dealt with right from the onset in a mini trial. He also never mentioned a word about it to the different magistrates before which he

appeared. To them all, he repeatedly said how well he was being treated by the police.

[78] The final attack against admission of the confession is said to be that he recorded the statement purely out of fear for his own life. The accused testified that Jomo Mavuso (the late Senior Superintendent of detectives in the Royal Swazi Police) threatened him that unless he confesses to the string of murder charges investigated against him, he would be killed by the police “just like the boys at Bhunya”. According to Simelane, some youngsters mysteriously died at Mankayane Police Station while detained in custody and that he was so scared by this threat that he agreed to do as he was told to do.

[79] Again, if this actually was the version of events which caused him to confess to murders that he did not commit, he most certainty is expected to have told his erstwhile attorney all about it and Mr. Howe would then have requested that a trial within a trial be held . Thereat, he would then have ventilated his instructions and the crown would have been able to call

Jomo Mavuso as witness to deal with such a serious accusation. That this was not done is history.

[80] Instead, most belatedly and after closure of the crown's case, this aspect first came to the fore when his new attorney put the accusation to a recalled witness, detective sergeant Solomon Mavuso, who vigorously denied any such threats having been made to the best of his knowledge. The accused can hardly expect otherwise than that his own evidence of such alleged threats or suffocation be labelled anything else than belated afterthoughts or recent fabrications.

[81] In context, the accused had an inordinately long period of time, almost ten years by now, during which he could reflect on all facets of the case against him. He had about half that amount of time to put his thoughts together before commencement of his trial, more than ample to realise the importance of serious, compelling and real threats to his own life, which caused him to confess to numerous murders which he did not commit. If that was the true position, he would have had the admission of such

a forced, coerced and untrue confession challenged with utmost vigour, right on the first day of the trial when the confession was dealt with. Instead, waiting for a further five years to raise the issue for the first time does not persuade this court to accept it as a reasonable possibility, even if the truth thereof does not also have to be accepted.

[82] To add insult to injury — the untruthfulness of his related evidence about the spoonfed list of names provided by the police which he had to use when confessing to the murders, is equaly devoid of any compunction to abide by a sworn oath, to speak the truth, the whole truth and nothing else than the truth.

[83] It is my considered judgment, concluded after intense and anxious consideration, that all of the attacks against the confession recorded by the late Magistrate Charles Masango and admitted as Exhibit number 2 are unfounded, unjustified and incapable of avoiding it to remain admitted as evidence in the trial. The admissibility thereof has been persuasively

proved and there is no justification to disregard or expunge it from the body of evidence against the accused.

[84] I will soon revert to the contents of the confession, properly so termed, and the significance of the details contained in it. For now, it suffices to state that the contents of the confession in Exhibit 2 actually embodies the case of the crown against the accused. The remainder of the evidence serves to corroborate the crimes confessed to, adding flesh to the bones, so to speak. The evidence *aliunde* details how the different deceased persons went missing whereafter skeletons and bones were discovered by either the police, herd boys, road workers or pointings out by the accused, who also pointed out all of the scenes of the crimes to the police, and the finding and collection of personal possessions of the deceased persons located in the vicinity of their remains and the subsequent identification of possessions as belongings of the deceased by their relatives.

[85] Before dealing with the further evidence which ties in with the confession, two further main obstacles were highlighted by Mr. Mabila and the evidence of the accused himself. The first of these relates to the identity of the deceased *vis – a – vis* the recovered human remains and the other pertains to evidence of pointing out.

[86] DNA profiling or genetic fingerprinting is a technique employed by forensic scientists to assist in the identification of individuals by their respective DNA or hereditary genetic profiles, being encrypted sets of numbers that reflect a person's DNA (Deoxyribonucleic Acid) makeup, which can also be used as the person's genetic identifier. A reference sample of the unknown person is taken, for example from recovered skeletal bones, and compared with samples obtained from biological or blood relatives, using one of various scientific techniques. The scientific comparison between the DNA profiles of the two different samples result in either an almost 100% irrefutable genetic match, i.e. that the two persons are close blood relatives, or that they definitely are not related (Wikipedia).

[87] In this manner, applied to the situation at hand, a sample from recovered skeletal remains of a certain deceased person would have been taken, with the deceased suspected and assumed to have been of specific identity due to the personal belongings recovered from the immediate area. The DNA profile of the deceased would then be compared against the DNA profile of a known immediate blood relative with the scientifically repeatable and provable determination as to whether they indeed are closely related blood relatives, or not.

[88] Such expert and independent evidence would then have been adduced in court in order to prove beyond any doubt that the deceased found at point number X or Y and said to be so and so by her relatives based on conclusions deduced from the personal belongings but possibly open to some measure of doubt, is indeed that specific person who went missing and whose remains were recovered.

[89] The evidence of Detective Senior Superintendent Khethokwakhe Ndlangamandla and substituted by that of

Detective Sergeant Solomon Mavuso is to the effect that the recovered human remains of all the deceased was handed over to forensic scientists for “DNA analysis”. The awaited results of DNA profiling or genetic fingerprinting analysis caused considerable delay in the completion of the investigation. The police officers conveyed the impression that this scientific forensic analysis was central to the investigation process, in order to accurately and uncontrovertably establish the identities of the various deceased persons based on expert DNA evidence.

[90] That none such expert evidence was produced during the course of this protracted trial, which was investigated by a dedicated specialised investigative unit of the police due to the large number of murders attributed to the accused and the emotional stirrings of grief by family members of the many missing women, a media frenzy at the time, all in addition to the seriousness of the matter, is now water which has passed underneath the bridge. The simple fact is that no DNA evidence was presented at the trial and that no relative who

testified said that any specimen body tissue sample such as saliva, blood, hair, nail clippings or whatever for the creating of a DNA profile, has been obtained from him or her.

The bottom line is that by all reckoning, no DNA evidence has ever been sought to be presented at the trial. In this day and age, thirty years after the commercial availability of DNA typing, and with the technique readily available to the public and the Police, the opportunity for conclusive and irrefutable identification of the deceased referred to in the indictment has come and gone, with no delivery.

[91] The argument of Mr. Mabila is that since there is no proof that the remains of human bodies which were found at the various scenes are indeed those alleged in the indictment, the prosecution has not proved its case beyond reasonable doubt and consequently, the accused is entitled to an acquittal. Is this so?

[92] The answer to this line of argument, which so readily could have been dispelled if the investigation was comprehensively conducted, requires consideration of the remaining body of evidence relating to the identity of the deceased victims.

[93] The first aspect is centered on the expert evidence adduced by the prosecution in a futile attempt to overcome the problem of identification. At great expense to the taxpayer, but totally wasteful, the bones of the victims were gathered *in situ,* placed into different and individually marked exhibit bags, preserved in an undetermined place under supervision of undisclosed keepers, without a chain of evidence to prove the integrity of exhibits from the moment of collection untill dealt with. This *lacuna* does not adversely impact on the outcome of the trial since the resultant expert evidence proves nothing.

[94] The crown called Dr. Komma Reddy, the Government Pathologist, and Professor Maryna Steyn, a specialist in physical anthropology. Between these two witnesses, as well as a further expert who did not personally testify but whose

analysis reports were availed to professor Steyn who presented the reports on behalf of the late Dr Susan Hoft, without protestation by defence counsel due to the technical nature of the reports, no headway was made.

[95] The expert evidence of scientific anthropological analysis of the specimens received from the Royal Swazi Police, with each container marked with a specific identifying number, and the results of the analysis, remains uncontroverted. Even so, it takes the matter no further. Also, a most acute deficiency in the presentation of this evidence is the patently and obvious absence of an evidentiary link between the number of the exhibit which contains the report, to tie it in with a specific scene of crime and more importantly, with a specific count *vis a vis* a named deceased. Surely at least this much could have bean expected from the crown. An attempt to link the different reports to the different counts by merely mentioning it from the bar does not suffice.

[96] To illustrate the impreciseness of this lackadaisical approach by the prosecution, I refer merely to the exhibit marked 315/8/69 — a *post mortem* examination report by Dr Komma Reddy (Pw 69 – the police pathologist). In the numbering of the exhibit, the "315" refers to the sequential and cumulative number of the document and the "69" refers to the sequential number of the witness, presently Pw 69, while the "8" in the centre is to reflect the count to which it refers, as was mentioned from the bar by the DPP.

[97] Count 8 in the indictment refers to Fikile Motsa as the deceased and her husband, Simon Motsa (Pw 37) positively identified her at the mortuary. However, the post mortem report, said to relate to count 8, reflects the identity of the deceased as "Fikile Maseko", *prima facie* somebody else. Moreover, the name follows a deletion which was painted over, or Tippexed out.

[98] Such erros are not merely to be brushed off being technical in nature – it is inexcuseable.

[99] Despite the abovestated aspects of general application, there are nevertheless a few exceptions. Mr. Simon Motsa (Pw 37) was the husband of the late Fikile Motsa (count 8) and father of Lindokuhle Motsa (count 9).

[100] After Sergeant Mavuso (Pw 79) recovered three bodies on the 2nd April 2001 at Malkerns and took them to the mortuary at the RFM Hospital in Manzini, Simon Motsa positively identified them as being his wife and child. Motsa testified that he last saw them on the 10th March 2001 when they boarded a bus to Mankayane. He identified the recovered body of his wife by her face and noted some deep cu t wounds on her head, neck and near her ear. Her hands were tied behind her back. He identified his child by from the clothes she still had on, the same as when h e last saw her.

[101] These were the only three deceased victims, as listed in the indictment under counts 8, 9, and 21 who were positively identified *post mortem* by way of direct evidence. Had DNA

evidence been procured, it could have been similar in may other instances, instead of requiring that inferences be drawn.

[102] The closest that any of the anthropological exumination reports cuts to the bone, and even so not rendering expert scientific irrefutable evidence as should have been the case, is found in exhibit 310/35/70. Therein, according to ex parte address from the bar, the DPP informed the court that the report of Professor stayn relates to count 35.

[103] Originally, this report was marked as Malkerns RCCI 12/01, but somebody unknown to the court deteted the printed “12/01” and in blue pen remarked it as “421/01”. Nevertheless, under the heading “Teeth”, it *inter alia* reads that : “The lower right second molar had been lost ante mortem”. Count 35, reflected in the exhibit number as the 35 in 310/35/70 relates to the murder of Lindiwe Nelisiwe Dlamini.

[104] Siphiwe Gina (Pw 64) knew the deceased as her “stepmother, being in love with her son. She testified that, Lindiwe Dlamini

did not have a full set of teeth, missing the bottom right molar tooth. In cross examination she said she does not know which particular bottom right hand tooth she had missing.

[105] When compared to the evidence of Prof. Stayn (Pw 70), it gives strong support for concluding that both speak of one and the same person, but not conclusively or irrebutably so.

[106] The point of this is that it remains lamentable that out of 34 victims mentioned in the indictment, only three identities are positively established by direct evidence (counts 8,9 and 21) and in count 35, there is an increase in the probabilities that indeed the deceased was the person referred to. Scientific DNA evidence so readily could have dispelled all of this aspect.

[107] The third and only other instance of direct evidence as to identification of the deceased is that of Joy Mnisi (Pw 43) and Duduzile Dlamini (Pw 44), respectively the mother and Aunt of Khanyisile Vilane, the deceased in count 21. Both testified that they identified her at the mortuary after her body was

recovered. Their identification evidence was left unchallenged by counsel for the accused.

[108] For some unexplained reason, the Government Pathologist, Dr. Komma Reddy (Pw 69) did not hand in a post mortem report in respect of this deceased, nor did Professor Stuyn (Pw 70) hand in an anthropology report.

[109] Each of the analysis reports prove that the examined human remains is in all instances that of a female person, in some cases an infant, whose race is probably of either negroid or of negroid/mongoloid mixed origin, of indeterminable age but probably within a range of years. Neither identity nor cause of death could be established. What this translates to is that no single individual deceased could be positively indentified *post mortem* by or in the presence of these expert witnesses, nor that the cause of death could be established, even with a measure of uncertainty. Again, it needs to be restated that identity could readily, easily and conclusively have been proved

by way of DNA familial genetic evidence. The expert evidence does not advance the Crown's case any further.

[110] What remains is the evidence of relatives and friends of missing persons, who testified that the recovered personal belongings of the lost ones actually were possessions of their kin and friends. This evidence is in conjunction with the police witnesses who told the court which items were found in the vicinity of recovered human remains or from elsewhere. In addition to this is the evidence relating to pointing out of the various scenes by the accused to which I presently revert, and the evidence of relatives and friends who identified personal belongings in the presence of the accused, who said that at times he assisted them by identifying objects of which they had no knowledge of, as being that of a particular person. In a few instances, photographs of a deceased was proven, in which specific recovered items of clothing is depicted, worn by the specific individual. Also, and crucially so, is the contents of Exhibit 2, the confession recorded by Magistrate Masango.

Therein, the accused stated almost all of the names of the victims who died under his hands.

[111] It is the combination of this, in most of the counts against the accused, which serves to dispel the contention by defence counsel that no alleged deceased person has been positively identified, entitling the accused to an acquittal. Further below, the evidence relating to different counts will be dealt with but in general, even though no individual recovered set of human remains is identifiable through scientific and compelling expert evidence, and even though no other direct evidence as to the identity of any deceased has been adduced by the prosecution, save for the two instances in counts 8 and 9, and perhaps in count 35, the remaining volume of circumstantial evidence is sufficient, in my judgment, to dismiss the contention that the absence of identification of the deceased referred to in all of the charges, justifies a blanket acquittal.

[112] The final leg of argument raised by Mr. Mabila is that the evidence pertaining to various incidents of pointing out by the

accused should also be disregarded. Cut to the bone, the argument is that it was not freely and voluntarily done, mainly due to the absence of a proper caution to the effect that it must not only be freely and voluntarily done, but also that it may be used as evidence against the accused at his trial.

[113] The aspect of free and voluntary pointing out is said to be on the same footing as that which preceded the statement to the magistrate, i.e. that the accused acted under duress, fearing for his life, due to threats made by Mr. Jomo Mavuso that he would “follow the fate” of young men who are said to have mysteriously died in the Bhunya police cells and that he was repeatedly suffocated.

[114] This contention has already been dealt with above, and dismissed. Equally so, it again falls to be rejected as an afterthought. When evidence of pointing out by the accused was presented, this line of attack was not used to challenge it.

[115] The second aspect is that the accused was “tricked” into accompanying the police to the various scenes where he allegedly pointed out where he would have killed who, and that it resulted in the recovery of numerous incriminating pieces of evidence against him. The bone of contention is that he was not appraised of his rights prior to being taken to the scenes, only atferwards to be told that it now is evidence against him and that it was the police who took him to the various scenes of crime, not the other way around.

[116] The evidence of Ndlangamandla, later reiterated by Mavuso, is over-saturated with numerous and repetitive recountings of cautions administered in terms of the Judge’s Rules. Time and again, *ad nauseam,* this court heard the repetition of the cautionary words addressed to the accused by Ndlangamandla, as testified by himself and repeated by Mavuso as having been done in his presence. In each instance preceding a trip to some scene of crime, the caution against self incrimination, free and voluntarily action and that there is no obligation to admit or point out anything, plus that the

consequence of such evidence by conduct could be used against him at his trial was verbally administered. As if that was not enough, the whole episode was yet again repeated upon arrival at the place where the accused told the driver to stop the police vehicle.

[117] To now argue or testify that no, that is not how it happened, instead the accused was taken by the police to the various scenes and not *vice versa,* only afterwards to be informed of the consequences of his action, does not impress me as having any ring of truth to it. The cautionary words addressed to the accused before he embarked on the various pointings out were not mere incantations belatedly spoken by the police — on the contrary, the evidence is that full cautionary administrations preceded all events.

[118] This is repeatedly found in the evidence of the police officers who testified to that effect in court, and left unchallenged. Moreover, the police officers also repeatedly said that as the events occurred, it was captured on video camera recordings.

For now, it suffices to state that when this court viewed the video recordings, to which I revert below, it was abundantly clear that the contention by Mr. Mabila and the statement of the accused that the cautions were administered only after he pointed out, without him being aware of the consequences and with the police leading him to the various scenes instead of him leading the police, are fallacious and devoid of merit.

[119] The video recordings, of which the authenticity and integrity is beyond dispute and common cause, clearly depict the preceding events at the police station where the accused was cautioned, and again cautioned *in situ* upon arrival at the various scenes. It also shows him, even though handcuffed to a policeman throughout, pointing the way to the diverse places, setting the pace, and upon arrival at the places he indicated, without the signs of unfamiliarity with the area as if he was there for the first time, with various items of personal clothing, shoes, *etcetera* being recovered from within the immediate vicinity. More gruesome and startling is the recovery of human skulls and bones which were found at a number of places.

[120] This court cannot but reject the notion that the accused was not the one who took the police to the scenes of crime but instead he was taken there by the police, nor the notion that he was not duly cautioned in terms of the Judge's Rules before going there, but only afterwards.

[121] Evidence of pointing out has the potential to adversely incriminate the person who does so, therefore it must by necessity be approached with caution and circumspection to avoid improper conclusions of fact. Many a criminal conviction has been based almost exclusively on evidence that the accused took the police to a scene of crime where he showed them the incriminating evidence without which he could not have been convicted. The discovery of the evidence is directly as consequence of the conduct of the then suspect, by whose action the discovery was caused. Obviously this could lead to malpractises and hence the cautionary approach to such evidence.

"Now, evidence may be oral or written, or it even may be by signs or gestures. If a man accused of theft leads an investigator to the spot where the stolen property is found, and points to it, that is as much evidence as if he said "There it is". And he cannot be forced to do that "

(per Innes C.J. in R v Camane and Others 1925 AD 570 at 575).

[122]This was confirmed with approval by Grosskopf JA in S v Sheehama 1991 (2) SA 860 when he said (at 875 F – G and 879H –I) that:

"A pointing out is in essence a communication (or declaration) by conduct and as such is a statement of the person who points at something. " ..." In my judgment a pointing out in an applicaticable situation may well be an extra curial admission, and as such it must done under the common law, as confirmed by the tenets of Section

*219A of the Criminal Procedure Act, freely and voluntarily" (*my own translation).

(Section 219A of the South African Act was promulgated in 1979 and it requires that an extra curial admission must be made freely and voluntarily, in confirmation of the common law, in order to make it admissable as evidence – See also S v Yolelo 1981 (1) SA 1002 (A) at 1009C – D and R v Barlin 1926 AD 459 at 462).

[123] In S v Shezi 1985 (3) SA 900 (A) Rabie CJ held at 906 A – B that:

"In the case of a pointing out, the evidence in regard thereto is admitted on the basis that the act done by the accused shows that he has knowledge of the thing or place pointed out, from which knowledge it may be possible, depending on all the facts of the case, to draw an inference as to the accused's guilt. (R v Tebetha 1959

(2) SA 337 (A) at 346 D –E ; S v Tsotsobe and Others 1983 (1) SA 856 (A) at 864 D – E)".

[124] The trickery and chicanery by the police to induce the accused to participate in staged, trumped up mockeries of "evidence gathering" that is alleged by the accused, yet again fails to convince that it might have even just a ring of truth to it. Firstly, this challenge was not levelled against Ndlangamandla nor Mavuso in any significant measure of clarity when they testified. Secondly, the video recordings of the various pointings out by the accused graphically demonstrates the absence of the unfounded allegations. Repeatedly, *ad nauseam,* the accused was comprehensively and unambiguously cautioned by Ndlangamandla in the presence of Mavuso, that he is in no way obliged or compelled to go and point out anything. He was also fully appraised that the consequences of pointing out may well result in evidence that may be used against him at the trial.

[125] Also repetitive were the further comments made by especially Ndlangamandla, and reiterated by Mavuso, that the accused was “very cooperative” and that he voluntarily took the police to all of the scenes of crime. In the process, the police discovered further evidence in the form of human bones and personal belongings, at new scenes which they were unaware of untill it was pointed out to them by the accused.

[126] From the aforegoing, I cannot but reject the contentions that the evidence of pointings out by the accused must be disregarded and not allowed. It would require a blindfolded trier of fact to look at the video recordings of pointings out and conclude that it was anything else than freely and voluntarily done, anteceded by due, proper and comprehensive cautioning.

[127] In the event, as with the confession, it is held that the evidence of pointing out by the accused of diverse scenes as testified, video recorded and viewed by the court during the different inspections *in loco* is admissable and acceptable, further that in almost all instances, to which I revert below, there is sufficient

evidence to prove the identities of relevant deceased persons on a count by count basis. Therefore, the main grounds on which the defence relies to have a blanket dismissal of the case against the accused, due to the inadmissibility and inadequacey of identification evidence, falls by the wayside.

[128] The thirty five counts of murder as set out in the indictment are tabulated hereunder, together with the sequence as contained in the confession, Exhibit 2. For ease of reference further on, the count specific Prosecution Witnesses (PW's) are also listed, excluding omnibus witnesses, such as Prof. Steyn, the investigating officer, magistrates, etcetera.

Count	**Date/Period**	**Place**	**Deceased**	**Confession**	**PW**
1.	5/2/01-25/4/01	Malkerns	Thandi Dlamini	13	4,5,7 10,13,14
2.	5/2/01-25/4/01	Malkerns	Infant Kwanda Khanya	14	4,5,7,10, 13
3.	13/4/01-25/401	Malkerns	Anna Dlamini	Same person as in count 1. Charge withdrawn.	-
4.	5/2/01-23/4/01	Macetjeni	Vosho Dlamini	4	4,5,7,10, 11,66
5.	04/2000-06/2000	Malkerns	Zanele Thwala	19	65

6.	22/01/01-25/4/01	Malkerns	Twana Dlamini	23	3,4,5,7, 11
7.	03/1999-05/2001	Mankayane	Dumsile Tsabedze	5	48,49,50, 71
8.	03/2001-04/4/01	Malkerns	Fikile Motsa	8	37,38
9.	03/2001-04/2001	Malkerns	Lindokuhle Motsa	9	37,38
10.	9/9/99-12/9/99	Ngcoseni (Capha)	Phakamile Vilakati	6	8, 73
11.	20/2/01-25/4/01	Malkerns	Rose Nunn	17	39,40
12.	20/2/01-25/4/01	Malkerns	Infant Nothando Khumalo	18	39,40
13.	16/3/01-25/4/01	Malkerns	Sister Tsabedze	13	55,56,57
14	09/2/01-04/2001	Sidvokodvo	Cindi Ntiwane	16	30
15.	06/10/00-04/2001	Malkerns	Lomcwasho Mbhamali	Nil	53, 54 80
16.	12/04/01-25/04/01	Sidvokodvo	Ntombifuthi Shongwe	Nil	97
17.	03/2001-05/04/01	Sidvokodvo	Nompumelelo Mamba	Nil	78
18.	13/03/00-10/2000	Macetjeni	Ntombi Khumbuzile Ndzimandze/ Mkhwanazi	1	35, 36, 67
19.	21/03/01-25/04/01	Sidvokodvo	Samantha Kgasi	15	26,27,28, 29
20.	(Amended on 14/06/06) 2000-25/04/01	Malkerns	Thembi Kunene	29	19,20,21
21.	03/2000-06/05/00	Khalangilile	Khanyisile Vilane	7 (?)	43,44
22.	11/2000-25/04/01	Malkerns	Thabile Dlamini	27	19,20,21
23.	03/04/01-25/04/01	Malkerns	Sibusane Mlotsa	35	68,51,52

24.	11/2000-25/04/01	Malkerns	Ntombinkulu Maseko	26	13,15,16
25.	19/05/00-25/04/01	Malkerns	Tholakele Simelane	28	41,42
26.	22/03/01-25/04/01	Malkerns	Sizakele Magagula	12	19,23,24, 25
27.	19/12/00-25/04/01	Malkerns	Sizeni Ndlangamandla	30	17,18
28.	09/03/00-25/04/01	Macetjeni	Tengetile Malaza	20	31
29.	15/03/01-25/04/01	Malkerns	Lizzy Makhanya/ Mhlanga	34	58,59,60
30.	07/03/01-25/04/01	Malkerns	Demephi Manana	10	33,34
31.	03/2000-25/04/01	Malkerns	Lungile Gamedze	22	-
32.	12/03/01-25/0401	Malkerns	Fikile Dlamini	21	45,46
33.	02/2000-25/04/01	Malkerns	Siphiwe Magagula	11	32
34.	02/04/01-25/04/01	Macetjeni	Alizinah Sibandze	3	61,62,63
35.	02/2001-25/04/01	Malkerns	Lindiwe Nelisiwe Dlamini	24	64,70

[129] Immediately apparent is that the victims listed in the indictment do not fully correspond to the names stated in the confession. Some counts refer to persons whose identities are not contained in the confession, or where there is initial uncertainty due to omission of the first name, or where the same surname

appears more than once, without a first name. Also, the confession refers to a number of names that do not appear in the indictment. It also refers to victims of which the accused did not remember their names.

[130] It certainly would have been of helpful assistance to also make use of Exhibit 377/79, the list of names referred to above, written by the accused. However, even though it was solicited as court exhibit by defence counsel, it may too readily be construted as a confession, or at least of admissions, that I by necessity regard it as inadmissable insofar as its contents goes, as it contains incriminating evidence against the accused. However it might have originated, fact remains that it does not meet with the requirements pertaining to the admission of a confession. This list, for instance, includes further names which do not also appear in the confession. In my judgment, it would be unfair to use the list in order to add missing details to the confession. Details such as a missing first name can only be inferred when regard is given to the remainder of the body of admitted evidence, and only if it is the one and only reasonable

conclusion to be drawn, to the exclusion of other alternaties. Mainly, this would be limited to omitted first names. The list also includes dates of the various incidences, which are omitted in the confession.

[131] Before turning to the evidence of relatives and others, I reiterate that the real purpose which it is to serve is to provide evidence *aliunde,* to separately prove only the commission of the crimes listed in the indictment, in conjunction with the confession, but not to also prove the guilt of the accused, or that it is he who committed the crimes. Whichever view one takes of a proven and admitted confession, it still remains a self-incriminating statement made by an accused person against himself. Although a confession can form the basis on which a conviction may be founded, the truthfulness of it could still be open to doubt, unless there is some form of a safeguard against an unwarranted finding of guilt, solely on the basis of the confession. Our legislature has captured this inherent warranty under Section 238 (2) of the Criminal Code as aforestated, in the requirement that the provision for conviction on a proven

and admitted confession is subject to the offence, by competent evidence other than such confession, having been proved to have been actually committed.

[132] Restated in different words, it means that even if the accused has confessed to having killed Mrs X by strangling her with his hands to death, out of revenge for having been unjustly convicted and sentenced to prison for committing a crime he believes he has not committed, it nevertheless requires the prosecution to prove independently of the confession that Mrs. X has indeed been killed. Direct or indirect, circumstantially, the offence of murder still has to be proven before a conviction could follow.

[133] In this trial, the secondary evidence in virtually all counts follows the same pattern: The victim was last seen in the company of the accused, or in some instances she left the company of the accused with a different person but still it was the last time she was seen alive, with the accused being present. Thereafter, the person was never to be seen alive again. Later, human

remains were found in remote forested areas, and in the immediate vicinity of the remains, items of clothing and other property were also recovered. When the relatives and friends of the missing persons were shown the recovered personal property which was found near the human remains, they identified the items as having belonged to the missing persons.

[134] It is from these repetitive patterns of evidence that the prosecution seek to establish that the crimes of murder, as confessed to, were actually and indeed committed. Although almost no witness could identify the recovered bones or human remains of any specific person, save for counts 8 and 9 as set out above, the glaring fact sought to be proved is this: A person goes missing, almost invariably to be taken to a new job by the accused. The person is never thereafter again seen alive. When skeletal remains of a female person is discovered, personal items of clothing is found in the immediate vicinity, later identified as property of the missing person, or some pieces of property are directly linked to the accused, such as when he gave it to somebody or where it was recovered form

where he stayed. Each of the scenes where human remains and personal property were recovered, is separated by distances that place each area out of visual contact with another, as observed during the inspections of the scenes *in loco.* Although specific causes of death are not proven by the Crown, each one obviously died, from whatever cause. There is no argument against the fact that the personal property used to belong to a specific and alive person, the same person who was recruited by the accused and who is mentioned by name in his confession.

[135] Therefore, the secondary evidence establishes, in most counts, that inevitable conclusions of fact must be drawn by necessity of reason that the persons to whom the items of clothing etcetera belonged were indeed the persons who were killed at the very same places, with their remains to be found afterwards. It is that evidence which establishes evidence outside the confines of the confession itself that the crimes have indeed been committed.

[136] There has been no suggestion throughout the course of the trial, or scope for concluding so, that the individual deceased all met their death due to natural or other unexplained causes at the places where skeletal human remains were found, loosely based on identification of their belongings. All of these places are situated in remote and inhospitable areas, off the beaten track, on forested and bushed mountainsides or at rocky outcrops and dongas. All of the scenes have been pointed out by the accused to the police, who later in turn took the court to the places. The names and places of residence of most of the victims were given by the accused to a judicial officer when he confessed to the crimes. The recovered belongings of the missing persons, found right at the various places where human remains were left to decompose in the open leaves hardly any doubt as to the identity of the victims, fortified by the aforestated aspects.

[137] According to the evidence adduced by the investigating officers and corroborated by the relatives in their own evidence, there were quite a few instances where the accused not only

acknowledged that the identified items belonged to a specific victim, but also that he himself identified some further items as property of the particular deceased, which the relatives were not aware of.

[138] Mr. Howe raised a valid issue when he cross examined the witnesses who said that they identified personal belongings as being the property of their lost ones. When taken in isolation, his point would have had to be upheld, namely that almost invariably, save for a few isolated instances, the identified personal property of a specific person had nothing especially unique to the item, with the result that it might as well have belonged to a different person. To illustrate this, a pair of shoes or a dress that comes “off the shelf” from a normal plain regular and ordinary shop or chain store in Swaziland could well have been the origin where the particular individual obtained the item. But, it equally could well be so that another person could have purchased an exact some replica of the same pair of shoes or the dress, thereby depriving the item of being unique. The only manner in which such a readily available item

becomes uniquely identifiable is when it undergoes some process which in itself renders it differentiable, such as affixing a special mark or name tag, or being visibly repaired or altered.

[139] Now, only a limited number of exhibited and identified items of personal property, said to have been the possessions of a stated individual person who went missing after accepting offers of employment by the accused, have uniquely identifiable features. For instance, a shoe that has been repaired to the knowledge of the identifying person, who describes the particular repair and is able to point it out, or a person who mended a garment or who has particular knowledge of that repair, can positively state that such item has an aspect of uniqueness, the one and only such item in existence. That would be despite the fact that the item was originally exactly the same as many others, a generic replica.

[140] However, this takes on a different perspective when more and more items are added to the basket, figuratively speaking. Statistically, there is an upward exponential probability which

increases with each further item which is positively identified as being property of the missing relative. By the time that a handful of different items are identified as having been the property of a particular person, the risk of an incorrect finding of fact decreases to the extent that it becomes less and less possible to be held as speculative and possibly wrong. The law of evidence is not based on mathematical models of increasing or decreasing odds. Nor is it an exact science, such as the identification of a particular species or the hereditary genetic fingerprinting of an individual. But the law of evidence is also not blinded by the elevation of a single individual item of property, looking at it in isolation and then to accept that because it is not entirely unique, it might as well have belonged to someone else, while at the same time negating the evidence that a number of other items have also all been identified as belongings of a particular person. At the same time, it needs to be recalled that from each individual scene where human remains were recovered, in the immdiate surrounding area, the recovered items were collected, marked and separately kept,

untill it was availed to the relatives for their perusal and identification.

[141] It follows that when different objects were identified as property of a specific person, the multiplying factor decreases the risk of an incorrect factual finding, based on the cumulative effect of identification, to a level where, in applicable circumstances, it advances it beyond reasonable doubt.

[142] The probative value of this series of events is not to the extent that in itself, it is to prove guilt beyond reasonable doubt, but it serves as evidence to prove that the offences were actually committed, secondary to what the accused has confessed to. Also, in all instances of such identification, the accused was personally present and given the opportunity to challenge the identification of any particular item as being the property of a specific individual. The evidence is that he did not challenge it, moreover that he actually confirmed it, even more so when he referred to some objects as also belonging to the deceased person when the relatives did not recognise it as such.

[143] This extra curial conduct was reaffirmed in open court when the various persons identified and pointed out particular items from the vast number of exhibits before court, as having been property of their lost loved ones. If the accused instructed his lawyer to challenge their identification evidence, it would have been done. Instead, the cross examination was not focussed on challenging this or that particular item as identified by the witnesses, but rather that absences of uniqueness were highlighted, putting it to them that there could be a possibility that a specific item could have belonged to someone else, obtained from the same shop.

[144] In consequence, the defendant's line of attack against some of the identified exhibits boils down to an attempt to create doubt, to relegate that evidence to being akin to speculation. However, as already indicated above, evidence of this nature should not be academically divided into individual small packets and separately be evaluated in isolation. It is rather the comprehensive and cumulative body of evidence which must be looked at in totality, first so with the individual witnesses,

thereafter to look at corroborative evidence and finally at the whole body of evidence, in all of its different facets and aspects.

[145] Nevertheless, the accumulation of a large body of evidence against an accused person does not as such conjure it into evidence beyond a reasonable doubt. The evidence still remains to be assessed in its own right, while at the same time, the controverting evidence adduced by the counterside also has to be put into the scales, for fair measurement.

[146] In the present instance, there is hardly anything that has been put into the scales to upset the already unbalanced equilibrium. The accused himself, who is the sole witness called in defence of the voluminous body of evidence against him, did not even attempt to gainsay the evidence which pertains to identification of personal belongings said to have been the property of lost relatives. Where Mrs. X said that the shoes, skirt, dress, blouse and undergarments or whatever was the personal property of Mrs. Y, that evidence remains uncontroverted. The other side of the coin is that when something has been asserted in a

persuasive manner, and it is not challenged by evidence to the contrary, however slight it may be, the orginal evidence of identification of personal belongings takes on a different hue — it then becomes evidence beyond a reasonable doubt.

[147] In this trial, with the exception of only a few instances as stated below, the identification of personal property which used to belong to missing relatives and either recovered in the immediate areas where the human remains were found or recovered from a place where the accused had taken the police to, it justifies the only reasonable conclusion that can be drawn — the deceased persons are those lost relatives who used to own the personal belongings. It is this body of evidence which proves the commissioning of the individual crimes which the accused confessed to, fortified by himself when he pointed out the different scenes to the Police.

[148] When relatives positively swear to the fact that particular items used to belong to a missing person and it is not gainsayed, such uncontroverted evidence cannot readily be dismissed at a

whim. When multiple objects are identified, so much the more. When it is further shown that the multiple personal belongings were recovered in the immediate vicinity of a human skeleton and amplified by a confession of the accused that the particular person “died at his hands” and when he furthermore confirmed that the items which were identified to have been the property of that person, it becomes very difficult to draw any other conclusion, consistent with the facts, that the accused indeed killed the particular person. This is further suplemented by evidence that the accused pointed the scenes to the police, long after the incidents and in many instances, after the human remains had already been removed from the very same place. The well established patterns of evidence are present in all counts, from the very beginning when the female victims were enticed by the accused to take up employment somewhere.

[149] A key witness in this trial is Detective Sergeant Solomon Mavuso (PW 79). His evidence serves to detail the overall process from the time when reports about missing persons started to escalate, the discovery of human remains in isolated

areas, the collection of evidence which culminated in a firm description of the suspect person, then the events which followed after the arrest of the accused, the confession, pointings out, evidence gathering, the identification processes and ultimately the indictment of the accused. His evidence is voluminious and detailed.

[150] Detective Sergeant Mavuso was belatedly called to testify after the untimely death of Detective Senior Superintendant Khethokwakhe Ndlangamandla (PW 75). Ndlangamandla was the officer in charge of the investigation team while Mavuso was a member of the team, in almost constant presence of his superior officer.

[151] Ndlangamandla was one of the best witnesses to ever testify in this court. His whole demeanour, cool calm and collected, radiated a confidence in the accuracy and veracity of his evidence like few others. He displayed a most remarkable capacity of memory to logically, cronologically and systematically testify as to the events he was called upon to

present in court. He was unfazed by numerous interruptions. He was also subjected to an enormously protracted barrage of cross examination, much of which was entirely irrelevant or which could not advance the matter any further. He was questioned in minute and often times repetitive details.

[152] Mr. Ndlangamandla never lost his patience or displayed any detectable signs of annoyance, arrogance or impatience, giving full and comprehensive responses to everything he was asked. From time to time he asked leave of the court to refresh his memory from notes which he made at the time of the investigative process, which was repeatedly objected to by Mr. Howe. Repeatedly this court did allow memory refreshing, giving *ex tempore* rulings as and when appropriate. Notably, Mr. Howe never proceeded to file a formal written notification, with authorities and examples, to try and persuade the courtto refuse access to notes for memory refreshing, as he more than once said he was going to do. If he did, a comprehensive and detailed fully motivated ruling on the issue would have been made by this court, during the course of the trial.

[153] A main objective of evidence by a witness in court is to convey his or her knowledge of certain events and aspects in a reliable, understandable and accurate manner. It is not a test to determine how many facts a person can recall as such — it is rather the accuracy and reliability of evidence which is of paramount importance to establish credible, truthful and reliable evidence in which a trial court can have faith. Of course memory plays a pivotal role in this process and the role of cross examination, which is an inherent and indispensable method to be a lithmus test of evidence, is to expose cracks and fissures in what otherwise appeared to be solid as a rock. However, in a matter like this where there are 34 different murder charges under consideration, with each individual count having its own unique set of evidence, it would be folly and a travesty of justice to disallow memory refreshing.

[154] The reality is that at each individual scene of crime, various visits were affected and at each instance, important details had to be accurately and reliably conveyed as evidence. To require

a witness to recite from memory at which scene what was recovered, which human skeletal bones and which exhibits were found where and which witness identified which exhibits at the police station is a task of impossibility. The defence counsel was given written details and copies of the notes which were to be used as outline of the evidence and which would also periodically be used to refresh a memory, with leave of the court.

[155] Both Ndlangamandla and Mavuso were regularly castigated by counsel for their need to verify from notes which they personally made during the course of the investigation, the lists of times or places where certain things occurred, in order to accurately convey their evidence. They were also wrongly accused at times of reading from their notes without specific leave of the court when they did not do so. The duration of cross examination of each of these two police officers was as tedious and protracted as it ever could be, bordering on and often going beyond the point of badgering and simply exhausting an exascerbated witness.

[156] Despite this, both police officers never fell for the laborious trap which was being set up for them. Both continued to be courteous, long suffering and consistent. Both left a lasting impression that the evidence which they gave can safely be relied upon as full and accurate renditions of what they came to testify about.

[157] Most unfortunately Mr. Ndlangamandla, who had entered retirement from the Police Service by the time he testified as witness, suffered serious health problems. He regularly had to undergo kidney dialysis in hospital to avoid renal failure. Despite this, his sense of duty prevailed and in cognisance of the importance of his evidence and his sense of duty, he attended court as often as he could and for as long as he could. He could not be present on every day of the wek and could not hold out for full days either.

[158] His untimely demise in a motor vehicle collision preceded the very last few questions which he was to be asked in cross

examination, which by that time should very well have been concluded.

[159] This court has not been formally called upon to order that his evidence be expunged from the record. Counsel seemingly accepted that it would be done *mero motu*. When the full picture of the evidence by Ndlangamandla is viewed, with his voluminous evidence having been extensively subjected to protracted cross examination, never shown to be unreliable, fanciful, concocted or untruthful, and with only an indicated last and final few questions to remain, I am loathe to simply expunge all of his evidence from the record without being asked to do so.

[160] Instead, the view I take is that Sergeant Mavuso admirably stepped into the shoes of his mentor, repeating the gist and minute details of the same body of evidence. He repeatedly stated, for instance, his presence with both Ndlangamandla and the accused when the latter was cautioned in tems of the Judge's Rules. He also accompanied both, together with other

members of the investigative team, to various scenes of crime and pointings out by the accused. By all measures, he actually in fact substituted the evidence of Ndlangamandla, corroborating it fully at the same time.

[161] The comments made in respect of the impressions made by Ndlangamandla are equally applicable to Mavuso. Instead of formally expunging the evidence of Ndlangamandla, deleting it from the record, I rather prefer to simply disregard it for evidentiary purposes, as proof of what he said. Instead, the evidentiary burden of proof now is placed squarely on the shoulders of Mavuso alone, to determine the myriad of facets and facts contained in his own evidence. Therefore, it is only the evidence of Mavuso to which I refer when the facts of the matter are decided.

[162] Due to the most detailed and lengthy extent of the evidence by Sergeant Mavuso, I can not even attempt to summarise it in this judgment. Instead , having heard and seen him in court, having noted and recorded his evidence virtually verbatim in my own

notes, and having given regard to both his evidence in chief and his evidence in cross examination, I hold him to be an honest and reliable witness, whose evidence as recorded can safely be relied upon insofar as it pertains to the factual events he testified about. Below, extracts of Mavuso's evidence, especially in relation to the recovery and discovery of human remains and exhibits in the form of personal possessions, is mostly referred to as "the police evidence".

[163] A majority of witnesses identified photographs of their lost relatives in the course of their evidence and handed it in as exhibits. I fail to appreciate the probative value of this cumbersome and oftentimes emotional evidence. Certainly, photographs would have been most helpful during the course of investigation and in the search for lost relatives. Seemingly , the accused was given sight of the then alleged victims at diverse times when relatives came to identify recovered belongings.

[164] In only one instance, relating to Count 23, the photograph which was proven in evidence also depicted an item of clothing, a yellow T – shirt imprinted with the words “Transship”, as being the same as that which was identified in court. Otherwise, the photographs would only have been necessary evidence if evidence of facial reconstruction was also presented, which was not done.

[165] A witness who identifies a person from a photograph which he or she provided to the police could well be challenged as being self – corroborative, which was not done, but surely some meaningful addition to the body of evidene must result as consequence of such evidence.

[166] Despite all the effort to obtain and prove photographs of the deceased victims and the amount of time spent on getting it admitted as evidence, coupled with the stirring of emotional memories by relatives who testified in court, laboriously paging through photo albums, I do not even refer to it in count specific evidence. Although it holds true to say that a picture is worth a

thousand words, the instant matter did not derive any evidentiary benefit from the numerous photographs.

[167] I now turn to deal with the evidence that relates to the individual counts, which almost invariably follows the same pattern. With evidence of the confession and pointings out already accepted in principle, the quest for the remaining body of evidence is to serve only one purpose, namely to prove the commissioning of the different crimes as confessed to, *aliunde* and independantly. I will therefore not summarise their evidence as comprehensively as would be done otherwise, such as when it was the only avenue to prove guilt.

Counts 1 and 2

[168] The deceased in Count 1, Thandi Dlamini, was the mother of the deceased infant in Count 2, Kwanda Khanya. The family knows the accused well as another daughter, Vosho Dlamini, the deceased in Count 4, was his lover. On the 5th February 2001, Thandi Dlamini and her baby Kwanda Khanya

accompanied the accused as pre-arranged, to take up new employment at Matsapha as promised by him. They were never thereafter again seen alive.

[169] The human remains suspected to be of the two deceased was recovered on the 12th April 2001 in the Malkerns Forest at the Magomini area. Later, the accused took the police to the same place and various items of personal properly were recovered. Further items were also recovered when the accused took the police to the home of another girlfriend, Gugu Dlamini (PW13) at Luyengo, plus further items from his own room at Morolong.

[170] The mother of the deceased, Lombahlu Dlamini (PW 4) and the sister of the deceased in Count 1, Sibongile Dlamini (PW 5) and the sister in law, Busisiwe Dlamini (PW 7), identified numerous of the recovered items as belongings of Thandi Dlamini and her child Kwanda Khanya. These included the clothes that she wore on the day she left with the accused. It also included items of clothing which the accused had left with his girlfriend, which she surrendered to the police and which were also

identified by the relatives as belongings of Thandi Dlamini. Numerous items of the eight month old infant were also positively identified by relatives, in particular by his aunts Sibongile Dlamini (PW 5) and Busisiwe Dlamini (PW 7).

[171] The accused was well known to this family, which also included further relatives who went missing (Counts 4 and 6 below). They positively stated how the accused left with the different deceased at diverse times, corroborating each other. When enquires were made from him as to their welfare, he purported to say that the deceased is well and working hard, unable to yet come home. He also purported to give groceries to her sister, Sibongile Dlamini (PW 5) saying that it was sent by Thandi Dlamini, the deceased. The meeting between these two was confirmed by a schoolfriend of Sibongile Dlamini, Nelisiwe Mamba (PW 6).

[172] The accused challenged the evidence that he was the last person to be seen with the late Thandi Dlamini and her child Kwanda Khanya, as well as their relatives which feature in

other counts. Mr Simelane said that Sibusiso Dlamini (PW 10) who testified that two weeks after the departure of the deceased and her child, he enquired about their whereabouts from the accused, then followed the given directions to no avail, should not be believed. Instead, that he was not obliged to give an explanation to Sibusiso and also, that he did not need to take him to Thandi.

[173] All of this evidence is focussed on peripheral issues that do not alter the essence of the case against the accused. It is accepted in favour of the accused that he indeed had no obligation to assist Sibusiso Dlamini to contact the women, and that if he told him she had gained weight and changed the colour of her complexion for the better, it still does not impact on the case. Even to the extent that one Sipho Dlamini might have taken the deceased somewhere else after Simelane was last seen with them, it still does not alter the matter.

[174] The case of the prosecution does not rest upon a supposition that whoever was last seen with the missing relatives, is by any indication also responsible for their deaths. Whoever the

mythical Sipho Dlamini might have been, even real and not imagined, there is no such person who confessed to having murdered the victims and the accused did not say so either when he confessed to the crimes. There is no evidence anywhere to conclude that the accused was not alone with his victims when he killed them.

[175] It must also be recalled that during the course of the investigation, the accused provided undisclosed names of possible co-perpetrators to the police on two different occasions. The police got hold of the first set of such people and after thoroughly investigating their possible association with the accused, they were released after it was found that they had no involvement at all. The second set of mooted accomplices could not be located. The police evidence condenses to the conclusion that nobody had any association with the accused in any of the crimes he came to be prosecuted for. The police thus concluded that there was no accomplice or partner in crime and that it was merely a ruse during the coruse

of investigation that the accused employed to detract the attention away from himself.

[176] In his own evidence, the accused did not try to shift any blame on somebody else, who might have committed the crimes he came to be prosecuted for. The mention of one Sipho Dlamini, who by necessity must be accepted as having had some association with the accused, cannot suffice to be elevated to the level of the confessed conduct of the accused. He repeatedly stated that he himself killed the victims, not that he was assisted by anyone else to do so.

[177] It might very well have been that one Sipho Dlamini took the late Thandi Dlamini and her child, as well as others whom the accused equally stated to have been taken further by Dlamini, but yet again, it does not serve the purpose of also inferring that Sipho Dlamini was somehow also responsible for their deaths. Nor did the accused blame him for that. For all we know, the deceased persons might as well have been accompanied by further unknown persons after having left the accused,

accompanied by Sipho. It does not matter. What does matter is that the accused instigated the missing persons, enticed by offers of employment, to leave home and hearth for green pastures, never again to be seen thereafter. After discovery of their remains, the accused confessed to the magistrate that : "There was one Thandi Dlamini who was with her child. She was from St Philips and was my sister-in-law. I also promised her work. I got to her homestead and told her to come to Manzini where we will meet. We met at Manzini and we left for Malkerns area. When we got to the Bhunya Forest, I killed her and the child by strangling them with my hands to death".

[178] This imputes no blame on Sipho Dlamini or anyone else. The uncontroverted evidence is that Thandi Dlamini and her baby were indeed his "in-laws", with him being the live-in lover of another woman of the same household, who followed the same fate. The numerous recovered and identified items of both victims leave no doubt that both were actually killed, independantly corroborating the crimes confessed to.

[179] In the result, I hold that the Crown has proven the guilt of the accused beyond reasonable doubt in respect of counts one and two.

Ad Count 3 : Withdrawn by the prosecution prior to plea, due to duplication of identities of the deceased person also referred to in Count 1.

Count 4

[180] Vosho Dlamini was referred to by the accused as his girlfriend of over a year, with a very serious relationship between them, not just a casual encounter. He said that he proposed marriage to her and that they wanted to build a home together, even discussing it with her parents, who in turn wanted to make sure that she made him aware of her previous disastrous marriage.

[181] This is in harmony with the evidence adduced by the relatives of the late Vosho Dlamini, who in line with the regular pattern also fell for the ruse of employment offered to her by the

accused. The only real difference is that he said the women asked him to secure employment and not the other way around, but what remains is that inevitably, he got the women to leave for employment secured by him for them. In this instance, the mother of the deceased, Lumbahlo Dlamini (PW 4) said that the arrangement for work was what caused her daughter to leave, never to be seen again.

[182] When she heard reports of human remains having been found, she sent Bhekumusa Ngcamphalala (PW 14) to the police station at Malkerns, where he recognised and later formally identified property of Vosho Dlamini as well as items belonging to other relatives, such as the deceased in counts one and two.

[183] Sibongile Dlamini (PW 5), a sister of the deceased in this count, also knew the accused from prior encounters and she also identified a number of personal belongings of the deceased. Another sister of the deceaased, Busisiwe Dlamini (PW 7) confirmed the identification of recovered items as belongings of the late Vosho Dlamini at the Malkerns Police Station. In

particular, she recognised the clothes which the deceased wore on the day she was last seen, being in the presence of the accused, before boarding a bus to take her towards the new place of employment.

[184] Sibusiso Dlamini (PW 10) confirms this, having been present with both accused and deceased as she boarded the bus. He also lends credence to the evidence of the accused, who said that he remained behind when the deceased left by bus from Siphofaneni to Manzini. As already stated, the case against the accused does not depend on any evidence as to whether or not the accused was last seen in the presence of a person who thereafter went missing. What is relevant and decisive is the confession of the accused wherein he stated that with regards to Vosho Dlamini : "Then there was Vosho Dlamini who was my girlfriend from St Philips. I also went with her to Macetjeni where I strangled her with my hands untill she died".

[185] From the collective body of evidence the only conclusion that can properly be drawn is that the Crown has proven the guilt of the accused beyond reasonable doubt in Count 4.

Count 5

[186] Zanele Thwala, the deceased in this count, was said to be another lover of the accused, who not only shared her bed and rented flat with him but whose advanced pregnancy alledgedly was to render him the father. The sister of the deceased, Ntombi Thwala (PW 65) knew the accused well as a result of this relationship.

[187] This witness fell sick and left her nearby flat to go home, leaving the accused, her sister and the sister's child at their Malkerns rented rooms. The sister thereafter came to the parental home, reporting that she was on her way to work — secured by her lover David Simelane— the last time she saw the deceased. When the deceased failed to return as promised, this witness went to look for her at the Malkerns flat

but was reportedly told that they had moved elsewhere, to Luyengo. When she could not locate her sister at the reported new area, she reported her as missing to the police.

[188] When she later heard announcements calling on people who lost their relatives, she went to the Malkerns police station where she found the accused under police custody. She then identified a large number number of recovered items as property of her missing sister and further testified that the accused assisted her by also pointing at some napkins and a travelling case which was for her sister's child. The accused was said to have also assisted her in the identification of other items, by confirming that he gave it to her sister. In all, some fourty four recovered exhibits were positively identified by her as having belonged to Zanele Thwala, the deceased in Count 5.

[189] Many of the recovered items were collected by the police from the home of Kate Mabuza, another girlfriend of the accused, in the presence of the accused. Sergeant Mavuso (PW 79) who

confirmed the same evidence as testified by Ndlangamandla (PW 74, now deceased) said that having been duly cautioned, the accused volunteered to take them to Kate Mabuza's flat at Luyengo where the accused gave them the items. These were later identified as property of Zanele Thwala by her sister, Ntombi Thwala.

[190] From the evidence of her sister, corroborated by Sergeant Mavuso, it is thus shown that the accused got hold of many items which belonged to the late Zanele Thwala and took them to the flat of Kate Mabuza, from where it was later recovered when he pointed it out to the police. In addition, there were the many other items which were recovered in the forest, near the remains of human bones. When taken in conjunction with the confession of the accused, where he said that : "Zanele Thwala of Mambane area who was my live-in lover. We stayed at Luyengo. We left Luyengo to Malkerns. We were just walking around untill we got to the Bhunya Forest where I strangled her with my hands untill she died", there remains no reasonable doubt that the accused also murdered this victim.

Count 6

[191] Twana Dlamini, the deceased in Count 6, was the sister of Vosho and Thandi Dlamini, the deceased in Counts 1 and 4. A further sister, Sibongile Gcinile Dlamini (PW 5), testified that the accused also took Twana away from home to where he had found a job for her, as he also did in the case of the other two sisters. She knew the accused well, having known him as lover of her other sister, Vosho. He also came to visit her on three occasions at her school, where he gave her groceries, money and purported regards from her missing sister. These two steps sisters had different mothers.

[192] Sibongile Dlamini identified diverse items which belonged to her sisters and the infant referred to in counts 1, 2 and 4 and also items of clothing, shoes, and a handbag which used to belong to Twana.

[193] Eldah Dlamini (PW 3) also last saw the deceased, Twana Dlamini, early in the year 2000 when she departed with the accused on her way to a new job that he promised to take her to. This relative also never saw her again but later recognised and identified personal items of Twana at the police station. These items correspond with the identification by Sibongile Dlamini (PW 5).

[194] Lombako Dlamini (PW 4), an aunt of Twana, also identified two items as having been her personal property. These two items again correspond with the items as identified by the previous two witnesses.

[195] A further sister of the deceased, Phumlile Dlamini (PW 11) confirmed that she had also identified the property of Twana, all of the items also identified by PW 3 and 5. She further testified that while at the police station, the accused told her that she missed to also identify a certain jersey, which he told her to have belonged to Twana.

[196] The identified property of Twana was recovered at Sappi forest near Malkerns by the police on the 29th April 2001. The recovered human remains which was found in the vicinity of the personal property was not positively identified by any direct evidence but the personal items which were positively and separately identified by the relevant witnesses leaves no doubt that the former owner, Twana Dlamini, was killed in the immediate vicinity of where the items were found, thus proving the commission of the offence of murder independantly from the confession of the accused. The accused said that Twana Dlamini was from St. Philips, as all relevant witness also stated. He added: "I promised her a job and I told her to meet me at Manzini bus rank. She came and we met. I then proceeded with her to Malkerns where I strangled her with my hands to death".

[197] The combination of evidence in this count, with nothing to gainsay it save for a bare blanket denial of wrongdoing in any of the multitude of charges, culminates in a finding that in Count 6,

the Crown has also established the guilt of the accused beyond reasonable doubt.

Count 7

[198] The landlady of the rented flat that the accused and the deceased in this count shared, Thoko Goodness Dlamini (PW 48) testified that in the year 1999, they left without a word. However, some of their belongings were left behind and she kept it in a room. Thereafter, she again saw the accused from time to time, concluding that he might have gone to stay at a Dunn (see count 11) homestead nearby. She did not ask him for rent as he used to pay up to four months in advance. The lady who lived with the accused was Dumsile Tsabedze, the deceased in this count, whom she never again saw after their departure.

[199] After the arrest of the accused, he took the police to his former rented flat and pointed to two items in the storage room as being property of the deceased (a stove and suitcase), in the

presence of his former landlady. She was quite talkative but the essence of her evidence creates a link between the accused and the deceased.

[200] She further identified some four items of clothing and a watch as property of the deceased but the manner of identification thereof was not entirely convincing and cannot by itself be reliable enough without corroboration.

[201] Corroboration of the identification came from the evidence of her sister Winile Tsabedze (PW 49) who confirmed it, except that she did not also indicate the wrist watch in court although she referred to it. She also identified a further number of personal items as being property of her late sister, but made no reference to the stove and suitcase which was recovered from the flat where the accused and deceased used to stay.

[202] The sister also corroborated the evidence of the landlady insofar as that the two used to live together as lovers. She further said that after the disappearance of her sister, the

accused, whom she regularly saw, explained that she was “held up somewhere”. She further stated that she herself was offered employment in the Police Service by the accused but she did not also say that her sister was enticed likewise.

[203] When their mother died and the deceased did not respond to a broadcasted call to attend the funeral, they feared for her death. This was confirmed to her at Malkerns police station when she again saw the accused. He told her aunt that he buried some items of the deceased and burned some more after he confirmed that he killed her. The second part of his statement wherein he is quoted as saying that he killed her mother is not admitted as evidence to prove that fact.

[204] The brother of these sisters, Siboniso Tsabedze (PW 50) testified that he last saw the deceased in mid November 1999. He asked her lover, the accused who lived with her, as to the whereabouts of his sister and was told that she moved to Manzini. He again asked him thereafter to keep a lookout for her, and he continued his search for the missing sister in vain.

He also could not locate the accused again. When he eventually found the accused and insisted that he accompany him to her, he somehow made up a story of first having to go elsewhere, but gave him busfare and instructions to wait for him. The accused did not show up at the arranged rendezvous. The next time he saw the accused was at the police station, where he informed them that he killed their sister and burnt or buried some of her belongings.

[205] To link the recovered and identified items of property which belonged to the deceased and her death, the Crown adduced evidence to the effect that a body was found on Capha Mountain near Mankayane by herdboys. They reported it to Alfred Sibandze (PW 71) who in turn took the police to the scene where the human remains were collected.

[206] On the 25th May 2001 the accused took the police to the same scene where he pointed at the place where the remains and some four items had been recovered.

[207] The extraneous evidence on which the Crown relies to prove that this offence actually has been committed is on all fours with the contents of the confession wherein the accused said that: "Then there was Dumsile Tsabedze from Ncangozini area with whom we stayed together. She was my live-in lover. I left with her and told her that we were going to my parental homestead. We used to stay together at Malkerns. We left and proceeded to Mankayane. When we got to Capha mountain, I strangled her to death with my hands".

[208] With nothing to controvert this apart from a general distancing by the accused from any wrongdoing anywhere, the end result inevitably is that the guilt of the accused in Count 7 has also been proven beyond a reasonable measure of doubt.

Counts 8 and 9

[209] Fikile Motsa and her one year old baby Lindokuhle Motsa were last seen alive by their husband and father, Simon Motsa (PW 37) on the 18th March 2001. He accompanied them to a bus

stop at Logoba from where they set off to their home area at Mankayane. He described the clothes that they wore at the time in some detail.

[210] Soon thereafter, on the 2nd April 2001 the police recovered their dead bodies at Malkerns, near Eagles Nest farm, in close proximity to each other. By then, Mr. Motsa had already reported to the police that his wife and child disappeared. From the information and descriptions of their clothes the police put two and two together and went to fetch Mr. Motsa, and took him to mortuary at Nazarene Hospital in Manzini.

[211] The tragedy of the situation was clearly conveyed by the obvious grief of the father who then identified his baby and wife at the mortuary. He positively did this from facial and bodily features as well as the few items of clothing which were together with his baby daughter. He also noted that his wife had some open injuries on the head and that her hands were tied behind her back.

[212] Thoko Simelane (PW 38), who is the Mother of Fikile Motsa and grandmother of Lindokuhle Motsa, jointly reported their disappearance to the police when she searched in vain wherever she could. Her fear that her daughter would not just have walked away from her husband was confirmed when she also went to the mortuary. She confirmed the evidence of her son in law (PW 37) in all aspects of identification of the two deceased.

[213] In this instance, there is no secondary evidence of any involvement by the accused at the time of their disappearance, such as the usual job offers. There is no doubt about the identies of the two deceased, whose bodies were recovered by the police near Eagles Nest farm in Malkerns, an area where numerous human remains were found in the thick forests. By itself and in isolation, it would merely have remained an unsolved murder, committed by an unknown person.

[214] However, the matter does not end there. After the accused person was arrested, not very long after these two bodies were

recovered, he confessed to a judicial officer in the following words : "Then there was Fikile Motsa from Sidwala area. She was with her child who was one year or just above one year old. I found her at Manzini bus rank. She said she was looking for work. I promised her work and we left Manzini to Malkerns. We got to Golden area where I killed her and the child by strangling them with my hands". These chilling words provide the answer as to how the mother and her baby ended up dead in Malkerns instead of reaching their original destination in Mankayane.

[215] With the accused having confessed to their murders and with evidence *aliunde* outside the confines of the confession to prove the commission of the crime, with no evidence to suggest any other alternative, I hold that the Crown has established the guilt of the accused beyond reasonable doubt in both Counts 8 and 9.

Count 10

[216] Phakamile Vilakati, the deceased in this count, was last seen alive by a witness when she left home in 1999. As so many other women, she was offered a job, but the man who made the offer to her was not named by her sister, Philile Vilakati (PW 8). This sister remembered what clothes she wore on the day she left and testified that she again recognised the same clothes with the exception of her skirt when the police showed it to her in the year 2001.

[217] From these recovered items of clothing, in combination with each other, she positively concluded that it belonged to her late sister, Phakamile Vilakati, who had not been seen or heard of since the day she left home in 1999. In cross examination, this evidence was not disputed. To the contrary, she said that the accused, who was present at the police station, confirmed that the identified clothes indeed belonged to Phakamile, the deceased.

[218] The body of the deceased was discovered in the Capha Mountain by some herdboys on the 6th October 1999. The clothing which the sister of the deceased recognised as property of the deceased was found in the immediate area of the human remains. Detective Sergeant Gladman Mlipa (PW 73) was stationed at the nearby Mankayane Police Station at the time of the discovery. He went to the scene and observed the decomposing body of a deceased female laying face down in a ditch. Nearby were some items of clothing. The recovered items of clothing are the some as those identified by the sister of the deceased.

[219] After the accused was arrested a year and a half later, he took the police to the same place at Capha Mountain where he showed them where he had left the deceased. Moreover, he confessed to the late Magistrate Masango that : " There was another one from Kukhulumeni in Mankayane area whose surname was Vilakati. I went with her after I had promised her work. I got with her to Capha where I strangled her to death with my hands".

[220] Although the confession does not include a first name, it is the only Vilakati he mentioned. Also, the further details of where she came from and where he said he killed her, together with the evidence of her sister who identified the clothing found on the scene as that of Phakamile Vilakati, leaves no room to conclude anything else than that the Crown has proven the guilt of the accused sufficiently to sustain a conviction in Count 10.

Counts 11 and 12

[221] Rose Nunn and her thirteen month old baby Nothando Khumalo left home for the Social Welfare offices on the 20th February 2001. Later that day, her live-in lover Mbongeni Mlotsa (PW 39) again saw them, this time not at home but at the welfare offices. He described the clothes they wore that day, having seen it twice. Little did he know when that when they again parted company, that it would be the last time he was ever to see them alive.

[222]They did not come home as expected that afternoon. He reported their disappearance at her parental homestead which was next to their home in Manzini, but nothing happed for a month. He was then contacted by the police at Matsapha police station, his worst suspicions were aroused when he heard the reaction to a photo which he had of Rose Nunn, the deceased person referred to in Count 11. This was confirmed when he was then taken to Malkerns police station, where he identified the clothing worn by Rose and her child Nothando Khumalo, the deceased infant referred to in Count 12. Between him and Mary Nunn (PW 40), a sister of Rose, who was also at the police station, they each identified a dozen items of clothing as being property of his girlfriend and her child.

[223] The sister of the deceased, Mary Nunn, confirmed the relationship as stated by Mlotsa and the events at the police station. She could only identify two specific items of clothing as having belonged to her sister and conceded that they had no unique features. However, when the accused who was also present at the police station when they identified the belongings

of the two deceased came to know who she was, he remarked that she closely resembled the appearance of her sister, Rose Nunn. This was left unchallenged.

[224] The bodily remains of these two deceased persons were found by the police in the Sappi forests near Malkerns prior to the arrest of the accused. Afterwards, when he took the police to some scenes of crimes on the 25th April 2001, he pointed out where these two victims were killed. At the scene which he pointed out, the dozen of exhibits were recovered, thereafter to be identified as having been possessions of the two deceased.

[225] From this evidence, I am satisfied that it proves the deaths of both Rose Nunn and her baby Nothando Khumalo. Separately from the comment by the accused that Rose and her sister Mary looked alike, which proves nothing, there is the evidence of Magistrate Masango who testified that the accused confessed the following to him:-

"There was another one Num (sic) by surname whom I found at the same park next to City Council Offices at Manzini City.

She had a child with her of about eighteen to twenty two months. She was looking for a job and I promised her one. We left for Malkerns and when we got to the forest, I strangled her to death, with her child, with my own hands".

[226] The spelling and sound of Num and Nunn are so similar that it is of no consequence. Nor is the omission of a first name, since the uniqueness of the surname, coupled with the presence of the infant, leaves no room for uncertainty of who the accused in fact referred to.

[227] There is no gainsaying evidence to counter the positive identification of the combination of items, recovered where the human remains were found, as being erstwhile possessions of the two deceased, nor any other evidence which could serve to create doubt. In the result I hold that the Crown has discharged its evidentiary onus to prove the guilt of the accused beyond reasonable doubt in both Counts 11 and 12.

Count 13

[228] Sanele Tsabedze (PW 55) testified that she last saw her daughter, Sister Tsabedze, the deceased mentioned in count 13, on the 14th March 2001 when she left home. She described the clothing worn by her daughter on the last day she saw her alive. The deceased did not return home when expected and her mother made enquiries, which confirmed to her that she reached her destination. However, the deceased was reported to have left elsewhere with a man who promised her employment. In court, she identified two items of clothing as having been worn by her daughter when she last saw her and adamantly insisted on them being unique but without a foundation to support her contentions.

[229] The sister of the deceased, Tjengisile Tsabedze (PW 56) confirmed the arrival of the deceased at her destination, where she spent the night. She also noted the clothes worn by Sister Tsabedze and gave a fairly similar though not identical description as the mother. When Sister Tsabedze left the

following morning, she was never to be seen again. Contrary to the mother's evidence , Tjengisile omitted any mention of a man who would have taken her sister with him, on the strength of a promise to get her a job. In cross examination, she said when she saw the accused at the police station when she went there to identify property that might have belonged to the deceased, the accused was a stranger to her, her first time to see him.

[230] She maintained that when the items of property that belonged to the deceased were identified by her relatives, the accused spontaneously confirmed it to have belonged to Sister Tsabedze, "the last person from Malindza", which she said she understood to mean "the last person he killed from Malindza". These stated remarks were denied to have been said when she was cross examined, but she would hear none of that. She also said that after they identified the items as belongings of Sister Tsabedze, the accused confirmed that it was sister's clothing and that he said he knew her sister. Ultimatly, the accused did not testify to substantiate the instructed version

which was put to this witness, nor did he deny or dispute her evidence.

[231] She identified a “skipper” and sandals as property of her sister, the same items as identified by the mother of the deceased. Contrary to the position with the mother of the deceased, the accused’s attorney did not raise any issue as to potential absence of uniqueness regaring the identified sandals and “skipper”.

[232] Rejoice Tsabedze (PW 57) also testified in this count, saying that as sister in law of the deceaased, she was involved in the events at the police station when they were called in after having reported Sister Tsabedze as missing. After they identified a skipper and shoes as having belonged to Sister Tsabedze, the accused who was present then spoke and said “The clothes belong to Sister, the last person I dealt with at Malindza”, thus echoing the evidence of Tjengisile Tsabedze (PW 56). Her evidence, like that of Tjengisile, is that the accused spontaneously confirmed the identified items as

having belonged to Sister, likewise with his remarks about her being the last person he “dealt with at Malindza”.

[233] All three relatives of Sister Tsabedze were rigorously cross examined by attorney Howe. None of them were shown to have been conniving, untruthful or speculative. Although their individual impressions could leave some scope for better showings, there is no reason to reject their evidence that the items they identified were property of the late Sister Tsabedze. If there was reason to suspect that the small number of objects could as well have belonged to somebody else, not having been clearly shown to have unique properties, the risk of an incorrect factual finding is dispelled by the comments made by the accused. He confirmed to them that the items indeed belonged to Sister Tsabedze, as they also claimed.

[234] The further remarks attributed to the accused, pertaining to sister Tsabedze having been the last person he would have dealt with at Malindza, might well have been made freely and voluntarily, as they testified. But there is no basis on which this

court can hold that it passes the admission requirements for acceptance thereof on the merits and accordingly it shall be disregarded, unlike the admission that their identification was correct.

[235] The identified items of personal property were recovered on the 29th April 2001 when the accused voluntarily pointed out the scene of crime to them. The exhibits were found in the very same place where the police found the body of the deceased on the 12th April 2001, prior to the arrest of the accused, in the SAPPI forests near Malkerns.

[236] In his confession, the accused stated that " There was another one who stayed at Matsapha but was from Malindza area. Her surname was Tsabedze. I found her at Manzini bus rank looking for a job. I promised her one and we proceeded to Malkerns. I went with her to the Bhunya forest where I strangled and stabbed her to death".

[237] When all of the evidence relating to this count is considered, I conclude that in the absence of any evidence by the accused to counter the evidence adverse to him or anything to render it suspect or unreliable, the prosecution proved his guilt beyong reasonable doubt, with nothing being consistent with his possible innocence.

Count 14

[238] Mr. Robert Vusi Dlamini (PW 30) is one of the more impressive witnesses heard by this court for quite some time. Civil, reliable, credible and persuasive are all suitable adjectives which adequately qualify him as a single witness in this count who carries the day. He was the husband of the deceased in Count 14, the late Cindi Ntiwane.

[239] He testified that before she left for work in the morning of the 9th February 2001, she reminded him about somebody who owed her E4000 which she had a difficulty in recovering. He noted the clothes she wore, including a gold coloured quartz watch

which he had previously repaired for her. When she did not return home as expected, he became anxious when finding her cellphone said to be switched off and contacted her parents. They reported adversely, that she was not there. He then called his other relatives to join in searching for her, all to no avail.

[240] Having reported her as missing and having heard reports about human skeletons found by the police, his worst nightmare came true when he was called to the Malkerns police station and heard that his wife was one of the recovered deceased persons. He then identified the dress and T-shirt as well as the watch which his wife wore on the day of her disappearance.

[241] The police evidence was that the accused pointed out the human remains of the deceased at Nkonyeni Farm at Sidvokodvo when he voluntarily took them to the scene and on a subsequent visit at the same place, on the 4th June 2001, he pointed out the recovered clothing, which was later identified as being the property of the late deceased, Cindi Ntiwane. The

wrist watch was separately recovered from the rented flat of the accused at Luyengo on the 29th April 2001.

[242] In his confession, the accused said: " These was one Sindi (sic) Ntiwane who told me that she was from Mbabane City. I found her at the park next to the City Council offices and I promised to borrow (sic) her money. I left with her and when we got to the forest at Malkerns (sic) I strangled her to death with my hands".

[243] The patently obvious discrepancy is that the confession places the scene of crime to have been at Malkerns forests, whereas the evidence places it at Sidvokodvo. No argument has been advanced on this aspect by either counsel or addressed by the accused. I do not think that it would be justifiable to reject either of the two versions simply because they differ in this one aspect.

[244] The evidence which pertains to the recovery of the human remains at Sidvokodvo, coupled with the subsquent recovery of

the clothing at the same place, leaves no doubt as to where Cindi Ntiwane met her death. This was also confirmed during the inspection *in loco* on the 30th June 2009. At Nkonyeni Farm near Sidvokodvo, the court was shown what was said to be place where the remains of Cindi Ntiwane was pointed out to the police by the accused. This most certainty was not anywhere near Malkerns forests.

[245] The exact place where the accused confessed to having killed Cindi Ntiwane is not of such importance that in my judgment, it should result in an unjustifiable acquittal. The all important fact is whether he indeed killed her, whether at Nkonyeni or Malkerns. He might as well have made a mistake when he stated that it was at Malkerns instead of Sidvokodvo/Nkonyeni. In the event, it is held that the accused killed her at Nkonyeni, near Sidvokodvo, as was proven by the evidence and not at Malkerns as he told the magistrate.

[246] The accused adduced no evidence to raise the place of death as an issue in dispute, nor did he do anything else to cast doubt

about the veracity of the evidence against him in this count. Accordingly, I hold that the Crown has established beyond reasonable doubt that the accused is responsible for the murder of Cindi Ntiwane, committed between the 9th February and April 2001 at Sidvokodvo, as charged in count 14.

Counts 15, 16 and 17

[247] The deceased persons referred to in each of Counts 15,16 and 17 are respectively Lomcwasho Mbhamali, Ntombifuthi Shongwe and Nompumelelo Mamba. In each of these three counts their relatives testified that they disappeared at diverse times, never to be seen alive again.

[248] Following reporting to the police that they were missing, relatives were called to the police station and were shown exhibits which were recovered, in the vicinities of the areas where human remains were recovered either discovered as a result of pointing out by the accused at NKonyeni (Counts 16 and 17) or found by the police in the Malkerns forest.

[250] In each instance, the relatives identified either a few or a single item, stated to have been possessions of their missing relatives. However, unlike as is the position in the other counts, the accused did not confess to having killed any of them. Even though it could possibly be assumed that the accused was somehow connected to their deaths, arising from him having pointed out their remains (in counts 16 and 17 at Sidvokodvo) it does not by necessity also follow that he killed them, as the only reasonable conclusion that may be drawn from the proven facts. There also remains equally possible other conclusions of fact which may be drawn, but which are consistent with innocence and not guilt.

[251] A strong suspicion vests in the accused, that he might very well have also killed these people, but the available evidence, devoid of a confession that he indeed did kill these three, must by necessity lead to the inescapable and only conclusion that his guilt has not been proven in respect of counts 15, 16 and 17 beyond a reasonable doubt, since doubt must necessarily

accrue to the accused. A suspicion of guilt, however reasonable under the circumstances, does not suffice to justify a conviction of murder in any of these three counts.

Count 18

[252] Having told her mother (Sibongile Nsimandze, PW 36) the previous evening that she was about to leave home in order to take up new employment which was secured for her, Ntombi Khumbuzile Ndzimandze, the deceased person referred to in count 18, set off in the morning for her new job. Her mother never saw her again, since she did not return home that evening or anytime afterwards.

[253] Her mother reported her as missing to the police, who in turn called her to come in and she was given the opportunity to see if she could recognise any property as belonging to her child, from what they had at the police station. She identified a pair of shoes which actually belonged to herself but which her daughter, the deceased, had with her when she left home.

She pointed at a unique feature of the left side shoe, which had been repaired by re-stitching of its strap. This feature was viewed by the court.

[254] The boyfriend of Ntombi deceased testified that the deceased, who hailed from Ntondozi area, told him of a job secured for her at a certain garage in Manzini by one Phepisa Yende. At some stage he found the deceased with two men one of them said to be Yende. Thereafter his girlfriend disappeared, and could not be found at the garage, as reported to him by her brother. In court, he pointed at the accused in the dock, stating him to be Phepisa Yende.

[255] I am not persuaded that the identification of the accused in the dock constitutes conclusive proof that he and Yende are one and the same person. I am also not inclined to hold that the accused held himself out to be Phepisa Yende, or that someone else did so on his behalf. The opportunities for recognition were very brief and the verbal description of Yende by this witness was far too general to be reliable. To then say

that he recognises the same person some six years later as the one and only accused in the dock, leaves far too much scope for error. Also, what the witness related about Yende is based on hearsay. When the evidence of the accused also comes under consideration, it exarcerbates the role he is imputed to have played. There is no reliable, compelling and credible evidence that the accused can by any acceptable measure be found to have been the person who offered a job to the deceased, or that he was the last person to have been seen in her company. Without delving too deeply into all of the evidence, there is more than just some uncertainty as to whether or not the accused spirited the deceased away from the presence of her boyfriend and remained with her untill her last moments. To find so would require conjecture and speculation. This court is not called upon to divine and read into the evidence facts which are not proven and established.

[260] However, the Crown's case is not dependant upon such a finding. The position is that the crown relies upon circumstantial evidence to prove independantly of the existing

confession, to which I soon revert, that the offence in count 18 has indeed been committed. To do so, the prosecution presented evidence to the effect that the deceased disappeared from home, apparantly while on her way to a new job. After her reported disappearance, her mother identified a shoe of her own, which was worn by the deceased. The uniqueness of a repair to one of the two brown shoes convinced the mother that it is one and the some shoe, and none other. It also convinced the Court.

[261] In order to establish the origin of the recovered shoe, the Crown called Sabelo Dlamini (PW 67). He testified that during October 2000, he as a herdboy searched for cattle in the mountains at Macetjeni when his dogs found the remains of a human hand. He ran away, to return with the police to the same place. On closer inspection of the area, he found a pair of brown sandals or shoes, which he handed in during his evidence. These are the same shoes which were identified by the mother of deceased, referred to above. In the same area, he and the

police found human remains in a crevice between some rocks, with some half burned papers on top of it.

[262] What this evidence establishes is that the human remains which were recovered on the Macetjeni mountain have been proven to be that of Ntombi Khumbuzile Ndzimandze, by way of persuasive and compelling circumstantial evidence. This much is fortified by the police evidence that the accused pointed out the same place to them, long after the initial discovery. I not only vividly recall this scene from having seen it during the inspection *in loco* but also from the graphic depiction on a video cassette. The real remaining mystery to this court, which will probably remain in only the mind of the accused, is how on earth he managed to persuade the deceased to accompany him to such a remote place in the mountains.

[263] As to the reason why this knowledge is imputed to the accused is no secret. In his confession, he said : "I remember the surnames of those found at Macetjeni but I do not recall their names. One of them was a Mkhwanazi and her homestead

was at Ntondozi. I left with her from Malkerns after I had promised her work. We got to Macetjeni and I killed her. When we got to Macetjeni, I killed her by strangling her with my hands".

[264] The combination of the confession to the crime and the evidence to independatly prove its commission leaves no doubt that the guilt of the accused has been proven beyond a reasonable doubt in count number 18.

Count 19

[265] Samantha Kgase, the deceased person referred to in count 19, left for her workplace in the morning of about the 21st March 2001. She was accompanied by Abraham Mndzebele (PW 26), her close friend. He requested her to take a sick note to a certain doctor in Mbabane where her sister was employed, in order to have it "stamped". The note had his details written on it and when he was shown a document in court, he immediately and positively recognised as the same which he spoke about.

[266] Samantha's mother, Mabel Kgase (PW 27) testified that when her daughter left home, she also had her law degree certificate with her, in order to use at a new place of employment which was promised to her by a certain man. She noted the clothing worn by her daughter.

[267] The following day she received a call from her other daughter to enquire about the whereabouts of Samantha, who left her baby with the sister and did not return. Nor did she return to her home. The police and the family conducted a widespread but futile search for their missing relative. The filed a report with the police.

[268] The relatives were later called to Malkerns police station where they positively identified a number of items as having been belongings of Samantha. Most of these have nothing especially unique to it, as was pointed out in cross examination. However, it is not only the combination of a number of items which carry evidentiary weight. What adds persuasion is the

sick note to which Abraham Mndzebele referred to and if that still was to be short of sufficient proof, the degree certificate in the name of the deceased carries the day. The deceased took it with her on the day of her disappearance in order to use it at her new place of employment, offered by the non determined man.

[269] The crown called one Dan Dube (PW 28) in an attempt to further fortify the existing evidence. He did not make a very positive impression as witness and I do not place reliance on his evidence. He said that he saw the accused and deceased on the day of her disappearance and that they boarded the same vehicle. His identification of the accused in the dock, coupled with his efforts to see him at the police station, leaves much to be desired. His identification of a certain note which he said he received from the deceased is equally unreliable. No adverse inferences are to be drawn from his evidence, save to disregard it.

[270] The husband of the deceased, Nkosinati Ngubese (PW 29) corroborated her mother's, evidence, confirming the description of the clothes she wore when she left, which does not take the matter any further but his evidence about the identification of her recovered personal objects, especially so with her degree certificate, yet again removes any doubts which might have remained about the identity of its owner, Samantha Kgase.

[271] The recovered property identified as that of Samantha Kgase was recovered by the police on the 1st June 2001 at Nkonyeni farm at the same place where the accused took them on the previous day and where he pointed out the place whre an almost complete skeleton was discovered. The accused told them on the previous day about some items that should have been there but they could not find it, therefore the search on the following day. They found the sick sheet in the name of Abraham Mndzebele and the degree certificate in the name of Samantha Kgase near to the same place where the human skeleton was pointed out to them by the accused. This

discovery was dependant upon the pointing out made by the accused.

[272] The combined effect of this evidence is that the Crown has proven the commission of the murder of Samantha Kgase inependantly of the confession by the accused. In his confession he said: " Then there was La-Kgasi of Malkerns but whom I think stayed at Dvokolwako area. I promised her work. I went with her and told her that we were going to the person that will hire her. I went with her to Malkerns and when we got to the forest. There, I strangled her to death."

[273] Nkonyeni Farm at Sidvokodvo is quite a distance from Malkerns, maybe some 50 kilometres or so, as noted during the inspection *in loco.* The two places cannot readily be confused. Yet, the confession refers to Malkerns forests as the place where the accused said that he killed La-Kgasi, but her remains were recovered on Nkonyeni Farm at Sidvokodvo. During the inspection at Malkerns, no reference was made to Samantha Kgase. She is the person referred to at Nkonyeni, in

verification of where her remains were pointed out. The indictment also alleges the scene of the crime to have been at Sidvokodvo not Malkerns.

[274] There is no explanaton in the evidence that deals with this discrepencey and neither counsel addressed the court on this issue. Mr. Mabila did not take the point or agued that it could serve to vitiate this count. In my judgment, it does not undo the consequence of the remaining body of evidence to the effect that it must result in an aquittal due to non proof of the essential elements of the crime of murder. The physical areas where the deceased was actually murdered and that which the accused stated in his confession do in fact differ, but it is not of such material importance that it should be held to create such a measure of doubt that it cannot be found that there is no reasonable doubt that the accused is liable to be convicted of her murder.

[275] The relevant evidence of the accused himself centres on two aspects, the first being that he never knew anybody called

Samantha Kgase. In his confession he referred to La-Kgase, being the Swazi linguistic way of indicating a maried women with that surname. He did not refer to her by her first name, Samantha. No other person by the same surname is mentioned in his confession.

[276] It is easy to make a bare denial, saying that " I never knew so and so". However, there is no doubt that Samantha Kgase disappeared and that between the 21st March 2001 and the 1st June 2001, she was murdered on Nkonyeni farm, Sidvokodvo, where her remains were pointed out by the accused. By then, her body had decomposed to the extent that only her skeletal bones were found, indicative that she was killed closer to the date of her disappearance than the date of her discovery.

[277] I therefore find it to be not plausible that the accused never had any dealings with Samantha Kgase, or that he did not know her, as he testified. That evidence must be and is rejected.

[278] The second aspect of his relevant evidence could well be true. He says that Dan Dube (PW 28) might well have seen him at

the bus stop at the same time when he saw the deceased there. However, he disputes the evidence of Dube that Kgase and the accused jointly or together boarded the half full bus, if it was to imply that they were exclusively in each other's company.

[279] With this court already being sceptical of Dube's evidence, as detailed above, it follows that no inference could reliably be drawn as to the exclusivity of their togetherness when boarding the same bus. It might have been so but it also might as well not have been so. In any event, it does not matter. Whether or not they shared each other's company at the bus stop and also when they embarked the vehicle makes no difference to the factual findings in this count. It does not play any material part in the case of the prosecution against the accused.

[280] The factual finding which is made consists of the identification of belongings of the deceased, that it has indeed been proven to have been her personal property. Further, that the recovered and positively identified possesions which she had with her at

the time of her disappearance, more particularly the sick note of Abraham Mndzebele and her own law degree certificate, were discovered by the police in the proximity where her remains were voluntarily pointed out by the accused on the previous day. Coupled with the confession of the accused, it results in a finding by this court that the Crown has established the guilt of he accused insofar as count 19 is concerned, beyond reasonable doubt.

Counts 20 and 22

[281] Thembi Kunene, the deceased referred to in Count 20, was the mother of Thabile Dlamini the deceased in Count 22, and her sister Nobuhle Shongwe (PW 19). Sometime in November 2000, the two sisters were walking home after church when they met a man who came running after them and who later introduced himself as a Mhlanga. He enquired from them as to the way to one Sizeni Ndlangamandla (the deceased referred to in Count 27). The two sisters agreed to show him where Sizeni Ndlangamandla stayed and this they did as they reached

their own homestead. From there, the man went onwards and they reported the encounter to amongst others, their mother Thembi Kunene. Nobuhle Shongwe further testified that the man whom they met on their way then came back to their homestead.

[282] He said that he had come to fetch Thembi Kunene, their mother, to take her to a new place of employment, as he had been told by Sizeni Ndlangamandla (the deceased in Count 27 to whose homestead he obtained directions from the sister) that Thembi needed a job. He had meant to take Zizeni to the new workplace, a petrol filling station in Matsapha, but could not do so as she was with her boyfriend. It was then that the man introduced himself to them as Mhlanga.

[283] As her mother was preparing to leave with this man, her sister Thabile Dlamini (deceased, Count 22) and cousin Thulisile Kunene (PW 21) asked him to find jobs for them as well. He arranged with Thabile that he would meet her on the “first” (December 2000) at Luyengo. Mhlanga, as he was then known

to them, then left with her mother Thembi towards a place where he said they would find a vehicle.

[284] This was the last time when they saw their mother alive. She did not return home when expected and her grandmother could not find her at the petrol filling station where the promised place of employment was said to be. Meanwhile, her sister Thabile Dlamini (the deceased in Count 22) had already left for her rendezuous with Mhlanga at Luyengo, as per their prior arrangement. She also was never to be seen alive again.

[285] Eventually, (on the 8th May 2001 according to Sergeant Mavuso) they heard that human skeletons had been recovered at Malkerns and that relatives of people who had gone missing should go to the police station at Malkerns to see if they could identify any recovered property. There, she recognised a jersey which used to belong to her missing mother, Thembi Kunene and which she took along with her when she left home. By then it had a cut on the left sleeve. She also recognised six items of clothing that used to belong to her sister, Thabile

Dlamini. She further identified a photograph of her sister Thabile, where she wore a skirt that looked identical to the one she identified in court.

[286] The same jersey which she said belonged to Thembi Kunene was also identified as such by Nomcebo Dlamini (PW 20), and by Thulisile Kunene (PW 21). Both the late detective Ndlangamandla and Sergeant Mavuso attested to their identification and testified that this jersey was recovered on the 5th May 2001 in the Malkerns area where it was voluntarily pointed out by the accused, near the Mbetseni river. The items identified as property of the late Thabile Dlamini were also pointed out by the accused to the police in the forest at Malkerns.

[287] The relatives of these two victims reported the circumstances of their disappearances to the police, as stated above, and also said that they would be able to recognise Mhlanga who took them away if they were to see him again. Nobuhle Shongwe (PW 19) identified the accused as being the same Mhlanga she

spoke about, during an identification parade held at Matsapha police station on the 28th April 2001.

[288] Nomcebo Dlamini (PW 20) corroborated the evidence of Nobuhle. She also related how her aunt, Thembi Kunene (the deceased in Count 20) was taken away from their homestead at Ngwempisana by Mhlanga, who lateer turned out to be the accused before court. She also related how Thabile Kunene (the deceased in Count 22) followed suit, and she related how Mhlanga first went to the home of Sizeni Ndlangamandla (the deceased in Count 27) prior to the events at the homestead of Thembi Kunene and Thabile Dlamini. She further confirmed the identification of the recovered jersey which used to belong to Thembi Kunene.

[289] Thulisile Kunene (PW 21), a relative and friend of the aforestated three victims and the witnesses, likewise confirmed and corroborated the evidence as to the events leading to the disappearance of the Thembi Kunene and Thabile Dlamini, as well as the preceding visit by Mhlanga to the homestead of Sizeni Ndlangamandla. She corroborated the identification of

the recovered items of both Thembi Kunene and Thabile Dlamini.

[290] The result of this body of evidence is that it provides sufficient proof to conclude that both Thembi Kunene and Thabile Dlamini, the deceased persons in Counts 20 and 22, left their home in pursuit of jobs offered to them by one Mhlanga, the accused. Their remains were later recovered by the police and their belongings were voluntarily pointed out by the accused to the police, in the same places where their remains were found. Subsequently, the recovered personal items of the two deceased were identified by their relatives as having belonged to them. In this manner, the Crown has established evidence to justify factual findings that independent of the confession by the accused, both victims were murdered.

[291] When the confession of the accused also comes to be considered, no doubt remains as to how they met their untimely deaths. The accused confessed by saying : “Then there was Thembi Kunene from Ngwempisana. I left with her from

Ngwempisana after I had promised her work. We proceeded to Malkerns and we went to the forest where I strangled her to death with my hands". He also said "There was Thabile Dlamini from Ngwempisana in the Mankayane area. I also promised her a job. I left with her for Malkerns. I proceeded with her to the Bhunya forest where I killed her by strangling her with my hands".

[292] When these portions of his confession comes to be considered in conjunction with the evidence *aliunde,* and with no evidence to gainsay it or a reason to doubt the correctness and veracity of the evidence by the Crown's witnesses, there remains no reasonable doubt that the accused murdered both Thembi Kunene (Count 20) and Thabile Dlamini (Count 22).

Count 21

[293] Khanyisile Vilane is the deceased referred to in Count 21. Her home area was Khalangilile, from where she left to visit a relative. She did not reach her aunt and was never again seen

alive. Over a year later her mother and aunt identified her at the Mbabane Government mortuary by certain features and they also identified certain items of clothing which was shown to them.

[294] I do not propose to determine the accuracy and reliability of the evidence in support to prove the commision of this crime, sine there is no clear proof as to who might have been responsible for her death. The nearest indication of that is found in the confession of the accused, where he said that he had strangled to death a person " from Khalangilile" but that he had forgotten her name.

[295] Accordingly, there remains too many possibilities that an incorrect conclusion may well be drawn from this, as there is no compelling evidence from which it may be positively concluded that the deceased is by necissity the unidentified person mentioned in the confession. The benefit of doubt must by necessity accrue to the accused.

Count 23

[296] Philile Mlotsa (PW 51) testified that her late sister Sibusane Mlotsa (the deceased in Count 35) left home on the 1st April 2001 to take up a new job at Sicaweni filling station. She said that she was offered this job by a man she had met the previous day at a market place and that she was to meet him again at Siphofaneni. This witness took note of the clothes she wore when she was last seen alive and gave a description of it.

[297] Later, the police took the relatives to Malkerns police station where now late mother of the deceased and her aunt, Sibongile Gamedze (PW 52) identified items of clothing and property which the deceased had with her on the day she left. Philile Mlotsa was not with them at the police station but identified some 15 items in court, as well as two photographs of her late sister, when shown exhibits displayed in court. Apart from the clothes she wore, this witness said that the cosmetical items plus a few more were all contained in the handbag which she also identified as property of the deceased.

[298] The deceased's aunt, Sibongile Gamedze (PW 52) accompanied the late mother when they went to the police station at Malkerns. She testified that they met the accused at the police station and that at his instance, the police separated five items of clothing, indicated by the accused as being property of the deceased, Sibusane Mlotsa. One yellow T – shirt, with the imprint "Transship" (Exhibit 204/23), was said to have belonged to the deceased by both Sibongile Gamedze and Philile Mlotsa (PW 51 and 52). Mrs. Gamedze, when shown a colour photograph (exhibit 220 (23) of the deceased which was said to have been given to the police by her mother, recognised the T-shirt worn on the photograph to be same as that which belonged to the deceased.

[299] In addition to this evidence, Sibongile Gamedze testified about words spoken by the accused at the police station, which cannot be interpreted in any other manner than being consistent with firsthand acknowledgement of having committed the crime. These words therefore amount to an extra curial

admission but however spontaneous they might have been uttered, I am reluctant to admit and accept it as evidence of guilt against the accused. In any event, the prosecution does not rely on the statement made by the accused in the presence of this witness to prove its case — it relies upon a different and properly proven written confession to prove this particular charge of murder.

[300] The items which were identified as having been the personal property of the deceased in this count were found as result of a handbag which Petrus Thobela (PW 23) discovered near the road between Malkerns and Bhunya. This construction worker called the police when he found the handbag, a hat and body lotion in the veld. On the 12th April 2001, the police recovered the remains of the deceased as well as the further items of clothing which were later identified by the relatives, all in the proximity of the handbag.

[301] From this evidence, there is no scope for a finding other than that the recovered and identified items of clothing and other

personal property used to belong to Sibusane Dlamini, the deceased in Count 23, whose remains were found in a crevice near the recovered items. There is no eidence to gainsay or dispel this factual conclusion and the cross examination of the witnesses does not result in the creation of any measure of reasonable doubt.

[302] Coupled with this evidence *aliunde* is the confession of the accused wherein he said : " There was another one Mlotsa by surname from Siphofaneni. We met at Siphofaneni and I promised her a job. We boarded a Kombi from Siphofaneni to Manzini. We got another combi from Manzini to Malkerns. We got to Malkerns and I proceeded with her to the forest where I assaulted her and stabbed her to death".

[303] The joint effect of this evidence is that it leaves no reasonable doubt to conclude and find otherwise than that the Crown has established the guilt of the accused in the murder of Sibusane Mlotsa in Count 23, as charged.

Count 24

[304] Ntombinkulu Maseko, the deceased in this count, lived in the same area as three other women who also disappeared from home when they left on strength of ostensible job offers (Sizeni Ndlangamandla —Count 27; Thembi Kunene — Count 20 and Thabile Dlamini — Count 22).

[305] Assiah Jele (PW 15), the mother of Nombinkulu Maseko, last saw her daughter in October 2000 when she left for employment said to have been offered to her by a man unknown to her mother, who reluctantly let her go. In particular, she noted a scarf and decorated T – shirt, whichshe took with her, amongst other items of clothing when she departed from home.

[306] The following month a man who introduced himself as a Thwala, whom she later recognised and identified as being the accused, came to her and asked for a radio. This radio/cassette player she said, was wanted to be taken with her

daughter when she left home but she would not let go of it. The man told her how much her daughter wanted to have it as she was so lonely at night, and that she was very busy at work. He said that her daughter Ntombinkulu had sent him to fetch it for her. His pleas softened her heart and she told him to come and fetch it the following day, as he said he was in the area for a wedding. Sabelo Jele (PW 16) was to give it to the man. She did not see the radio again.

[307] Later in time, she identified the scarf and T- shirt with its distinctive studded and decorated look at the Malkerns police station as the property of her missing daughter, Ntombinkulu. She steadfastly maintained her evidence regarding identification of both the accused and the clothing of her daughter despite vigorous cross examination. No acceptable specific evidence in rebuttal of her recognition was tendered in defence by the accused despite the casting of insinuation and doubt during cross examinaion by attorney Mr. Howe.

[308] Sabelo Jele (PW16) is a son of Assiah Jele (PW 15) and a brother of the deceased, Ntombinkulu Maseko. He is the one who handed over his mother's radio to the accused. He positively recognised the accused as the Thwala he introduced himself as. Sabelo stated that the accused told him that his sister (the deceased) was doing well but that she was unable to come home as there was nobody to relieve her. He also identified the relevant recovered items of clothing as belongings of his sister.

[309] Gugu Dlamini (PW 13) testified that she was a girlfriend of the accused. She said that he brought her a number of presents, although not new. Amongst these, he gave her a radio cassette player in January 2001 but that it got lost before the police recovered from her home the remainder of items which the accused gave to her.

[310] The necessary inference which the court is sought to draw from the evidence concerning the radio cassette player is that the accused who fetched it from the home of the deceased

thereafter gave it to his girlfriend. Whether that is so or not so, it certainly does not meet the standard of proof to positively make such a finding. Merely the description of the radio leaves far too many other possible conclusions, over and above the absence of positive identification and comparisons of the radio, by any witness, to even indicate that it could be one and the same. In addition, the radio went missing before the police could recover it. This evidence falls to be rejected.

[311] The T – shirt with its distinctive metallic decoration and the scarf, both identified by the relatives of the deceased as having been her property, is the weakeast link in the chain of evidence which seeks to establish the commission of this particular crime independent of the confession.

[312] The remains of the deceased was recovered in the Usutu forest on the 10th April 2001 by the police, but no identified property was recovered in the immediate vicinity. However, the scarf and T – shirt, described by Sergeant Mavuso as a “Black velvet scarf” and a “Black velvet skipper”, are the same two items

which the mother and brother of the deceased identified as her property. There two items were recovered from the rented room of the accused at Mawelawela on the 29th April 2001 when the accused took the police there and where his girlfriend Kate Mabuza was present.

[313] The totality of this evidence insofar as it relates to the deceased is that she was recruited by the accused, who thereafter came to her house to fetch a radio . He could not have known about it unless he was told of it by the deceased. He is also the the same person who reported to her family that she was busy at work and could not came home herself. This man, who introduced himself as a Thwala was seen and positively identified by her mother and brother on diverse occasions — when he was at their home prior to her recruitment in relation to other victims from the same area, when he was there to arrange for collection of the radio as well as the following day when he took it and making reports about the deceased on both occasions, and when he was again seen by her relatives at the police station afterwards as well as in court. The two items of

clothing which was recovered from the rented room of the accused and positively identified by the relatives lends further credence to the final conclusion that the accused was personally involved with her disappearance and death, with him taking some of her personal possesions to his own rented room which he shared with his girlfriend, Kate Mabuza.

[314] In addition to this, is the confession of the accused where he stated: “There was one Ntombinkulu Maseko from Ngwempisana in the Mankayane area . I also promised her a job. I left with her for Malkerns. I proceeded with her to the Bhunya forest where I killed her with my hands”.

[315] In consequence of the evidence produced by the Crown I am satisfied beyond reasonable doubt that the guilt of the accused has been sufficiently proven in order to sustain a conviction in Count 24, the murder of Ntombinkulu Maseko.

Count 25

[316] Gelane Simelane (PW 41) was a friend and roommate of some ten years of Tholakele Simelane, the deceased referred to in Count 25.

[317] She testified that the deceased told her about a “brother Simelane” whom she had met and who promised her money and Tibiyo scholarships for her children. When she later collected her belongings, she reported having met the man again and he wanted her to fetch her belongings, as she was to commence with her new work at Cadburys. This witness noted and described her belongings which she took along when she left, never to be seen alive thereafter.

[318] She said that she received a report from one Mfanampela Mndzinisa who allegedly told her that he saw the deceased with her “brother” in Malkerns, after she had left. Mfanampela was not called to testify as to what he saw and heard, rendering the hearsay report unconfirmed and of no consequence.

[319] After the continued absence and disappearance of the deceased, this witness identified some nine items of recovered clothing as being recognised property of the deceased. In particular, she recognised a petticoat which she had mended with maroon thread. She added that during the identification process at the police station, a man assisted her by saying that a shirt, which she had not immediately recognised as property of her friend, was worn by Tholakele. She did not identify " that man" in her evidence and the description she gave of him has a one in a million chance of being anyone in particular.

[320] Mshikasheka Simelane (PW 42) is the father of Tholakele Simelane. He gave evidence to the effect that he knew the accused as a child. He was born as a Mhlanga but took Simelane as surname since he grew up in the extended family of the Simelanes.

[321] This frail and aged man said that David Simelane knew his daughter Tholakele since childhood. He also said that at the

police station, Simelane told him what he did, but due to the most incriminating nature of the extra curial admissions I am loathe to allow it as evidence against the accused. He could not recognise the accused before court, presumably due to his poor eyesight. He did not identify any recovered possessions.

[322] After the remains of an unknown person was recovered by the police in the Malkerns forests, the accused took the police to the same place after his arrest. He voluntarily pointed out the same place where the remains were recovered and in close proximity thereof, a number of clothing items were then also recovered. It is these items that the roommate and friend of the deceased positively identified as having belonged to Tholakele Simelane, the deceased in this count. With the commission of the crime having been astablished outside the parameters of the confession, it is the confession which links the accused to this specific crime.

[323] The accused confessed to Magistrate Masango that " another one was Simelane by surname from Mancubeni in Mankayane

area. I found her at Malkerns looking for a job. I proceeded with her to the Bhunya forest where I stabbed her to death. I stabbed her on the neck".

[324] From the joint combination of the count specific evidence and the confession of the accused, I hold that the Crown has established the guilt of the accused beyond reasonable doubt. There is no acceptable and contradictary evidence from the accused that countermands such a finding in respect of the murder of Tholakele Simelane, the deceased in Count 25.

Count 26

[325] Sizakele Magagula is the deceased person to whom reference is made as the victim in Count 26. The brief accepted evidence of her mother, Christina Magagula (PW 23), is that she sent her child to Matsapha in March 2001 and that she noted and recalled what clothes she wore at the time. She never saw her child thereafter. She reported her loss to the police and was later able to identify belongings of her lost child at the Malkerns

police station. The accused was present at the time, introduced by the police.

[326] She was able to identify a hat, a jacket and a pair of shoes as having been with her child when she left home.

[327] The father of Sizakele, Elliot Magagula (PW 24) confirmed the evidence of her mother. In particular, he identified the same jacket as her mother did, adding that it used to belong to himself. His evidence was not disputed or sought to have any doubt casted on his identification of the jacket.

[328] Mr. Watson Magagula (PW 25) was the brother of the deceased to whom she was sent by her mother. He said that he did meet his sister on the 22nd March 2001 when she told him that she was sent by their mother. He noted that she wore a jacket which he identified as the same one as his mother and father also did. His evidence was also not materially challenged or disputed.

[329] The jacket, shoes and hat which were positively identified by the relatives of Sizakele Magagula were recovered from the place where the accused pointed out the scene to the police in the Sappi forest on the 29th April 2001. It was testified by Sergeant Mavuso, as was also done by Ndlangamandla, that the place where these items were recovered is the same where the police had previously found human remains on the 12th April 2001.

[330] The inescapable conclusion to be drawn from the aforestated evidence, with no contradiction or other acceptable evidence tendered by the accused to suggest any other finding, is that the Crown has conclusively proved the death of the deceased in this count.

[331] Independent of this evidence is the confession which the accused deposed to. He said: " There was also one Sizakele Magagula from Mmabanjeni area whom I found at the park next to Manzini City Council offices. I also promised her work. I

then went with her to Malkerns and when we got to the forest there, I strangled her with my hands to death".

[332] The combined effect of the confession and evidence to prove the commission of the offence in Count 26 is that it is held that the guilt of the accused in relation to Sizakele Magagula has been proven beyond reasonable doubt.

Count 27

[333] Sizene Ndlangamandla is the woman who has been referred to by witnesses in Counts 20, 22 and 24 *supra* at diverse times. All four of them used to live in the same area. Sizene is the woman to whom the accused first went when he obtained directions to her house from the deceased persons in Counts 20 and 22 and from the mother of the deceased in Count 24, from whom he asked for a radio that was given to him by her brother the following day.

[334] The father of Sizene, Griffiths Msibi (PW 17) testified that he first saw the accused when he enquired from him how to find Assinah Jele (PW 15), the mother of Ntombinkulu (being the deceased in Count 24) from whom he asked a radio. At the time, the accused introduced himself as a Thwala but the witness knew that there was no Thwala homestead in the mentioned area. The accused then changed tack and said he was a nephew of a different family in that area. Nevertheless, the gist of his further evidence is that he again saw the accused some time later, at his own homestead. He asked the daughter to accompany him to a job he had secured for her. She would not go at the time but arranged to go at a later stage.

[335] Afterwards, Griffiths Msibi was away from his home when on his return, it was reported to him that Sizene was sent by her mother to Mankayane. He never again saw his daughter and reported her as missing to the the police.

[336] Sizene's mother, Idah Msibi (PW 18) said that the accused came to their homestead where he spoke to her daughter about

employment he had secured for her. That Sunday, the 17th December 2000, her daughter said that she could not leave right away but she would soon do so. The mother overheard this convesation as she was within earshot. The following Tuesday, the 19th December 2000, she sent her daughter on an errand to Mankayane and expected her back the same day. She never returned and she never heard any more of her. When she was taken to Malkerns police station, she again saw the accused.

[337] She then identified a skirt, jacket, shoes, umbrella and petticoat from amongst many other items of clothing on display, in the presence of the accused, as having belonged to her missing daughter. As she was about to depart from the police station, she was called back and the accused told her that she forgot to identify a certain “Mickey Mouse” T – shirt as property of her child.

[338] Nobuhle Shongwe (PW 19) is the witness who testified about the disappearances of her mother and sister (Counts 20 and

22), saying that she directed the accused to the homestead of Sizene Ndlangamandla when he asked directions. Thereafter, he returned to their homestead, to leave with her sister and later, her mother followed suit. Neither of them were seen again. At the time when the accused returned to her homestead, he said that Sizene, for whom he secured employment, could not leave right then but that he would come to fetch her later. This corroborates the versions of the parents at Sizene who testified likewise.

[339] The police recovered unknown human remains in the Sappi forests near Malkerns on the 12th April 2001. Soon after his arrest, the accused voluntarily pointed out various scenes in the same forest to the police. Sergeant Mavuso reiterated the evidence of Ndlangamandla that the items which the relatives of Sizene Magagula identified as having been her personal belongings, were recovered from the scene pointed out by the accused to the police and that it corresponded with the same place as where human remains were recovered. From this, it may reliably concluded, with no reasonable other conclusion

from the same facts, that the human remains which the police recovered, were that of Sizene Ndlangamandla, the deceased in Count 27.

[340] In his confession which has already been admitted as evidence, the accused said : " There was also Sizene Magagula from Ngwempisana whom I found at eVukuzenzele next to the bus rank at Manzini City. She was also looking for a job and we proceeded to Malkerns. I went with her to Bhunya forest where I strangled her to death with my hands".

[341] With the commission of the crime proven independantly by the Crown, with no compelling, persuasive or suggestive evidence by the accused to the contrary, and with the same crime having been confessed to by the accused, the evidence serves to prove the guilt of the accused in respect of the murder of Sizene Ndlangamandla as per Count 27, beyond reasonable doubt.

Count 28

[342] Khetsiwe Malaza (PW 31) testified that she last saw her sister, Tengetile Malaza who is the deceased referred to in Count 28, around the 9th March 2000. They lived in the Sigombeni area. Her sister said that she was going to Nhlangano and she noted and described the clothes which she recalled that her sister wore when they parted ways. She never saw her again.

[343] She was eventually called to the Malkerns police station and asked if she could recognise any of her missing sister's clothing, but found none. She said that there was a man at the police station who gave her a description of the clothes that her sister wore. The description she first gave and what she said the man described are exactly the same.

[344] Her further evidence is has she was called back to the police station a few days afterwards and that on this second occasion, she did recognise and identify the clothes she spoke of. Apart from a pair of tights, she identified four items of clothing.

[345] Her identification of the clothing was not challenged or disputed, nor was there an attempt to cast doubt upon the accuracy of her identification, nor was she asked of any item had a unique feature. Later, when the accused testified, he did not bring any new aspect to the fore and he again did not raise any issue against acceptance of her evidence.

[346] After the arrest of the accused, he was properly and comprehensively cautioned by Ndlangamandla about the potential consequences of evidence of pointing out and that if he did want to do so, it had to be freely and voluntarily done. Sergeant Mavuso testified that this was done in his presence and that the accused responded positively, that he indeed wanted to take the police to Macetjeni and point out a place he knew about. He then took the police to Macetjeni mountains on the 5th June 2001 where he was again comprehensively cautioned and appraised of the consequences of pointing out and that it would have to be freely and vuluntarily done. His rights to legal representation were again waived and he again

indicated that he indeed wanted to point out a certain place to the police. This much and the subsequent walk by foot and the actual pointing out was recorded by the police on a video camera tape, which tape was admitted as evidence.

[347] The evidence of Mavuso (PW 79) reiterates that of Ndlangamandla (PW 75). He described the trip up the mountain and how the accused then pointed at a place where human skeletal bones were found to be. In close proximity, the exhibits which were subsequently identified by Khetsiwe as property of his sister Tengetile Malaza who went missing, were also found. These discoveries were made as a direct consequence of the pointing out by the accused.

[348] When all of this evidence is joined together, it proves that the deceased mentioned in this count went missing and thereafter, her remains were found as estalished by her personal property which was found in the vicinity of the human remains. The evidence pertaining to the pointing out by the accused, fortified to some extent by the description of the same clothing exhibits

when the sister first went to see if she could find her sisters clothes, lends credence to conclude that he had personal knowledge of the death of the deceased .

[349] In turn, all of this, and in the absence of anything to dispute the identification of the recovered property as personal belongings of the deceased, establishes sufficient evidence beyond the scope of the confession by the accused that this crime was in fact committed.

[350] In his confession, the accused is recorded as having said that : " Another one was from Sigombeni and she was a Malaza by surname. I found her at Malkerns looking for a job. I promised her a job at Eagles Nest and we proceeded there. When we got to the Bhunya A6 forest, I strangled her with my hands to death".

[351] Again, there is a discrepancy as to the place when the accused confessed to having killed his victim and the place where her remains and belongings were found. Again, it is not the place

where the crime was alleged to have been committed, and also so proven, which is a crucial aspect of the matter. What is of more importance is whether the accused admitted and confessed to having murdered Tengetile Malaza, and whether there is a reasonable doubt about it.

[352] From the conduct of the accused when he pointed out the place where the remains and personal property of the deceased was recovered there can be little if any doubt, as to the fact that he knew where he killed her. The contrasting place, as stated in his confession to have been at Malkerns, does not detract enough of the reliable and accepted evidence as to where she died.

[353] The reason for the discrepancy is not known. If the accused wanted to do so, he would have given evidence to persuade the court that it was not a mere mistake to say in his confession that he killed Malaza in Malkerns and that such a conclusion cannot or should not be drawn. He did not testify so and his attorney did not argue otherwise either.

[354] The Malaza surname in his confession is the one and only such surname. He also said that she came from the Sigombeni area, as was also testified by the sister of the deceased. There can be no doubt that he referred to Tengetile Malaza instead of any other Malaza. The undisputed identification evidence, relating to the recovered personal property of Tengetile Malaza, does not leave room for any other conclusion than that she is indeed the one who was killed at Macetjeni and also that it is erroneously stated in the confession of the accused that he killed her at Malkerns, instead of Macetjeni.

[355] In view of the aforegoing, I hold that there is no reasonable doubt that the accused murdered Tengetile Malaza at Macetjeni, as is alleged in Count 28 of the indictment.

Count 29

[356] Lizzy Makhanya/Mhlanga is alleged to have been murdered by the accused between the 15th March and 25th April 2001 at

Malkerns. The tragedy of this instance is that although the accused has confessed to her murder, the Crown has been unable to prove the commission of the offence independantly. What makes it even more tragic is that the accused personally told the mother and two friends of the deceased that he killed the deceased and gave her clothes to a Simelane women of Madonsa.

[357] In the minds of the three witnesses whose evidence relate specifically to this alleged deceased, there is absolutely no doubt that the accused murdered her, from what he told them. Their belief is furthermore supported by the confession of the accused. In my own mind, I do not believe them to be wrong.

[358] However, the issue of guilt of an accused person cannot be determined and decided by what the presiding judge believes to be correct. Instead, the court is bound by the accepted rules of evidence and established practice to determine guilt on the basis that there cannot be a reasonable doubt about the guilt of an accused before he may be convicted. In determining this, a

confession of guilt cannot by itself determine guilt to the extent that it results in a conviction. This much is also required by the common law principle embodied in our Criminal Code, as referred to above. It is an emphatic and imperative requirement that beyond the confines of confessions, the Crown is also required to prove, in addition, that the crime has indeed been committed. This much can only be achieved when there is further evidence of the commission of the crime itself, which also needs to be proven beyond a reasonable doubt.

[359] In my judgment, this was not done in Count 29. Beyond the confession of the accused, of which the words he uttered by saying to the witnesses at the police station that he killed Lizzy Makhanya, which cannot be admitted as a proven confession by the accused, there is no other evidence to sustain a conviction. He also made a perceived admission, saying that the clothes of Lizzy was given to a Simelane woman. That Simelane was not called as a witness, possibly because she could not be found, is common cause There is no evidence on record of any item of clothing or other personal property of

Lizzy that could be a basis to find that she indeed died, nor that she was murdered. No human body or skeletal bones were recovered and positively identified as being hers. The witnesses were shown recovered bodies but could not identify Lizzy either.

[360] As the evidence stands, there is proof that the deceased said she was going to visit her boyfriend but that she did not arrive there. A search was conducted but she could not be found, nor could any of her possessions which she would have had at the time of her disappearance be located. No recovered human remains or body can be held to have been that of Lizzy Makhanya/Mhlanga. Nor did the accused point out anything by which any finding can properly be made. The words he uttered at the police station are not admissable to the extent that it can be used against him to prove his own guilt outside of his own confession, just as a boot cannot be lifted by its own shoelaces.

[361] It is therefore that this Court cannot justify a conviction in Count 29 which is based on the available evidence, despite justified

beliefs of the witnesses who did testify in this trial and despite the confession by the accused.

Count 30

[362] Mahenjane Manana (PW33) is the mother of the deceased referred to in Count 30, Demephi Manana. The last time her mother mother saw her alive was during Easter time in the year 2000. She testified that her daughter left home in search of employment. She noted and described the clothes which her daughter left with.

[363] After her daughter failed to return home she was taken to the Malkerns police station to see if she or her husband could identify any belongings of their lost daughter. She did so and said that she was able to positively identify a number of items, though she searched in vain for further items which her daughter had in her possession when she left home.

[364] Her evidence is that after she identified a petticoat, underwear, a T-shirt and a single shoe of her daughter, the accused volunteered to also prompt the information that a black leather bag and a pair of shoes belonged to her daughter, in addition to what she had already identified. She said that she did not know either of the leather bag or shoes as her daughter did not have it with her as she left home.

[365] The father of the deceased, Mufile Manana (PW34) confirmed that his daughter was missing, never to be seen again. He accompanied his wife to Malkerns police station, as it eventually turned out to be despite his confusion between a court and a police station. There, he identified a recovered skirt as having been with the deceased, recognizing the fairly tattered item since it used to belong to his wife. He did not say that he identified any further personal belongings of his daughter but instead, that the accused identified it as having belonged to their child.

[366] The extra curial admission by the accused as to who was responsible for the death of the daughter cannot be admitted as evidence against himself.

[367] The recovered items which were identified by the parents of the deceased were recovered in the same vicinity as where human remains were found by the employees of Eagle Nest Farm near Malkerns in the Sappi forests on the 2nd April 2001. Four days later, while the police were present, the personal property which was later identified as belongings of Demephi Manana, were also recovered in the same place.

[368] None of the two parents of the deceased were able to be swayed away from the essence of their evidence. Both were cross-examined quite thoroughly on peripheral issues but neither gave any impression that their evidence might not be reliable. Literacy of witnesses, or the absence thereof, might be an impediment in some instances, such as where dates, time, distances etcetera may have to be estimated. However, these two elderly people seemed to have the powers of

observation and recollection that are more than sufficient to be able to rely safely on the essence of what they testified. Likewise, the recovery of the personal property in the immediate area of where human remains were found, leaves no doubt that it is factually acceptable and reliable evidence as to the origin of the exhibited items.

[369] From this evidence, fortified by the absence of any gainsaying or contradicting evidence by the accused, it is held that the crown has established that Dumephi Manana left home and following her lengthy disappearance, human remains were recovered in the Malkerns forests. At the same place, personal property which the deceased had with her at the time when she disappeared, was also recovered and positively identified as her belongings. The inescapable conclusion is that her death has been adequately proven by evidence *aliunde.*

[370] Hand in hand with this, the crown has also proven a confession which was deposed to by the accused, and which has been admitted as evidence. Therein, the accused said: “There is

another one who is a Manana by surname whom I found at Manzini Park next to City Council offices. I left with her to Malkerns at Golden area where I strangled her to death. We got there by Insuka bus Service after I had promised her work."

[371] In combination with each other, the joint effect of the evidence *aliunde* as well as the confession is that the Crown is found to have proven the guilt of the accused in Count 30, the murder of Dumephi Manana, beyond reasonable doubt.

Count 31

[372] Lungile Gamedze is the person whom the accused has been arraigned for as being guilty of murdering her. That there might have been substance in prosecuting him for this incident is found in the confession of the accused. He said that he also killed one Gamedze by surname from the Siteki area, at the Bhunya forest.

[373] However, as has already been stated above, a confession to a crime by itself is not sufficient to sustain a conviction. There must be more, as required under both our common law and Criminal Procedure and Evidence legislation. The Crown is required to also prove the commission of the defence, independently and outside the confines of a confession.

[374] To illustrate: A man may have confessed to having murdered the Pope of Rome, admitting details of the incident and adding the reasons why he did it – fully as much is required of him to plead guilty to such a charge. Despite the confession, the Pope of Rome may very well still be folly alive and unaware of his confessed murder. Unless that secondary aspect has been independently proven, it would be fully to convict and sentence the man for a crime which has never been committed in the first place.

[375] In this count, no evidence has been adduced to prove the death of Lungile Gamedze as alleged in Count 31. I do not find that she has not been murdered but cannot find that there is

evidence on which a conviction may be based, by any measure which requires proof beyond reasonable doubt. The accused is entitled to be acquitted in his count.

Count 32

[376] Fikile Dlamini is the deceased referred to in Count 32 and it is alleged that the accused murdered her between the 12th March and 25th April 2001 at Malkerns.

[377] In order to discharge the onus of proof which vests on the Crown, Muzi Gina (PW45) and Sophie Ndlela (PW 46) were called as witnesses to supplement the evidence of Sergeant Solomon Mavuso and the proven confession by the accused.

[378] Muzi Gina was the boyfriend of the late Fikile Dlamini and father of their child. His evidence is that his girlfriend and their child left their home on the 12th March 2001 in order to go to her parental home. When she did not return as arranged, he made

enquiries, all fruitless. Neither her sister or mother were able to locate her either and she was reported as missing to the police.

[379] Later, he was asked if he would be able to identify the clothes she wore when she left their home, which he described in his evidence. The enquiry by the police first referred to his wife's maiden surname, Ndlela, instead of her marital surname, Dlamini. Nevertheless, he thereafter recognized and identified seven items of clothing and a black bag – "Casual America" – as being possessions which his wife had with her when she left home. This was done during May 2001 at the Malkerns police station. He could not find some further items which she also had with her, such as her passport and birth certificate.

[380] The mother of Fikile Dlamini, Sophie Ndlela (PW 46) confirmed that her daughter went missing, in lesser detail than Muzi Gina, her lover. She said that she recognized two items of clothing which belonged to her pregnant daughter and could identify one item in court, which was also so identified by Gina.

[381] This witness did not leave a very positive impression on the Count as she seemed to be quite unsure about pertinent facts. It might well be due to her advanced age and weak eyesight. This is in stark contrast with the positive impression created by Muzi Gina, a bright young man, well spoken and well presented. Despite these differences, I think that her identification of the same dress referred to by Muzi Gina can safely be accepted insofar as corroboration is concerned.

[382] However, I am hesitant to allow her evidence about what the accused purportedly would have told her at the police station, as admissions attributed to him. The self incriminating words are tantamount to a confession outside the parameters by which his confession to Magistrate Masango came to be admitted. The extra curial statements as attributed to the accused by Sophie Ndlela are disregarded as evidentiary material in the trial, despite the fact that defence counsel did not raise an appropriate objection at the time when it was presented.

[383] What is unique of Sophie Ndlela is that she is an isolated exception as witness. She said that the police took a blood sample from her because she was told that it could not be determined which bones belonged to who. It is similar evidence from all other direct relatives of deceased persons which was expected and anticipated to be adduced, but which did not materialize. It is the sample of gene carrying material, such as blood, that would have been used to compare it with the DNA code of unidentified recovered bones, skeletons or bodies which were recovered in the course of the investigation. Such expected and anticipated DNA evidence never materialised, as stated above, which so readily could have assisted the court in the making of factual findings.

[384] The human remains of the person suspected to have been Fikile Dlamini were recovered by the police in the Malkerns forests, near a stream, on the 12th April 2001. That same specific place was thereafter, on the 29th April 2001, pointed out by the accused to the police, when he voluntarily pointed out various scenes of crimes. At the same time and as result of the

pointing out, the police recovered items of clothing, shoes and a black bag, which were retained as exhibits. It is these same items which Muzi Gina, the boyfriend of the deceased, identified as personal property of the deceased when he and her mother were at Malkerns police station on the 14th May 2001.

[385] The accused had no real dispute with the identification of the items as having been belongings of Fikile Dlamini. He also adduced no evidence to contradict it or to render it suspicious, or to otherwise endeavour to and negate the inevitable conclusion. This conclusion is that the boyfriend and the mother of Fikile Dlamini established through their evidence that she disappeared from home, never to be seen again. Thereafter, through the pointing out by the accused at the same scene where human remains were recovered, various properties were retrieved, thereafter to be positively identified as having belonged to Fikile Dlamini.

[386] This is sufficient evidence to reliably conclude that Fikile Motsa was killed where her property was found, also that the accused person had knowledge of where it was done. Thus, the Crown has proven the commission of the offence itself, independent of the confession.

[387] The confession establishes the identity of the perpetrator. The accused said: "There was also one Fikile Dlamini or Ndlela. I do not know which one was her surname. One of them was hers and the other was her husband's. I found her at the park next to Manzini City Council offices. She was looking for a job and I promised her one. I left with her to Malkerns and when we got to the Bhunya forest, I strangled her to death with my hands."

[388] The combined effect of the evidence inevitably must result in a finding that in respect of Count 32 wherein the accused is charged with the murder of Fikile Dlamini, his guilt has been proven beyond reasonable doubt.

Count 33

[389] The twin sister of the deceased referred to in Count 33, Jabulile Magagula (PW 32), told the court that in February 2000, her sister Siphiwe Magagula said that she was leaving home in Malkerns. Her sister had found employment which was arranged for her by one Mhlanga. At the time, her sister was 19 years of age. When she left, this witness noted what clothes she was dressed in and what other paraphernalia she took with her. She described it in the course of her evidence. Her sister was never to be seen again and she was reported as missing to the police by her late mother.

[390] Subsequently, they heard announcements over the radio of human bones that have been found near Malkerns and that relatives with lost ones should report at the police station. On her second visit at the Malkerns police station she recognized a number of items which belonged to her missing sister. She also said that the accused was present at the time and that he

showed some further items to her, which she then also recognized to have belonged to her sister.

[391] She showed the court seven items which she so identified and a further ten items which she was shown by the accused at the police station and also identified to have been her sister's.

[392] As in most other instances, this witness was also challenged in cross-examination that the items she identified could as well have belonged to somebody else since they are not unique. Actually, some of the items of clothing had become entirely unique due to the severity of damage to it, being most dilapidated, possibly due to exposure to the elements or damp storage, but this is not the point.

[393] Jabulile Magagula steadfastly and convincingly maintained her original identification evidence. If only one or two "off the shelf" products were involved, it conceivably could have altered the reliability of her observations and recollection abilities. In the present instance, the large number of objects which jointly and

severally make up the totality of possessions which one single person had with her, the risk of an incorrect finding decreases exponentially, as in this case.

[394] The absence of evidence by the accused to explain his knowledge about the items which he showed to this witness and her recognition of it as property of her sister, further reduces the risk. Also, the accused never testified that the items which Jabulile Magagula identified somehow could not all have belonged to her sister, to cast some doubt as to whether the evidence could be relied upon or not. Surely the accused bears no onus to prove his innocence but at the same time, when *prima facie* persuasive evidence is adduced against his protestations of innocence, such evidence, the identification of property of a person who disappeared as having been with that person, can readily take on the cloak of conclusive proof.

[395] The upshot of the evidence by Jabulile Magagula is that it can reliably be found that her sister, Siphiwe Magagula, disappeared after she left home to take up a job offered to her

by a Mhlanga man. A little more than a year afterwards, she recognises and identifies quite a number (17 in all) items which each is said to have belonged to her missing sister.

[396] In order to tie this in with the origin of where these items were recovered and to further link it to the missing person, alleged to be the deceased in this count, the Crown relies on police evidence. Ndlangamandla initially said so, but it was reiterated in the evidence of Detective Sergeant Mavuso, that the police discovered and removed human remains of a then unknown person from the Sappi forest near Malkerns on the 12th June 2001.

[397] Thereafter, on the 7th June 2001, the accused volunteered to point out certain scenes of crime in the same area, and he was taken there. After due cautioning about the potential consequences of evidence obtained through pointing out, and that he was under no obligation to do so, and that he could only do so out of his free will, no pressure on him to do so, furthermore that he was entitled to first obtain legal assistance

and representation if he so chose, as narrated by both police officers, the accused chose to point out a certain scene to them. That scene corresponded with the very same place where the police recovered skeletal remains. At the same place, they recovered personal possessions in a donga as direct consequence of what the accused voluntarily pointed out to them. These same recovered items were thereafter identified on the 9th June 2001 at Malkerns police station by the sister of the deceased.

[398] With the commission the crime having being proven independent of the confession made by the accused, it is the confession which establishes the guilt of the accused in relation to this count. He said: “Another one was from Malkerns area who is a Magagula by surname. I also promised her work. We then left and got next to Eagles Nest at Malkerns where I strangled her with my hands to death in the forest there.”

[399] The nett effect of the evidence pertaining to the murder of Siphiwe Magagula, alleged in Count 32 to have been

committed by the accused between February 2000 and the 25th April 2001 at Malkerns, is that the prosecution has established his guilt beyond reasonable doubt.

Count 34

[400] The son of the deceased in this count is Sihle Mtimkulu (PW61). He related how his mother, Alizinah Sibandze of St Phillips, returned home one day and told the family of good fortune that befell her. She related to them that as she stood with a few items of groceries that she bought at the shop where she works, she met this generous man who promised to give her some money when they were to meet again a few days later. Of course this is hearsay evidence, but it is not repeated here as being the truth of the matter, but the witness used it to motivate the reason why his mother left home on the 2nd April 2001.

[401] He said his mother left from home in order to meet her benefactor. He noted and testified as to the clothes in which

his mother was dressed that fateful morning, the last time she was seen alive by her son. When the mother did not return home that day and for a second week as well, the family reported her disappearance to the police. Thereafter, they went to the police station at Malkerns, where he said he saw a man whom he described to the court. This man repeatedly declared that he had destroyed the clothes of Alizinah, once they were introduced. He could not find any of his mother's property.

[402] He was again at the police station, this time at Matsapha, on a subsequent date where she again saw the man he had described and referred to, having first seen him at Malkerns. On this second occasion, the 9th July, he found one single sandal which he identified as property of his mother.

[403] His further evidence is that once he identified the sandal to have belonged to his mother, the man he spoke about said that yes, it is the only sandal left of his mother Alizinah Sibandze and that he had destroyed the remainder of her items. The

man whom he spoke of was identified by him as the accused before count, in what could be termed as “dock identification.”

[404] He stood his ground admirably well when bombarded under cross-examination with a host at peripheral issues. He would not budge from his original evidence despite enticement and proffered opportunities to do so. He would not fall for a temptation to volunteer answers to things he was not sure of, such as the size number of his mother’s shoe and dental work which he did not examine himself.

[405] He remained sure of his evidence that the man who also told him that he destroyed the remainder of his mother’s items was indeed the accused before court, and that he confirmed instead of dispute his identification of his mother’s shoe. The evidence which forms the essence of his testimony, that he recognised his mother’s remaining shoe at both the police station and also in court remains unscathed and intact, acceptable as *prima facie* proof. In addition, it is in conformity with the words uttered by the accused in confirmation that it is the one and

only remaining item of personal property which remains of Alizinah Sibandze, as the rest of her property had been destroyed.

[406] In addition to the son of Alizinah Sibandze, the Crown also called her sister in law, Sebenzile Masango (PW 62) as witness. The long and the short of her evidence, most of which takes the matter no further, is that she also heard the accused to say words to the effect that he knows of her and that he destroyed her clothes. The remainder of what he reportedly said amounts to an inadmissible confession to which no evidentiary value shall be given.

[407] The associative words of the accused said to have been uttered in her presence was merely denied to have been spoken by the accused, when his instructions in that regard were put to this witness. The above denial was not followed up by evidence of the accused to specifically deny that he ever said so, or to cast doubt on the truthfulness of her evidence in this aspect.

[408] Dumisa Mtimkulu (PW 63), the husband of the deceased, was also called to testify. Over and above confirmation of the disappearance of his wife, the efforts to look for her and his sad loss, the essence of his evidence is the same as that of his sister, Sibongile Masango, and to further corroborate his son Sihle Mtimkulu. He also corroborates the evidence that the accused said that he had destroyed the clothing of Alizinah Sibandze, again confirming the association of the accused in relation to the crime.

[409] Again, the utterance of such words were denied in cross-examination, with the bare denial again, unsubstantiated by the accused in his own evidence.

[410] Over and above the *prima facie* evidence that the shoe he referred to used to belong to his mother and that the accused confirmed it to him, there is no gainsaying evidence about the shoe and its original owner, but also nothing to detract from the evidence that the accused confirmed it to be all that remains from the property of his mother. If it was wanted to be disputed

by the accused, he did not testify that it is incorrect or that he never said as related or that any other detached conclusion of fact should be drawn.

[411] The origin of the exhibited and identified shoe, to where it was identified at the Matsapha police station, is that it was recovered at the Macetjeni Mountains. The evidence of the police officers, corroborated pace by pace and word by word in the video cassette recording of the event, as was done virtually throughout the course of the entire investigation, is that the accused voluntarily took the police to the Macetjeni Mountains on the 27th April 2001.

[412] There, the accused pointed out the place where a human body was recovered. Later, on the 29th June 2001, the accused again took the police to the very same place and as a result of a further search of the area where the body was discovered, also as a result of him pointing out the place, this specific ladies' sandal was discovered.

[413] In all, the evidence of the son of the deceased establishes that she disappeared from home on the 2nd April 2001, never to return. Later, the son positively and reliably identified a sandal as having belonged to the deceased, in the presence of the accused and confirmed by him as correct.

[414] The same sandal was found in the same place where the accused took the police to and where he voluntarily pointed out where first a human body was found, later the shoe.

[415] This evidence establishes the commission of the crime in this particular count, independently from the confession of the accused, wherein he said: “The third one was from St Phillips and her surname was Sibandze. I left with her from Siphofaneni after I had promised to borrow (sic) her money. I went with her to Macetjeni where I strangled her with my hands until she died.”

[416] Despite the recovery and identification of only one single item of the deceased, in context of what is stated above, I hold that

indeed the Crown has established beyond a reasonable doubt that the accused has murdered Alizinah Sibandze, as charged in Count 34.

Count 35

[417] Siphiwe Gina (PW 64) testified that she knew the deceased referred to in Count 35 quite well. She had a relationship with her brother since the women stayed together at Siteki.

[418] Her friend left home in the year 2001 but being illiterate, she was unable to clearly state exactly when it was. She knew the deceased as Lindiwe Mabona Dlamini and is unaware of the further name of Nelisiwe as stated in the indictment. When Lindiwe did not return for some two months and having left her young child behind, this witness became anxious about her whereabouts and filed a report with the police. I find it most odd that she could have been idle for so long. Possibly, there

could be an explanation for it, of which the court simply has not been told.

[419] Three months after the disappearance she was taken to the police station at Malkerns. Although she did not see her friend at the time she left from home and could therefore not describe the clothes she wore at the time, she said that she was well aware of what Lindiwe possessed since they had lived together.

[420] At the police station she recognized some 14 items which she all identified as having belonged to Lindiwe Dlamini. An issue was sought to be made by defence counsel as to why she recited only half of the items when she testified, later to identify 14 items from the exhibits in court, she gave a reasonable explanation, that she was a bit confused and that a long passage of time dimmed her memory.

[421] However, she remained positively sure that the total collection of fourteen items all belonged to her friend, Lindiwe. Though unsophisticated, Siphiwe Gina never impressed me as a

witness who was uncertain of the items she identified in court, or that she made up or concocted her evidence, nor that she was prompted on what to say in court. She forthrightly and candidly admitted her possible shortcomings but persuasively laid a foundation for the source of her knowledge of the property of her friend.

[422] She tendered a further and important indelible characteristic of Lindiwe Dlamini, the deceased. She knew that a molar tooth was extracted from her friend, on the right hand lower side. She could not also say which specific molar tooth was extracted when cross examined, saying she was not sure of it.

[423] As recorded earlier, the physical anthropology examination reports by Professor Steyn concludes that in the process of examining a certain set of skeletal bones, she established that the remains marked as “Malkerns RCCI 421/01” (exhibit 310/35/70) had the lower right second molar tooth missing, lost *antemortem*.

[424] Although this court cannot reliably determine which particular police investigation file was allocated with the RCCI 421/01 serial number, at the time the reports were proven by the crown, the Director of Public Prosecutions stated from the bar that it related to Count 35. Due to acceptance thereof without protest by defence counsel, I think it may fairly safely be assumed that indeed this particular report relates to this specific count, even in the absence of specific evidence to prove it correct. I trust that in future prosecutions, the same omission shall not be repeated.

[425] The effect of the expert evidence relating to a specific tooth that was lost before death, and evidence by a friend of Lindiwe Dlamini that she had known her to also have the same tooth, or possibly the molar adjacent to it missing, lends strong support for a finding that both speak about one and the same person. This in turn fortifies the evidence that the 14 exhibits identified as property of the same person, swaying the evidentiary scales even further towards a clear and unequivocal factual finding.

[426] The police evidence is that the body of an unknown person was found on the 12th April 2001 in the SAPPI forests near Malkerns. Later, on the 5th May 2001, the accused voluntarily pointed out to the police the exact same place where the body was recovered. In a ditch very close to where the body was found, the exhibits which were later identified as property of Lindiwe Dlamini, were then discovered and removed.

[427] The end result of this collective body of evidence manifests in a finding that the commission of the crime has been adequately proven. Lindiwe Dlamini has thus been proven to have been killed at the place indicated by the accused, supported by the identification evidence relating to her recovered personal belongings and her missing lower second molar tooth.

[428] The Crown has further proven a confession by the accused wherein he stated that : “Another one was Nelisiwe Dlamini from Siteki area who was also looking for a job. I found her at the same park next to Manzini City Council offices. I promised

her a job and I left with her for Malkerns. When we left to the Bhunya forest, I strangled her to death".

[429] In my view, the difference in first names, Nelisiwe and Lindiwe, does not detract enough from the identity of the deceased to create doubt about her identity. Her friend knew her by one name, the accused by another.

[430] Accordingly, I conclude and hold that the Crown has established the guilt of the accused in connection with the murder of Lindiwe Nelisiwe Dlamini between the month of February and the 25th April 2001 and at Malkerns, as per Count 35 of the indictment, beyond reasonable doubt.

[431] In conclusion, although the establishment of motive for the crime of murder does not carry remotely the same prominence in our law as in contrast with American jurisprudence, the accused has volunteered his motive for the multiple murders as part of his confession. He said that it was out of revenge for

having been incarcerated for the crime of rape which he did not commit. He admits to having robbed the same woman but he says that he was grossly and unfairly treated by also having wrongly been convicted and imprisoned for having raped the same woman, hence his revenge.

[432] This court accepts that he murdered his victims out of revenge. This dispels the often mooted diverse theories and speculation in the media that he had some other more sinister motives, or that he was assisted by highly placed persons, or that he harvested body parts for equally sinister, undisclosed but highly placed individuals.

[433] In the final analysis and having considered the totality of evidence heard during the course at this unduly protected trial, the judgment of the court reads thus:

Count 1 - Guilty as charged

Count 2 - Guilty as charged

Count 3 - Charge withdrawn

Count 4 - Guilty as charged

Count 5 - Guilty as charged

Count 6 - Guilty as charged

Count 7 - Guilty as charged

Count 8 - Guilty as charged

Count 9 - Guilty as charged

Count 10 - Guilty as charged

Count 11 - Guilty as charged

Count 12 - Guilty as charged

Count 13 - Guilty as charged

Count 14 - Guilty as charged

Count 15 - Not guilty – acquitted

Count 16 - Not guilty – acquitted

Count 17 - Not guilty – acquitted

Count 18 - Guilty as charged

Count 19 - Guilty as charged

Count 20 - Guilty as charged

Count 21 - Not guilty – acquitted

Count 22 - Guilty as charged

Count 23 - Guilty as charged

Count 24 - Guilty as charged

Count 25 - Guilty as charged

Count 26 - Guilty as charged

Count 27 - Guilty as charged

Count 28 - Guilty as charged

Count 29 - Not guilty – acquitted

Count 30 - Guilty as charged

Count 31 - Not guilty – acquitted

Count 32 - Guilty as charged

Count 33 - Guilty as charged

Count 34 - Guilty as charged

Count 35 - Guilty as charged

[434] With the accused now having been convicted of twenty eight (28) counts of murder and acquitted on 6 (six) counts of murder with one count having been withdrawn by the crown before he pleaded thereto, this court shall now continue with the matter in relation to proceedings on sentence.

JACOBUS P. ANNANDALE
JUDGE OF THE HIGH COURT OF SWAZILAND
23RD MARCH 2011