

IN THE HIGH COURT OF ESWATINI

JUDGMENT

Case No. 344/18

In the matter of :

REX

Vs

SONKHE JOHN GWEBU

**Neutral Citation: Rex v. Sonkhe John Gwebu (344/18) [2025]
SZHC 06 (5th February 2025)**

Coram : J.S Magagula J

Dates Heard : 20/7/22;18/7/23;17/4/24 and 5/11/24

Delivered : 5th February 2025

JUDGMENT

[1] In this matter the accused person is charged with four (4) different offences as follows;-

(a) Count one:

The accused is charged with murder. The prosecution alleges that on the 21st h November 2018 and at or near Malkerns area in the Manzini Region, the said accused did unlawfully and intentionally kill ELLAH Du PONT.”

(b) Count two:

The accused is charged with the offence of “robbery it being alleged that:

“... upon or about the 21st November 2018 and at or near Malkerns in the Manzini Region, the said accused did unlawfully and intentionally use force and violence to induce submission of Ellah Du Pont and steal Ellah Du Pont’s national identity card, Ellah Du Pont ‘s driver’s licence, office keys, a sumsung battery, a mobilizer, a spray and E46-00 money in cash the property of Ellah Du Pont and thus did rob her of same.”

(c) count three:

Under this count the accused is charged with the offence of rape and it is alleged that

“ upon or about the 21st November 2018 and or near Malkerns area in the Manzini Region, the said accused did and intentionally have unlawful sexual intercourse with ELLAH Du Pont and thus commit the crime of Rape.”

It is further alleged in respect of this latter offence that it is accompanied by aggravating factors in that;

- (i) the accused strangled and killed the deceased after having sexual intercourse with her.*
- (b) the accused took away the deceased's belonging's after killing her.*

(d) Count four

On this count the accused is charged with the offence of stalking and it is alleged that;

“ upon or about the 21st November 2018 and at or near Malkerns area in the Manzini Region the said accused did unlawfully and intentionally stalk Ellah Du Pont by following the said Ellah Du Pont to Malkerns area where she lived at her homestead, loitering near the said Ellah Du Pont's homestead, waiting and watching her arriving at the said Malkerns area, and eventually raped, killed and took Ellah Du Pont's property without lawful excuse or legally justifiable reason and thus did commit the unlawful stalking.”

[2] Upon arraignment the accused pleaded not guilty to all these charges. The Public Prosecutor Mr A. Matsenjwa then led ten (10) witnesses in all to establish the commission of these offences.

[3] **PW1 - DR R.M REDDY**

This is the police Pathologist who conducted a Post Mortem examination on the body of the deceased. After explaining his medical qualifications to the court Dr Reddy went through his report which revealed that the accused died as a result of pressure applied to the neck or, in simpler terms strangulation. He handed in the post mortem report as part of his evidence. The said report was marked " exhibit A".

PW2 - ELIZABETH MKHABELA

[4] This is the person who identified the deceased's body during the Post Mortem examination. She told the court that the deceased was her cousin. The deceased's father and the mother of this witness are siblings. She further told the court that she went to the RFM hospital in Manzini on the 29th November 2018. This is where she identified the deceased by looking at her face and also by the clothing she was wearing.

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PW2 – ELIZABETH MKHABELA

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**PW3 - 6698 DETECTIVE CONSTABLE MPENDULO
BABONGILE DLAMINI**

- [5] This is the scenes of crime officer who attended to the scene of crime in this matter. He told the court that on the 21st November 2018 he attended a crime scene at Emseleni around Malkerns and on the way to Luyengo. He came to a Du Pont Farm where he found other Police Officers and some members of the public. One of the police officers led him to the scene which had been condoned off by the police.
- [6] At the scene he found a dead body lying facing up under a tree. He observed that the deceased was wearing black pants which were unbuttoned such that the private parts could be seen. The deceased was also wearing a blue jersey and black shoes. Not far from the body was a black plastic bag. Upon examining the body he observed that the body had marks on the neck. He then took pictures of the scene and compiled a photo album thereof. The photo album was handed into court and it is marked "Exhibit B". This was after this witness went through the album explaining each picture in it. He also told the court that he took the plastic bag to the police station He however said the plastic bag was empty.
- [7] During cross - examination he was asked if the plastic bag had any relevance to the incident. It was in fact suggested to him that someone else might have left the plastic bag there even prior to the incident. His response was that he could not

dispute that. In relation to the unbuttoned trousers, he was asked if there were any signs on the crime scene that would establish the SODV charge under count three. His response was that he was not in a position to tell that. He was also asked if he knew what caused the marks which he observed on the neck of the deceased. His answer was that he did not know.

PW4- ALEXIS CHELEN

[8] This witness stays at Emseleni Farm in the Malkerns area. It was after 9.00 pm on the 21st November, 2018 when her aunt came to her house and asked her to assist call the deceased. Her aunt said she had tried to contact the deceased but she could not find her. This witness tried to call the deceased but she could not get hold of her either because her number was not available on the network.

[9] This witness then tried to call the accused person who is a father of deceased's daughter Caroline. She enquired the whereabouts of the deceased and the accused said he had no knowledge of same. He however suggested that she calls Coates Valley Lodge. She called the lodge and a gentleman by the name of Zakhele answered the call. She asked him the whereabouts of deceased. This man said he gave the deceased a lift home and asked if she was not at home.

[10] PW4 answered in the negative. He then said she should call the police since he left the deceased at the gate. He further

stated that when he took the deceased home she was scared and did not even want to alight from the car. This witness then went to the Malkerns Police station straight away. She reported the matter to the police and requested assistance. The police were reluctant to open a case at that time since 24 hours had not elapsed since deceased's disappearance. She however explained the circumstances of the disappearance of the deceased and asked them to call the accused.

[11] The police officers used this witness's cellphone to call the accused. At first the accused did not answer the phone. However when a call was made again he answered it. The police officer introduced himself and asked him if he knew Ellah Du Pont. His response was that he did not know her. The police officer asked him to come to the police station and he said he was coming. They waited for him for a period in excess of two hours at the police station but he did not pitch up.

[12] The police decided that they should go and look for the accused at his place of residence which was in Matsapha. They then went to look for the accused using this witness's motor vehicle. Whilst they were on their way the accused called and told the police that he had killed Ellah and put her body under a strawberry tree at Emseleni ka – Du Pont Farm. They then returned to the police station. At the police station

the police asked this witness if she knew the place referred to by accused. She answered in the affirmative. She led them to the place and they found the body under the tree.

[13] At around 8.00 am on the following day, Police Officer Gumedze called and told PW4 that the police had found the accused. In the afternoon of this day this witness went to the police station to identify the deceased's belongings. There was a dark – brown handed bag which had some other items inside. In the handbag was a purse , money, keys, a cell phone and other items.

[14] During cross – examination it was put this witness that the accused had introduced the deceased at his parental home as someone he wanted to marry. It was further put to this witness that the accused never imagined life without the deceased. This witness's response was that she had no knowledge of all this. It was further put to this witness that the deceased fell pregnant with the accused's child. She however aborted the child and said she had a miscarriage. However at the time of the incident leading to the death of the deceased, she told the accused that she aborted the baby.

[15] Further it was put to this witness that it is the confession of abortion by the deceased that led to a fight during which the deceased grabbed the accused's testicles until he lost his strength. It was also put to this witness that it was during this

struggle that the accused's hand landed on the deceased's neck and death resulted. This witness stated that she had no knowledge of that and that all the deceased told her was that the accused was abusive to her. It was put to this witness that the allegation of abuse was an after thought because she did not mention it in chief. She denied this. She was further asked why she did not mention it when she made a statement to the police. She said she mentioned it but it was not recorded. When she was queried about the non - recording of this allegation she said another statement was made to a lady police officer.

PW5 -6000 CONSTABLE FREDDY VILANE

[16] This is the police officer who received the report about the disappearance of the deceased from PW4. He corroborated PW4 on what happened after PW4 made the report at the Malkerns Police Station. He confirmed that he made calls to accused after receipt of the report and that he eventually travelled in PW4's car to look for accused. He further confirmed that they did not reach the accused's place of residence. He said after a cellphone conversation he had with the accused along the way they went back to the police station and thereafter proceeded to the scene of crime at Emseleni Farm. This witness was not cross - examined.

PW6 – EMELIA MORDANT

- [17] This witness told the court that she is a nurse by profession and that during November 2018 she was based at Good Shepherd Hospital in Siteki. She also told the court that the accused is her cousin. On the 21st November 2018 she received a phone call from the accused late at night. The accused said he was checking on her. He then made a request that she should look after his child, Caroline Gwebu as he was leaving the country to look for a better job in South Africa. He said he would go at the end of the third term. He further stated that the reason he wanted to leave the country was that his love affair with Ellah Du Pont was failing.
- [18] She then called home and talked to her sister Lindelwa who told her that the accused had also called her. She went to work the following morning. Whilst at work at about 2.00pm two police officers from Malkerns Police Station came and asked what happened the previous night. She related the whole story of the phone conversation with the accused. She recorded a statement with the police.
- [19] This witness also told the court that she knew the deceased very well and the accused had introduced her at home as someone he intended to marry. After the meeting with the police she visited the accused in custody in Matsapha as he had been arrested. The witness identified the accused in court. Nothing much came out of cross – examination.

PW7 – VUSI MALINDZISA

[20] This witness told the court that he stays at his parental home in Mfabantfu, Ngonini where he rears pigs. On the 22nd November 2018 and at about 11.30 am police from Malkerns Police station came and they were in the company of one Mr Smith. Mr Smith was renting a house in this homestead and stayed with his son who was at school when the police came. The police explained what had happened in Malkerns and requested to search the house in which Mr Smith stayed.

[21] The police entered the house with Mr Smith. On the floor of the house they found a brown wallet. This witness opened it as it was small. There were items in it and these included an ID and copies of the same, money which amounted to forty – six Emalangeni, office keys, mobilizer, driver's licence and perfume. Mr Smith also showed them safety boots, a rain suit some trousers and an orange T-shirt. The police took these items and left and everyone including this witness signed a document.

PW8 – MAGISTRATE LUCIA LUKHELE

[22] This is the Judicial Officer before whom a confession statement was made by the accused. The Judicial Officer explained the procedures she followed before she recorded the statement. This include that he ensured that the police officer who brought the accused was not present when the confession is made. Also that she told the accused to speak freely and not

fear anything; further that the confession was made to the Judicial officer in his chambers and behind closed doors with only the Judicial officer, the clerk of court and the accused person . She the further told the court that after the statement was recorded it was read back to the accused and he acknowledged that it was correctly recorded. The statement was recorded on the 23rd November 2018.

[23] During cross - examination defence counsel asked if it was explained to the accused that this witness was not working with the police. Her response was that she did not explain that. All she did was to tell him that she was a Judicial Officer and the Police officer was not there at this time. It was also put to this witness that part of what the accused told her is what he was told by the police to tell her. Her response was that she did not know what transpired between the police and the accused; what she knew was that she told accused to speak freely and voluntarily.

[24] Defence counsel also put to this witness that the accused felt obligated to tell her whatever the police told him to say to her because he thought this witness worked together with the police. Her response was that she told the accused to speak freely and voluntarily as she was a Judicial officer. The accused did not show any signs of having been compelled to come and make the confession before her.

[25] Defence counsel also put to this witness that the accused was still reeling in shock when he made the statement. Her response was that the accused was very calm when he made the statement and did not show any signs of being shaken or fear. Further, defence counsel put it to this witness that the deceased grabbed the accused's testicles and a fight ensued. She responded that all she did was to record what the accused said and she did just that. She further pointed out that she asked the accused if he had any injuries and he answered in the negative.

[26] The statement was handed into court in both a typed and handwritten versions. The latter version which is the original was marked "exhibit "B" and the typed version exhibit "B1". I shall take only an extract from the statement as it is long and most of it is irrelevant. From page 7 to 8 the statement reads as follows;-

" Monday morning I met her next to KFC, I gave her my cellphone to use. Tuesday morning I met her again, she had arrived early. I asked how she got there early, she told me she got a lift from someone I also knew. I had no problem with that. Around 3.00pm she called the landline from her work. I found the missed call and called her. She said that she would be using a lift to go home , the individual was a Motsa. I asked her not to use the lift, she said she would use a kombi. After

work I went to park next to her work, I asked to speak to her we argued about the lift issue. She also refused to go with me as she said I was possessive. I said I would wait by her work to see if she would not be using the lift.”

I became angry, I left and boarded public transport to Malkerns to wait for her at the station. I called her about 10 times but she did not answer. I saw the car parking cross the road, they waited for about 2 minutes while she was inside the car. She then came out of the car, I became very angry. I had been hiding next to a tree. I then came out and I assaulted her with an open hand, I asked why she was lying to me. She told me the male was owner of Coates Valley Lodge. I assaulted her again with a fist by the side of her cheek. She screamed, I closed her mouth as I feared people would hear and attack me. She told me she was no longer in love with me and that it started when we had a child.

I forcefully had sex with her. She asked me not to hurt her but to kiss her first so she could enjoy. We had sex. I questioned her about her behavior recently. She told me she was no longer in love with me and that she hated even to kiss me. I became very angry, I held her by the neck. I used my belt to strangle her as I

feared that she would report to the police. She became weak and quiet. I put her pants on as she had not put them on. I took her bag and left her there..."

PW9 - KHETSIWE DLAMINI

This witness told the court that she is a clerk at the Manzini Magistrate court. She was handed exhibit "B" and she identified it as the statement made by the accused before PW8. She stated that she was present when the statement was made and she was the interpreter thereof. She also said that she appended her signature on the statement and so did PW8 and the accused in her presence.

PW10 - 3791 D/A INSPECTOR BONGANI GAMEDZE

[27] This is the Investigating Officer in this matter. To a huge extent the evidence of this witness corroborates that of PW3 (the scenes of crime officer), PW4 (Alexis Chelen), and PW5 (CONSTABLE FREDDY VILANE)). He told the court that he was on duty on the 21st November 2018. At about 11.00 pm he was informed by sergent Dlundlu that there were people who were reporting a missing person at the police station at Malkerns where he was stationed at the time.

[28] He proceeded to the Police station. From there he proceeded to Emseleni Farm with other police officers. There he discovered the body of the deceased under a tree. He then called upon

PW3, the scenes of crime officer, who came and took photos of the scene. Alexis Chelen confirmed this to be the body of the person they were looking for. He then inquired how they found the deceased. Alexis said this was through a phone conversation she had with the deceased's boyfriend who stayed in Matsapha. Based on this information, this witness and other officers proceeded to Matsapha at Mfabantfu. They got to a homestead which had rented flats. Upon enquiries he was shown the house of the accused. He knocked at the door and although he delayed for some time, the accused eventually opened the door.

[29] He introduced himself and his companions and advised him of their mission. He then arrested and charged the accused and took him to Malkerns Police station. There was also a boy child there and this witness told the boy that they were going to Malkerns with the accused. They arrived at Malkerns between 5.00 am and 6.00 am.

[30] During interrogation this witness realized that the accused wanted to say something. He then asked if he wished to say this to someone else who is not a police officer and he agreed to this. He then went to the station administration office to arrange for someone to take him to court to make the statement. He was taken to the Manzini Magistrate's court where he recorded a confession statement before a Judicial Officer.

[31] After accused's return investigations proceeded. The deceased's relatives reported that they had not found belongings of the deceased. The accused was questioned about this. The information given by the accused dictated that the police should go back to his place of residence where they had arrested him. Upon arrival at the homestead this witness secured two independent witnesses to the pointing out. These were Vusi Malindzisa and Lungile Thwala. The accused freely gave the police a brown waste belt from his bedroom. He also produced a small brown bag which was evidently a ladies bag.

[32] The bag had the following items;

- i) A driver's licence for Ellah Du Pont.
- ii) National ID for Ellah Du Pont.
- iii) Hospital cards for Ellah Du Pont.
- iv) A bundle of keys held by an orange key -holder.
- v) A black purse with money amounting to E46,00. and
- vi) a black gate remote control.

All these items were confiscated because they clearly belonged to the deceased. The belt did not however belong to the deceased. It was taken because it was suspected to have been used in the commission of the offence. All these items were handed in at the Police station as exhibits. The accused was then formerly charged with the offences enumerated in

paragraph [1] hereof. The witness also handed in the items listed above as part of his evidence. The belt was marked "Exhibit 1" and the bag and its contents was marked "Exhibit 2."

[33] During cross - examination it was put to this witness that on the day of the incident a fight ensued between the deceased and the accused at the scene of crime. During this fight the deceased grabbed the accused's testacles. The accused then used his hands to ward her off. He never used a belt to strangle the deceased. In response this witness said accused gave the police the belt as one of the said items he used to assault the deceased. Asked if the belt was taken for forensic testing to confirm if it had contact with the deceased. He replied in the negative but maintained that it was obvious and also maintained that the accused confirmed this. He further said that what made it obvious that the belt had been used were the marks on the neck of the deceased.

[34] It was also put to this witness that the accused never raped the deceased. His response was that after looking at the situation and body of the deceased, police concluded that the accused had raped the deceased. He further said the deceased's underwear was below her buttocks and not where it was supposed to be. The witness was referred to pictures 5 and 6 in exhibit "B" and asked if the underwear is not where it is supposed to be in these pictures. His response was that in

picture 5 it is not and the way she is lying tells. It was also put to this witness that although a button on the pants of the deceased is depicted torn off this happened during the fight. The witness responded that what accused narrated to them was contrary to that suggestion. Asked if tests were done to confirm sexual assault on the deceased, this witness was not sure.

[35] It was also put to this witness that the accused never robbed the deceased. It was contended that the accused and the deceased stayed together, it was not out of the ordinary for deceased's belongings to be found in the possession of the accused. His response was that an observation of the scene suggested that there was a fight and that the accused possibly forcefully took away deceased's belongings. He further said that looking at the scene he could tell that there could not have been consent to the taking of the items.

[36] During re-examination this witness confirmed it was the accused who told Alexis where the deceased would be found. On the story of grabbing of accused's testicles this witness maintained that this was never mentioned during investigations.

THE CROWN THEN CLOSED ITS CASE

DEFENCE CASE

DWI – SONKHE JOHN GWEBU (THE ACCUSED)

- [37] The accused told the court that he and the deceased were lovers and they had a four (4) year old child. They were both working in Manzini. On the 21st November, 2018 they had arranged that when they knock off from work they were going to buy food stuff for their child. However it turned out that this arrangement could not be proceeded with because his aunt called him and told him she had a problem of light bulbs at her home. Her home was at Luyengo which is past Malkerns where the deceased was staying.
- [38] The accused called the deceased and told her that he will no longer be able to join her to buy the child's foodstuff as he will have to rush to her aunt's place when he knocks off from work. He was going to buy foodstuffs and deliver them to the deceased at Malkerns. The accused knocked off early on this day. He bought the food stuffs and proceeded to her aunt's place at Luyengo. After fixing her aunt's light bulbs he returned to Malkerns where he waited for the deceased at the bus stop. He could not go alone to the deceased's place of residence as there were vicious dogs there.
- [39] Whilst waiting for the deceased at the bus stop he saw a motor vehicle which was silver in colour approaching. It stopped at the bus stop and the deceased alighted from it. He asked whose motor vehicle was she alighting from as she said she would come by kombi. She told him that she got a lift from a customer at her work place. The accused told the court

that it was not the first time for the deceased to get a lift from the same car. He therefore asked her why she was lying. He said she was lying because she normally came with this motor vehicle and it would drop her off and go back. The owner of the motor vehicle did not even reside at or near the place of residence of the deceased. A squabble then ensued. The deceased had told the accused that she was pregnant. The accused asked the deceased if she was still pregnant. She responded by clapping him. he responded by clapping her back and a fight ensued.

[40] The accused had all the deceased's belongings when he left and he took them to his place of residence. When he reached his place of residence at Mfabantfu in Matsapha he received a phone call from the police. They asked him if he had seen the deceased. His response was that he last saw her by the bus stop at Emseleni. They told him that he did not get home and they wanted to know what happened to her. He told the police that they had a fight and he left her there. He slept and in the morning the police came and arrested him for the murder of the deceased. They took him to the Malkerns Police Station where he was formerly charged with murder.

[41] The accused was asked by his legal representative to explain why he took the deceased belongings from the scene. His response was that he wanted to keep them so that they do not get stolen. He was also asked to respond to the

allegation that a belt was used in the commission of the offence. He denied this and maintained that he gave the belt to the police when they asked him to give them all the clothes he was wearing during the commission of the offence. The belt was one of such clothes. Asked about his relationship with the deceased he said their relationship was very good and he actually had introduced her to his family as someone he intended to marry. He further mentioned that the deceased had been pregnant with their second child. She however terminated the pregnancy and that hurt him a lot.

[42] During cross-examination the accused was *inter alia* asked why he told the police when they called him using PW4'S phone that he did not know the whereabouts of the deceased. He denied ever saying this. He maintained that what he told the police was that he had a fight with the deceased at Emseleni and he left her there. He was further asked how far was the tree under which the deceased 's body was found from the bus stop. He said it was not more than fifty (50) metres. Quizzed on how the body got that far, he said that is where they were standing when they were talking.

[43] The accused was further asked how is it that he was concerned about the safety of deceased's belongings more than her safety. His response was that the deceased's belongings were in his bag as they were walking and talking; and that is

how he went home with them. The accused was also referred to two sets of affidavits which he signed in his application for bail. He was asked how come the story of him being held by testacles does not feature in such affidavits. His response was that he told his attorneys everything and he does not know why they elected to exclude such story. He further said that the affidavits were never read back to him.

[44] The accused was further referred to an affidavit he deposed to on the 10th May 2019 when he moved an application for bail. Paragraph 8, 9 and 10 of that affidavit read as follows;

“8. *During or about the month of November 2018, the deceased changed the standing arrangement in the sense that during knocking off time she would be unavailable on her phone. When I did have access to her she would tell me that she got a lift from work from a person who stays at Luyengo. This happened on 3 occasions and I became suspicious of the change and wanted to see and talk to her about the change and whether or not we were still in a love relationship.*

9. *In the evening I went to see her at Malkerns and fortunately just after I had alighted I saw her disembark from a vehicle which then made a u-turn.*

10. *I asked her about the lift and whether or not we were still in a love relationship. Among her responses was that I was paying too much attention to her and that we were*

still in love. As we spoke tempers flared and we ended up fighting and I held her on the neck and she collapsed and died...”

[45] It was then put to accused that the allegation that he went to Malkerns to deliver foodstuffs of a child was not true and it was an after thought as it was not put to any of the crown witnesses. It was put to him that the real reason he went to Malkerns is the one stated in paragraph 8 which is stalking the deceased. In response he denied this and tried to disassociate himself with the contents of that paragraph. He said he never told his attorneys what is written in that paragraph.

[46] The accused was also asked why he told PW6 that he wanted to go and work in South Africa. His response was that he had heard that the police were looking for him and suspected that he may have committed an offence.

[47] During re – examination the accused was asked if he read all the pages in his affidavits supporting his fail applications. His response was that he was only shown the space on which he was to append his signature.

ANALYSIS OF THE EVIDENCE

[48] From the evidence of PW4, Alexis Challen PW5 Constable Freddy Vilane, PW8 Magistrate Lucia Lukhele and the accused himself, there can be no doubt that it is the accused who

killed the deceased. The accused told the court in his evidence that he applied pressure on the neck of the deceased using his hands until the deceased died. When making his confession statement before the Judicial Officer he said he strangled the deceased with his belt. In court he denied this but the mark on the neck of the deceased as seen in exhibit "B" is in line with the allegation that a belt was used. Also, although the accused maintains that he gave the belt to the police when they demanded all the clothes he was wearing on the day of the incident it does not make sense that the only item of clothing revealed in court was only the belt and nothing else. This is a strong indication that he handed the belt to the police as an exhibit he used in the commission of the offence. In any event whether he used the belt or his bare hands to strangle the deceased, the fact is that he killed the deceased by strangulation. The *actus reus* element has therefore been established beyond any reasonable doubt.

[49] The second leg in establishing liability for the offence of murder is that of intention. Intention can take three forms. There can be intention in the form *dolus directus*. This is direct intention where the perpetrator directs his efforts towards attaining the results of his actions. There is also *dolus indirectus*. This is where although the perpetrator intends the blow to land on particular person he however does not care if it lands on another one. There is also *dolus eventualis* which

is present where although the perpetrator foresees that his actions may cause the death of a person, he goes ahead with them not caring whether, or not the person dies.

[50] In *casu* the accused strangled the deceased until she died. It is common knowledge that a person subjected to strangulation fights to get loose of the grip and will eventually get weaker and weaker before he dies. If the grip is loosened timeously the victim will survive. In *casu* the accused told the court that the deceased did put up a struggle trying to loosen herself from his grip. However the accused did not let go of the grip. The deceased eventually got weak and died. He then took her bag and left with it leaving the deceased dead. In other words he made sure that the deceased was dead before he left the scene. He intended that the deceased should die. The accused therefore had intention in form of *dolus directus*. He therefore murdered the deceased. The crown has therefore established the charge.

[51] In count two the accused is charged with the offence of robbery. This offence occurs where the perpetrator uses force and violence to deprive someone of his property. In *casu* no evidence of such use of force and violence upon the deceased to deprive her of her belongings has been produced. The accused told the court that he took the deceased's belongings when she was already dead and that he wanted to avoid them

being stolen by someone else. The offence of robbery in count two has therefore not been established.

[52] Under count three the accused is charged with the offence of rape. This offence entails intentionally and unlawfully having sexual intercourse with another person. The unlawfulness consists in the absence of consent from the alleged victim. In *casu* the accused confessed before PW8, the Judicial Officer that before killing the deceased he forcefully had sexual intercourse with her. This is corroborated by the manner in which the deceased's body was found with her pants unzipped and slightly below the buttocks. Also according to PW3, the scenes of crime officer, her private part was partially visible. Count three has therefore been established by the crown. The accused did commit the offence of rape.

[53] Under count four the accused is charged with the offence of stalking. It is alleged that the accused followed the deceased to her place of residence at Malkerns, loitered near such place waited and watched the deceased arriving, and thereafter raped and killed her. Although in court the accused stated that he had gone to Malkerns to deliver foodstuffs of his child which he had with the deceased, in his confession statement before PW8 he states that he actually followed the deceased to Malkerns as he was suspicious that she was having an affair with another man. He did see the deceased alighting from a motor vehicle and confronted her. This is where the

squabble that eventually resulted in the killing of the
deceased began. The crown has therefore established the
offence of unlawful stalking in count four.

VERDICT

[54] For the foregoing reasons the following verdict is returned;

54.1 Count one -

The accused is found guilty of murder as charged;

54.2 Count two -

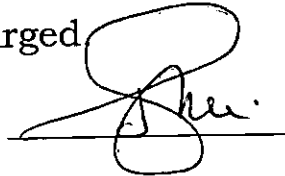
The accused is found not guilty of the offence of robbery
and he is accordingly acquitted and discharged thereof;

54.3 Count three -

The accused is found guilty of the offence of rape as
charged.

54.4 Count four -

The accused is found guilty of the offence of unlawful
stalking as charged



J.S MAGAGULA J

JUDGE OF THE HIGH COURT

For the crown : A. Matsenjwa

For Accused : N. Hlophe