



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

Case No: CC 18/2011

In the matter between:

THE STATE

versus

MICHAEL GARISEB

Neutral citation: *S v Gariseb* (CC 18/2011) [2013] NAHCMD 136 (21 May 2013)

Coram: SHIVUTE, J

Heard: 4 – 8 March 2013, 18 – 19 March 2013

Delivered: 21 May 2013

Flynote: Witness deviation – statement to police – opposed to testimony in court – not in itself – mean events not taking place – Witness – not required – at the time of making his/her statement to – police to furnish – statement – all its detail –
Police statement – is more often than not simply – bare bones of a complaint – the fact that flesh – added to the account at – stage of oral testimony – not necessarily – adverse consequence.

Summary: Witness deviation statement to the police as opposed to testimony in court does not in itself mean that those events did not take place or that there have been a recent fabrication by the witness especially not if the witness gives an explanation for their omissions and that explanation is not gain said by anyone.

It is trite law that a witness is not required at the time of making his or her statement to the police to furnish a statement in all its detail.

What is set out in a police statement is more often than not simply the bare bones of a complaint and the fact that flesh is added to the account at the stage of oral testimony is not necessarily of adverse consequence.

VERDICT

In the result the accused person is found guilty as charged and convicted of

1st Count : Contravening section 2 (1) (a) read with sections 1, 2, (2) 3, 5, 6 and 18 of Act 8 of 2000.

2nd Count : Contravening section 2 (1) (a) read with sections 1, 2, (2) 3, 5, 6 and 18 of Act 8 of 2000.

3rd Count : Contravening section 2 (1) (a) read with sections 1, 2, (2) 3, 5, 6 and 18 of Act 8 of 2000.

JUDGMENT

SHIVUTE J:

[1] The accused person stands charged with three counts of rape contravening section 2 (1)(a) read with ss 1, 2, (2) 3, 5, 6 and 18 of the Combating of Rape Act 8 of 2000 to which he pleaded not guilty.

[2] It is alleged that on 31 July 2010 at Epako New location in the district of Gobabis the accused did wrongfully, unlawfully and intentionally commit sexual acts under coercive circumstances with the complainant by inserting his penis into her vagina and the coercive circumstances are that:

The perpetrator by word and/or conduct threatened to inflict physical harm to the complainant and applied physical force to the complainant.

All offences were allegedly committed on the same date at the same location but at different spots.

[3] Mr Karuaihe appeared on behalf of the accused on the instructions of the Directorate of Legal Aid whilst Ms Esterhuizen appeared on behalf of the State.

[4] I will now proceed to give the summary of evidence. The first witness called by the state was Petrus Kuahee, a Sergeant in the Namibian police stationed at Gobabis who compiled a photo plan of the scene of crime which was admitted in evidence as exhibit "E". The scene of crime was pointed out by the victim. The photo plan revealed that there were marks of people struggling at the scene and marks of a person who was lying down.

[5] The second witness, Mr S, is the biological father to the then 14 year old victim. Mr S testified that on 31 July 2010, in the morning around 08h00, the victim went to the bush. She stayed for a long time. He went to look for her but did not find her. He went back home and after sometime the victim came crying and reported to him that she was raped. The father observed that the victim had a black eye and a red spot in the eye. Her neck appeared to be swollen and there was a mark that looked like she was strangled. She reported to him that she was raped by a stranger who was light in complexion, wearing a white shirt with stripes, a black trousers and white takkies. The person also had a mole which had grown hair on one side of the face. The offender was not too fat or thin or too tall but he was of average body

build. The person had kinky hair similar to what the witness referred to as 'a bushman's hair'.

[6] After the victim reported to him he took her to the police station. The victim appeared to be shocked and stressed. The victim's father acted as an interpreter between the police and the victim. The victim was speaking Otjiherero language and the father was interpreting from Otjiherero to Afrikaans or English mixing both languages.

[7] At the police station the victim explained how the incident took place, namely that whilst she was in the bush a male person appeared and grabbed her and told her to take off her trousers and then raped her by inserting his penis into her private parts. She gave a description of the alleged male rapist as well as his clothing.

[8] The victim was accompanied to the scene of crime by Constable Ugab, one lady, Constable Tjiposa and the victim's father. Constable Tjiposa was picked up from her house. The victim stated that she was raped thrice and she showed three spots where she was allegedly raped. After the victim had pointed the scene of crime, the father was dropped home and the victim accompanied by her mother was taken to the hospital by the police. The following day the victim and her father went back to the scene of crime for photographs of a scene of crime to be taken.

[9] After some time the victim and her father went to a place where an identification parade was held. They were kept in a room and the victim was collected from that room to go and identify the culprit.

[10] After the identification parade was held, the victim and her father were taken back home. One day when the victim was with her father, she pointed out a person and said he is the one who raped her. The victim was very scared when she saw the alleged rapist. The witness identified the accused person as a person who was identified by the victim whilst he was walking with the victim. According to the witness, the accused also fits the description given by the victim.

It was put to the witness that the description of the accused as well as the clothes was not stated in his statement. The witness responded that although the description was not contained in the statement the victim mentioned it and he interpreted it to

the police. The witness remarked that he had observed that most of the things he testified about were not contained in his statement although he interpreted them to the police. Furthermore, the witness testified that he did not read the statement and it was not read back to him. It was again put to the witness that the fact that the description of the accused was not contained in the statement was a recent fabrication. The witness replied that the victim gave the description of the offender and the description of his clothes to Sgt Tjiposa.

[11] The third witness N K the victim testified that whilst she was in the bush on her way back home she saw a male person coming from the opposite side and the person pretended as if he was passing by but after he went behind her he grabbed her from behind and put his arms around her neck. He squeezed her neck and she screamed. He continued to strangle her and pulled her backwards. Her shoes fell from the feet. The victim was screaming for help. He took her to a certain ditch where she fell down. The victim fell into the ditch (hole) when the victim inquired what the man wanted from her he answered in Afrikaans using crude language meaning that he wanted to have sexual intercourse with her. The victim begged him to leave her alone. The man said he would only let her go if he had finished what he wanted to do with her. He warned her that if she refuses he would kill her.

[12] The man pulled the victim's trousers down at that stage the victim was lying on her back and the man was kneeling down. They struggled about the trousers and the man assaulted the victim with a fist on the eye and she sustained injuries as a consequence. The victim was very scared and she thought that the man would carry out his threats to kill her.

[13] The man proceeded to undress the victim by pulling the trousers on one leg and taking off her underpants. He opened his trousers' zip, took out his penis and tried to insert it into her private parts but it could not enter. He tried to put his finger into her private part but he could not gain complete entry. He then put saliva on his finger and forced to enter; he succeeded and inserted his penis into her vagina and did rude things to her. The time the man was forcing to gain entry and when he was doing rude things to her she suffered a terrible pain. The man had sexual intercourse with her for a long time.

[14] He told her to put on her clothes and pulled her to another place where he undressed her again; the victim was resisting but he was not deterred. He laid the victim's trousers on the ground and ordered her to lie down on it. At that stage the victim was bleeding because of the injuries she sustained through forceful entry. The victim begged him to release her but instead he pushed her on the chest and ordered her to keep quiet. He put his penis into the victim's vagina again. He further put his hands in her T-shirt where there was N\$6.00 and he took it. Thereafter he started to fondle her breasts. He told her that he will keep the N\$6.00 for her. After he finished he ordered her to stand up.

[15] He took the victim's clothes and pulled her to another place. He was dressed up whilst the victim was half naked. The victim was crying begging him to leave her and asking why he was doing that to her and whether he did not have a wife. The man said the victim was his wife. At the third spot he let the victim to lie down and told her to stick out her tongue which she did and he sucked it. At that stage the accused was having sexual intercourse with her by inserting his penis into her vagina.

After he finished he ordered the victim to get dressed and go home to take a bath and that she should not tell anyone. He further told her that he would be leaving as he was not staying in Gobabis and he would only come back to see her on Friday the following week. Therefore she should not report the incident. The man gave the victim N\$1.00 part of her money that he took from her and left with N\$5.00.

[16] All the time the man was talking and having sexual intercourse with the victim the victim was able to see him. The victim described the man as not too fat or thin, not too tall or short, light in complexion with kinky hair similar to that of a bushman. He had a mole on his face and he was wearing a white shirt with black stripes and a black trousers and white takkies. The man was a bit young.

[17] At home the victim reported the matter to her father and the father took her to the police station. The victim narrated the story to the police through her father who was interpreting. Police Officers Ugab, Noadoes and Tjiposa went to the scene of crime with the victim and her father. The police officers asked her questions but she could not remember what they asked her as she was not concentrating. Her mind

was still pre-occupied with the man's threats and she believed that the man would carry out his threats since she reported the matter.

[18] From the scene of crime the victim was taken to the hospital. The following day the police came to take her to the police station and questioned her. She spoke through her mother who accompanied her to the police station. The victim spoke in Otjiherero and the mother was interpreting in both English and Afrikaans. Police Officer Noadoes was the one questioning her concerning what happened. She asked her whether she would be able to identify the offender if she saw him, his description and the type of clothes he wore. She gave a description of the man and how he was dressed. She also told the police what happened. The description and the type of clothes she told Noadoes was similar to what she told her father. The police officer was writing down what was said to them. However, she did not read what was written down.

[19] One day when the victim and her mother were at home, police officer Ugab came and told them to accompany him to a certain place where he saw a person who fitted the description she gave to them. This was about two weeks from the date of the incident. They stopped the vehicle a bit far from the place where the man was and told her to go with him to see if she would be able to identify the man. When they arrived at the place, the man was talking to Tjiposa. When the victim alighted from the vehicle, the man looked at her and the victim immediately recognised the man. At that stage the victim was still afraid of the man and immediately she saw him she ran back to the vehicle. There were other people at the place where the victim recognised the man apart from the police officers. After the victim identified the man they were taken back home.

[20] After some days she was called to attend an identification parade. The victim and Tjiposa were at a certain room. One of the officers came to fetch the victim and went to the office where there were people standing with numbers. She was asked to point the person out. The victim pointed the man out by touching him on the shoulder and photographs were taken. After the victim touched the man, the man moved backwards and he leaned on the wall. After the identification parade the victim saw the man again whilst she was in the company of her father. This man

happened to be the accused. The victim identified the accused as the person who had sexual intercourse with her. The victim testified that she was traumatised by this incident and it had affected her performance at school and she kept a distance from her friends.

[21] It was put to the witness that when she and police officer Ugab entered the yard of the house police officer Ugab asked the victim whether the accused was the right man who raped her. The witness responded that she did not enter the yard, she identified the accused on her own from a far and ran back to the car and started to cry. The police only realised that the accused was the one from the way the victim reacted upon seeing him. The witness insisted that even if the accused is put among a thousand people she will never forget him because he did bad things to her. It was put to the witness that the accused was not the one who raped the victim. The victim was adamant that the accused is the one who raped her.

[22] It was further put to the victim that she identified the accused person because he was shown to him by police officer Ugab. She vehemently denied that she was told by anybody that the accused is the one who raped her. She insisted that she identified him because she was able to recognise him. It was put to the witness that the fact that the description of the accused person was not in the witness statement meant that she never gave the description to the police officers. The victim answered that she gave the description.

[23] The fourth witness called by the state was Doctor Felix Kwenda a medical practitioner at Gobabis State Hospital. He testified that on 31 July 2010 he examined the victim in this matter who was allegedly sexually assaulted. She appeared to be hysterical. She had a bruise on the left upper eye lid. The genitalia; the labia majora; labia minora; and vestibule were bloodstained. The hymen was torn and the examination was painful. The Dr's findings were consistent with sexual abuse. The injuries were fresh and it appeared that there was forceful entry.

[24] The state further called Constable Ismael Ugab who testified that he, Sergeant Noadoes, the victim and her father picked up Constable Tjiposa to go to the scene of crime where the victim was allegedly raped. The victim directed them to the scene of crime. The victim showed them the spots where the incident

allegedly happened and told them what happened through the father. Constable Ugab and the victim's father followed the footprints of the offender. However, they lost sight of them because the offender was walking on the grass. From there they took the victim to the doctor. Constable Ugab further testified that the victim gave him the description of the culprit and what he was wearing (similar to the description as already stated in court by the victim).

[25] After two weeks, a woman reported an incident between her and her boyfriend. Constable Ugab and Tjiposa went to investigate the incident. They found the alleged culprit, upon seeing the culprit he realised that his description matched the description he was given by the victim in the rape case. He, Ugab, drove to the victim's house, took the victim and her mother to the place where he saw the man who fitted the description for the victim to identify the man. He parked at a distance. Constable Tjiposa was close to the culprit and there were other people around. The victim and her mother alighted from the vehicle and the victim upon seeing the accused she ran back to the vehicle and started to cry. The victim appeared to be frightened. The accused person wanted to run away but Ugab grabbed him. The accused was taken to the police station by Constable Platt. Ugab further testified that he walked to the accused person because he wanted to run away. The witness again testified that he was the one who drove the victim to the identification parade but he did not take part in the identification parade. Through cross-examination, it was put to the witness that whilst he was in the company of the victim he walked to the accused and touched the accused and inquired from the victim whether the accused was the right person who raped her. The witness replied that he never asked her whether the accused is the one who raped her. Ugab was further asked whether Tjiposa and the victim were in a waiting room during the time of the identification parade. Ugab responded that she was not there, contrary to what the victim said.

[26] The State further called Warrant Officer Ephraim Kashuupulwa who testified that he conducted an identification parade which took place at Gobabis Prison on 17 September 2010. He completed a proforma and informed the accused of his rights as contained in the proforma before the identification parade was held. He took people of similar complexion, height and built. The suspect was told to choose the

position he wanted to stand and to choose his number. He chose No.5. There were 9 people who stood to be identified. Each person was holding a number. The victim was called in to identify the culprit and the victim identified the accused as the culprit and photographs were taken during the process of identification. All nine people were standing straight before the accused was identified. However, after he was pointed out the accused crossed his legs. The accused did not complain anything about the way the parade was conducted; he appeared to be satisfied.

[27] It was put to the witness that the accused was asked to stand at a particular position, given a No.5 and told to cross his legs before the complainant entered the hall where the identification parade took place and that the complainant knew before hand that the accused would be No.5. The witness responded that it did not happen that way.

[28] Sergeant Aretha Kandundu testified that she took the photographs during the identification parade and compiled the photo plan. The accused and eight prisoners took part in the identification parade. The victim positively identified the accused in photograph No.2. The accused crossed his legs at the time he was pointed out by the victim. She further corroborated Warrant Officer Kashuupulwa that the accused was not informed to stand in a specific position.

[29] Sergeant Karl Amtana testified that he was guarding the victim whilst she was waiting to go and identify the perpetrator. The complainant was in a company of her parents. In that room it was only him, the victim and her parents. She was collected by Constable Eiseb to go and attend the identification parade. If one is in the waiting room one could not see or hear what is going on in the hall where the identification parade took place.

[30] Sergeant Vespasion Eiseb corroborated the testimony of Sergeant Amtana that he collected the victim from a certain room where she was with Sergeant Amtana and her parents and took her to Warrant Officer Kashuupulwa. He did not see Tjiposa.

[31] Constable Ganeb testified that after the identification parade was held he took the victim to the waiting room to Sergeant Amtana. He further testified that he did

not see Cst. Tjiposa at the prison where the identification parade took place. She was left at the police station.

[32] Constable Stella Tjiposa testified that she was picked up from home by Constable Ugab so that she could attend to a rape case involving the victim. She went with the victim accompanied by her mother to the hospital. The victim was in a state of shock. She was also in pain and traumatised. After she was examined by the doctor she was taken back home. On 1 August 2010 she and Constable Ugab went to the victim's place to question her. The victim told them where the incident took place and the description of the perpetrator. At that stage the victim was still in shock and she was crying. The victim in the presence of her father pointed out three different spots where she was allegedly raped. Constable Tjiposa further testified that the accused was arrested in this matter whilst she was investigating another case involving the accused. Whilst the witness was talking to the accused Constable Ugab informed her that the accused fitted the description of the man that was described in the rape case. Constable Ugab informed her at the time the accused wanted to flee. She further testified that she did not see the victim in this case at the accused place. She was not aware that Ugab had brought the victim to that scene. There were other people at the scene.

[33] Constable Tjiposa further testified that she arranged for the identification parade to be held. She collected the victim and her parents and dropped them at Gobabis Prison where the identification parade took place. She took them to a waiting room where she met constable Amtana and she stayed for about a minute in that room. Constable Ugab was the driver and he had remained in the car. Before she went back to the car she told the victim not to be afraid and to be comfortable. Tjiposa testified that she did not hear or see Ugab touching the accused and asking the victim whether he was the right person who raped her.

[34] Through cross-examination it was put to the witness that she wrote in her statement that the accused was arrested with the help of the victim. She insisted that she did not see the victim the date the accused was arrested. It was a mistake for her to have said that in her statement. When it was further put to her that the accused saw her at the hall where the identification parade was held, she answered

that she was never at that hall. As to the question that she was together with the victim at the waiting room, she explained that she is the one who took the victim to the waiting room and left, it could be that since she is the one who took the victim there, the victim thought she was also guarding her, but she just put her in that room and she left for the police station. It was again put to the witness that either she or other police officers who were in the company of the victim told her the position which the accused was standing. She responded that she did not tell the victim in which position the accused was because she was not in a position to know.

[35] The witness was further asked whether they did not first go to the scene of crime before they went to the hospital and she disputed it. It appears to me the witness was mistaken in this regard, because Constable Ugab, the victim and her father all corroborated each other that the witness was picked up from her home and they proceeded to the crime scene thereafter they dropped the victim's father at home, the victim's mother accompanied them and proceeded to the hospital.

[36] On the other hand the accused gave evidence under oath. He called no witnesses. His testimony was that he was not at the location where the incident took place. He never had sexual intercourse with the victim. He only came to see the victim on 17 August 2010 the day he was arrested. Ugab came to the yard of his house with the victim, and asked the victim whether the accused was the right person who raped her and the victim confirmed it. The accused was arrested and after weeks from the date of his arrest he was taken to the identification parade at the Gobabis Prison. He was given a prison uniform and there were eight other inmates. The accused was standing against the wall when the first photograph was taken and he was having a No. 5. Ugab and Tjiposa were moving around. Amtana was also present and many other police officers the victim came and identified him. The police officer who was in charge of the identification parade told him to cross his legs and the second photograph was taken.

[37] The accused further testified that he was not satisfied with the way the identification parade was held. He was told as to which position he must stand and he was given that particular number. The accused was the only person who had a mole on his face at that identification parade.

[38] Through cross-examination the accused conceded that at the time he was arrested there were other people present. The accused further testified that although the description given in court fits his, he was not the one who committed the offence.

[39] It was submitted on behalf of the state that concerning part of the witnesses' testimonies that was not contained in the witnesses' statements given at the police station, the failure to indicate all the details of series of events does not in itself mean that those events did not take place or that there have been a recent invention by the witness especially not if the witnesses give an explanation for their omissions and that explanation is not gainsaid by anyone.

[40] I fully agree with the argument advanced by counsel for the state. Although the victim; her father; Constable Ugab and Tjiposa's statements did not give all the details concerning the description of the accused and the clothes he was wearing as opposed to what they testified in court, it is trite law that a witness is not required, at the time of making his or her statements to the police, to furnish a statement in all its detail.

The above legal principle was followed by this court in the matter of *Hanekom v State* (unreported case) No. CA68/1999 when Hanna,J expressed himself as follows:

"What is set out in a police statement is more often than not simply the bare bones of a complaint and the fact that flesh is added to the account at the stage of oral testimony is not necessarily of adverse consequence."

[41] In the light of the above legal principle with which I agree, I found the argument by counsel for the defence that the witnesses' failure to give all the details in their statements to the police is an indication that what they testified about in court was a recent fabrication or that it did not take place to be without merit and it does not render the witnesses' testimonies to be rejected in their totality.

[42] There is no doubt that the victim was sexually assaulted. This is corroborated by medical evidence. The victim testified that she was raped thrice; this evidence was not contradicted in any manner. The only dispute concerns the identity of the person who committed the sexual acts against the victim.

[43] At the pain of being repetitive, the victim testified that she did not know the perpetrator before the incident. However, she was able to give the description of her assailant as well as the description of the clothes he wore to her father and to the police officers through her father. She again gave a similar description in court. The testimony of the victim as far as the description of her assailant and the clothes he wore was corroborated by Constable Ugab and the victim's father. However, there appears to be a discrepancy between Constable Tjiposa and the rest of the witnesses who testified about the colour and type of clothes worn by the culprit. It is my considered opinion that Constable Tjiposa was mistaken concerning the type of some of the clothes described to her by the victim due to the fact that she only put her statement in writing a year after the incident happened, which may well have affected her ability to correctly remember the events.

[44] It has been a point of criticism by the defence counsel that the victim identified the accused person earlier on before the identification parade was held at the prison hall because Constable Ugab held the accused by the shoulder and asked the victim whether the accused was the right person who raped her. This proposition was disputed by Constable Ugab as well as the victim. Constable Ugab testified that because of the description the victim had given him, when he saw the accused he realised that the accused's description matched the description given by the victim in the rape case. He then decided to go and fetch the victim in order for her to confirm. However, when they arrived at the place where the accused was, Constable Ugab parked the vehicle about 50 metres away and when he and the victim alighted from the vehicle the victim saw the accused and did not say a word. She immediately ran into the vehicle and cried. This piece of evidence was corroborated by the victim who testified that when she alighted from the vehicle, the accused looked at her. She recognised him and ran back to the car. The victim was adamant that she would never forget the accused because he did rude things to her. Furthermore, Constable Tjiposa testified that she did not see or hear Constable Ugab touching the accused and asking whether he was the right person who raped the victim.

[45] Again counsel for the accused argued that the fact that Ugab stated in his statement that the accused was positively pointed out by the victim and that he had arrested the accused because of the description given by the victim, Ugab could not

deny that the victim did not point out the accused. I note that Constable Ugab could not give a satisfactory explanation why he said the accused was pointed out by the victim in his statement. It is my considered opinion though that an inference that the accused was identified by the victim can be drawn from the victim's conduct when she ran back to the car upon seeing the accused.

[46] Concerning the identification parade, it was argued that the identification parade was not fair and properly held because Constable Tjiposa was at the waiting room where the witness was. Constable Tjiposa testified that she is the one who took the victim to the waiting room and handed her over to police officer Amtana. However, she only stayed there briefly. Although there is evidence that Constable Tjiposa went as far as the waiting room, there is no evidence that when she took the victim to the waiting room they were able to see the individuals who were to take part in the parade or that they were able to see or hear what was going on at the hall where the parade took place as it was a bit far from the room. Furthermore, there is no evidence that Constable Tjiposa was seen or heard pointing out the accused to the victim. The mere fact that Tjiposa was at the waiting room does not invalidate the identification parade process.

[47] Furthermore, it was counsel for the defence's argument that Constable Tjiposa or other police officers who were involved in the identification parade had informed the victim to point out the accused. This proposition is contradictory to the argument advanced earlier that Const Ugab had held the accused by the shoulder and asked the victim whether the accused was the one who raped her. If that was the case, one can legitimately ask: Why was it necessary for the police to tell the victim to point out the accused if the victim already knew him? I found this proposition to be nothing but mere speculation. There is no merit in it and it should be rejected.

[48] I have been referred to several trite principles gathered from case law concerning the identification of an accused person by both counsel and I have taken them into consideration when assessing the evidence given by the state as well as the defence.

[49] The victim in this matter is a single witness as far as to what happened in the bush and as to the identity of the accused person. Section 208 of Criminal Procedure Act 51 of 1977 reads: *“An accused may be convicted of any offence on the single evidence of any competent witness.”*

However, the evidence of a single witness should only be relied upon when it is clear and satisfactory in every material respect. The victim in this matter testified that the incident took place during broad day light. The victim spent a considerable time with the perpetrator which gave her ample opportunity to observe him. Although the victim was a young child aged 14 years when this incident happened, it is the observation of the court that she appeared to be sufficiently intelligent to observe, and she could remember what transpired. The victim was able to remember the identity of the culprit, and on the strength of the description she gave to constable Ugab, he was able to connect the description to the accused. The accused had a distinctive feature namely a mole. It is not disputed that the description given by the victim matched that of the accused. When the victim alighted from the vehicle she immediately recognised the accused on her own despite the fact that there were other people at the place where the accused was found. Again when an identification parade was held, the victim pointed out the accused, without any hesitation because she knew him. She gave her evidence in a straight forward manner and did not succumb to the pressure of cross-examination. She remained calm and was able to give straight answers to the questions put to her.

[50] In contrast, I find the evidence of the accused that constable Ugab was the one who pointed the accused to be far-fetched. Ugab's decision to take the victim to the accused's premises was informed by the description he was given earlier by the victim. The ability of the victim to accurately identify the accused was also tested at the identification parade. The accused alleged that the identification parade was not fairly held because he was made to stand in a certain position and that he was given a particular number and told to stand with crossed legs. As already noted, this evidence was disputed by all the police officers who were at the hall where the parade took place and corroborated each other when they testified that the accused chose his number and position and only crossed his legs after he was identified by the complainant. There is no good reason to disbelieve the evidence of these

witnesses. The accused himself also testified that only after the first photograph was taken that he crossed his legs. I find that the accused's version of events cannot reasonably possibly be true. The accused was properly identified at the identification parade that was properly held. This court has no reason to doubt the evidence of the complainant and that of other State witnesses concerning the accused's identification. I am satisfied that the truth has been told. I therefore reject the accused's defence that he was not at the scene and that the police officers told the victim to point at him as this could not be possibly true in the circumstances.

[51] I am satisfied that the state had proved its case beyond a reasonable doubt that the accused indeed had a sexual intercourse thrice with the victim under coercive circumstances by assaulting her and by threatening to kill her should she refuse to comply with his instructions..

[52] In the result the accused person is found guilty and convicted as follows:

1st Count : Contravening section 2 (1) (a) read with sections 1, 2, (2) 3, 5, 6 and 18 of Act 8 of 2000.

2nd Count : Contravening section 2 (1) (a) read with sections 1, 2, (2) 3, 5, 6 and 18 of Act 8 of 2000.

3rd Count : Contravening section 2 (1) (a) read with sections 1, 2, (2) 3, 5, 6 and 18 of Act 8 of 2000.

N N Shivute
Judge

APPEARANCES

STATE : Ms Esterhuizen
Office of the Prosecutor-General

ACCUSED: Mr Karuaihe
Instructed by Directorate of Legal Aid