

REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA,  
MAIN DIVISION



WINDHOEK,

CASE NO.: CC 26/2018

In the matter between:

**THE STATE**

versus

**ANDRE**

**MAJIEDT**

**ACCUSED**

**Neutral Citation:** *State v Majiedt* (CC 26/2018) [2024] NAHCMD 609 (17 October 2024)

**Coram:** CLAASEN J

**Heard:** 19, 20, 22, 25, 26, 28 and 29 November 2019; 15 and 17 June 2020; 9 and 16 November 2020; 19 to 23 April 2021; 23 September 2021; 18 February 2022; 3, 4, 6, 10 and 11 June 2024; 15 July 2024.

**Delivered:** 17 October 2024

**Flynote:** Criminal Law – Criminal Procedure – Combating of Rape Act 8 of 2000 – Rape – Coercive circumstances – Incest – Contravening s 15 of the Prevention of Organized Crime Act 29 of 2004 – Trafficking – For sexual exploitation – Assault by threat.

**Summary:** The accused was charged with 3 counts of rape in contravention of the provisions of the Combating of Rape Act, 8 of 2000. In the alternative, he was charged with 3 counts of incest and a further alternative count of committing sexual acts with children below the age of 16 years. He also faced 3 counts of trafficking in contravention of the Prevention of Organised Crime Act 29 of 2004 and 2 counts of assault by threat.

The complainant is the biological daughter of the accused. Her mother requested that the daughter reside with the father in Angola as from 2009. The daughter moved to Angola with the father during the period 2010 until 2012. Prior to the move to Angola, the father's family went on holiday at Jakkalsputz. The complainant alleged that the first sexual violation took place during that holiday. The complainant attested of other sexual violations and threats. The accused denies that he raped or assaulted her or trafficked her for sexual exploitation. He admits to a sexual incident between him and the complainant but says it happened in the border town of Ondjiva in Angola during the last year before the complainant came back to Namibia.

*Held that*, the evidence proves that an intentional sexual act has taken place, which was unlawful and to which the complainant clearly did not and could not consent to. It occurred under coercive circumstances wherein the complainant was given alcohol earlier that night, she was asleep when the act commenced and as a 15 year old child, she was powerless against her father abusing his trusted position.

*Held further that*, the court was satisfied that incest has been proven under count 7 as the evidence has proven beyond any reasonable doubt that the accused committed a sexual act, with his biological daughter, which act was intentional, prohibited and unlawful.

*Held further that*, in view of the voluntary agreement between the complainant's parents that the complainant will move to Angola and reside with her father the court is not satisfied that the State has proven the charges of trafficking in persons.

*Held further that*, the recollection regarding assault by threat was not clear and there remains discrepancies between the date as per the evidence and the date as in the charge. As such the court does not find the evidence satisfactory to sustain a conviction.

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### ORDER

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**Count 1:** Contravening s 2(1)(a) read with ss 1, 2(2), (3), 3, 5, 6 and 7 of the Combating of Rape Act, 8 of 2000 – Rape read with s 1, 2, 3 and 21 of the Combating of Domestic Violence Act 4 of 2003: **Guilty.**

**First alternative to count 1 – Incest: Not Guilty.**

**Second alternative to count 1:** Contravening s 14(a) of the Combating of Immoral Practices Act, 21 of 1980 as amended by Act 7 of 2000 – Committing or attempting to commit a sexual act with a child below 16 years: **Not Guilty.**

**Count 2:** Contravening s 15 read with s 1 of the Prevention of Organised Crime Act, Act 29 of 2004 – Child Trafficking: **Not Guilty.**

**Count 4:** Contravening s 15 read with s 1 of the Prevention of Organised Crime Act, 29 of 2004 – Child Trafficking: **Not Guilty.**

**Count 5:** Assault (by threat) as read with s 1, 2, 3, and 21 of the Combating of Domestic Violence Act 4 of 2003: **Not Guilty.**

**Count 6:** Contravening s 15 read with s 1 of the Prevention of Organized Crime Act, 29 of 2004 – Child Trafficking: **Not Guilty.**

**Count 7:** Contravening s 2(1)(a) read with ss 1, 2(2) and (3), 3, 5, 6 and 7 of Combating of Rape Act, Act 8 of 2000 – Rape read with s 1, 2, 3, and 21 of the Combating of Domestic Violence Act 4 of 2003: **Not Guilty.**

**Alternative to count 7:** Incest: **Guilty.**

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## JUDGMENT

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CLAASEN J:

### Introduction

[1] The accused was indicted for intra-familial sexual abuse, child trafficking and assault charges. The State contends that the incidents were perpetrated during the accused's daughter's teenage years over the course of several years and charged him with 8 counts in total.

[2] The matter has a protracted history that followed it from the lower courts. The commencement of plea and trial at the High Court coincided with the outbreak of COVID-19 in the country. Once that subsided, the accused brought several interlocutory applications whereafter he terminated the mandate of his erstwhile legal counsel. He insisted on privately funded legal counsel, which caused further delays. After the withdrawal of several legal practitioners during the period of 2022 through 2023, the trial got back on track in 2024. From that point forward, the accused has been represented by Mr Andreas on the instructions of the Directorate of Legal Aid. The State has been represented by Mr Khumalo of the Prosecutor-General's office.

### The plea and charges

[3] The accused pleaded not guilty to all the charges and elected to remain silent. At the end of the State's case, he applied for a discharge on all charges, save for count 1 and count 7. The court discharged the accused on counts 3 and 8 with reasons given at the time.

[4] The accused thus remained with counts 1, 2, 4, 5, 6 and 7. Counts 1 and 7 are rape charges which read similar, except that the alleged incidences took place during different time periods<sup>1</sup> and different places.<sup>2</sup> These charges both had an alternative charge of incest<sup>3</sup> and it is also alike except for the place and date<sup>4</sup>. In

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<sup>1</sup> Count 1: On an unknown date during the month of December 2009 at or near Jakkalsputz in the Swakopmund district the accused unlawfully and intentionally committed sexual acts with the complainant by inserting his penis into her vagina on diverse occasions. The alleged coercive circumstances are threats to apply physical force, threats to harm to the complainant under circumstances where it was not reasonable for the complainant to disregard the threat and abuse the position of power over the complainant.

<sup>2</sup> Count 7: On an unknown date during the month of October 2012 at or Oshikango in the district of Eenhana the accused unlawfully and intentionally committed sexual acts with the complainant by inserting his penis into her vagina on diverse occasions. The coercive circumstances are threats to apply physical force, threats to harm to the complainant under circumstances where it was not reasonable for the complainant to disregard the threat and abuse the position of power over the complainant.

<sup>3</sup> First alternative to count 1: On an unknown date during the month of December 2009 at or near Jakkalsputz in the Swakopmund district the accused unlawfully and intentionally committed sexual acts with the complainant by inserting his penis into her vagina on diverse occasions on diverse occasions whilst the parties are in a blood relationship and the accused was legally prohibited from marrying the complainant.

<sup>4</sup> First alternative to count 7: On an unknown date during the month of October 2012 at or near Oshikango in Eenhana district the accused unlawfully and intentionally committed sexual acts with the complainant by inserting his penis into her vagina on diverse occasions whilst the parties are in a blood relationship and the accused was legally prohibited from marrying the complainant.

respect of count 1, the State proffered a second alternative charge of committing a sexual act with a child under the age of 16 years<sup>5</sup> for the same acts.

[5] Counts 2, 4 and 6 are that of child trafficking, wherein it is alleged that the accused transferred and transported the complainant from Windhoek to Angola for the purpose of sexual exploitation.<sup>6</sup> Count 5 pertains to assault by threat.<sup>7</sup>

### Background

[6] For the sake of brevity, certain facts emerged as common cause during the trial. The accused is the biological father (hereafter called 'the father') of the complainant. Towards the end of 2009, the mother of the complainant contacted the father and asked that the complainant resides with him. He was working and residing in Angola at the time. The request was made on account of disciplinary problems that the mother experienced with the complainant, who was in grade 9. The parents agreed that the complainant would go and reside in Angola where she would continue her school career. The father collected the complainant, with two of his other children and drove to Angola for the first part of the December holidays in 2009. Thereafter, they returned and went to a camping site at Jakkalsputz for the remainder of the December holidays of that year.

[7] It was not in dispute that the complainant resided with the father in Angola for approximately 3 years from 2010 onwards. During that period they occasionally

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<sup>5</sup> On an unknown date during the month of December 2009 at or near Jakkalsputz in the Swakopmund district the accused unlawfully and intentionally committed a sexual act with the complainant who was 15 years at the time.

<sup>6</sup> Count 2 pertains to January 2010, Count 4 to January 2011 and Count 6 to January 2012.

<sup>7</sup> During June 2011 and at or near Windhoek in the district of Windhoek the accused did unlawfully and intentionally threatened to kill the complainant and has in that manner instilled fear in her.

travelled back to Namibia for visa renewal of the complainant as well as holidays. Towards the end of 2012, the complainant did not want to stay with her father anymore. Subsequently, it emerged that the complainant was pregnant. She implicated her father. Criminal charges ensued which led to the arrest of her father on 29 January 2013. It is also common cause that during the course of the year, whilst the case was in the lower courts, the complainant deposed to several withdrawal statements.

[8] The legal questions before the court revolved around:

- a) whether unlawful sexual intercourse took place between the father and the complainant on diverse occasions during December 2009 at Jakkalsputz and during October 2012 at Oshikango, respectively;
- b) whether the complainant willingly travelled with her father during January 2010, January 2011 and January 2012 and voluntarily resided with him in Angola for that period or whether the father trafficked the complainant for sexual exploitation purposes; and,
- c) whether the father threatened to kill the complainant in June 2011.

#### Summary of the State's case

[9] The State's case comprised of evidence by the complainant, several forensic officials, a psychologist, relatives of the complainant, an acquaintance of the complainant's mother and several police officers. The court will summarise the salient parts of the evidence.

#### Complainant, relatives and acquaintance of complainant's mother

[10] The complainant gave her evidence in camera and in the presence of a support person by means of a closed circuit television. She was 26 years old at the time of the testimony. She was 15 years old when she went on the camping holiday during December 2009 with the father and his relatives. She and her sister had turns to sleep in a tent that was mounted on top of a Pajero vehicle owned by the father. Their father also slept there.

[11] One night the complainant awoke and found her father on top of her and his penis was in her vagina. She was shocked and asked him what was going on but he quietly left the tent. She remained in the tent. She testified that she assumed that would never happen again. Later during that holiday he bought sneakers worth about N\$ 1 000 for the complainant. During that time he told her that nothing is for free and that one has to pay for what you receive.

[12] They returned to Windhoek, where she was enrolled for grade 12 at the College of Open Learning. Although a few of her siblings accompanied her and her father to Angola, the siblings were driven back to Namibia after the holiday. At some stage whilst driving to Lubango, her father told her that she cannot stay with her stepmother in Lubango, but that she had to stay in Luanda where he works. Once they were in Luanda, further sexual acts continued:

'--- And that is where everything happened again when he had sex with me.

Sorry when you say he again had sex with me what do you mean by that? --- He inserted his penis in my vagina.'<sup>8</sup>

[13] She described the place where they resided as being located under a construction site where he worked. She elaborated that during the three years, whenever they visited Namibia, the father did not permit her to overnight at her mother's place but only at her paternal grandmother's house. He threatened her during these times and told her that she was obliged to have sex with him. If she did not do so, then he inter alia hit her with a belt. She testified that she was

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<sup>8</sup> Page 451 of record.



impregnated by her father on several occasions, which pregnancies were terminated with pills bought by him. She described the process as that her father inserted the pills into her vagina and she had to lay still until her water broke. Once the blood clots released, she had to go to the toilet for it to be flushed down.

[14] She also attested of another sexual incident of vaginal penetration that occurred in Oshikango in 2012. That incident was preceded by threats, and he pushed her into the room, locked the door and had sexual intercourse with her.

[15] She could not tolerate it anymore. She could not precisely recall which month she returned to Windhoek. She does recall that once she was in Windhoek she sent a SMS to the father telling him that he has to stay out of her life. That angered her father. He came to her mother's house where he threatened to kill her. She subsequently opened up to her aunt and disclosed that her father had been raping her for the past 3 years. They went to a psychologist where the news was shared with the complainant's mother. She opened a criminal case and made witness statements. The police arrested her father. As part of the process, she consulted a medical practitioner. He tested her and confirmed that she was pregnant. The police arranged a legal abortion of the pregnancy.

[16] She admitted to visiting her father in custody, because her brother, 'Andre Junior', asked her to and because the family told her if she does not allow him to get bail she will be the cause of her grandmother's death. The grandmother was ill at the time. Thus, on the advice of a nephew she went to a lawyer. She told the lawyer that it was not her father's fault but that she is the one who initiated the sexual intercourse. Consequently, she made a withdrawal statement. She testified that prior to that she also withdrew the case as it was taking too long and because it was her father.

[17] During cross-examination, she was interrogated about the feasibility of her and her sister sharing a bed with their father. She said it had always been like that.

She was pressed for details about the first incident. She said it was in the early morning hours and that on the preceding night, her father gave her alcohol in a cup so that the other people cannot notice.

[18] She was tested about information in her witness statement made in 2013. Therein she referred to the first incident as one wherein her father licked her vagina. She could not remember if the licking took place during or separately from the penetration incident, but reiterated that the vaginal penetration happened once during that holiday. It was postulated that her mixing up the incidents is indicative thereof that she is lying about it. She disagreed and said it was a lot that happened to her which is why she could not recall all the specific details or the sequence thereof. She said the statement was only taken in 2013, whilst those events occurred in 2009.

[19] She was tested on her recollection of what the father wore during the respective incidents and she stated that during the licking of the vagina he wore a t-shirt and underpants whilst during the incident of penetration of the vagina he wore a t-shirt on top but his lower body was naked. She was also asked why she did not run away or scream or tell anyone after it dawned on her what had happened in the first incident. She answered that it was her father and he was the one that should have known better and protected her.

[20] She was criticized about not including in her witness statement that her father threatened her at the time. She conceded that not everything is in her statement. She was questioned as to whether her father also threatened her after the licking incident and she was not able to recall. That was imputed to her fabricating the incidents, but she remained steadfast that if all were lies, she would not have been able to clearly remember the vaginal penetration.

[21] Counsel for the accused put forth the father's version in respect of the respective charges. Firstly, that the accused denies having done any of the

alleged incidents at Jakkalsputz. She replied that a person accused of rape will always deny having done it. Counsel also indicated that her stepbrother and sister will come and testify that the complainant insisted on sleeping with their father at Jakalsputz. She answered that it does not change the fact that the sexual incidents happened. The question arose as to why she continued to sleep in that tent after the incidents. She said that her grandmother and other relatives would have noticed if all of a sudden she did not want to sleep next to him anymore. She was also asked why she did not say or report anything, and she replied that they would not have believed her.

[22] Counsel also explored the circumstances and reasons for going to Angola, in particular whether she was forced. She said that she had no choice as her parents already decided on that. She agreed with the proposition that the reason for her to go to Angola was to further her education. It was put to her that she had numerous opportunities to disclose these incidents during the times when she came to Namibia for visa renewal. She replied in the affirmative.

[23] She was asked about the logic of returning with the accused in January 2011 (at which time she was 16 years old) when he had already committed these invasive acts with her. She testified that the father told her in 2011 that it is her duty to be next to him and if she did not do so, he threatened her and said she knows what he will do to her and her mother. That theme continued and it was pointed out to her that in the father's bail hearing, she spoke of only one threat in Windhoek, but during oral evidence and during the trial she spoke of more threats. She clarified that during the bail hearing she did not talk about the threats in detail. It was put to her that in the evidence she gave during the bail hearing she made it sound as if the threat was extended to her parents and not to her. She said that may be so, but that the threat to kill her was made to her. However, eventually she conceded that she does not know whether the threat was made to her or her mother.

[24] Cross-examination probed the number of pregnancies and places where conception took place. She answered that it was 3 pregnancies, 2 of which were conceived in Angola. As for the last pregnancy, that in January 2013 the medical practitioner said that she was more than 3 months pregnant. The medical termination of the pregnancy was done when she was 5 months pregnant.

[25] The accused's version was then put to her that he will admit that there may have been a sexual incident between them, but it was at Ondjiva. She stated that no incident took place at Ondjiva, but that the last sexual incident was at Oshikango. Doubt was then expressed as to why she could recall more complete details about the 2009 incident but cannot recall complete details for the 2012 incident, which is more recent in time. She said during the first sexual incident her father took away her childhood.

[26] The withdrawal statements also featured in cross-examination. She was confronted with information therein, wherein she said that she was impregnated by her father during a sexual incident in October 2012 that occurred in Ondjiva, Angola. She answered that she wrote that because her father sent his son to tell her what she should say in the statement. It was then put to her if that is the case it means that she lied to the police. She answered that it was something she did for her grandmother who was very sick at the time. It was also put to her that a certain Randy, who is a doctor, will come and testify that the complainant told him that she wanted to withdraw the case. He then sent her to a law firm which is where a withdrawal statement was made on 4 October 2013. It was impressed on her that she lied twice in the withdrawal statements. She repeated that she had her reasons for that.

[27] Cross-examination also tackled certain SMSs that were exchanged between the parties. She answered that she cannot remember the content of the messages. It was postulated that she fabricated all these lies because she wanted to please her mother and because she was sexually aroused by her father.

She answered that it was not the case. A third reason was proposed namely that she was angry that the accused took away her nail business, which he financed. She denied that and said that she left all the stock of the nail business in Angola.

[28] Re-examination touched upon many of the pertinent points in cross-examination such as the withdrawal statements and that the information therein is not correct. She answered in the affirmative and reiterated that she gave the reasons for doing so. In respect of the threats, she answered that she got scared.

[29] The complainant's mother, in her evidence, confirmed that she gave consent for the complainant to go to Angola with her father. She expected a better future for the complainant, ie that the complainant will complete her grade 12 senior certificate. She recalled that there was about four times during the period when the complainant stayed in Angola, that the complainant said that she does not want to go back with the father but gave no reason.

[30] In December 2012, the accused said he wanted to talk with them. He came to their house. He was angry and wanted the complainant's passport back. In the house, whilst she and the complainant were next to each other, he threatened to kill the complainant in front of her or get someone to kill her. She instructed the complainant to get the passport and give it to him. He took it and left.

[31] Thereafter, in January 2013, her sisters came to her. They ended up at a psychologist's (Ms Black) office. There she heard that the complainant was molested and raped by her father. She was shocked and could not breathe. They called a medical practitioner who gave her an injection. From there they went to the Women and Child Protection Unit to open a case. Her daughter went to a safe house for two and a half weeks, but did not want to remain there. The witness learnt that the complainant had contact with the accused. At some point in time she was told that the complainant withdrew the matter.

[32] During January 2013, the complainant told her that she had her last periods in November 2012. As such the witness bought a pregnancy test. Thereafter, the complainant also went to a medical practitioner. The doctor confirmed that the complainant was pregnant and the State facilitated an abortion.

[33] During cross-examination, the witness confirmed that she gave consent for her daughter's move to Angola. The allegation pertaining to the threat to kill was put to the witness. She said that was done in the presence of her, the complainant, and her husband and that he spoke to the complainant and the witness. Counsel postulated that the precise words given in the oral evidence was a bit different than what she testified in the bail hearing. She said that for her it's the same thing. She then said he said it to the complainant with his hands moving

[34] Two of the aunts of the complainant testified. The first aunt, Ms H L Strauss, testified that the complainant disclosed to her that her father is raping her. When she asked the complainant to clarify what she meant the complainant said that '...my father is making me his wife.'<sup>9</sup> That conversation took place on 8 January 2013. Having listened to the complainant, the aunt contacted her other sisters and arranged that the news be broken to the complainant's mother at a psychologist's office.

[35] The witness related to the court that she noticed that something was not right with the complainant. That was prior to the complainant disclosing the news to her. She deduced that because the complainant cried while she was speaking on the phone with the father. At that stage the complainant did not say more than that she was afraid that her father will kill her and her mother.

[36] During cross-examination doubt was expressed that the complainant was indeed fearful, as the complainant opted not to stay long in the safe house after

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<sup>9</sup> Page 20 record.

the father's arrest. The witness said she does not regard it as strange as the complainant wanted to be amongst the family. As for the withdrawal, she said she does not know why the complainant did that, but that she was told by the complainant's mother that the complainant was forced by a person at the Women and Child Protection Unit.

[37] The second aunt, Ms M L Heyn, testified that she was contacted by her sister and that they took the complainant and the complainant's mother to a psychologist. Upon hearing the news the complainant's mother cried a lot and had to be given a sedative. She attested that she had a suspicion of something unbecoming before the news broke because of a change in behavior that she had observed in the complainant. According to her, the complainant used to be a jovial child but she was not like that anymore. When pressed for more she said that the complainant was quiet and had no friends or even a boyfriend.

[38] One of the cousins of the complainant, Ms S Strauss, attested to an incident wherein the accused came to their house in January 2013. He, inter alia, called her to his car and showed her a gun saying that he wants to shoot the complainant.

[39] Mr Irvin Beukes, a resident of Oshakati in northern Namibia, testified that he knows both parents of the complainant. On 18 November 2012, he received a telephone call from the mother of the complainant. The mother gave him the cellphone number of the complainant and requested that the complainant stay with him and his girlfriend for a day.

[40] He called the complainant who said that she came to Ondangwa. He explained to the complainant where to get off at a mini market close to his residence. Upon her arrival he made a comment to her enquiring whether she was not with her father anymore. She was not talkative and did not explain why that

was the case. She just said that she wanted to get to Windhoek. The next day, he assisted to put her on a bus to Windhoek.

#### Police Officials for the State

[41] Detective Warrant Officer E Kawiwa-Shuudukilwa is the investigating officer at the Women and Child Protection Unit who attended to the complaint. The complainant informed her that she was sexually abused by the father and had two abortions already. While doing so the complainant was emotional and scared.

[42] Deputy Commissioner Bartholomeus De Klerk is the officer who arrested the accused. He attested that at the time of the arrest on (29 January 2013), the accused had a .38 special revolver with 5 rounds of ammunition in his vehicle. The accused was surprised by the charge allegations, and said that he does not need to rape anyone as he could get any girl that he wants.

[43] Detective Sergeant Hilde Gebhard was attached to the Women and Child Protection Unit in Erongo Region in 2013. She also worked on the docket. When she met the complainant, she enquired from the complainant as she noticed the 'big belly'. The complainant confirmed that she was pregnant and did not want to keep the child. Thus, the police officer made arrangements at the Magistrates' Court in Windhoek for an abortion.

[44] Detective warrant officer Kaavela is an officer attached to the Scene of Crime Unit. He photographed various sites, as pointed out by the complainant, as the sites where the alleged offences took place.

#### Evidence by Medical and Forensic Officials and Psychologist

[45] Ms Engine Black is a licensed psychologist and counsellor at a center called 'My Wellness Twenty Four Seven'. She confirmed the evidence by the



complainant, the complainant's mother and aunts about the tale of sexual abuse that unfolded at her office. As to what the complainant said she, in brief, related that complainant had told her that her father had been sexually abusing her since the age of 15 years, at times it was brutal and at times he would use his gun to hit her. He was also monitoring her cellphone communication, and that she had no one in Angola to tell.

[46] The complainant's mother fainted during the consultation and had to be given an injection by the emergency doctor in order for her to handle the news. It was her evidence that she advised the complainant about her options as to whether or not to make a criminal case.

[47] The late Dr Paul Ludik was the Director of the National Forensic Institute of Namibia (hereinafter called 'NSFI'), who testified in the matter in 2019. He was, amongst others, a certified digital forensic examiner. He attested that he used certain hardware and software tools to extract data from the complainant's cellphone and submitted a report on that, which was admitted into evidence and marked as exhibit 'N'.

[48] The State tendered in evidence an ultrasound report (exhibit 'G2') that was compiled by Dr Nakangombe. It relates to the complainant and the ultrasound was done on 22 January 2012. The finding was that there is 13 weeks and 4 days single alive uterine pregnancy.

[49] Dr D R Jaravaza deposed to several affidavits regarding samples that he took and sealed for DNA purposes. These were admitted by consent. Exhibit 'H' pertains to the sample taken from the foetus after the termination of the pregnancy, exhibit 'I' relates to a buccal swab from the complainant and exhibit 'J' to a buccal swab from the accused.

[50] Ms Tuenukelao Nakalemo is a forensic scientist at the genetics section in the NSFI. She screened the samples that was brought to their laboratory and compiled exhibit 'O'.

[51] Ms Maryn De Klerk was employed at the NSFI as a Chief Forensic Officer in the genetics section. She performed the DNA profiling and analysis and came to explain her findings (admitted as exhibits 'R1' and 'R2'). The principal finding she made in respect of the paternity relating to the placenta sample received by NSFI was that the accused cannot be excluded as a possible biological father and that the probability of the accused being the father was 99.996%. So too, she analysed the DNA sampled from the accused and the complainant and found that accused cannot be excluded as the father of the complainant and that the probability of paternity is 99.986%.

#### Defense Case

[52] The accused was 52 years old at the time of the commencement of his testimony. He testified that his is the father of 7 children. He was a construction entrepreneur in Angola since 2001, where he had been for approximately 10 years until December 2012. During that period, he travelled to Namibia 3 or 4 times per year.

[53] The accused testified about the agreement between him and the complainant's mother that caused the complainant to move in with him in Angola. He testified that during the December holidays in 2009, he went on a camping holiday with the rest of his family at Jakkalsputz. That included the complainant. He confirmed sleeping on a matress in a tent on top of his Pajero. On the first night the complainant requested to sleep there instead of the smaller tents. The complainant retired to bed earlier whilst he stayed at the fire. He went to bed around midnight and wore a t-shirt and swimming shorts. He fell asleep and nothing of significance occurred that night. The second night it was his other

daughter's turn to sleep on the matress on the Pajero. However, the complainant argued with her sister about that and sat in another car of his that whole night and sulked. After that his other daughter said that she did not want problems, and the complainant thus slept in the same tent as him for the remainder of that holiday.

[54] The accused maintained that he never sexually assaulted the complainant at Jakkalsputz, and it was all lies spread by the complainant. He construed it as revenge by her because he rejected her. He said that she loved him as a husband instead of a father. He made that deduction on account of a SMS that he received from her in January 2013 that stated words to that effect. He said that she crossed the border 26 times in the years that she resided in Angola and it was strange that during that time the complainant did not tell anyone.

[55] He related a sexual incident between himself and the complainant that occurred on 8 October 2012 in Otjiva, which is a border town on the Angolan side. He drove with the complainant and his ex-girlfriend known as 'Panado'. He had drinks and made out with Panado. When he woke up the next morning, the complainant laid naked on the bed next to him. Panado was gone. He argued with the complainant and she left the room. Upon her return he slapped her. She fell to the floor. He has no memory as to what happened after that. Once he regained consciousness he was laying on the lap of the complainant, at the back of a bakkie. The complainant said that his friend, one M Jackson, offered to take them to Windhoek. Thus, they drove to Windhoek. He regards the withdrawal statements, admitted as exhibits 'S4' and 'S3' as evidence that corroborates his version on this incident.

[56] During cross-examination counsel for the State explored the accused's version that the complainant was sexually attracted to him, in particular what he did about that. He answered that he rejected her attention by telling her it is not normal, though he did not tell the family about it. The questions turned to his evidence that the complainant sulked about not being able to sleep with him at

Jakkalsputz. He was asked whether he did not regard it as strange that his 15 year old child wants to sleep in his bed. His view is that there was nothing strange about that as his daughters always did that.

[57] It was put to him that he used the situation as an opportunity to sexually abuse the complainant. In this regard, counsel for the State advanced several reasons, namely that she had no friends in Angola, that she did not speak Portuguese, that she was a rebellious child and did not think anyone would believe her, and that she knew that he carried a gun and was afraid. He denied that theory, saying that she had more than three years when she could have said something. He also replied that his children were not afraid of firearms and that she is used to a firearm around her. He furthermore denied giving her abortion pills in Angola or that there was any sexual incident in Oshikango.

[58] Counsel put forth that the complainant sent a message to him in November 2012, stating that she did not want to return to Angola. He confirmed that and imputed that reaction to the sexual incident between them at Otjiva the preceding month. Counsel then questioned the truthfulness about his version that it happened in Otjiva, in view of the father having no clarity as to what happened that the complainant, instead of Panado, got into the bed with him. He repeated that he cannot clearly recall that part, nor was he sure whether indeed there was sexual intercourse.

[59] It was put to him that the complainant was unduly influenced to make the withdrawal statements by various persons. Firstly, he hinted that it is strange that Inspector Zimmer, who is a Unit Commander, visited the accused in the cells and spoke about his case even though she was not the investigation officer in this matter. The accused made it off as nothing, saying that he and Inspector Zimmer did their police training together years ago, and that Inspector Zimmer told him that the complainant said she lied about the case. Secondly, counsel for the State put to him that a certain 'Zimmy' sent a message on 12 February 2013 to the effect

that, if the complainant agrees the accused can go to Walvisbay and he need not stay here. The accused replied that he cannot answer for that. Along that same line, counsel pointed to a SMS from the accused's son to the complainant on 29 March 2013, to the effect that he wants them all to make peace, that it is a good idea and that she can just say she is sorry. Later that same day, the son sent another message wherein he thanked her for what she did and said he appreciated that. The accused answered that he cannot answer for that.

[60] During re-examination, the accused confirmed having sexual intercourse with the complainant at Otjiva Hotel. He attested that he did not sent any SMS to her to withdraw the case, nor did he and his son, Andre Junior tell her what to say to the police in the withdrawal statements.

[61] The defence called Police Officer Victoria Zambwe as a witness. She was an investigating officer at the Women and Child Protection Unit in Windhoek in 2013. She recorded the withdrawal statement exhibit 'S3.' She explained that in the event of a withdrawal by a minor the minor is usually accompanied by a social worker, and if by a major, that person would be accompanied by a relative. In this matter, it was too long ago and she was unable to remember who accompanied the complainant. In cross-examination, she agreed that she has no facts to independently support that it was voluntarily given.

#### The law and application thereof to the facts

[62] Many of the counts in the indictment refers to diverse occasions, which is provided for in s 94 of the Criminal Procedure Act, No 51 of 1977 (hereinafter 'the CPA'). It provides that where the State alleges that an accused has on diverse occasions during any period committed an offence in respect of any person, the accused may be charged in one charge with the commission of that offence on diverse occasions during a given period.

[63] It is trite law that the burden rests on the State to prove the guilt of the accused beyond any reasonable doubt. There is no onus on an accused to prove his innocence. Germane to that is the passage from *R v Mlambo*,<sup>10</sup> which was applied in *S v Van Wyk*,<sup>11</sup> and has become a trite principle in Namibian law:

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

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

[64] In returning to the matter at hand, there is no qualm that the State's evidence on the sexual assault charges herein constitutes evidence given by a single witness. Section 208 of the CPA provides that an accused may be convicted of any offence on the single evidence of any competent witness. That calls for the court to evaluate that evidence through the lenses of the cautionary rules that pertains to single witnesses, which essentially entails that the evidence has to be clear and satisfactory in all material respects.

[65] In the same vein it has to be remembered that cautionary rules were developed as rules of practice and the exercise of caution ought not to displace common sense. The ultimate requirement still remains proof beyond any reasonable doubt. The court eloquently captured it in *S v HN*<sup>12</sup> as follows:

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<sup>10</sup> *R v Mlambo* 1957 (4) SA 727 (A) at 738A-C.

<sup>11</sup> *S v Van Wyk* 1993 NR 426 (SC) at 438H-439A

<sup>12</sup> *S v HN* 2010 (2) NR 429 (HC) at 443E.

‘Evidence of the single witness need not be satisfactory in every respect as it may safely be relied upon even where it has some imperfections, provided that the court can find at the end of the day that, even though there are some shortcomings in the evidence of the single witness, the court is satisfied that the truth has been told’.

Count 1, Count 7 and its alternatives

[66] Before the State can secure convictions on rape, it has to prove that the accused (a) committed or caused another to commit; (b) a sexual act with another person; (c) under coercive circumstances; (d) with intent; and (e) such act was unlawful. Section 1 of Combating of Rape Act No 8 of 2000 (hereinafter referred to as ‘CORA’) defines a ‘sexual act’ as:

‘(a) the insertion (to even the slightest degree) of the penis of a person into the vagina or anus or mouth of another person; or

(b) the insertion of any other part of the body of a person or of any part of the body of an animal or of any object into the vagina or anus of another person, except where such insertion of any part of the body (other than the penis) of a person or of any object into the vagina or anus of another person is, consistent with sound medical practices, carried out for proper medical purposes; or

(c) cunnilingus or any other form of genital stimulation.’

[67] Counsel for the defense launched multiple prongs of attack against the credibility of the complainant. He submitted that the complainant’s evidence does not meet the criteria in respect of single witnesses. Mr Andreas described the complainant’s evidence as unreliable and untrustworthy. In support of that, he referred to an instance wherein she had gone to visit her father in prison but lied to her mother that she was going to assist a friend. He also referred to the evidence of the psychologist that testified the complainant, inter alia, said that the rapes were brutal and at gunpoint and that the complainant escaped from her father at Oshikango.

[68] He also argued that she has made contradictory statements to the police. In support of that he pointed to her first witness statements, admitted as exhibits 'S1' and 'S2' respectively, wherein she laid the complaints. A few months after that she made a statement, admitted as exhibit 'S3', indicative thereof that she wanted to withdraw the case but her mother advised against that. She stated therein that she was impregnated by her father during a sexual incident in Ondjiva. She deposed to a further statement to the police, admitted and marked as exhibit 'S4' wherein she, inter alia, said that the content of exhibit 'S1' is not true and that she wishes to withdraw the complaint that she laid against her father. She elaborated on the content of the sexual incident at Otjiva, Angola, and said that it was based on an untruthful statement as she was not raped.

[69] The State, on the other hand, pre-empted the effect of the withdrawal statements by asking the complainant what she will say about the withdrawals, especially since they can be construed as indicators that the incidents did not really happen:

'--- 'I will say it has happened and he is my father and that is one of the reasons why I wanted to withdraw the case and I felt sorry for him. And many got hurt in the process, like my grandmother and brothers and sisters. But it still does not change that it truly did happen because who come up with something like that that did not happen.'<sup>13</sup>

[70] This court is proceeding with caution because the complainant is a single witness and has admitted that she had been untruthful to the police in the withdrawal statements herein. Undoubtedly, the content of the statements that spell out the complaints and the content of the withdrawal statements are diametrically opposed to each other. In the initial statements, the complainant reported sexual abuse and thereafter recants it in the later statements, ie states that it is a lie.

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<sup>13</sup> Page 473 of record.



[71] This court, in its research on the subject matter, came across a passage in the textbook 'Introducing the Child Witness',<sup>14</sup> regarding the retraction of sexual complaints by children. Although the complainant herein was not a child anymore, (being 18 years at the time), she still hovered at the edge between adolescence and young adulthood and the court found the passage insightful to the phenomenon of recanting. The authors explain at page 140 that:

'Glaser and Frosh (1993:86) maintain that partial disclosure may rapidly be followed by retraction. The initial disclosure is "often a way of enabling the child to gain some relief from the burden of the abuse and the secret." However, the full burden of the disclosure often proves to be too much for the child to cope emotionally, and their intense need to maintain the *status quo* is often more important. Some reasons for retraction include (Sorenson and Snow 1991:12)

- Pressure from the perpetrator;
- Pressure from the family;
- Negative personal consequences, such as alienation by peers/friends;
- Investigation and judicial proceedings: the fears that children have about the investigative interview and the court process often cause them to retract disclosure.'

[72] The court has to assess the reason(s) for recanting, thereby withdrawing the case, on a holistic basis, in the context of all the evidence. Sight cannot be lost that the complainant was the daughter of the person she accused of having violated her sexually and had to face and deal with the pressure of siblings, family and friends of the family. The messages sent by Zimmy on 12 February 2013 and the messages by Andre Junior on 29 March 2013 give credence to that.

[73] Moreover, the complainant knew that her grandmother (on the paternal side) was ill and she was anxious that she will be on the receiving end of wrath by the family if her grandmother dies. She also had to come to grips with the

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<sup>14</sup> Muller K et al, Introducing the Child Witness, 2<sup>nd</sup> ed. Printridge 2009.

knowledge that she reported a loved one and he was incarcerated as a result. Additionally, it is obvious from the father's evidence that he took pride in, always, carrying a gun and exposed his children to that. That supports the version by the State that the complainant was fearful and knew what could happen if she proceeded with the case.

[74] Considering the family dynamics and the climate wherein the complainant found herself, the court finds her explanation for the retraction of the complaints plausible in the circumstances of this case. Based on the cited passage on retraction, it is something that may occur in sexual abuse cases for various reasons.

[75] The same goes for her lying to her mother about where she went when she visited her father in jail, once again a daughter caught in the intricate web of love and loyalty to both parents. As regards the criticism by the defence counsel that the complainant told the psychologist that the rapes were brutal and at gunpoint, it must be said that it is difficult to conceive a sexual violation in terms other than inhuman and cruel. The evidence by the psychologist was to the effect that the complainant said a gun was used, inter alia, to hit her. It is common cause that the father at all material times had a gun with him, so not much turns on these purported contradictions. It does not materially change the substance of the act itself.

[76] In considering whether the complainant's evidence on the incident at Jakkalsputz fulfils the criteria, the court finds her to be credible and reliable in all material respects. She was clear in her evidence that it was her father who did up and down movements with his penis inside her vagina and that she saw him removing his penis as she awoke from her sleep. She testified that although he had given her alcohol in a cup earlier that night, she was not drunk. She realized what was happening. She was unable to recall whether a condom was used or whether he ejaculated, but that does not detract from her firm evidence that she

awoke from her sleep and found her father's penis inside her vagina. She recalled that her vagina was a bit sore but that she was not bleeding.

[77] The accused's version on the incident in Jakkalsputz is that nothing of significance happened between him and the complainant. Furthermore, that she is just a liar, who continued to sleep on that mattress night after night and did not disclose or report the sexual incidents to anyone. The notion by defence counsel that she did not report the sexual incidents cannot lend itself to the conclusion suggested by counsel that it is because it never happened. That is because victims react differently and there is no 'prescribed reaction formula' for a rape victim. The matter of *Maila v The State*<sup>15</sup> explained it as follows in para 23:

'Authors and experts in the field of psychology and criminology state that '[e]ach victim reacts different after a violent act. [They] may try to dismiss or ignore what happened and even normalize it by having contact with the perpetrator in the future. [They] may only decide to report once they are supported by a family member or when a friend confirms that this behavior is indeed wrong. If the perpetrator is considered as a trustful person, victims may take years to link their situation to violence and recognize it as such. Sexual violence victims often experience a profound sense of shame, stigma and violation.'<sup>16</sup>

[78] In any event, this court cannot make an unfavourable assumption against the complainant merely because she took 3 years to report the case. Section 7 of the Combating of Rape Act No 8 of 2000 (hereafter referred to as 'CORA') provides that in criminal proceedings at which an accused is charged with an offence of a sexual or indecent nature, the court shall not draw any inference only from the length of the delay between the commission of the sexual or indecent act and the laying of the complaint.

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<sup>15</sup> *Maila v State* (429/2022) [2023] ZASCA 3 (23 January 2023) at para 23.

<sup>16</sup> UNODC handbook for the Judiciary on effective Justice Responses to Gender-based Violence against Women and Girls at 25.

[79] The complainant recalled that she remembers the ghastly details because it was that first sexual incident wherein her father took away her childhood. The complainant withstood rigorous cross-examination and was resolute in her evidence that vaginal penetration occurred at Jakkalsputz. Having evaluated the evidence as a whole, this court has no hesitation that the complainant told the truth about the vaginal penetration at Jakkalsputz and rejects the denial on that as false beyond any doubt.

[80] That being said, the evidence proves that a sexual act has taken place, which was intentional and unlawful. The complainant clearly did not and could not consent to the act. The court already alluded to the coercive circumstances being that she was given alcohol in a cup, earlier that evening, that she was asleep and at all material times this was a situation wherein she (as a 15 year old child) was powerless against her father abusing his trusted position. Thus, the court is satisfied that the State has proven rape in respect of count 1 and the alternative charges under count 1 falls away.

[81] Count 7 relates to the allegation of sexual intercourse during October 2012 at Oshikango, which is a town on the Namibian side of the border between Namibia and Angola. The complainant in court attested of a sexual act of vaginal penetration that occurred at Oshikango.

[82] The accused admits a sexual act, but says it was in Otjiva the town on the Angolan side of the border. Incidentally, this court has no jurisdiction over a sexual incident that occurred in Angola. The long and short of his evidence on this is that although he kissed and went to bed with an ex-girlfriend 'Panado,' he woke up next to his naked daughter the next morning and had no recollection as to how that happened. An argument ensued between him and the complainant, he slapped the complainant and went blank, again. He only regained consciousness late afternoon at which point he was laying, on the complainant's lap in a bakkie of his friend, and being transported to Windhoek.

[83] This court must bear in mind that there is no onus on the accused to convince the court of the truth of his explanation. Even if the explanation is improbable, the court is not entitled to convict unless it is satisfied not only that the explanation is unlikely, but that beyond any reasonable doubt, it is false.

[84] In weighing the accused's version it is significant that these elaborate details about Panado, the numerous blank spells, that the complainant drove Panado to the airport, or that the accused regained consciousness hours later, in the lap of the complainant, were never put to the complainant in cross-examination. That is peculiar because she, as an ostensible participant in the events, would have been able to confirm or deny or, at best, say that she cannot recall that. At the same time, this court is mindful that during cross-examination it was postulated that the accused will call his son, his other daughter, a certain Randy and Inspector Zimmer to testify about the relevant components in support of his version. That did not happen. It was convenient for the accused to admit to a sexual incident in a place over which this court has no jurisdiction. Additionally, it was a convenient strategy to dovetail his admission of the sexual act along the details as set out in the withdrawal statements. However that is not upheld. This court has already pronounced itself on the withdrawal statements, namely that the complainant was told what to say therein which explanation the court found credible.

[85] During cross-examination of the complainant, counsel for the defense elicited details about the sexual act in Oshikango. She answered in certain and definite terms that the act had taken place at Oshikango and that she was pushed by the accused into a room. However, she conceded that she was unable to remember the full details of where it happened. It was, according to her version, the last sexual incident between her and the father. After that she could not tolerate the situation anymore.

[86] Eventually she disclosed to her aunt, once she arrived in Namibia, which led to a criminal case being opened. It was also, amongst others, discovered that the complainant was pregnant at the time. In this regard evidence tendered by the State, exhibit 'G2' reveals that on 22 January 2013 the development of the foetus was 13 weeks and 4 days. It was also not in dispute that DNA analysis was done on the placenta and tissue from the said foetus. The Chief Forensic Officer made critical findings, not only in respect of the blood relationship between the complainant and the accused but also that the accused could not be excluded as the father of the foetus that was medically terminated. It eliminates any reasonable doubt that indeed a sexual act took place between the complainant and the accused, who are related by blood. The period of the pregnancy is also consistent with the time alleged in count 7.

[87] In the light of all the evidence tendered in respect of this incident, the court finds the complainant's evidence, that indeed there was a sexual incident at Oshikango in October 2012, truthful and credible in all material respects. She is honest about her inability to clearly recall the further details and has not added embellishments of which she is not sure. Given the elapse of time, it is to be expected that some of the details may have faded with time. Against that background, the court rejects the version by the accused on this count as highly improbable and false beyond any degree of doubt.

[88] The remaining question is whether the sexual act, without further elaborate details can sustain a finding of rape. In view of the faded memories of sufficient surrounding details about the sexual act, the court finds it more appropriate to explore the alternative charge of incest. The author C R Snyman<sup>17</sup> defines incest as that there must be sexual intercourse between male and female persons who are prohibited from marrying each other because they are related within the prohibited degrees of consanguinity, affinity or adoptive relationship and unlawfulness and intention.

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<sup>17</sup> Snyman C R, Criminal Law, 4<sup>th</sup> ed. Butterworths 2002 p 355.

[89] The evidence leaves no doubt that sexual conduct thus took place between the accused and his biological daughter, and that it is prohibited and unlawful. She also testified that the father pushed her into the room and locked the door which is indicative of the element of intention. Therefore, the court is satisfied that the State has proven the elements of the alternative charge of incest.

#### Counts 2, 4 and 6

[90] In respect of trafficking, clearly the charges herein relate to time periods prior to the commencement of the Combating of Trafficking in Persons Act 1 of 2018, and the case was prosecuted under s 15 of the Prevention of Organised Crime Act, Act 29 of 2004 (POCA). The definition of trafficking in POCA stipulates it to be the recruitment, transfer, harboring, or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation and includes any attempt, participation or organizing of any of these actions.

[91] In *Groenewald v The Minister of Safety and Security and Another*,<sup>18</sup> our Supreme Court explained the elements:

‘The following elements of the offence of trafficking in persons can be gleaned from the definition: to recruit, transport or transfer a person, by means of the threat or use of force or other form of coercion or abduction or fraud or deception or abuse of power or a position of vulnerability or of the giving or receiving of payment or benefit to achieve the consent of a person having control over another; for the purpose of exploitation. An attempt to perpetrate any of the above actions also constitutes an offence.’

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<sup>18</sup> *Groenewald v The Minister of Safety and Security and Another* (SA 99-2021) [2024] NASC (1 October 2024).

[92] Counsel for the State argued that the evidence is sufficient for convictions on all the trafficking charges. That is because the accused transported the complainant to Angola and Oshikango and sheltered her at his place for the purpose of sexual exploitation.

[93] The defence, on the other hand, denied that the accused can be convicted on the trafficking charges and pointed out that there was consent for all intents and purposes for the complainant to move to Angola and for the complainant to travel with the father at each of the respective trips.

[94] When children are involved, it is not a requirement for the alleged perpetrator(s) to have engaged in any of the means as set out in paragraph (a) of Annex II to art 3 of the UN Convention on trafficking in Persons.

[95] The 3 trafficking charges are framed in the terms of the accused's transfer and transportation of the complainant for sexual exploitation, it is in fact silent on the harboring aspect. There is no qualm that indeed the complainant drove with the accused to Angola during these periods as alleged in the charges. For all that, there is no evidence that the complainant was forced into the vehicle or that she unwillingly got into the vehicle during January 2010, January 2011 and January 2012 respectively when they set out to drive to Angola.

[96] The evidence shows that the complainant's parents agreed that the complainant will go and reside in Angola with the father. It was also not disputed that the agreed time was for the transfer to take place by the end of the academic year of 2009, but that the mother initiated contact earlier than that and the complainant was collected earlier by the father. The reasons and purposes for that decision were that the complainant gave the mother disciplinary problems, the mother needed assistance from the accused and for the complainant to finish her education. That was common cause between the parties. In view of the voluntary agreement between the complainant's parents that the complainant will move to



Angola and reside with her father the court is not satisfied that the State has proven all the elements of the trafficking charges.

#### Count 5

[97] Assault by threat takes place if there is an unlawful and intentional threat of violence in circumstances that lead the person threatened to believe that the perpetrator intends to and has the power to execute said threat.

[98] In count 5, the State charged the accused for a threat to the complainant which occurred during the month of June 2011 in Windhoek. The complainant testified about threats in general, with some of which appears to have been made in Angola and some in Namibia. In the complainant's witness statement the specific threat appears to have taken place during or subsequent to January 2013 (as it is described with reference to a SMS sent in January 2013, wherein she states that she hates her father). According to the complainant's mother's testimony, it was during December 2012 that the accused came to the house and extended oral threats.

[99] At the time of countering the s 174 application, the State opined that it may apply for an amendment of the charge or make a case for s 88 of the CPA. That promise was not carried out, nor can s 92(2) of the CPA assist the State which allows for a 3 month latitude prior to or after the period as alleged in the charge.

[100] Apart from that, both the complainant and her mother's evidence were fluctuating on whether the threat was made to the mother or the complainant. During cross-examination, after much back and forth, the complainant said that she could not remember if the threat was made to her or her mother. At the end of the day, the recollection regarding assault by threat was not clear and there remains discrepancies between the date as per the evidence and the date as in

the charge. As such the court does not find the evidence satisfactory to sustain a conviction.

### Conclusion

[101] Consequently, the court makes the following orders in respect of the various counts:

**Count 1:** Contravening s 2(1)(a) read with ss 1, 2(2) and (3), 3, 5, 6 and 7 of the Combating of Rape Act, 8 of 2000 – Rape read with s 1, 2, 3 and 21 of the Combating of Domestic Violence Act 4 of 2003: **Guilty.**

**First alternative to count 1 – Incest: Not Guilty.**

**Second alternative to count 1:** Contravening s 14(a) of the Combating of Immoral Practices Act, 21 of 1980 as amended by Act 7 of 2000 – Committing or attempting to commit a sexual act with a child below 16 years: **Not Guilty.**

**Count 2:** Contravening s 15 read with s 1 of the Prevention of Organised Crime Act, Act 29 of 2004 – Child Trafficking: **Not Guilty.**

**Count 4:** Contravening s 15 read with s 1 of the Prevention of Organised Crime Act, 29 of 2004 – Child Trafficking: **Not Guilty.**

**Count 5:** Assault (by threat) as read with s 1, 2, 3, and 21 of the Combating of Domestic Violence Act 4 of 2003: **Not Guilty.**

**Count 6:** Contravening s 15 read with s 1 of the Prevention of Organized Crime Act, 29 of 2004 – Child Trafficking: **Not Guilty.**

**Count 7:** Contravening s 2(1)(a) read with ss 1, 2(2) and (3), 3, 5, 6 and 7 of Combating of Rape Act, Act 8 of 2000 – Rape read with s 1, 2, 3, and 21 of the Combating of Domestic Violence Act 4 of 2003: **Not Guilty.**

**Alternative to count 7:** Incest: **Guilty.**

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C CLAASEN  
JUDGE

APPEARANCES:

STATE:

P Khumalo  
Of the Office of the Prosecutor-General,  
Windhoek

ACCUSED:

J Andreas  
Of Andreas-Hamunyela Legal Practitioners,  
Windhoek