



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

INQUEST:

01/2021

In the matter of:

THE RE-OPENED INQUEST INTO THE DEATH OF DR HOOSEN MIA HAFFEJEE

JUDGMENT

Z P Nkosi J

Introduction

[1] The late Dr Hoosen Mia Haffejee (“Hoosen”), who was 26 years old, died at the hands of the then South African Police Security Branch, in the police cells, at Brighton Beach Police Station, Durban, on 3 August 1977 allegedly from suicide by hanging. The pain of his sudden death reverberated within the hearts, mind and soul of his loving family in Pietermaritzburg. The ever-lingering melancholy felt by his mother, Mrs Fatima Haffejee (“Fatima”), is captured in a Witness newspaper article of 17 July 1978, as follows:¹

¹ Volume K, page 2637.

'On Monday morning, August 1, 1977, my son wished me goodbye, saying that he would see me on Friday, as he usually came home every Friday since his return from India 22 months ago. My son was a very home – loving person, so he spent three days a week at home and would leave early on a Monday morning for work in Durban. So as usual he left home on Monday, August 1. God knows what happened to him. In August 3, 1977, we heard that shocking news – he had died in police detention. I could not believe that as my child was no criminal or terrorist. He was a noble young man and a dedicated doctor, but the police found him a dangerous terrorist. What damage had he done or whom had he killed in order to warrant such suspicion? As a sensitive mother who shared a close relationship with her son, I knew that my son was not involved in any political activity, but rather was a carefree person. The police say that he was a brave man, yes, he was brave because he was honest – they also said that he was desperate, yes because he was in the lion's den with no way to escape and no chance of informing his family of his detention. After his "death", they said they found him hanging in his cell, but I will never, never believe that my son took his own life. The security police then went to search his flat for about two hours and what did they find? Just two ordinary letters from his friends in India: These were obviously a poor attempt to gather tatty bits of evidence as a means to disguise the main issue, i.e. how and who inflicted these injuries on my son's body? Although a magistrate's findings are based on the evidence put before him, isn't it strange to find a recurring similarity in the injuries and bruises found on the bodies of dead detainees and no evidence led about the obvious injuries? Are we doing enough to see justice being done? The Prime Minister was quoted in the Natal Mercury, May 25, 1978, confidently stating that "God will open doors to us so that we can fulfil our destiny". I think the time is right for us, the Blacks, to pray that God will open a door to protect our destiny from the cruel injustice of the South Africa Security Police. I hope our prayers are answered before it is too late for us all. As a grieving mother I cannot forget this terrible ordeal; my heart will always cry for my son.'

[2] In a number of subsequent newspaper articles Fatima made her feelings and suspicions regarding her son's death known. In 1997 she appealed to the Truth and Reconciliation Commission ("TRC") to put an end to her two decades of pain and suffering stating:

'I know the truth about how my son died is going to come out one day.... I want to know the truth about how my boy died. I'm very heart sore and I will not rest until I find out who the killers are.... I will never never believe my honest, home – loving and caring son took his own life.'²

² Volume K, items 4, page 2641 (2681 of PDF).

[3] The TRC concluded that it was likely that Hoosen died under torture.³ Hundreds of TRC cases in which amnesty was not applied for or denied, were referred to the National Prosecution Authority for processing in terms of the law and the Constitution. The Haffejee case is one such matter.

[4] Fatima, died in 2011 without knowing the truth of how her son died in police custody. Her daughter, Sara Bibi Lall (“Sarah”) and son Ismail Haffejee (“Ismail”) continued with her struggle for truth and justice.

[5] Since the winding up of the TRC proceedings, there has been inordinate delays in the pursuit of justice in the Haffejee matter (like I am advised in many other kindred cases) and Hoosen’s family was left in limbo for years on end. It appears that until recently there was a state reluctance and/or suppression to prosecute such matters.⁴ In *Rodrigues v National Director of Public Prosecutions and Others*⁵ the Supreme Court of Appeal strongly expressed itself thus:

‘[26]... the executive adopted a policy position conceded by the state parties that TRC cases would not be prosecuted. It is perplexing and inexplicable why such a stance was taken both in the light of the work and report of the TRC advocating a bold prosecutions policy, the guarantee of the prosecutorial independence of the NPA, its constitutional obligation to prosecute crimes, and the interests of the victims and survivors of those crimes.’

[6] I am advised that most of these cases cannot be revived. Suspects, witnesses, and family members have died. This inquest has come late for Hoosen’s parents and his elder brother Yusuf. It seems the harm visited upon the Haffejee family and other families is incalculable and unforgivable.

³ TRC Final report, Volume 3, Chapter 3, page 179.

⁴ *Nkadimeng v National Director of Public Prosecution and Others*, Case Number 3554/2015, Gauteng Division; and *Rodrigues v National Director of Public Prosecutions and Others* 2021 (2) SACR 333 (SCA) paras 21-23.

⁵ *Rodrigues* *ibid*. See also the 2019 representations of Lukhanyo Calata and other families to the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State.

[7] I am also advised that it has been hard coming for the Haffejee family to reach this formal stage of the re-opened inquest. On 29 July and 15 August 2019, the lawyers acting on behalf of the families of late Neil Aggett and Haffejee threatened the Minister of Justice with an urgent High Court application if he did not instruct the Judge Presidents of the Gauteng and KwaZulu-Natal Divisions to re-open the inquests. On 16 August 2019 the Minister of Justice released a press statement announcing that the inquests into the deaths of Aggett and Haffejee would be re-opened. James Taylor, the last surviving alleged lead interrogator and torturer of Hoosen died three days later on 19 August 2019.

The Inquests Act 58 of 1959

[8] Inquests, including re-opened inquests, are regulated by the Inquests Act⁶ (the Act). Section 17A(1) of the Act provides as follows:

‘The Minister may, on the recommendation of the attorney-general concerned, at any time after the determination of an inquest and if he deems it necessary in the interest of justice, request a judge president of the Supreme Court to designate any judge of the Supreme Court of South Africa to re-open that inquest, whereupon the judge thus designated shall re-open such inquest.’

[9] Section 17A (2) of the Act further states that:

‘An inquest referred to in subsection (1) shall, subject to the provisions of this Act, as far as possible be continued and disposed of by the judge so designated on the existing record of the proceedings, and the provisions of section 17 (2) shall, in so far as they are not contrary to the provisions of this section, shall apply *mutatis mutandis* to such an inquest.’

[10] Section 17A(3)(b) provides that:

‘A judge holding an inquest that has been re-opened in terms of this section –

(b) shall record any finding that differs from a finding referred to in section 16 (2), as well as the respect in which it differs;’.

Evidential considerations

⁶ Inquests Act 58 of 1959.

The incomplete record from the 1978 inquest (“the first inquest”)

[11] It is apposite to record that the original record from the first inquest is incomplete. In the re-opened inquest this court needs to consider the record of the original inquest.

[12] During the hearing of the re-opened inquest, the family handed up a list of exhibits produced at the first inquest. In this list, it was disclosed that approximately 66 exhibits were handed up and made part of the record during the first inquest and of those 66 items, only the following exhibits are before this court:

- (a) exhibits “C1” to “C10”, which are photographs of the different injuries on the body, legs, back, lumbar area and arms of Hoosen;⁷
- (b) exhibits “N (i)” to “N (xix)”, which are photographs of Hoosen taken during Dr Biggs’ examination of his injuries at his home before burial;⁸
- (c) exhibit “0.1”, which are photographs of the injuries on Hoosen’s legs ;⁹
- (d) exhibit “DD”, which is the statement of Gilbert Oliver Hughes, Senior Professional Officer, Chemical Laboratories of the Department of Health;¹⁰
- (e) exhibit “EE”, which is the statement of Ivor Colin White, Chief Professional Officer, Chemical Laboratories of the Department of Health;¹¹
- (f) exhibit “FF”, which is the identification of body form and statement by Yusuf;¹² and
- (g) exhibit “GG”, which is a statement of Sergeant Richard Phillip Law, South African Police Medico-Legal Laboratories.¹³

[13] The investigating officer, Warrant Officer Kgamanyane (“Kgamanyane”) received the index, findings of Magistrate Blunden and two versions of similar portions of the first

⁷ Volume B2, pages 783-789.

⁸ Volume B8, pages 822-829.

⁹ Volume B6, page 788.

¹⁰ Volume B 11, page 842.

¹¹ Volume B 11, page 841.

¹² Volume B 11, page 843.

¹³ Volume B11, pages 844-845.

inquest record from Hoosen's sister, Sarah, around February or March 2018.¹⁴ The index is in manuscript and contains only the details of the transcripts from the first inquest.¹⁵

[14] Kgamanyane further confirmed in his evidence in chief that some exhibits from the first inquest were indeed missing.¹⁶ These exhibits are categorised as follows:

(a) **Statements:**

- (i) Professor Isidor Gordon, Chief State Pathologist, Durban.
- (ii) Lieutenant James Brough Taylor.
- (iii) Captain PL du Toit.
- (iv) Handwriting expert, Warrant Officer Pretorius.
- (v) Major van Eeden.
- (vi) Constable Johannes Nicolaas Meyer, uniform branch member stationed at Brighton Beach Police Station.
- (vii) Constable Hugh Derek Naude, uniform branch member stationed at Brighton Beach Police Station.
- (viii) Constable Shadrack Madlala, uniform branch member stationed at Brighton Beach Police Station.
- (ix) Captain HL Schourie, Station Commander at Brighton Beach Police Station.
- (x) Richard Browning Clarke.
- (xi) Major Schutte, investigating officer in the first inquest.
- (xii) A written statement prepared by agreement between Dr Simon, Dr Gluckman and Professor Loubser in the presence of Dr Lorentz.

¹⁴ 2021 Transcript Bundle, page 36.

¹⁵ Volume A1, page 1.

¹⁶ 2021 Transcript Bundle, page 70, lines 16-18.

- (b) **Reports:**
 - (i) Report by Professor Gordon for blood/alcohol, barbiturates, nail scrapings and for traces of marijuana or dagga analysis.
- (c) **Photographs:**
 - (i) Hoosen's vest.
 - (ii) Hoosen's shirt.
 - (iii) Hoosen's jacket.
 - (iv) Scenes of alleged events, such as the point of arrest, the parking area in the north pier and the pier itself.
- (d) **Diagrams:**
 - (i) Diagram of the cell and courtyard – Brighton Beach Police Station.
- (e) **Requests:**
 - (i) Request by Brigadier Lothar Neethling ("Neethling") for analysis of the presence of human blood on pieces of clothing cut from Hoosen's clothing.
 - (ii) A key to the list of pictures.
- (f) **Video or tape recordings:**
 - (i) Tape of Neethling reconstructing the hanging of Hoosen.
- (g) **Documents:**
 - (i) Booklet titled "Our immediate task" which is described as an organisational guide, referenced by Magistrate Blunden as one of the "*photostats of the documents that had been temporarily abstracted from [Haffejee's] flat*".
 - (ii) Article titled "Histopathology of Healing Abrasions" by Robertson and Hodge.
 - (iii) Pamphlet titled "Man's Worldly Goods" by Leo Nurberman.
 - (iv) Three handwritten documents, the contents of which are not described.

- (iv) A document allegedly on explosives.
- (h) **Clothing:**
 - (i) Clothing of Hoosen such as his underpants, trouser, vest, handkerchief, powder blue safari suit top, pair of shoes, pair of socks and pieces of clothing cut out for the purposes of examination.

The requirement of a record to be placed before a re-opened inquest court

[15] Section 17A (2) of the Act requires a record of the proceedings, “as far as possible”, to be placed before a court for inquest proceedings to be re-opened and concluded. However, the Act does not prevent an inquest judge from making a finding in the absence of a complete record. The Act only requires that the record of the proceedings be supplied as far as it possibly can be supplied.

[16] The record in these proceedings, to the extent that it can be supplied, is already before this court. In addition, the first inquest record has been supplemented by considerable new evidence, which would be of assistance to this court.

[17] In *S v Chabedi*¹⁷ the Supreme Court of Appeal held as follows regarding the adequacy of records:

‘[5] On appeal, the record of the proceedings in the trial court is of cardinal importance. After all, that record forms the whole basis of the rehearing by the court of appeal. If the record is inadequate for a proper consideration of the appeal, it will, as a rule, lead to the conviction and sentence being set aside. However, the requirement is that the record must be adequate for proper consideration of the appeal; not that it must be a perfect recordal of everything that was said at the trial. As has been pointed out in previous cases, records of proceedings are often still by hand, in which event a verbatim record is impossible.

[6] The question whether defects in a record are so serious that a proper consideration of the appeal is not possible, cannot be answered in the abstract. It depends, *inter alia*, on the nature of the defects in the particular record and on the nature of the issues to be decided on appeal.’
(Reference omitted.)

¹⁷ *S v Chabedi* 2005 (1) SACR 415 (SCA).

[18] It is trite that a party to any litigation proceedings must produce the original documents in court. The reason for this is that errors may be made in subsequent copies or documents may be falsified.¹⁸ However, a party need only produce the original document when the contents of the document, and not the actual existence of the document, are in dispute.¹⁹ See also *Welz and Another v Hall and Others*²⁰ where Conradie J held:

'As far as the best evidence rule is concerned, it is a rule that applies nowadays only in the context of documents and then only when the content of a document is directly in issue.'

Copies of the original may be admissible if it can be shown that the original has been destroyed or that, despite a diligent search, the original cannot be located.

[19] In this re-opened inquest the only concern is the availability of some documents from the original inquest. Otherwise, none of the parties have raised a dispute regarding the contents of the available documents. To the extent that the above principle can be applied to inquests, I believe that the available portions of the record as supplemented by the considerable body of evidence adduced in the hearing are more than sufficient for a proper consideration of this re-opened inquest.

Historical/Factual Background (life history)

Early years

[20] Hoosen was born on 6 November 1950 in Pietermaritzburg, KwaZulu-Natal. He had three siblings, Sarah, Ismail and Yusuf. His father, Mohammed Essack Haffejee, died on 8 May 1986, while Yusuf died on 16 September 2009 and his mother, Fatima, died on 19 April 2011.

[21] Hoosen's political activities were not known to his family. His early life merged with the politics of the day. According to the evidence of the anti-apartheid activist,

¹⁸ A Bellengere et al *The Law of Evidence in South Africa: Basic Principles* 1 ed (2013) Oxford University Press Southern Africa, Cape Town at 60.

¹⁹ *Ibid* at 61.

²⁰ *Welz and Another v Hall and Others* 1996 (4) SA 1073 (C) at 1079C-D.

Hanef Bhamjee (“Bhamjee”), as early as in 1960, when Hoosen was ten years old, he was already an active body on the streets and was keen to be involved in the struggle for freedom. They developed a close relationship from those days. It was in the same year that the African National Congress (“ANC”) and Pan Africanist Congress (“PAC”) were banned by the National Party government.

[22] Bhamjee gave elementary Marxist books and pamphlets to Hoosen to read. Bhamjee wanted to strengthen anti-apartheid groups and spoke to Hoosen about the activities of Umkhonto we Sizwe, the armed wing of the ANC.

[23] In 1961 while in primary school, Hoosen met KV Moodley (“Moodley”), who would later become a close comrade. In 1962, Moodley became Bhamjee’s first recruit. He worked closely with Hoosen and the ANC Youth League. Later that year, Moodley was recruited into Umkhonto we Sizwe.

Political activity

[24] In 1963, Bhamjee invited 13-year-old Hoosen to join his “study group 29” – which was a political education group. According to Moodley, Hoosen was one of the youngest who were attending this “youth group”. They met in the Pietermaritzburg library. The group worked with the Natal Indian Congress (“NIC”). According to Moodley, it was generally understood that he and Hoosen were members of the ANC and the South African Communist Party (“SACP”).

[25] Between 1962 and 1964 multiple arrests of political activists were taking place. At the study groups during this time Bhamjee explained to Hoosen and others that it was not the time to engage in sabotage, even though they had some knowledge of explosives.

[26] Hoosen’s early commitment to the struggle was highlighted by Bhamjee. Around 1963 or 1964, Hoosen, Moodley and Bhamjee organised a petition asking for a swimming pool for people of colour. In 1965, after Moodley moved to India and began his own study group, Hoosen, Bhamjee and others organised a boycott of the Royal

Show because management said that they would “limit the numbers of non-white children because of serious overcrowding by them in previous years”. In August 1965, Bhamjee left for the United Kingdom.

Studying in India

[27] In June 1968, a few months before Hoosen turned 18, he travelled to Bombay, India to study for a pre-medical degree at Bhavna’s College. He travelled, and studied the pre-medical degree, with Crumsun Nundkumar(“Nundkumar”) and Abdul Kader Akoo (“Akoo”). Hoosen, Nundkumar and Akoo opted to study medicine in India because of the limited opportunities available to people of colour to study at medical schools in South Africa.

[28] Akoo took part in activist movements with Hoosen when they arrived in India in June 1968. They were roommates in the hostel. According to Akoo, Hoosen was a determined anti-apartheid activist. He said Hoosen was widely read, and he embraced socialism and communism.

[29] While in India, Hoosen began receiving copies of “Sechaba”, the newspaper of the Umkhonto we Sizwe. The newspaper was addressed to Akoo. Akoo suspected that it was Hoosen who “was behind” him receiving this newspaper. He recalled an event when their hostel was raided by right-wing nationalists. Hoosen “*galvanised (them) into producing petrol bombs which (they) used to successfully thwart the mob when they attempted to repeat their shenanigans*”.

[30] Hoosen and Akoo met with ANC representatives in India. They had lunch with Mosey Moola and met with Mr Goolam and Mrs Amina Pahad. At these lunches, students were lectured and persuaded to join the ANC. It was around this time that Akoo suspected that Hoosen had joined the ANC; although Hoosen would never speak about his affiliation or membership because of the risk of being exposed to the apartheid police. It was something you kept to yourself, Akoo said.

[31] In 1968, Hoosen reunited with Moodley, and Moodley recruited him into his study group. Hoosen participated in all the activities, including the study of “political systems; theory of guerilla warfare; sabotage and practical application of underground work”.

[32] In June 1970, Hoosen was not accepted into Natal University’s Medical School and he decided to pursue dentistry. He moved to Nagpur, India. In January 1971, he met Vinay Hazarey at the Government Dental College where they were both studying.

[33] In 1971, Hoosen met Fatima Sacoor (“Sacoor”) and AB Gangat (“Gangat”) who were also studying dentistry and they developed a friendship. According to Sacoor, Hoosen was knowledgeable about the politics of the South African struggle. They spoke much about struggle icons such as Yusuf Dadoo, Ismail Cachalia and Nelson Mandela.

[34] Between 1973 and 1974, Hoosen was the General Secretary of the Dental College and Hospital’s Student Association and became its President during 1974 and 1975. Going back to 1973, he became a member of the Bombay ANC cell structure and attended ANC/SACP training school in Bombay. According to Bhamjee, these structures discussed the history of South Africa, Marxism, Leninism, underground work and urban guerilla warfare. All who went through the training were asked to consider smuggling the information back to South Africa by having it reduced to tiny print and then sewn into the lining of their clothing.

[35] According to Bhamjee, Hoosen must have taken his original notes to South Africa because they were exhibited at his first inquest. However, these notes were not available at the time of the re-opened inquest.

[36] Bhamjee said that he learned from Yusuf and Moodley about these notes at the first inquest. According to Bhamjee, this was a serious mistake by Hoosen which was contrary to the agreed security measures.

[37] In 1976, after qualifying with his degree in dentistry, Hoosen went to London to see his aunt, Rabia Bee Rahim(“Rahim”). He thereafter went to Cardiff to see Bhamjee.

While there, and around August 1976, he and Bhamjee attended the ANC/SACP training school in Dublin, Ireland. In September 1976, Hoosen completed his studies and left India to practise dentistry in South Africa.

Return to South Africa: relationship with Ms Matheevathinee Benjamin

[38] Hoosen began working in Durban, at King George V Hospital. In January 1976, he met Ms Matheevathinee Govender. At the time her surname was Govender, which changed after she married Major Joseph Benjamin. She was a nurse (dental assistant) at the hospital. Around March 1977, she started a relationship with Hoosen.

[39] Ms Benjamin admitted to being quite taken by Hoosen. She considered the relationship as “not exactly romantic” but admitted that she did harbour deep feelings for him. According to her, from Hoosen’s perspective, he did not see the relationship as a serious one. This was because he had an interest in another woman, who happened to be Muslim. Ms Benjamin found this to be insulting and hurtful. She became upset that Hoosen was not as responsive to her as she would have liked him to be.

[40] Ms Benjamin stated that Hoosen’s intention was to have a cell or group where he could influence and promote his beliefs. He would have meetings with young students at his flat for the purpose of recruiting them and teaching them how to be an activist.

[41] Ms Benjamin testified that she did not support Hoosen’s recruitment of people to fight against apartheid. She claimed that Hoosen thought he was better than everyone else. When questioned about this, however, she conceded that she wanted Hoosen to suffer a little because of his interest in another woman. She also conceded that her working with the Security Branch was to make Hoosen suffer for what he did to her, not for any public good.

[42] In her statement, Ms Benjamin stated that while cleaning Hoosen’s flat, she came across subversive literature on how to train communists. In oral evidence, she

changed her testimony and conceded that she was not cleaning, but in fact snooping around to find potential material to implicate Hoosen to the Security Branch.

[43] According to the former Security Branch Officer, Mohun Deva Gopal (“Gopal”), Ms Benjamin called the switchboard at Fischer Street; and her call was transferred to Captain Petrus Lodewikus du Toit (“Du Toit”). She informed Du Toit about a doctor involved in manufacturing of chemical bombs. She advised that she was fed-up with him because he was involved in a relationship with her and a Muslim woman. She was very bitter and wanted to get back at him.

[44] The Security Branch officers met Ms Benjamin at Delhi Restaurant, under the command of Du Toit and on an instruction of Major Joseph Benjamin (“Major Benjamin”). Gopal was accompanied by Warrant Officer Veera Ragalulu Naidoo (“VR Naidoo”), amongst others, who went to meet her. VR Naidoo, Sergeant Shanmugam (“Schrewds”) Govender and Gopal walked into the restaurant to meet her.

[45] They took her to Fischer Street in their vehicle. She was taken to Du Toit’s offices where she was questioned by Du Toit and Major Benjamin. Gopal was part of the meeting and he testified that the Security Branch received extensive information about Hoosen from Ms Benjamin.

Surveillance of Hoosen

[46] According to Gopal, he and members of the Security Branch had never heard of Hoosen prior to receiving information from Ms Benjamin. After meeting with Ms Benjamin, approximately the next day or so, Major Benjamin spoke to Du Toit about hotwiring Hoosen’s flat. A *tamatie* was placed in Hoosen’s flat by Lieutenant Vic MacPherson and Schrewds. A *tamatie* was how the Security Branch referred to a concealed listening bug. The Security Branch had access to Hoosen’s flat through the keys provided to them by Ms Benjamin. The Security Branch made copies of the keys. Hoosen’s home and place of employment were tapped.

[47] It was then decided to observe Hoosen for 24 hours, round the clock. They had six teams. VR Naidoo was part of one team. At some stage Schrewds and Major Benjamin gained access to Hoosen's flat with the keys provided to them by Ms Benjamin. Papers in the flat were photocopied and the originals returned.

[48] Ms Benjamin remained in contact with the Security Branch and gave them feedback on what was happening every two or three days. Ms Benjamin advised Gopal and the Security Branch that Hoosen gave lectures to Muslim students every Thursday evening at his flat and taught them how to manufacture bombs. Based on this, the Security Branch concluded that Hoosen was lecturing on manufacturing explosives.

[49] Surveillance went on for approximately four months, beginning in April 1977. Gopal listened to the conversations that took place in the flat. He had a special interest in Thursday nights because those were the days that Hoosen held lectures for two Muslim men from Port Shepstone, between 20h00 and 22h00. He claimed that he heard Hoosen giving lectures on the manufacturing of chemical bombs.

[50] Gopal was also tasked with observing who was entering and exiting Hoosen's home. Akoo, a friend of Hoosen, remembers Hoosen telling him that he thought he was being followed while driving around Durban City areas. Akoo knew that Hoosen had two romantic partners. He recalled that both lovers had keys to Hoosen's flat. Lieutenant James Brough Taylor ("Taylor") testified at the first inquest that he and Du Toit saw Hoosen drive past them in central Durban between 21 June and 5 July 1977. This seems to confirm that Hoosen was being monitored by the Security Branch.

[51] Moodley was at Hoosen's flat on 15 July 1977 when Hoosen received a phone call where he was "argumentative, dismissive and most of the time, rude". After Moodley enquired who the caller was, Hoosen said it was Ms Benjamin. According to Moodley, Hoosen advised him that Ms Benjamin was upset since she found out that he was courting another woman, a Ms Shaida who was a "student at University of Durban Westville (UDW)".

[52] Moodley expressed his concern at the state of Hoosen's relationship with Ms Benjamin, as this could impact on their political work. He said he told Hoosen that "complications from a scorned ex-girlfriend were unnecessary". Hoosen agreed. Ms Benjamin said she last saw Hoosen between 23 and 26 July 1977, before he died.

Hoosen's final visit in Pietermaritzburg

[53] On Sunday, 31 July 1977, and on his return from a trip to Mumbai, India, Moodley was visited by Hoosen at his parent's home in Pietermaritzburg, at around 16h00. Hoosen informed him that a coloured nurse (who worked with him) informed him that she overheard Ms Benjamin reporting his political activities to the Security Branch. Hoosen told Moodley that he was "not worried, nor was he scared and certainly not suicidal, but only looking for advice".

[54] After discussing the matter, the two agreed that Hoosen should leave the country. Hoosen told Moodley that he would inform him once he is out of the country. Between 1 and 2 August 1977, while Moodley was on emergency call at hospital, he called Hoosen ("several times") but there was no answer. Moodley said he assumed, erroneously, that Hoosen had left the country.

[55] Going back, after meeting Moodley, Hoosen went to his family home in Pietermaritzburg. According to Sarah, he was "in good spirits" and was playing with his nieces and nephews. On that Sunday evening, 31 July 1977, Hoosen visited his brother Ismail, at his home in Loop Street, Pietermaritzburg and played scrabble with Ismail's son. He left around 22h00 to go back to his parent's house in Church Street, Pietermaritzburg.

Hoosen's return to Durban

[56] Hoosen left Pietermaritzburg for Durban on the morning of 1 August 1977, between 06h00 and 06h30. In the evening, Akoo, Nundkumar and Hoosen had dinner at Hoosen's flat. The three friends spent time "reminiscing of the past".

Arrest of Hoosen

[57] On 2 August, 1977 at around 06h00, Du Toit called his unit members and explained that there was enough to conclude that there was sufficient cause to arrest Hoosen for the purpose of interrogation. Gopal conceded in cross-examination that he could not state whether there was enough evidence, at that stage, against Hoosen to secure a conviction.

[58] Gopal testified that around 06h30 Du Toit commanded his unit to get all their cars lined up as when Hoosen left his flat, they were to follow his vehicle and come to a specific point where they felt it was safe to have him arrested. Du Toit led the line of vehicles with Taylor, then Gopal and Schrewds, and then VR Naidoo and MacPherson at the end.

[59] Between 07h47 and 08h00, Hoosen was forced off the road and arrested by Du Toit, Taylor, MacPherson, Schrewds, Benjamin and Gopal. According to Gopal the apprehension of Hoosen amounted to a kidnapping.

[60] Hoosen's vehicle was forced onto a grassy patch. The unit members alighted from their vehicles. Taylor was the first to open Hoosen's car door and pull him out of the vehicle.

[61] Contrary to Du Toit and Taylor's evidence in the first inquest, Hoosen did not resist arrest and was not injured in any way at that point. Gopal stated that the evidence of Du Toit and Taylor in the first inquest that a scuffle took place was a lie.

[62] Hoosen was handcuffed and placed into Du Toit's vehicle. Hoosen was not informed of any charges against him and was not given any procedural warnings.

[63] Hoosen was then taken to the Brighton Beach Police Station. Gopal conceded that, upon reflection, Hoosen was taken to Brighton Beach Police Station, rather than

Fischer Street Security Branch offices in downtown Durban, to make sure nobody would know that he was being abducted. Brighton Beach Police Station is located quite far from the city centre in the quiet suburb of the Bluff.

[64] Gopal continued. They reached Brighton Beach Police Station at approximately 09h00. It took approximately an hour to get from Overport to Brighton Beach because of heavy traffic. Hoosen was not booked in at the charge office but taken to a basement which was used as an interrogation room. Gopal noted in cross-examination that upon reflection, Hoosen was taken to the basement so that the sound could get drowned out, since things could get “a little messy”.

[65] The court took time to conduct an inspection in loco of, inter alia, the possible interrogation room at Brighton Beach Police Station, on 18 August 2021. The room is situated in the basement of the multi-storey building which contains police barracks above it. Access to it is isolated and can be gained through a separate driveway on the south-west side of the building. At the time of the court’s visit, the room, which was identified by Gopal, was clearly neglected; degraded; flooded with stagnant water up to one’s ankles and was filled with mosquitoes. It was unused at the time and had apparently been so for many years, according to Captain Kruger the current commander of the police station.²¹

Interrogation of Hoosen

[66] According to Gopal, the purpose of the interrogation was to firstly find out who the two Muslim men were that attended Hoosen’s lectures; and secondly to find out more about the training he had received in India. Gopal stated that the first 24 hours of interrogation were the most important, and as a result, were the most intense. This was for purposes of extracting information that could lead to the capture of other suspects before they got wind of Hoosen’s detention.

Assault and torture

²¹ Volume L3, page 2673.

[67] Gopal's evidence was that he was instructed to give Hoosen food, escort him to the toilet, and make sure he did not escape. Taylor and Schreuds were the initial interrogators. Du Toit was also in the room and Major Benjamin intermittently entered and exited the room.

[68] Hoosen was first asked about his background and his training. He was also asked about the lectures he was giving every Thursday night. Hoosen was asked to get out of his blue-grey safari suit and was left with his white underpants. Gopal conceded that the purpose of stripping a suspect was firstly, not to leave bloodstains on the clothing and secondly, to humiliate him.

[69] Hoosen was questioned by all the members of the Security Branch. The assaults began around 09h15 or 09h20. Taylor initiated the assault by slapping and punching Hoosen, with open palm slaps, kicks on his kidney, along his back and front, and on his legs and thighs.

[70] The punches became more violent through the course of the day. Du Toit also started assaulting Hoosen, hitting him on the legs, ankles, private parts, buttocks, back, face, neck arms and armpits. The torture stopped temporarily around 14h00 as the Security Branch members "broke for lunch".

[71] Colonel Ignatius Gerhard Coetzee, who was second-in-command of the Durban Security Branch, arrived and asked Gopal to assist Hoosen in putting his clothes back on. Hoosen could not bend because his entire body was sore.

[72] After lunch, Taylor resumed the torture, but this time more intensively. Hoosen was already very bruised all over his body but not bleeding. Gopal could see marks all over his body as Hoosen had quite fair skin. Gopal said that Taylor dragged Hoosen by the back of the neck to the toilet and made him drink the water from the toilet.

[73] Hoosen was struggling to breathe and resisted by pushing himself up. As a result, he fell back and hit his head against the wall and fell on the ground. Hoosen was then dragged back to the interrogation room.

[74] After this episode, the assaults continued. Hoosen still did not disclose any information or anything that constituted intelligence. At this point the Security Branch had no evidence that would secure a charge. Gopal testified that the claim by Du Toit that Hoosen was taken to Durban Bay where a scuffle broke out, was a lie put forward at the first inquest to explain the injuries on Hoosen's body.

[75] Gopal initially denied being part of the interrogation but later conceded under cross-examination that he was and that he did ask Hoosen one or two questions. Gopal left the police station or should I say the interrogation room at some point to go to the shops to get lunch. When he returned, he observed Hoosen being assaulted again. Hoosen collapsed on the floor after his face hit a pillar as Taylor was kicking and pushing him.

[76] Hoosen was confronted with the documents retrieved from his flat. He was also confronted with the recordings obtained from the *tamatie*. According to Gopal, and contrary to Taylor's evidence at the first inquest, he was confronted with these documents throughout the day and not only at 23h00.

[77] Gopal stated that the torture concluded at around midnight because the interrogators were "tired". The Security Branch officers put Hoosen's clothes back on and Taylor brushed his hair back. Taylor took a towel and wiped blood off Hoosen's lip.

The charge office

Gopal's account

[78] According to Gopal, Hoosen was then taken to the charge office by Schreuds, Taylor, Du Toit and himself. He said Hoosen walked very slowly but walked upright for a

short while before bending over again. He claimed that Hoosen did not have to be carried to the charge office.

[79] Gopal denied Taylor and Du Toit's version at the first inquest that he, Schrewws and MacPherson were out doing further investigations at the time, and were then called back via radio to Brighton Beach and only then escorted Hoosen to the charge office. In cross-examination it was put to Gopal that the reason Taylor and Du Toit presented such fabricated evidence, which removed them from the scene, was because Hoosen was either debilitated and could barely move or he was probably dead by that time. Gopal denied this. He testified that Hoosen was most likely killed because dead men "tell no tales". However, he denied that Hoosen died under interrogation. This contrasted with the expert evidence of the pathologist, Dr SR Naidoo ("Naidoo"), who concluded that Hoosen would in all probability have been dead by this time.

[80] According to Gopal, Hoosen was then booked in by the charge office sergeant. It was not disclosed to the charge office staff that Hoosen had sustained injuries. Gopal testified that Taylor told Hoosen that if he disclosed his injuries, he would be taken back in for more "questioning". He said Hoosen was trembling at the time because of how weak he was.

[81] Gopal disputed Naidoo's evidence that if Hoosen was not already dead, he would have been in a lowered state of consciousness. When cross-examined on the injuries to Hoosen's arms, Gopal stated that he did not notice any injuries on Hoosen's arms. This claim contrasts with the medical evidence, to be dealt with below, which confirms injuries on the arms.

[82] Gopal was of the view that further torture must have taken place in the cell, after he left. According to Constables Johannes Nicolaas Meyer ("Meyer") and Hugh Derek Naude "(Naude)", uniform branch members on duty that night at the charge office, Hoosen was booked in injury-free and no one entered the cells after he was locked up.

[83] Gopal testified that if there were injuries on Hoosen's arms at that time, charge office staff would have noticed and duly recorded this in the occurrence book. Gopal felt that the evidence of Naude and Meyer ought not be accepted because they would have collaborated with whoever inflicted those injuries on Hoosen in his cell.

Meyer's account

[84] Meyer gave a different version. According to him on the night of 2 August, 1977, he was on duty at the Brighton Beach Police Station's charge office when Hoosen was brought into the charge office before midnight. He was on duty with two other uniform branch members, namely, Naude and Constable Shadrack Madlala ("Madlala"). Meyer was on shift between 22h00 and 06h00 the next morning. According to Meyer, Hoosen was detained as a "political prisoner".

[85] Meyer testified that he was not aware that Hoosen had been in the building since early that morning. He was also not aware that any interrogations took place at the basement storeroom. He conceded that it was irregular or even illegal for the Security Branch to bring a detainee to the basement storeroom for interrogation without doing any paperwork.

[86] He said that Hoosen was accompanied by two well-built white Security Branch members. He could not recall any Indian members accompanying Hoosen. Hoosen was dressed in a short sleeve safari suit and shoes and walked in quite normally. He described Hoosen as nervous and "shaking a bit".

[87] Meyer claimed not to have seen any injuries or signs of assault, or bruise marks, on him at that stage. He said he asked Hoosen if he had any injuries and Hoosen said no. Meyer conceded that this was inconsistent with the evidence of Gopal that Hoosen was severely beaten. He also conceded that his evidence was inconsistent with that of Naidoo who asserted that Hoosen would have been in great discomfort.

[88] Hoosen removed his trouser belt, shoelaces and other items from his person which were booked into the prisoners property register. He said Hoosen removed these items himself, in the presence of Meyer. Meyer asked Hoosen to finish a cold drink he was drinking but the Security Branch members apparently countermanded him and said Hoosen could take it with him to the cell. Hoosen was then physically searched and was found to have no other property on his person.

Naude's account

[89] Naude's version dovetails with that of Meyer's. He was on duty on the night in question, from 21h00 to 07h00 the next morning. He said he was not aware of the fact that Hoosen was being interrogated at the Brighton Beach Police Station. In fact, he claimed that it was the first time he ever heard about this fact.

[90] According to Naude, on this day at around midnight, two white plain clothed men arrived at Brighton Bridge Police Station, identified themselves as Security Branch members and informed him that Hoosen was a political prisoner and nobody was allowed to communicate with him, apart from the Security Branch members.

[91] Naude said that Hoosen wore a trouser and a shirt. He claimed that Hoosen was in "perfect health" but appeared to be looking tense. He conceded that if Hoosen was wearing a short sleeve safari suit, and had sustained injuries on his arms, he would probably have seen such injuries.

[92] He said Hoosen was stripped of standard items specified for cell detention, at the time. These items are logged in the cell register and occurrence book; and Hoosen was then taken to the cells by Naude and his colleague.

[93] In cross-examination it was put to Naude that it was the evidence of Naidoo and Dr Holland that Hoosen's time of death would have been at least by midnight. Naude said that he did not know how that was possible because he saw Hoosen being taken to

the cells. He agreed that it was not proper procedure to place Hoosen directly into the interrogation room without being booked in and filling out the proper paperwork.

Taking Hoosen from charge office to cell

Gopal's account

[94] Gopal denied Taylor's evidence at the first inquest that he was not part of the group that escorted Hoosen to his cell. He insisted that he accompanied Hoosen to his cell. According to Gopal, Hoosen's injuries were noticeable as he had visible bruises and lacerations. At this time, he says, Hoosen was conscious and could walk very softly.

[95] While in the cell, Gopal claims to have spoken to Hoosen. He told Hoosen that he was getting a two-hour break before the rest of the officers would be back.

[96] When it was put to Gopal that it was improbable that his evidence was correct because it was the expert opinion of Naidoo that Hoosen would have either been in a state of absolute distress and pain, or unconsciousness, or even dead, Gopal denied this and insisted that Hoosen was alive at the time and was able to walk from the charge office to the cell.

[97] Gopal said that when he left the cell, Hoosen still wearing the same safari suit he had worn since the morning. In examination, Gopal said that the clothing Hoosen wore in the post-mortem images, the long sleeve shirt, was not the same clothing he saw him in during the day of his torture, being a short sleeve safari suit. Gopal claimed that the long-sleeved shirt was probably placed on Hoosen to hide his injuries. He claimed that this shirt must have been put on Hoosen after he (Gopal) left the cell.

Meyer's account

[98] Meyer states that around 23h00 or 23h30, Hoosen was escorted to a holding cell by himself and Naude, in the presence of Security Branch members. He claims that Hoosen was able to walk freely, without assistance from anyone. After Hoosen was

placed in his cell the normal procedure of locking the doors was followed. According to Meyer, the Security Branch members then left the police station and the uniform members returned to the charge office.

Naude's account

[99] Contrary to Gopal's evidence, Naude said that he, together with a colleague and the Security Branch officers took Hoosen to his cell. He could not recall any Indian members walking with him. He also claimed that Hoosen had no issue walking to his cell.

Cell monitoring

[100] According to Meyer, the cells were inspected every hour in teams of two. He claimed that on the first hour he and a colleague visited the cells, which was most probably between 00h00 and 01h00.

[101] According to Naude, after Hoosen had been placed in his cell, normal cell visits and procedures were adhered to for the remainder of his shift. These procedures included checking the number of prisoners and that cell doors were correctly closed. He said he would enter the cell to confirm this, however, no communication was made with Hoosen. Cell visits occurred every hour until 04h00 when Hoosen was discovered dead. Naude agreed that, since it was not practice to wake detainees during cell visits, there is a possibility that Hoosen could have already been dead during his prior visits.

[102] According to Naude, the last cell visit was at 06h00 on the morning of 3 August 1977. When it was put to him that his testimony at the first inquest was that he saw the dead body during his visit at 04h00, he said he was convinced it occurred prior to handing over to the next shift at 07h00, but conceded that his memory might be shaky, given the lapse of so many years.

Death scene

Meyer's account

[103] At just after 04h00, upon opening the door, Meyer claimed he noticed that something was abnormal about the scene. According to him Hoosen was laying on the floor on his back; his lower body was naked; with something attached to his neck and tied around the bars of the “safety gate”, on the inside of the cell; and the knot was tied very tightly in a koeksister formation.

[104] On entering the cell, Meyer says he saw Hoosen’s trousers tied around the bars of the safety gate with the leg parts twisted around his neck. According to Meyer, no person was allowed to visit the cells. The officers in the charge office held the keys. If any officer, including members of the Security Branch, issued a higher command to release the keys, he insisted that he would not follow the command. Instead, he would have escorted the Security Branch member to the cell.

[105] While Meyer said he believed it was suicide, he conceded that he could not automatically assume that it was in fact suicide since there is evidence from other re-opened inquests that other political prisoners would not have caused their own deaths.

Naude’s account

[106] On the last cell visit prior to handing over responsibilities to the morning shift, Naude said he found Hoosen lying on the floor of his cell with his head against the bars of the inner cell door. His trousers were threaded through the bars of the cell door and around his throat, twisted tightly and his knees were pulled up towards his stomach.

Post death

[107] In the re-opened inquest both Naude and Meyer claimed that they were the first (with Madlala) to discover Hoosen dead in cell number 2 on their cell visit at 04h00 on the morning of 3 August 1977. In the first inquest, Naude testified that it was he who discovered Hoosen’s dead body.

[108] After discovering the body, Naude contacted his immediate superiors who took control of the situation, and they were instructed not to leave the premises until advised

that they could do so. According to Meyer, the Security Branch members, the Station Commander Captain Potgieter, and standby Criminal Investigation Department (“CID”), Warrant Officer Bezuidenhout were immediately telephoned. Other Security Branch members, such as Du Toit and Taylor, arrived on their own approximately 15 minutes later.

[109] According to Du Toit’s testimony in the first inquest, Captain Schourie took him to the cell. Then Colonel Stadler arrived with his former chief, Brigadier Steenkamp. Prof Gordon (“Gordon”) was then telephoned.

[110] According to Meyer, the Security Branch instructed the uniformed branch members to leave the scene. The Security Branch thereafter did their own investigations. It is not known what “investigations” were carried out by the Security Branch and who amongst them carried them out, but it would appear they entered the cell before the Forensics Unit carried out their duties.

[111] Du Toit, together with Taylor, were thereafter assigned to pick up Gordon. Meyer could not remember what time they picked up Gordon. We do however know that the examination in the cell occurred at 07h00.

[112] The police investigation that followed, can only be described as substandard. It appears it was largely designed to prop up the cover story of the Security Branch. More about this later in the judgment.

[113] Sergeant Richard Phillip Law of the South African Medico-Legal Laboratories 95 Gale Street, Durban removed Hoosen’s body from Brighton Beach Police Station and transported the body to the mortuary. We do not know what time Hoosen’s body was transported to the mortuary from the police station, but it must have occurred after Gordon conducted his examination in the cell at 07h00.

[114] According to an interview by Christian de Vos of the University of Westville's "Voices of Resistance" Oral History Project which he conducted with Yusuf, on 25 May 2002,²² two white males approached him on the morning of 4 August 1977 and informed him that his brother had committed suicide. He was informed that a post-mortem was going to be conducted and that he should phone Gordon if he wanted to know anything.

[115] Yusuf called Gordon's office and was advised that Gordon was already at the police mortuary in Gale Street, and that if Yusuf wanted to have a doctor present he should hurry, because Gordon was going to start the post-mortem. Yusuf called his friend Dr Yusuf Chenia ("Chenia") and asked him to be present at the post-mortem and to arrange for a pathologist. Chenia could not arrange a pathologist to be present and thus attended the post-mortem alone. The post-mortem began at approximately 10h20. Chenia did not give evidence at the first inquest nor was there any statement of his in the record or exhibit list.

The mortuary

[116] On 3 August 1977, Amena Motala ("Amena"), a friend of Hoosen and Hoosen's aunt, Rahim, were dropped off by Amena's husband at a museum. Her evidence (contained in an affidavit filed of record) was that she was dropped off at the museum early in the morning, by her husband who was on his way to work. Her husband returned to the museum approximately two hours later and said that they needed to urgently go to the government mortuary in central Durban.

[117] The Motalas and Rahim attended the mortuary where two white Security Branch officers were waiting for them. Amena spoke to these two officers whose names she could not remember. She informed them that she was present to identify the body of Hoosen.

[118] Hoosen's body was then released and uncovered. Rahim was emotionally struck by Hoosen's injuries and left the room. Amena observed the following injuries: burn

²² Volume E, page 1135.

marks underneath the soles of his feet which she believed could have been caused by an electrical instrument; many bruises on his body and head which she believed was caused by an assault; and his face was swollen.

[119] Amena confronted the Security Branch officers and said that Hoosen did not look like he killed himself. They did not respond but gave her a “bad look”. Later that day, Yusuf identified the body, and carried out Hoosen’s Islamic burial rights.

Bathing of the body

[120] Hoosen’s body was then transported back to Pietermaritzburg to be bathed according to Muslim tradition. Biggs was asked by the Haffejee family to examine the body at the family home in Church Street, Pietermaritzburg at approximately 17h40. It is not clear whether this examination occurred before or after Hoosen’s ceremonial bath.

[121] Dr Chota Motala (“Motala”) was also present. Biggs directed a photographer who took photos of the body. Ismail removed the white calico covering (or “kaffan”), and was shocked to see the condition of his brother’s body. He recalls seeing the following injuries on Hoosen’s body: bruises, most notably on the back and sides; brown dots that looked like the burns on his inner thighs and in and around the genital area; swelling of the face; and depressions in and around the wrists, under arms and genital areas.

[122] With all these injuries, Ismail believed that his brother had been tortured, and he “could not reconcile hanging with these injuries”. Ms Hajera Beebee Subedar, Hoosen’s maternal aunt, stated that at the funeral, she saw Hoosen’s face and described it as swollen.

[123] When Moodley saw Hoosen’s body he “noticed all the wounds (over 50) on his body, some look like electrical burns and others where his skin appeared to have been removed by unknown instrument. His face and skull were also swollen and bruised”.

Hoosen’s physical and mental well-being

[124] According to Sarah, Hoosen as a young man showed no signs of depression. She saw him during the weeks prior to his death, including the weekend before, and he did not seem any different. He was not displaying any signs of anxiety or stress.

[125] Sarah said that no one believed the police when they claimed that her brother had committed suicide. To her, it “sounded bizarre” because in the Islamic faith, suicide is not permissible. Hoosen knew about that principle. He knew that committing suicide was a sin and that if he did, he could not be buried in the designated Muslim area of the cemetery. Hoosen was however buried in the designated Muslim area of the cemetery, because nobody in the community believed he had committed suicide.

[126] Ismail insisted that his brother believed strongly in the Muslim doctrine - that life is sacred, and it is only God that can take life away prematurely. It is well known to Muslims that if they take their own lives prematurely it is a grave and unforgivable sin. Ismail cited the Islamic doctrine that life comes from God; life belongs to Him and it is He who takes away life.

[127] According to Ismail, Hoosen had no health conditions and was very healthy. He said his brother “was jovial” before he left his house on Saturday evening before his death. He had “no injuries or complaints”.

[128] Akoo last saw Hoosen when they had dinner at his flat on Sunday evening before his death. When he left Hoosen’s flat, around 22h30, he did not recall Hoosen being “unhappy”.

Gopal's instruction to cover up

[129] Gopal claimed that he was informed of Hoosen’s death by Taylor in the morning after his death when he bumped into Taylor at the Fischer Street offices. He then met Major Benjamin and asked him what had happened. Gopal says that Benjamin put his finger to his lips and told him to keep quiet. He says he had a bad feeling that Benjamin knew what happened but did not want to tell him.

[130] According to Gopal, on that morning, Du Toit called all the Security Branch officers who were present during the interrogation and said that they might be called to give evidence at the first inquest and that they should “have (their) story prepared”. The cover story was that Hoosen had confessed that there was a dead letter box at the Durban Bay and that they had taken him there to point out where he had hidden documents on the manufacture of explosives, chemical bombs and instructions on how to deal with interrogation.

[131] The interrogation team was told by Du Toit that he will be dictating to each member what they should say. Du Toit then called in each member one by one. Gopal was told that he would have to say that Hoosen was not handcuffed and that he tried to escape. During this process, Hoosen got violent and had to be restrained, and in the process his body struck various parts of the car. Du Toit gave Gopal a four-track cassette on which to record his story.

[132] Du Toit also instructed Gopal and MacPherson to go to Hoosen’s flat to remove the listening bug, which was removed by MacPherson and Schrewds. Gopal admitted that as a member of the interrogation team, he was willing to collude and lie, so the truth could be swept under the carpet. Ultimately, Magistrate Blunden accepted the Security Branch’s cover story and concluded that nobody was to be blamed for Hoosen’s death.

Post-death intimidation by the Security Branch

Sacoor and Gangat

[133] On 4 August 1977, the day after Hoosen died, a doctor from King Edward V Hospital called Sacoor to ask where her husband, Gangat was. It appears Gangat had disappeared, which I am told was unusual, as his car was still parked at the hospital.

[134] Later that day, Sacoor received information from her brother that a Mr Farouk Moolla found her husband wandering around on Stamford Hill Road, Durban between 12h45 and 13h00. Moolla took Gangat to Sacoor’s brother’s shop in Victoria Street.

After taking Gangat home, Sacoor learned that he had been tortured by the Security Branch.

[135] Gangat died in 2017, so the account below is Sacoor's recollection of what he told her. Gangat told Sacoor that two men from the Security Branch arrived at his hospital and asked him if he knew Hoosen. He answered in the affirmative and he was instructed to follow them to a car. Gangat scribbled a note to one of the nurses at the hospital to say that he had been taken by the Security Branch.

[136] According to Sacoor, Gangat was blindfolded in the car. While in the car, Gangat was asked about what he and Hoosen had been discussing over the phone the day before Hoosen was arrested. Gangat replied that they talked about the day's work schedule, but the Security Branch officers did not believe him.

[137] When they reached an unknown place, the Security Branch took him to an unknown room. In this room, the Security Branch asked Gangat if he was a communist and whether they were planning unrest in the country and if Hoosen was trained to make bombs. Gangat told them they were not communists but dentists, and that he and Hoosen never talked about bombs or communism.

[138] This upset the Security Branch members. Gangat was then taken to another room where he was subjected to forms of torture: by being stripped naked; his head pushed repeatedly into a container of water; shocked with electrodes on his head; his hands and feet tied behind and hung upside down by his feet; and beaten and forced to say what he knew about Hoosen and about their plans which lasted for more than an hour.

[139] Sacoor testified that the Security Branch followed her husband everywhere following Hoosen's death. Sacoor and Gangat realised that Gangat's phone at the hospital must have been bugged, and that is how the Security Branch knew that Gangat and Hoosen had been in contact.

[140] Their domestic workers were interrogated and threatened. The couple were followed to and from work and Gangat's practice was repeatedly raided, which had an adverse effect on patients. They discovered that Gangat's hospital phone had been bugged by Johnny Swanepoel, a police reservist, who had been planted at the hospital by the Security Branch.

Sarah

[141] Sarah testified that her elder brother, Yusuf, was hanging up photographs of Security Branch police officials Taylor and Du Toit outside their family shop window with the caption which read "Who killed Hoosen". Police officers came to the shop to instruct him to remove the photographs, but he refused.

[142] Sarah also recalled that police officers came to their home around midnight to search the house. She could not recall the date. They searched her mother's and Hoosen's rooms. They also tried to search Yusuf's room, but he refused to let them in.

Ismail

[143] After Hoosen's death, Ismail said that the Security Branch started to follow the Haffejee family. In one instance, he recalled Security Branch vehicles parked opposite the family shop and they watched who came in and who left.

First inquest

[144] At the first inquest, the Haffejee family was represented by Dr W Cooper SC, Mr ASK Pitman and Mr I Mahomed.

[145] The family's case was that Du Toit and Taylor used third degree methods and deliberately inflicted injuries on Hoosen while in interrogation. Since the Security Branch believed that Hoosen had been trained in urban terrorism and belonged to a subversive movement, the Security Branch had a powerful motive to apply excessive and extreme interrogation methods. Accordingly, the core focus of the family's representatives was on the injuries sustained by Hoosen.

[146] Counsel for the family challenged the versions of Du Toit and Taylor that Hoosen sustained these horrific injuries by resisting arrest. This was because Du Toit and Taylor were unable to explain, with reference to specific incidents, how each injury was sustained. Dr Lorentz, a surgeon, asserted that the nature, extent and distribution of the injuries indicated that they could not have been sustained in the manner described by the Security Branch members.

[147] Lastly, the family argued that it was these deliberate assaults that ultimately led to the death of Hoosen. However, Dr Cooper, quite inexplicably, agreed with the Magistrate that he could not ask for a finding that the death of Hoosen was brought about by any act or omission as contemplated in the Inquest Act. It is submitted in this inquest that there was no factual or legal basis for Dr Cooper to have made such a concession.

[148] *Dr Cooper* urged the court not to make a finding of suicide because the Inquests Act did not require a court to go that far in making a finding. Astonishingly, Magistrate Blunden agreed, and made the finding that nobody was responsible for Hoosen's death, even though he had died in unnatural circumstances, and Magistrate Blunden had apparently already concluded that Hoosen had committed suicide.

The first inquest court judgment

[149] Magistrate Blunden found that the evidence of Du Toit and Taylor coincided in all material respects. It is submitted by the family's counsel that this is hardly surprising given that the two had colluded in the cover-up. Their evidence will be considered together, for the purposes of the first inquest.

Du Toit and Taylor

[150] Magistrate Blunden accepted the following evidence of Du Toit and Taylor, without question:

- (a) The Security Branch had been interested in the activities of Hoosen since about April 1977.
- (b) During this time, entry was gained into Hoosen's flat, and documents removed, photocopied and replaced. These documents were highly incriminating in that they showed Hoosen engaging in subversive activities.
- (c) It was decided that Hoosen be arrested to question him and perhaps charge him. According to Taylor, at around 06h30 on Tuesday, 2 August 1977, Taylor, Du Toit, MacPherson, Lieutenant Moonsamy, Adjunct Officer Naidoo, and Gopal arrived in the vicinity of Hoosen's flat.
- (d) On driving away from his flat, Hoosen was pursued by Taylor. Taylor signaled Hoosen to pull over. Hoosen failed to comply, which resulted in Taylor forcing him off the road by cutting in front of him. Since Hoosen was believed to be a trained saboteur, and it was thought he might be dangerous, it was prearranged between Du Toit and Taylor that Hoosen's car would be immediately assessed for weapons.
- (e) However, Hoosen resisted arrest. Du Toit then came to Taylor's assistance and gripped Hoosen from behind, bumped Hoosen up against his car and held him in that position until Taylor established that he was unarmed. Hoosen refused to accompany them to the police station. Du Toit and Taylor placed Hoosen into his car by force, but he put up a "spirited" resistance.
- (f) Du Toit claimed that he did not want to use excessive force because he did not want to injure Hoosen unnecessarily. As a result, he struggled to get Hoosen into his own vehicle. Eventually, Taylor pinned Hoosen down on the seat while Du Toit pulled him into the car.
- (g) Hoosen was then taken to Brighton Beach Police Station where he was interrogated for various periods during the day, until 20h00 when Hoosen was taken to the North Pier.
- (h) According to Taylor, Hoosen was first questioned from 09h20 to 11h00.

- (i) According to both Taylor and Du Toit, from 11h00 to 13h00 Hoosen was taken to various unidentified locations in the greater Durban area by Taylor, Du Toit, MacPherson and Lieutenant Moonsamy.
- (j) According to Taylor, between 13h30 and 14h15 a lunchbreak was taken. Hoosen was in a room with Taylor, Du Toit, MacPherson and Moonsamy.
- (k) Taylor states that Hoosen was interrogated between 14h15 and 16h15. Hoosen then had a break between 16h15 and 16h30 before interrogation continued. Between 16h30 and 18h20 Hoosen was interrogated about his reading habits.
- (l) Du Toit's version was that the interrogation continued from 14h15 for four hours, until 18h00.
- (m) According to Taylor, Hoosen took a break between 18h20 to 18h40 when he had a sandwich and a cooldrink. The interrogation resumed on the question of certain literature. At around 20h00 Hoosen eventually told them that the literature was dumped in the sea.
- (n) At the North Pier, Hoosen was instructed to point out where the supposed subversive literature was. He did the pointing, but nothing was found. Hoosen was thereafter ordered to get back into the vehicle but refused. For the second time that day, force had to be used. Another physical struggle ensued, and he was forcefully taken back to Brighton Beach Police Station at around 21h20 where the interrogation continued.
- (o) Du Toit and Taylor were adamant that Hoosen's injuries were sustained during the periods in which he resisted arrest.
- (p) At around 23h00, photocopies of the documents seized from Hoosen's flat were shown to him. Up to that point, and according to Taylor, Hoosen was unaware that the Security Branch had these documents. This caused Hoosen to become visibly shaken.
- (q) The documents were photocopies of the originals and included a handwritten document, for which the Magistrate accepted the evidence of the handwriting

expert, Warrant Officer Pretorius, to be the writing of Hoosen. Allegedly, the documents proposed a general insurrection and detailed instructions of how death and destruction may be used to achieve such an insurrection. The handwritten document, contained details of how to make a wide variety of explosives and incendiary devices, the ingredients required, and diagrams for their manufacturing.

- (r) This caused Hoosen to become extremely uncooperative. Shortly after midnight, when it became apparent that no progress was being made, the interrogation was suspended until the next morning.
- (s) At the charge office, Hoosen was handed over to the uniform members on duty where the formalities were completed. He was then taken to cell number 2 where he was locked up for the night.
- (t) Du Toit and Taylor were wholly unaware of any injuries sustained by Hoosen. He showed no signs of having been injured and made no complaint to the Security Branch or the uniform members at the charge office. They could not connect any injury to either of the two struggles. Both noticed that, at various points in time, Hoosen's body encountered various parts of the cars in question. According to both, Hoosen could have easily bumped his head on the radio console protruding between the two front seats, while resisting arrest.
- (u) In cross-examination, it was put to Du Toit and Taylor that they were bigger, heavier and stronger men than Hoosen. Both explained that subduing Hoosen would not have been an issue due to their superior physical advantages. Hoosen could have easily been subdued and placed in the car. However, they claimed that their objective was to use as little force as possible to avoid causing unnecessary injury.
- (v) Du Toit claimed that it was extraordinarily difficult to thrust even a small man into a vehicle if such person was declining to cooperate.

Naude

[151] Naude was a 19-year-old uniform branch constable in the charge office at Brighton Beach Police Station. His evidence was that no one had access to Hoosen from the time he was locked in cell number 2, except Meyer, himself and Madlala. He said he had sole custody of the cell keys. Every hour on the hour, he and Madlala carried out a cell inspection.

[152] At 03h00, Hoosen did not exhibit any signs of injury and made no complaints while lying on the cell mat. Hoosen was awake and did not sleep that evening.

[153] At around 04h00, Naude found Hoosen dead, suspended by his trousers. Senior officers, including Du Toit, were called in and at 07h00 Gordon arrived at the station.

[154] It should be noted that the other two charge office policemen, Madlala and Meyer, were not called to testify in the first inquest. They provided statements, which were labelled as exhibits "X" and "Z", but these form part of the missing exhibits from the first inquest.

Gordon

[155] According to Gordon, the probable time of death was between 03h00 and 04h00. Gordon was of the view that Hoosen's injuries were sustained within a period of four to 12 hours before his death.

[156] Gluckman and Lorentz, the experts for the family, differed with Gordon and concluded that the lesions from the back and the right iliac crest were probably inflicted between eight and 24 hours before death and at least one other injury would have occurred between four and six hours before death.

[157] In addition to the superficial injuries, a dissection made by Gordon revealed:

- (a) Varying zones of engorgement in the intestines and an area of extravasation of blood in the substance of the mesentery.

- (b) Extensive extravasation of blood in the subcutaneous tissue and muscles of the scalp.
- (c) There were no fractures to the skull and his thick mop of hair may have cushioned any blow to the head.

[158] In examining the ligature mark, Gordon excluded the possibility of post-mortem hanging. This conclusion was disputed by Naidoo, as will be discussed below.

[159] The knots in the trousers were examined by Neethling. The consensus between Neethling and Gordon was that there was nothing out of the ordinary about the knots and they were the kind of knots a layperson might have tied. Neethling performed a simulation which was recorded on video and shown to the court, which persuaded the Magistrate that Hoosen would have been capable of committing suicide in the way postulated by Neethling. The video has since disappeared. The conclusions of Neethling and Gordon are disputed by an expert witness and mechanical engineer, Thivash Moodley (“Thivash”), as will be discussed below.

[160] Gordon concluded that Hoosen's death was consistent with hanging and that the injuries, other than those attributable to the ligature, in no way contributed to Hoosen's death. Gordon suggested that the injuries were minor except the injury to the scalp and mesentery. He said the bruises to the sternum, ribs and loins could be described as “significant”.

[161] Gordon refused to comment on the probabilities of Hoosen's injuries being sustained as illustrated by Taylor and Du Toit. He was not prepared to comment on the mechanisms that caused the injuries, nor was he prepared to make a scientific assessment of the degree of force required to cause them.

[162] He claimed that since a layperson was in as good a position as a medically trained person to make the assessments of this kind, he would decline to give a view.

He was however prepared to concede that blunt force could take the form of a blow with fists or a kick but was not prepared to concede that the police version was far-fetched. He ruled out the possibility that the injuries could have been self-inflicted in the cell, during the process of hanging.

Lorentz

[163] Lorentz, the expert surgeon for the family, provided the following evidence. The extravasation of blood into the subcutaneous tissues of the scalp required a direct blow of some significance. Such a blow could not have gone unnoticed, and one might reasonably have expected Hoosen to have been dazed or concussed.

[164] Though speculative, he commented that the mechanics of injury to the scalp would have been due to a direct blow to the head of Hoosen. The same applied to the injury to the mesentery. This sort of injury would have caused a person to be winded and if so, it would have been noticeable.

[165] He agreed that the abraded bruises were not in themselves serious. However, what was significant was that there were many of them, and their distribution was striking. Lorentz was of the view that it was unlikely that Hoosen could have sustained that many injuries during two scuffles.

Findings of Magistrate Blunden

[166] In his finding dated 15 March 1978, Magistrate Blunden found that:

- (a) The evidence of Taylor and Du Toit was found to be reasonably true.
- (b) There was no dispute about the events that followed after the handing over of Hoosen by the Security Branch to the uniform branch in the charge office.
- (c) There was no suggestion by anyone that the death of Hoosen can in any way be attributed to a homicidal act on the part of any person or persons.
- (d) No one seemed to have had a motive to kill Hoosen.
- (e) Hoosen would have been worth more alive than dead to the Security Branch.

- (f) Hoosen, on the other hand, “*undoubtedly had a strong motive to do away with himself, no conclusion is reasonably possible other than that he did just that; that is, he committed suicide by hanging himself*”.

[167] According to Magistrate Blunden, the mechanics of hanging did not explain the injuries, however, the consensus of all the medical experts were that the injuries occurred before Hoosen was handed over to the charge office staff. At least some of the injuries were in all probability sustained while in the custody of the Security Branch. However, the Magistrate rejected the view that the injuries were deliberate and considered such an assertion as mere speculation.

[168] Breathtakingly, he held that even if there were eyewitnesses to a deliberate infliction of injuries, such evidence would be entirely irrelevant as such injuries were not related to the death of Hoosen. Accordingly, Magistrate Blunden found that Hoosen died by hanging and his death was not brought about by any act or omission involving any person. In a final act of absurdity, he concluded that the Inquests Act does not require a formal finding of suicide and made no such finding.

Bias of Magistrate Blunden

Approach of apartheid-era magistrates

[169] The apartheid system introduced a structural bias in the criminal justice system, particularly in the magistrates’ courts, in favour of the apartheid agenda. Magistrates were appointed predominantly from the public service rather than the legal fraternity. They were appointed by the Minister of Justice in terms of s 9 of the Magistrates’ Courts Act.²³ The majority were former prosecutors who often interacted with Security Branch members.

²³ Magistrates’ Courts Act 32 of 1944.

[170] Magistrates and district surgeons were tasked with ensuring the well-being of detainees. This placed magistrates at the “*coal face*” of the apartheid’s government’s engagement with political prisoners.

[171] The TRC had the following to say about the magistracy as a whole:

‘The Commission deplores and regrets the almost complete failure of the magistracy to respond to the Commission’s invitation, the more so considering the previous lack of formal independence of magistrates and the dismal record as servants of the Apartheid state in the past’.

[172] The TRC also concluded that collusion had taken place between police and prosecutors, who collaborated with police to undermine the cases of victims and/or their families.

[173] In an affidavit provided to the re-opened inquest into the death of Aggett, the late Mr Bizos SC referred to the state of the magistrates in South Africa under apartheid.²⁴ Mr Bizos pointed out that most apartheid era magistrates had no real desire to reach the truth. It appeared that some of these magistrates saw it as their duty to protect organs of the state, such as the police. Magistrates tended not to interrogate police versions that vigorously. By way of example, magistrates invariably never asked police the most obvious question: why should a detainee commit suicide when he had the option of remaining silent under interrogation?

[174] Mr Bizos noted that apartheid era inquest courts tended to minimise evidence of the ill-treatment of detainees. Official police versions were often contradicted by forensic pathologists who examined the bodies of detainees. Magistrates typically ignored such expert evidence and uncritically accepted the versions of police witnesses.

[175] Improbable testimony of police witnesses was invariably rubber-stamped by inquest magistrates. Police versions that deceased detainees were treated with care

²⁴ *Aggett Reopened Inquest* exhibit “G1”, pages 4-19.

and consideration were readily accepted by the courts notwithstanding evidence of pre-death.

[176] Mothle J, in the *Re-opened inquest into the death of Ahmed Timol*, held that:²⁵
'341. It will be remiss of this Court not to address an issue on which Bizo's evidence put a spotlight. This is the impropriety role played by some in the magistracy, prosecuting authorities and medical experts in the past inquest proceedings. Bizo's evidence reveals the role of some of these public officials in being complicit in exonerating members of the Security Branch from the crimes they committed. The 1972 inquest into the death of Timol is one such example. From the outset, it had to take a Court order to allow Timol's family and their lawyers access to case documents before the inquest commenced. The evidence of the 1972 inquest further demonstrates how the prosecution made no effort to obtain evidence other than that of the police and the magistrate attempting to explain away the ante mortem injuries, without any shred of evidence supporting his statement about a brawl.'

The role of Magistrate Blunden (Blunden/Magistrate)

[177] The first inquest finding of the Magistrate makes for pitiful reading. He accepted the police version without question. He did not even raise the slightest concern or apprehension about its improbabilities.

[178] Examples of Blunden's disinterest in the truth was his acceptance of the claims by Taylor and Du Toit that Hoosen was violent in nature in that he strenuously resisted arrest and had to be forced into the vehicle on the morning of 2 August 1977; and that he again resisted being placed back into the vehicle following the so-called pointing out at North Pier on the beach at 20h00.

[179] The evidence of Taylor and Du Toit is not believable. The evidence shows that Hoosen had an unusually small physique for a 26-year-old, weighing only 49 kilograms (with a height of 1.75 metres). He had a body mass index (BMI) of only 16, when it

²⁵ *The re-opened inquest into the death of Ahmed Essop Timol* (IQ01/2017) [2017] ZAGPPHC 652 (12 October 2017).

should have been between 18.5 and 24.9. According to the evidence of Naidoo, the average weight of a 14-year-old boy would have been 49 kgs, rendering Hoosen remarkably underweight.

[180] In contrast Du Toit and Taylor would not have been out of place in the front or second row of a rugby scrum.²⁶ Du Toit weighed 109 kilograms and his height was 1.98 metres, giving him a BMI of approximately 27.8.²⁷ Taylor weighed in at 82 kilograms with a height of over 1.75 metres giving him a BMI of 26.8.²⁸ Indeed, Du Toit admitted that he had been a rugby player and Taylor conceded that he “played rugby at the time”.²⁹

[181] There were at least six police officers present at the arrest, and at least four were supposedly present at the alleged pointing out at the North Pier. The claim that Hoosen, a tiny person, would have taken on multiple police officers, especially those the size of Du Toit and Taylor on two occasions, stretches belief to breaking point.

[182] Indeed, the evidence of Gopal is that the so-called pointing out at North Pier in the harbour never took place. It was merely a story invented to try and explain away the injuries all over Hoosen’s body. In fact, the fabrication went to the length of producing images of the sites where these alleged scuffles took place and was produced as evidence in the first inquest.

[183] The fabrication however is easily understood. The Security Branch had to come up with an explanation for the nearly 50 injuries inflicted on Hoosen. Gopal’s evidence was that Du Toit and Taylor concocted their stories, and they instructed him to make sure his story aligned with theirs. Gopal was told that if he were to testify, he would have to say whatever he was told to say. In so doing, the Security Branch was

²⁶ Newspaper photos of Du Toit and Taylor, Volume H1, page 1828.

²⁷ Volume A3, page 186 (finding at page 165 lines 1-5 as converted to centimeters).

²⁸ Volume A3, page 40 line 27-page 41 line 17.

²⁹ Volume A3, page 594, line 20; and Taylor at TRC section 29 hearing, Volume E10, paginated page 1054 (pg 47).

accommodated by a pliant Magistrate who was willing to avert his gaze from logic and the facts.

[184] Magistrate Blunden accepted the versions of Taylor, Du Toit, Naude and Madlala that Hoosen was injury free and made no complaint to them, when in fact the injuries reflected in the post-mortem report would have seriously incapacitated him and caused him much pain, which would have been evident to all, as per the evidence of Lorentz. Even Gordon's evidence, which Blunden accepted, conceded that the blunt force injury to Hoosen's scalp and mesentery and the bruises to his sternum, ribs and loins were 'significant'.

[185] Blunden, in his rush to exonerate the police, saw no contradiction in accepting these mutually destructive versions. If Blunden had been engaged in a serious search for the truth, he would have found the evidence of Du Toit, Taylor, Naude and Madlala to be highly improbable, raising serious questions as to what they were hiding.

[186] Instead, Blunden casually found that nobody had a motive to kill Hoosen, completely ignoring the impact of the 50 odd injuries on him, and the serious implications for the police in trying to explain how these occurred, particularly since it is likely that by the end of Hoosen's ordeal, he was most likely incapacitated, unconscious or dead. Blunden studiously avoided exploring the possibility that Hoosen succumbed under torture.

[187] Given the medical evidence, Blunden was forced to accept that there "seems little doubt that at least some of the injuries found on the body... were in all probability sustained by him whilst he was in the custody of the Security Police concerned, that is Captain du Toit and Lieutenant Taylor...". However, notwithstanding this concession, Blunden concludes that any suggestion that Du Toit and Taylor were responsible for such injuries "*is completely unsupported by any evidence and is in fact mere speculation*".

[188] This jaw-dropping conclusion was reached based on their denials “under oath”, that they corroborated each other, that any such injuries occurred in the two subduing incidents; and that the two were “*unshaken by cross – examination which was long and searching*”.

[189] Denials by Security Branch officers under oath were good enough for Blunden. It is quite apparent that Taylor and Du Toit were unshaken in cross-examination because they always knew they had nothing to fear from the inquest proceedings. As stated above, apartheid era inquests involving the Security Branch were charades designed for the purpose of covering up the truth.

[190] Blunden went so far as to claim that even if there was “*direct eye-witness evidence of a deliberate infliction of injuries*” by the police, this would be “*entirely irrelevant to this inquest*” since these acts are “*collateral or completely unconnected with the main issue*”, namely the death.

[191] Blunden offered no explanation for this crass conclusion. He suggests that the very context in which the death occurred is irrelevant to an investigation into how the death occurred. This is particularly startling given how important the context is to cases of alleged suicide in police custody. Blunden’s willful avoidance of the search for truth is abundantly evident from his clumsy attempt to compartmentalise the story and prevent the making of obvious connections between the chain of events.

[192] There was not the slightest attempt to explore the impact of the injuries on the physical and mental well-being of the deceased, and if it was a suicide, whether it was an induced suicide – given the brutality visited upon Hoosen. Not a single question was raised about what Security Branch officers were willing to do to protect themselves from the inevitable scrutiny that would follow.

[193] Blunden concludes his woeful finding by claiming that after “*careful consideration*” the Inquests Act does not require him to make a finding of suicide, even

if the death was a suicide. In his final cop-out, he finds that Hoosen “*died by hanging*” which “*was not brought about by any act or omission amounting to an offence on the part of any person*”.

[194] Aside from the obvious misreading of the Inquests Act, it is mind-boggling as to why Blunden could not bring himself to put up a reason behind the hanging when he already concluded that the hanging was self-inflicted. This is especially so when Blunden suggests earlier in his judgment that Hoosen had “*a strong motive to do away with himself*”. This apparent motive is because Hoosen was supposedly exposed after the documents found in his flat were presented to him during interrogation. These documents, which have since disappeared, allegedly included various unidentified handwritten documents, pamphlets and documents on explosives.

Conclusion on bias

[195] Impartiality and bias are defined in *S v Le Grange and Others*³⁰ as follows:

[21] ...Impartiality can be described – perhaps somewhat inexactly – as a state of mind in which the adjudicator is disinterested in the outcome, and is open to persuasion by the evidence and submissions. In contrast, bias denotes a state of mind that is in some way predisposed to a particular result, or that is closed with regard to particular issues. Bias in the sense of judicial bias has been said to mean “a departure from the standard of even-handed justice which the law requires from those who occupy judicial office”. (Footnotes omitted.)

[196] In *S v Dube and Others*³¹ it was held that:

[7] ...What the law requires is not only that a judicial officer must conduct the trial open-mindedly, impartially and fairly but that such conduct must be manifest to all those who are concerned in the trial and its outcome, especially the accused.’

[197] It seems clear to me, that the first inquest into Hoosen’s death, was riddled with examples of bias on the part of the presiding magistrate. Blunden misdirected himself in: accepting, without question, the say-so of the police; paid no heed to the cause,

³⁰ *S v Le Grange and Others* 2009 (1) SACR 125 (SCA).

³¹ *S v Dube and Others* 2009 (2) SACR 99 (SCA).

nature and extent of the injuries of Hoosen; refused to apply his mind to the evidence of Lorentz; and finding that the injuries, even though they occurred while in custody, were irrelevant and not connected to Hoosen's death.

[198] It appears to me that Blunden conducted himself in a manner that was predisposed to a particular result, namely the exoneration of the police from all wrongdoing. He refused to apply his mind and went out of his way to give the police version a veneer of respectability. It was manifest to any casual observer of the first inquest that the Magistrate paid little or no regard to the standard of even-handed justice. His manifest bias was plain to see.

[199] In *Re-opened inquest into the death of Ahmed Essop Timol*,³² the court aptly stated that an inquest is an inquisitorial process: and quoted from decision of *Timol v The Magistrate of Johannesburg 1972 (2) SA 28 (T)* thus:

'14. Nevertheless, the inquest must be so thorough that the public and interested parties are satisfied that there has been a full and fair investigation into the circumstances of death'.

[200] The first inquest into the death of Hoosen did not come remotely close to resembling a full and fair investigation. It is my considered view that Blunden conducted a substandard inquiry aimed at rubberstamping the police version. He conducted himself disgracefully. One also saw no evidence of the prosecutor pursuing anything resembling a thorough investigation.

[201] It is hardly surprising that the Haffejee family and the wider community regarded the first inquest as little more than an extension of the police cover-up dressed up with judicial gloss. On this ground alone, the finding of the first inquest warrants overturning.

Evidence of abuse and torture by the Security Branch

³² *The re-opened inquest into the death of Ahmed Essop Timol* (IQ01/2017) [2017] ZAGPPHC 652 (12 October 2017).

[202] It is apposite to outline the history and evidence of abuse and torture meted out by the Security Branch to detainees. Such history is necessary to establish a *modus operandi* they employed during their illegal operations.

[203] The evidence reflects that the conduct of Hoosen's detention bears absolutely no resemblance to the version placed by the Security Branch before the first inquest court. Bizos, in his affidavit before the re-opened Aggett inquest, described how apartheid-era detainees routinely complained of torture and the police often being sued in the civil courts for torture and damages which were awarded against them. These include the widow of Imam Abdullah Haroon who sued the state for R22 000 in respect of her husband's death and received an *ex-gratia* payment of R5 000. The mother and sons of Steve Biko similarly sued the State and were paid an amount of R65 000.

Security Branch history of abuse

Perception of the Security Branch

[204] According to Gopal, Security Branch officers were considered the "*bosses above bosses*". They were not constrained by the ordinary 48-hour periods of detention, and relied on the draconian powers of ss 6 and 10 of the Terrorism Act ("the Terrorism Act").³³ They could use all the time they needed to extract information from anti-apartheid activists.

[205] There was a certain culture within the Security Branch that was oppressive and instilled fear into the hearts of its members, particularly members of colour. There was a general culture of white superiority; if a police officer of colour did not toe the line, which included covering up, the Security Branch would fabricate stories against them; commanding officers had full knowledge of the use of the "third degree" [use of excessive force] and approved of it; and if junior members of the uniform branch were told by the Security Branch to do anything, they would simply do it. For example, if they were told not to do any paperwork, there would not do it.

³³ Terrorism Act 83 of 1967.

[206] Meyer conceded that the Security Branch enjoyed a superior status within the police. The Security Branch was able to order the uniform branch to do tasks and the uniform branch was in a subservient position. Meyer believe that the Security Branch were a law unto themselves. *“The Security Branch enjoyed amnesty to do anything. You never heard of the Security Branch getting into trouble. They assaulted, detained and kidnapped people as they wanted.”*

[207] Meyer also conceded under cross-examination that uniform branch members were afraid of the Security Branch because they were so powerful and had their ways of keeping everyone in line. Squealing on the Security Branch meant serious repercussions such as demotion and even physical harm.

[208] Naude described the Security Branch as *“this secret guardian division of the force, supposedly looking after [the people of South Africa’s] best interests”*. He claimed not to have knowledge of what the Security Branch was doing during apartheid but was aware that they detained people regarded as a threat to national security. He heard rumours that detainees were assaulted and tortured but claimed, not convincingly, that he did not know this for sure.

The re-opened inquest into the death of Ahmed Timol

[209] *The re-opened inquest into the death of Ahmed Timol*³⁴ confirmed the practice that torture would be deliberately inflicted in such a manner that its effects would leave little or no evidence:

‘252. The ill-treatment of detainees is often visualised or expressed in the form of physical assault, i.e. beatings of detainees. It is indeed so the physical assault, apart from being a common method to hurt and bring fear into a detainee, it is also easier to prove by reference to scars from injuries or evidence of medical treatment. However, there are other less mentioned forms of torture which leave no evidence and are difficult to prove, such as sleep deprivation, long hours of standing and interrogation as well as electrocution.’

³⁴ *The re-opened inquest into the death of Ahmed Essop Timol* (IQ01/2017) [2017] ZAGPPHC 652 (12 October 2017).

[210] In the case of Hoosen, the interrogation team observed no such niceties; thus, leaving some 50 visible marks on Hoosen's body. This forced them to fabricate a crude cover-up story, involving the two scuffles.

[211] The inquest court in *Timol* found that torture extended beyond physical violence to include a broader "rubric of torture" that encompassed "all forms of abuse visited on detainees". It stated:³⁵

'253. This Court is of the view that on the basis of the evidence received it would be misleading to refer only to physical assaults as the ill-treatment of detainees. Detainees were subjected to beatings at various levels of brutality, with the least being only slapped once across the face. It nevertheless remains an assault, but are not comparable to those who were hit with solid objects, punched and kicked.... It will be more accurate to deal with the subject of ill-treatment or abuse of detainees under the rubric of torture, as it includes all forms of abuse visited on the detainees.'

[212] Mothle J found that detention under the Terrorism Act was, at times, an effective death sentence:³⁶

'43....the evidence in these and other inquests demonstrate, this drastic legislation became a tool in the hands of some members of the Security Branch, *not only to torture but also to kill detainees with impunity.*' (My emphasis.)

[213] The court's finding in *Timol* was epitomised by its rejection of the evidence of the Security Branch officers in the following terms:³⁷

'261. The evidence of assault and other forms of torture of detainees presented in the 2017 re-opened inquest *is* so overwhelming, that the denial and lack of knowledge thereof by the three former Security Branch police officers who testified is disingenuous. Further, the fact that each one of them testified during the 2017 re-opened inquest that they knew nothing about assault apart from what they read in the media, is a demonstration that they were regurgitating a standard response, seemingly prescribed to all members of the Security Branch. Else, Sons and Rodrigues's conduct calls for censure. Their conduct must be investigated further with a view to raise appropriate charges.'

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

[214] These findings are consistent with the conclusions of the TRC report which found that torture and the killing of detainees by the Security Branch was a “strong possibility”. It concluded thus:

‘The Commission has taken into consideration the evidence of victims of torture which could well have, especially those cases in which similar forms of torture did lead to death. A number of cases were recorded of detainees having their heads bashed against the wall and of detainees who are suspended by their feet outside windows of buildings of several storeys, raising the strong possibility that at least some of those detainees who allegedly committed suicide by jumping out of the window were either accidentally dropped down or thrown’.

Apartheid state sanctioned torture and killings

[215] Apartheid state sanctioned extrajudicial killings and rampant criminality by state security organs were the order of the day during the 1970s and 1980s. At the TRC, a former Commander of the Security Branch, Johannes Velde van der Merwe confirmed this:

‘All the powers were to avoid the ANC/SACP achieve their revolutionary aims and often with the approval of the previous government we had to move outside the boundaries of our law. That inevitably led to the fact that the capabilities of the SAP, especially the security forces, included illegal acts. People were involved in a life and death struggle in an attempt to counter this onslaught by the SACP/ANC and they consequently had a virtually impossible task to judge between legal and illegal actions.’³⁸

[216] The TRC found that during this period the State committed a host of gross violations of human rights in South Africa. These included, amongst other violations, extrajudicial killings and torture.

[217] The Police Act³⁹ mandated the South African Police with inter alia the preservation of internal safety. The Security Branch was charged with spearheading this function. The Security Branch was the effective intelligence wing of the former SAP,

³⁸ TRC Report, Volume 2, Chapter 3, page 206, para 77.

³⁹ Police Act 7 of 1958.

falling directly under the Commissioner of Police. It operated in a separate and parallel structure of the Uniform and Detective branches.

[218] The Security Branch targeted any person or organization which opposed the government. Its activities included the close monitoring of the affairs and movements of such persons, the detention of thousands and the torture of many.

History of cover-ups

Evidence of Brigadier Clifford Marion

[219] Christopher Reginald Clifford Marion (“Marion”) is a private investigator who investigated the Haffejee’s case. He is a retired SAPS Brigadier and a former Provincial Head of Detective Services in KwaZulu-Natal, with 40 years policing experience. He is employed by the Foundation for Human Rights (“FHR”) to investigate serious apartheid era crimes as part of its Unfinished Business of the Truth and Reconciliation Commission project.

[220] Marion was of the view that the probabilities pointed to the possibility that Hoosen died under interrogation. Alternatively, Hoosen was in such a debilitated state that he was murdered to protect the Security Branch from scrutiny. Marion is of the opinion that the cover-up and staging of suicide was done either to conceal the abuse and brutal torture of Hoosen, or to mask the fact that he died during interrogation. The police version before the first inquest was accordingly concocted to deflect attention from what actually took place at Brighton Beach Police Station between 2 and 3 August 1977. More about his evidence later.

[221] In the *Timol* inquest the court found that the Security Branch routinely invented cover-up stories to “shield police from blame” and cover-up crimes committed by members of the Security Branch:⁴⁰

‘314. ...In order to implement this cover-up strategy, the assistance of some selected members of the prosecuting authority, medical profession and magistracy were roped in to be part of the

⁴⁰ *The re-opened inquest into the death of Ahmed Essop Timol* (IQ01/2017) [2017] ZAGPPHC 652 (12 October 2017).

sham. Officials from these professions were carefully selected to support a cover-up version in the case of any judicial proceedings.’

[222] The first Hoosen inquest was no exception. The evidence before this court clearly demonstrates that the apartheid State concocted an elaborate scheme to cover up the circumstances surrounding Hoosen’s death, which will be dealt with in detail below. Gopal testified that he was asked to cover-up and stick to a specific story. It was also his evidence that Du Toit and Taylor lied under oath and that Hoosen did not get injured while being placed into various vehicles.

Torture of other detainees

[223] In the re-opened inquest, substantial evidence of torture at Fischer Street and other venues in Durban was presented by several former detainees who were interrogated and tortured during the 1970s and 1980s. The summary of similar fact evidence follows here-under.

Kambadasen Subramony “Coastal” Govender

[224] Coastal was a member of the NIC and a former police officer with the rank of Major in Crime Intelligence. He was arrested in the second week of September 1977 under s 6 of the Terrorism Act. Coastal was taken to the Security Branch headquarters in Fischer Street for interrogation.

[225] According to Coastal, the officers present included Taylor, Gopal, VR Naidoo and Major Benjamin. Coastal says he was hit a few times; ordered to take his clothes off; kicked by four or five people at a time; fell on the floor several times; ballpens were put between his fingers and squeezed his fingers on both hands; was made to sit with hands outstretched on an imaginary chair; and was kicked under his arms.

[226] If he fell, he would be kicked until he got back on his feet. He also recalled having his private parts squeezed. Coastal recalled one evening having some form of electrical device applied to his genitals and being shocked. He said he was held by his hair and

his head pushed into a toilet, at least twice, by Taylor. According to Gopal, Taylor meted out the same treatment to Hoosen.

[227] While he was assaulted, one of the Indian officers in the interrogation said to him that the white officers will kill him like they killed Hoosen. Coastal could not recall whether this was Gopal, VR Naidoo or Major Benjamin. Coastal testified that the Indian officers did assault him, but their assaults were milder than that of the white officers.

[228] During the evening of the first day, Coastal was again stripped naked and further assaulted. The assaults ended sometime after 21h00. Coastal was then taken to Mayville Police Station for detention. He testified that he could not walk and had to be carried out of the car.

[229] The next morning, he was taken back to Fischer Street where he was stripped again and heavily assaulted. His abuse included forced squats. The same Security Branch officers were present. He said the officers used slaps on his face, as opposed to punches to avoid visible injuries. His torture stopped at around 15h00 when a senior officer, Coetzee, walked in.

Mohammed Timol

[230] Mr Mohammed Timol ("Timol") is a former ANC struggle activist and brother of the late Ahmed Timol who was murdered by the Security Branch while in detention at John Forster Square in 1971. He was a former South African Diplomat in London and Brussels. Timol was arrested in Durban by six members of the Security Branch, on 25 October 1971, and taken to Fischer Street Security Branch offices.

[231] He was interrogated at Fischer Street offices from 11h00 to about 23h00. He was never left alone. The officers made him to stand on a brick in the office and was made to hold up two telephone directories for hours. He was repeatedly beaten up whenever he became unsteady or lowered the directories. He received blows to his stomach, legs

and body. Thereafter, he was taken to Berea Police Station where he was held in a lock-up cell.

[232] Timol was taken back to Fischer Street the next morning for more interrogation, and was further assaulted. He was made to sit on an imaginary chair, which the police called the “golden chair”. He was beaten up whenever he relaxed. He was then asked to do the golden chair until he gave in and told the Security Branch about his political activities in the United Kingdom and his contact with Dr Yusuf Dadoo.

[233] They continued to interrogate and tortured him until 23h00 that evening. The interrogation continued from Monday, 25 October, to Wednesday evening, 27 October, till about 18h00 each evening. He was not punched or kicked in the face. He said this was because the Security Branch were trying to avoid any visible injuries.

Raymond Sorrel Suttner

[234] Professor Raymond Sorrel Suttner (“Suttner”) is an emeritus professor at the University of South Africa. He was involved in the liberation struggle in the 1970s and was a lecturer at the University of Natal, Durban. In June 1975 he was detained and tortured by the Security Branch.

[235] He was arrested after spending hours distributing illegal pamphlets in Durban and Pietermaritzburg and was taken to Fischer Street. He experienced two events of interrogation and torture by the Security Branch.

[236] The first interrogation happened with the police officers questioning him in teams of two or three at a time. The assaults started after he said he would not answer further questions. Colonel SC Steenkamp, the head of the Security Branch in Durban, came in the interrogation room and shouted, “this is serious, man”, and he twisted Suttner’s nose and then left. Suttner believes that the twisting of his nose was a signal to “change approach”.

[237] Shortly after Steenkamp left, Andy Taylor (not to be confused with Jimmy Taylor mentioned earlier above) entered the room. Suttner described Andy Taylor as a very tall man who was wearing a white butcher's apron and carrying handcuffs. Andy Taylor took off Suttner's glasses and put on the handcuffs and said that "this was serious".

[238] Suttner was ordered to strip off all his clothes and instructed to lie down. They held him at various points on his body, by the legs and shoulders. A cloth was put around his mouth. Electric wires were attached to his penis. Captain Dreyer pulled out some of Suttner's pubic hairs, and hair from his head, beard and legs.

[239] The Security Branch officers began administering electric shocks. They blocked his shouting with a gag and made obscene remarks such as "I want to see him come now". According to Suttner, the officers were aware of the danger of electric shocks, because he heard them say "this is bad for your heart, you know". He was also subjected to anti-Semitic slurs.

[240] The torture continued until 07h00 or 08h00 the next morning. At around 20h00 Suttner was taken to Durban North Police Station. On his return to Fischer Street the next morning he was taken to a room on the fourth floor with two large floodlights on a table and handcuffs on the floor. He was asked questions and made to face the lights while sitting against the wall. He was forced to sit on the invisible chair. His arms were stretched and he had to balance what they called "his Bibles" (books on Marx and Lenin) on each arm. Drawing pins were placed on the floor to prevent him from falling. When he dropped the books or fell on the floor, the books would be picked up and additional volumes were forced on him.

[241] Suttner experienced further modes of torture, which included stamping on his toes; kicking his shins; threats that he would be "fucked up" properly, that they would put the "kaffirs" onto him; that he was a "fucking Jew"; a threat to place a rat under a pot on his stomach; and other degrading treatment.

Yunis Shaik(Shaik)

[242] Shaik is a non-practicing attorney and an executive director of Hoskin Consolidated Investments Ltd. Between the late 1970s and early 1990s Shaik was active in the ANC underground and held leadership positions in the trade union movement. He was detained by the Security Branch for various periods during 1980 and between 1985 and 1986.

[243] In his evidence, Sheik distinguished between two forms of detention: interrogatory and preventative. Interrogatory detention was used primarily to extract information from a detainee, while preventative detention was to stop an activist from mobilising people and engaging in activities detrimental to the apartheid State. It was aimed at extricating an activist from society.

[244] While Shaik experienced both forms of detention, his evidence focused on interrogatory detention. Shaik highlighted the following significant features of security detention:

- (a) Security detention allowed for a detainee to be held in solitary confinement without any access to an attorney, family, friends, or anyone else – other than State officials such as police officers, a magistrate, or the district surgeon.
- (b) The period of detention was unlimited, and release was at the discretion of the investigating officer. The jurisdiction of the courts was excluded.
- (c) A detainee was generally treated as an enemy of the State and suffered intense animosity and antipathy by the police, as well as from magistrates and district surgeons. If you were a member of the ANC or SACP, you were subjected to intense hatred and vilification.
- (d) Information was often extracted from a detainee by means of torture and wanton acts of cruelty that resulted in a detainee suffering trauma, severe physical injuries, and sometimes death.
- (e) Typically, the Security Branch claimed that the cause of the trauma, physical injuries or death were self-inflicted. This necessitated collusion between

members of the Security Branch and at times, other members of the erstwhile SAP.

[245] Shaik was detained at Brighton Beach Police Station for 14 days in 1980 and interrogated at Fischer Street, before being held for six months' preventative detention at Modderfontein Prison. He was not seriously mistreated during these periods in detention. He recalled the hourly inspections at the police cells at Brighton Beach Police Station.

[246] Shaik was detained at CR Swart Square Police Station on two separate occasions, under s 29 of the Internal Security Act.⁴¹ The first was from 3 to 19 July 1985 ("the first period") and the second was from 3 August 1985 to the following year ("the second period").

[247] He was ordered to strip naked. A wet hessian hood was placed over his head and the interrogation began. He was ordered to strip naked in order to prevent any evidence of blood or other fluids staining his clothing.

[248] The assault began with punches, knees and elbows to various parts of his body, his head, back, gut and solar plex. He could not see who was assaulting him because he was hooded. A Sergeant Visagie ("Visagie") pinned him down to the table and gripped his head and hands. His hands were bound by a rope and a bicycle tube like substance.

[249] After a while and after no information was given, there was a dramatic change in the method of torture. He had to get dressed and was led to another room where he again had to strip naked. He was hauled onto a table and forced to kneel, with his head and hands held against a tabletop. His hands were bound by rubber tubing and his head was still covered by a damp hessian hood. The soles of his feet and back were

⁴¹ Internal Security Act 74 of 1982.

repeatedly struck with fists and what felt like a wooden club. While all this was happening, he was still being questioned.

[250] While in this position, an instrument was inserted into his anus and pushed into its far recesses whilst at the same time, he was struck on his lower back. These brutal assaults caused him to suffer excruciating pain. The more he was assaulted, the more he struggled to pull free from having his hands and head pressed against the table. The more he tried to pull free, the harder Visagie tightened his grip on him.

[251] The wet hessian bag held tightly on his head and face was causing him to suffocate. He testified that if that torture had gone on for a while longer, he believed that he would have died by asphyxiation. Shaik described the experience of being hooded as a “dice with death” because of the inability to breathe while being hooded and tortured.

[252] After a while, the assaults became random. During the torture, he lost consciousness several times and was revived. At times, he was dragged to the toilet and had water thrown on him. As he had soiled himself due to the ferocity of the torture, he was required to clean up. He suffered internal bleeding, bleeding through his rectum and lost hearing in one of his ears.

[253] Shaik made the following observations from his experiences in detention:

- (a) Typically, the station commander or duty officer would conduct inspections of the cells every hour. A police officer would be stationed in the courtyard of the cell block and detainees would be under regular and frequent surveillance.
- (b) Notice would be taken if a detainee was in obvious distress. It was the responsibility of the station commander to attend to the needs of a detainee when held in his station. An appropriate entry was required to be made in the occurrence book. At the very least, a detainee would be observed at mealtimes, changing shifts and scheduled cell inspections and patrols.

- (c) A death in detention would result in the Security Branch orchestrating a cover-up of what happened. Police officers would typically deny that detainees were assaulted or badly treated and claim that injuries were self-inflicted. A culture of brotherhood existed amongst these Security Branch officers which involved total secrecy and never implicating each other.
- (d) District surgeons and magistrates would pay little attention to you and would ask you questions as formalities. There was no point in letting them know that you were assaulted, because the reports of the magistrate and district surgeon went straight to the officers who were abusing you. The reports would not go to an independent party.
- (e) Security Branch officers acted with total impunity. Since detainees were held *incommunicado*, with no access to lawyers or doctors, they had a licence to act as they wished with no fear of being held accountable.
- (f) The uniform branch was subservient to the Security Branch. The Security Branch effectively had control over police stations where they operated and had total control over detainees held in police stations. If a Security Branch officer asked uniform branch members to do anything, they would do so without question.
- (g) Among those in the underground, it was not expected of a detainee to resist answering questions or to hold out indefinitely. Shaik noted that one should hold out for about three days. The option of suicide or self-harm was never demanded or encouraged.

Gangat

[254] The evidence in relation to the abduction and torture of Gangat has been summarised above. Gangat died in 2017. The court relied on the evidence adduced by his wife, Sacoor. This hearsay evidence was not challenged in terms of s 3(1)(a) of the Law of Evidence Amendment Act,⁴² and accordingly may be admitted in terms of s 3(1)(c) of that Act.

⁴² Law of Evidence Amendment Act 45 of 1988.

Direct evidence of abuse of Hoosen

[255] The only direct evidence of Hoosen's abuse before this inquest comes from Gopal. He disclosed that the Security Branch conducted interrogations at Fischer Street, but also at private buildings around Durban that they used as safe houses. This was particularly so when they needed to extract information quickly.

[256] According to Gopal the typical forms of assault and torture used by the Security Branch included:

- (a) psychological abuse;
- (b) sleep deprivation;
- (c) continuous interrogation over several days;
- (d) physical assault, involving: minor assault by slapping, and major assault such as "panel beating" and kicking;
- (e) the helicopter method: the victim of torture is made to stand with his arms out, balanced on his toes, with a ruler on his head and crouched down. If the ruler falls, the detainee would be brutally kicked;
- (f) electrocution: wires were connected to a dynamo, clamped to the victim's body part such as the nipple, genital, anus, kidney area, ear or nostril; and
- (g) wooden rulers were used to assault victims on their testicles.

[257] Gopal witnessed the following methods of torture being applied against Hoosen:

- (a) Stripped naked and left in his underpants, but later instructed to remove his underpants. The purpose of stripping was to not leave behind any stains on clothing and to humiliate him.
- (b) Slapped on the face with open palm slaps.
- (c) Kicked on the kidneys, along his back and front, thighs and legs.

- (d) Hit and punched on the legs, ankles, private parts, buttocks, back of body, neck, arms and armpits.
- (e) Dragged by the back of the neck to the toilet, with head pressed into the toilet bowl and made to drink toilet water.
- (f) Head smacked into a pillar.

[258] Gopal described the torture of Hoosen as “*a grotesque feature of a horrible nightmare that just unfolded before my very eyes*”. In his evidence, he recalled that Hoosen could not bend because his entire body was sore and he had to help him put his underpants on; was very bruised all over the body but not bleeding and could see marks all over his body as he was quite a fair person.

[259] Gopal’s description of the torture is largely consistent with the findings of the expert medical witnesses.

Medical evidence of abuse

[260] The post-mortem findings of injuries and assessments done by Gordon; and Lorentz *et al* were catalogued and evaluated herein earlier and will not be repeated. Further related and allied evidence is considered below.

Amnesty International Danish Medical Team

[261] On 14 October 1977, a confidential request was made by Mr Malcolm Smart of the International Secretariat of Amnesty International’s Africa Department to Professor Albrectsen and members of the Amnesty International Danish medical team (“the Danish medical team”) to assess the images and report of Biggs and to provide an expert opinion of the nature and causes of the marks on Hoosen’s body.

[262] On 19 October 1977, the Danish medical team replied with the following findings:

- (a) Scattered on the trunk and the extremities are sequelae of blunt injuries of varying degrees.

- (b) Scattered on the back are well- defined irregular dark-coloured marks which may be due to blows or prolonged pressure.
- (c) Similar skin injuries are located around the knees and elbows and in less degree around the ankle joints. They are due to some form of blunt violence.
- (d) Their nature and location might suggest that the victim had been restrained for some time.

[263] On 24 February 1978, the Danish medical team released a further report after assessing the report of Gordon and the supplementary report by Biggs. In this report, the team found that the bleedings in the scalp and the lesions on the body and the extremities were caused by heavy blunt violence while Hoosen was alive. The bleeding around the mesenteries mentioned in the autopsy indicated blunt violence directed towards the lower abdomen.

[264] On 16 March 1978, following the judgment of Magistrate Blunden, Amnesty International released a statement critical of the judgment. The press statement challenged the finding that there was insufficient evidence to attribute Hoosen's death to any individual since the injuries were sustained in the four to 12 hours before death, while in the custody of the police.⁴³

Biggs

[265] Biggs testified on behalf of the Haffejee family at the first inquest. As adumbrated earlier, he had, at the request of the Haffejee family, assessed Hoosen's body before he was buried.

[266] Biggs was examined in certain aspects of his report and on how his report found its way to the press. The salient points of his report, in relation to evidence of abuse includes:

⁴³ Volume C2, pages 872-873; Volume C4, pages 877-878; and Volume C5, pages 881-882.

- (a) There were notable lesions circular in shape and some six mm in diameter on both sides of the ankles and on the right knee.
- (b) The floor of the lesion was depressed below the level of the skin.
- (c) On the left posterior aspect of the chest there was a hand sized discolouration, which may have indicated bruising.
- (d) The face and neck were noted to be darker in colour than the rest of the body and there were subconjunctival haemorrhages in both eyes.

[267] Biggs produced a further report to explain the unusual and similar marks observed on the body.⁴⁴ Biggs took photos of the body.⁴⁵ He said he had not “*seen such marks produced in any way*”. He noted that, as an orthopaedic surgeon, he had never seen such marks on a person injured in a collision.

[268] Biggs’ evidence was not considered by Magistrate Blunden since the counsel for the family stated that they would not be relying on it.

Naidoo

[269] As already stated earlier, Naidoo is an independent specialist forensic pathologist. He was instructed by the National Prosecution Authority to study the medical evidence of the first inquest and provide an independent forensic medical opinion on the manner, circumstances and cause of Hoosen’s death. He compiled a report, dated 23 February 2021, and testified at the re-opened inquest.

[270] According to Naidoo, the injuries inflicted on Hoosen’s scalp, chest and mesentery were caused by significant forces. He said these injuries would have been physically incapacitating, causing Hoosen to be in noticeable pain and in marked distress until his demise.

⁴⁴ Volume B3, pages 794-795.

⁴⁵ The photos can be seen in Volume B6-B9 at pages 801-837.

[271] If these injuries were inflicted in stages, then Hoosen's condition would have progressively worsened. Naidoo's description of the most serious injuries is set out below.

Head

[272] The extravasation of blood (or bleeding from ruptured blood vessels) on the scalp can be described as deep scalp bruising. Such extensive bruising points to several physical impacts that rendered the bruising as a confluent (i.e., merged, or blended into one) set of haemorrhages. This meant that multiple blows were inflicted on Hoosen's head. Naidoo could not exclude brain damage from the state of concussion.

[273] Such injuries would have induced unconsciousness, or a lower state of consciousness, or drowsiness as seen with a concussion. This would have disabled Hoosen, rendering him unable to walk or talk. Such injuries would not have been caused by the alleged scuffles, (which we now know were fabrications designed to mask the torture).

Chest

[274] The thoracic contusion, or bruising, is indicative of a heavy blow to the left lower front of the chest and would have been intensely painful. These blows would have resulted in cardiac concussion.

[275] Such blows would have left Hoosen winded, breathless and doubled-up in pain, not just "winded ". He would have been unable to sit or stand up or walk upright. It might have restricted abdominal movements and respiration due to mesenteric irritation.

[276] Naidoo further noted that if there was no observable bleeding, death may have supervened very shortly after the abdominal impact, and it cannot be excluded that the death may have been caused by the abdominal impact themselves.

General impact of the injuries

[277] According to Naidoo, in light of Hoosen's injuries, it was not possible that the deceased was awake and normal when he was last visited in his cell at 03h00, as claimed in the first inquest. An objective observer would have found a seriously injured person in noteworthy pain and distress if he was alive, if he was not unconscious or dead.

[278] Since these injuries were likely sustained under interrogation, Hoosen would not have been able to retain an upright or even a seated position. Since the injuries were between four and 12 hours old, the police officers at the charge office would have been able to discern that Hoosen was in considerable pain and distress, even if his injuries were not immediately visible.

Visibility of the injuries

[279] Naidoo believed that the bodily injuries would have been clearly noticeable when they were exposed to view. Although the visible injuries do not necessarily indicate the full extent of physical harm perpetrated on Hoosen.

[280] Naidoo counted between 60 to 75 individual discrete lesions, or body wounds. He said there could have been about 120 strikes, although 60 of them fell below the wounding threshold. Many of these wounds/lesions are in clusters and groups which may have occurred in single impacts, or with repeated impacts to the same body part. Strikes, such as open-handed slaps to the face, would not pass the wounding threshold and would not produce a visible injury.

[281] According to Naidoo, the injuries around the elbows and knees appeared to suggest a distinct "pattern or set of patterns" that are difficult to reconcile with usual causes of injury. They indicate a specific directed application of force, strongly suggesting restraint or constraint by an object or surface with a patterned configuration.

[282] Naidoo stated that the possible use of electrodes cannot be excluded or easily dismissed. The injuries of the lower back do not reconcile with incidental injuries of falls,

sliding on the ground or being forced into a vehicle. The linear marks at the back of Hoosen's knees indicate the possibility of him having been suspended from a piece of wood under his knees.

[283] Naidoo was of the view that the general wound age was at widest range between six and 24 hours, but that there was concurrence of a period of between eight and 12 hours – which was the most likely. This placed the age of the injuries squarely within the period Hoosen was being interrogated.

[284] Naidoo was critical of Gordon's view on the injuries. Gordon viewed the injuries as superficial and refused to comment on how the injuries were caused and the type of force used. Naidoo found that such an approach was unhelpful to the court and unbecoming of a senior state pathologist.

[285] Following the provision by Gopal of his affidavit, Naidoo was asked by Advocate Shubnum Singh ("Singh") of the NPA to prepare a supplementary report, that considered Gopal's version of the abuse of Hoosen. That report is dated 24 February 2021 and was entered as exhibit "L5".

[286] Pursuant to that report Naidoo made the following remarks:

- (a) The nature of the assaults as described by Gopal are very much aligned with the injuries noted in the post-mortem examination.
- (b) The nature of the assaults is also in keeping with his observations of multiple impacts in multiple positions and in keeping with the estimated age of the injuries of between eight and 12 hours before death.
- (c) The deep scalp bruising could have occurred with any type of blows, including Hoosen striking his head against the wall when he was plunged into the toilet.
- (d) The number of injuries in clusters around the elbows and knee suggest the possibility of shackling, as mentioned by Gopal in his affidavit when describing the practices of the Security Branch.

- (e) The injuries behind Hoosen's knees raises the possibility that he was subjected to the helicopter method, while Gopal was not in the room.
- (f) There were no genital injuries observed by Gordon in his post-mortem report, but unless one specifically dissects and looks for bruises, they may easily be missed.
- (g) The abdominal blunt blow, as well as the chest bruising, could be in keeping with the possibility that a mule kick was administered to Hoosen.
- (h) Gopal's description of Hoosen being in pain, exhausted and unable to stand and speak properly is in keeping with his (Naidoo's) assessment of what Hoosen's state would have been.

Dr S Holland (Holland)

[287] Holland is the Principal Specialist in Forensic Pathology at the Diepkloof Medico-Legal Laboratory. She prepared a specialist report on Hoosen's death, dated 27 February 2020, which is exhibit "G28".

[288] According to Holland, the injuries on Hoosen's body were not related to the cause of his death. Holland noticed a large scalp haematoma over the top of Hoosen's scalp. She believed that it was caused by a blunt force impact to the head that may have occurred just prior to death. Hence, the possibility that Hoosen was incapacitated prior to death must be taken into consideration in determining the circumstances of his death.

[289] Holland questioned the explanations given by the various police members in their testimonies at the first inquest, citing "scuffles" as the reason for Hoosen's injuries. Holland stated that such injuries were inconsistent with the findings of Magistrate Blunden. Instead, she stated that the unexplained injuries of the limbs should raise the suspicion of a homicidal death.

[290] Holland agreed with Naidoo that it was a possibility, based on the post-mortem report, that Hoosen suffered thoracic contusion following a heavy blow to the left lower chest which could lead to cardiac concussion. She also agreed with Naidoo that it is a

blunt force injury that caused the injuries on the intestines. And she also agreed that the extravasation was limited.

[291] Holland however did not see evidence of electrocution, nor evidence of hypoxia, or of brain injury in the report. She did concede that it was a possibility but could only rely on the post-mortem report.

[292] From the foregoing I am implored to find that Hoosen was indeed tortured during his period of detention. The submission is meritorious since there is an eyewitness's (Gopal) factual account and forensic evidence to support the same.

Mechanics and instrument of death

[293] Hoosen was found "hanging" in his cell with a trouser around his neck. The trouser was tied to the lowest rung of the cell grille. The crotch of the trouser was around his neck and the trouser was twisted to create the compressive force. The ends were tied around the grille in a knot. A handkerchief was then tied over the knot.

Evidence of Thivash

[294] Thivash is a Mechanical and Aeronautical Engineer with the firm TMI Dynamics. In 2018, he was requested by Singh to conduct simulations and report on the death of Hoosen. His first report, dated 6 April 2018, is before this court as exhibit "G25". The photographs taken during the simulation are contained in exhibit "G 25.1", while his final report dated 6 August 2019 is exhibit "G25.2"; and the video of his simulation is exhibit "G25.3". The final report includes the report of the simulation conducted in relation to death by suffocation. Thivash concluded that it was possible but unlikely that Hoosen died from self-strangulation.

[295] Thivash first considered the Magistrate's finding that Hoosen "died by hanging". He observed from the photos that Hoosen's legs, pelvis and abdomen were on the floor. The noose was fixed around the lower section of the neck. The height of the knot on the

first horizontal bar of the jail door was 493 mm above the ground. Only the head, thorax, neck, and upper arms were suspended off the ground.

[296] He noted documented findings that a person would need approximately 15 kilograms of compression of force around the neck to block their arteries and cause death. Hoosen had a tall frame at 1.75 metres but weighed only 49 kilograms. He concluded that the tensile force in the trouser is equivalent to a suspension mass of 11.72 kilograms which is approximately 24 per cent of Hoosen's total weight. He was of the opinion that the suspended mass was too low for Hoosen to have died from hanging or sudden arterial occlusion.

[297] Thivash and his team conducted simulations dealing with four scenarios. He concluded that two of the scenarios were within the realm of possibility.

[298] In scenario one:

- (a) Hoosen tied the ends of the trousers to the lower vertical bar of the jail door (grille) and then tied the handkerchief around the knot and placed the crotch of the trousers around his neck.
- (b) He then turned himself until the pants were twisted so tight around his neck that he suffocated and died. A fourth or fifth turn would have likely resulted in suffocation.
- (c) The re-enactment demonstrated that it would have been considerably easier for Hoosen to twist the trousers around his neck by rotating his head whilst kneeling in front of the jail door.
- (d) However, it is likely he would have been suffocated and died in a kneeling position. To have been found in a lying position, he would have to stretch out and lie down while in the process of suffocation.

[299] In the second scenario, which was scenario four in the simulation:

- (a) third parties placed the crotch of the trousers around the neck of a live or an already deceased Hoosen;

- (b) then twisted the trousers;
- (c) then pulled Hoosen to the door and tied the trousers to the lowest horizontal bar of the jail door;
- (d) tied the handkerchief to the knot of the trousers to ensure the trousers cannot be untwisted; and
- (e) then closed the door and exited.

[300] Thivash noted that it was the first time he had seen a handkerchief being used to secure a knot. He stated that the handkerchief was used to make sure that the knot of the pants would not slip open. It was also to maintain the compression force when the pants twisted. If the knot of the pants loosened compressive force in the pants would have been lost.

[301] Regarding the staged suicide scenario, Thivash said that third parties could have tightened the ligature without necessarily having to roll the body over because they would twist it in their hands while the body was in a complete stationary position. Thivash was of the view that it was likely that a third person was involved because *“it could be very easy to use the lowest bar, strangle the person, tie them to the lowest bar and then close the door behind them”*.

[302] Thivash noted that the position in which Hoosen’s body was found would have made suffocation difficult to achieve, so it was suggested that third parties may have been involved in his death. If there was no involvement of a third party, it would have involved great effort to have suffocated himself in that position, and he would have chosen the most difficult position to suffocate himself.

[303] If suffocation as opposed to hanging was the preferred option of suicide, Thivash maintained that it would have been immeasurably easier to kneel or stand up since *“you would require a lot less rotation of the body on the ground, like twisting on the floor and*

you could literally stand up straight and just turn around in a direction to keep twisting that knot”.

[304] In his report, during the inspection in loco as well as his testimony, Thivash said the entire situation intrigued him, since the cell door was approximately two meters high, it would have been immeasurably easier to commit suicide by simply hanging oneself from the highest bar. This would have allowed his entire body to be suspended. This is especially so in light of the version advanced by all the police officers, that Hoosen was able to walk with ease from the charge office to the cell.

[305] According to Thivash, even hanging himself from the second or third horizontal bar of the grille gate would have been an easier method of suicide because more body weight would have been suspended than just his head and shoulders. Aside from higher vantage points on the gate grille, Thivash noted that he had the option of attaching the ligature to the higher parts of the cell door or on either of two windows that were available. In this regard, see photos numbered 22, 23, 27 and 28 of the inspection in loco report. Thivash founded it to be “weird” that a person would choose the convoluted manoeuvre involved in strangling oneself from the lower bar of the door.

[306] Thivash agreed that if the death was the result of homicidal strangulation, then rigging the deceased to the lowest rung off the ground was the “simplest and easiest” method. That is so since if higher rungs were used the deceased would have to be lifted, requiring two or more persons to hold him and another to tie the knot. Also, it would have been simple enough for the perpetrators to step out of the cell and then just pull the door behind them.

[307] Gopal conceded in cross-examination that Hoosen was too weak to have crouched or rolled around to strangle himself. He added that if Hoosen was able to stand and walk, and if he intended to commit suicide, he would most likely have done so from the highest rung of the cell bar, or from the grille on one of the cell windows. If the suicide was staged, Gopal agreed that it would have been easiest to attach Hoosen to

the lowest rung on the cell door, because it meant no lifting and holding him while carrying out the manoeuvre.

Medical evidence supporting staged suicide version

[308] In support of Thivash's view that third parties were most likely involved in causing the death through a staged suicide was the expert opinions of the two forensic pathologists who testified in the inquest. They raised the distinct possibility that Hoosen was incapacitated prior to death. The two pathologists are Holland and Naidoo who noted serious injuries caused by a blunt force impact to the head which either led to unconsciousness or a lowered state of consciousness or a drowsiness as seen with concussion. Naidoo also noted that thoracic contusion is indicative of blows to the left lower front of the chest which would also cause the person to be winded, breathless and in pain. Such a blow could also cause cardiac concussion. Also, to be factored in are abdominal injuries arising from the mesenteric extravasation of blood which would have seriously incapacitated Hoosen. As indicated earlier, Naidoo was of the view that such a massive abdominal blow would have been potentially life-threatening if the spleen or liver had been damaged, and death may have supervened shortly thereafter.

[309] So, the medical evidence suggests that Hoosen was most likely incapacitated prior to death and would have been in no position to carry out the strenuous exercise of strangling himself as alleged by the police. Naidoo even questioned the need for an additional knot with a handkerchief over the trouser, which he viewed as somewhat redundant and superfluous, especially since the legs of the trousers were of "ample length" to tie a knot. He commented that the knot appeared to have been extremely tight, as observed by Gordon who was at the death scene. In this regard he referred to the report by Robert Chisnall's MEd titled "*Distinguishing between homicide and suicide notes and ligatures: A comparative analysis of case and survey data*". Naidoo considered the findings of Chisnall in a short commentary which was made available to the court and the parties.⁴⁶

⁴⁶ Volume L7, page 2755.

[310] While noting that he was not a knot expert, Naidoo drew attention to the finding that strangulation was “more likely” in external tying cases and “not likely” in self-tying. He noted that the Chisnall’s article did not consider ligature twists and number of twists, but did investigate ligature tension and found:

- (a) ‘In all homicides involving strangulation with knotted ligatures, the neck ligatures were tight or extremely tight – smaller than the relaxed circumference of the neck...’
- (b) ‘Suicides were more frequently characterized by loose neck ligatures and the presence of an inverted “V” mark in the soft neck tissue...’
- (c) ‘The incidence of tight, self-tied neck ligatures was lower than loose ligatures’.

[311] Naidoo noted that there was no presence of an inverted “V”- mark which is the typical hallmark of a suicide.

Forensic cause of death

Gordon

[312] According to Gordon’s post-mortem report, the official cause of death was “consistent with hanging”.

Biggs

[313] According to Bigg’s report, it seemed likely that Hoosen’s death was caused by a tight constriction of the neck. It further appeared to be death by suffocation rather than by sudden arterial occlusion. He explained that this was because the knot was so tight that it had to be cut open.

Naidoo

[314] Naidoo concluded that the cause of death may have been the consequence of pressure upon the neck, arising from the consequence of neck constriction by ligature or ligature strangulation. He excluded actual hanging by suspension.

[315] Naidoo found that the possibility of “terminal reflex neurogenic cardiac arrest” cannot be excluded. He noted that it was also a possibility that such cardiac arrest could have occurred under torture.

[316] According to Naidoo, if Hoosen had died following cardiac arrest, this would not have been picked up at the post-mortem as there would be no signs that this was the mechanism. While Naidoo accepted that neck constriction could have been self-applied, he found it odd that the deceased attached himself to the lowest rung and not one of the upper rungs of the cell door grille, which would have made self-constriction easier.

[317] He testified that he had seen several examples of suicide by self-constriction from a standing position and that this case was the first time he had seen an alleged suicide employing this method so close to the floor. He found the ligature contraption on Hoosen to be extremely unusual.

[318] He could not determine whether this was a self-inflicted neck constriction or whether it was caused by another party. The available objective evidence does not exclude other persons applying the constriction. Naidoo however excluded throttling, which he defined as the manual strangulation by hands or fingers, as opposed to the use of a ligature.

[319] In relation to the short linear abrasion on Hoosen’s neck, contrary to Gordon’s repeated claims that such injuries are usually due to the deceased’s own fingers and fingernails attempting to adjust the ligature in suicide, it appears unlikely that a person intent on committing suicide would have a reason to adjust the ligature in the process of suicide. Such adjustments to loosen the constricting ligature likely happen in instances of homicidal strangulation.

[320] Naidoo concluded that it “cannot be resolutely determined that the ligature constriction of the neck was caused either before or after death or before or after a state of unconsciousness has occurred”. Naidoo disputed Gordon’s assertion that the

possibility of post-mortem hanging (or more accurately constriction) is “completely excluded”. Naidoo noted that except for two areas of bruising on the neck (at the inner aspect of the right side of the mandible and the anterior edge of the sternomastoid muscle), no other deep vital reaction was observed. Accordingly, both haemorrhages could have been post-mortem, as much as they could have been perimortem or antemortem.

[321] Naidoo testified that there was no way a pathologist could say:

‘that the ligature was not placed after death or constricted, or if the person died before or whether he was still alive, and the ligature was placed, or he placed it himself’. The two bruises, referred to above, he said “are more likely related to the ligature itself, they are superficial” and such bruising “can be seen in some cases where a person is strung up very shortly after death.’

Holland

[322] Holland concluded that the cause of death, based on the findings documented in the post-mortem report ought to have been “consistent with pressure to the neck”. She highlighted that the post-mortem report indicated that examination of the internal neck structures showed “bruising of the subcutaneous tissues below the inner aspect of the right side of the mandible”. She stated that an assessment of the presence and shape of the ligature mark is the most crucial factor in determining a case of “hanging “versus a case of “strangulation”.

[323] She concluded that:

- (a) The presence of marks in the internal neck structures of Hoosen were not consistent with hanging.
- (b) Since a pair of trousers were allegedly used as a ligature, such material is a “soft broad type of ligature”, which would not be expected to cause injuries to the neck.
- (c) The presence of submandibular (which is the side of the jaw, under the ear) “bruise” is not consistent with hanging, but usually indicates blunt force applied directly to that area and is more consistent with the manual application of pressure to the neck, i.e. manual strangulation.

[324] Holland noted that the post-mortem report described at least 46 “abraded bruises” on the back, groin, both arms and both legs. Histological analysis on some of these wounds was done (from the back, right groin, right knee and base of the neck), which suggested that the wounds were between four and 12 hours old. She stressed that these wounds displayed a “vital reaction”, confirming that they were sustained during life.

[325] As explained earlier, she disputed the Magistrate’s finding that the injuries were not related to cause of death, and that they did not need to be explained. In her view explaining these injuries was “crucial in excluding or confirming a homicidal manner of death”.

[326] Holland noted that since Hoosen only weighed 49 kilograms it would not have taken much for multiple Security Branch officers to subdue him. She noted further that untangling of hair in the knot of the ligature, as was the case here, is generally associated with homicidal hanging.

Time of death

Gordon

[327] According to Gordon, the probable time of death was between 03h00 and 04h00. He examined Hoosen’s body at 06h59 and recorded his temperature at 35.3 degrees centigrade. He used a method which calculated the time of death by using a decrease in temperature. He claimed that his estimation of the time of death was based on “*the collation of the temperature and rigor mortis, and the lividity and so on. It hasn’t got absolute accuracy; it can’t possibly have. But it is an estimate.*”

Naidoo

[328] Naidoo disputed the finding of Gordon. He was of the view that death occurred several hours earlier, possibly around midnight or earlier. Due to the technical nature of

the calculations, Naidoo attached annexure A (titled “Notes on the Estimation of Time Interval Since Death”) to his report to explain his conclusions.

[329] Naidoo doubted the reliability of core body temperature as an accurate measure of time of death. The reading of 35.3°C at 06h59 at the death scene was approximately 1.7 degrees lower than the assumed rectal temperature of 36.9°C.

[330] Naidoo noted that in theory, it is assumed that the normal core temperature is 37°C and there is a post-death temperature plateau of between one and two hours, and thereafter there is a steady post-mortem temperature drop of approximately 1°C per hour. Using the first temperature reading of 35.3°C, this is a 1.7°C drop from normal core temperature. This must be added to the plateau which extrapolates to between 2.7 to 3.7 hours since death, which is close enough to Gordon’s estimate. However, this method does not take environmental and other conditions into consideration and is a very rough rule-of-thumb process.

[331] If the formula is applied to the temperature reading of 27°C, which was recorded at 10h23 at the beginning of the autopsy, the rough calculation would be an interval of some 11 to 12 hours since death. This would bring the time of death to between 22h23 and 23h23 the night before.

[332] Naidoo applied the most stringent “Henssge’s nomogram method” to Gordon’s first and second temperature measurements, employing an average environmental temperature of 18.5°C and arrived at the result of a time-lapse of seven and 11 hours respectively since death.

[333] Naidoo viewed the state of full development of rigor mortis as a more reliable measurement of the time of death. Gordon’s finding in annexure D of the post-mortem report was that rigor mortis “had developed completely” and “fully developed in all the joints” he described. Naidoo concluded that complete rigidity happens between six to 10

hours after death – with a mean at eight hours, relying on the well- researched text of Henssge.⁴⁷

[334] In his testimony Naidoo narrowed his estimates to time of death to be between 22h00 and 00h00 with a possible mean of 22h50. He concluded that the evidence given in the first inquest by Naude and Madlala, who claimed to have seen Hoosen alive at 03h00 and only dead at 04h00, must be “seriously doubted” and challenged.

Holland

[335] In her report, Holland noted that in the post-mortem report, the Post-Mortem Interval (PMI) was stated as “3 to 4 hours”. However, she noted that Gordon only considered the changes in the body temperature to assess the PMI. This contrasted with Gordon’s scene report which described that the upper limbs, and the lower limbs were in full rigor mortis. Relying on the research of Shkrum and Ramsay,⁴⁸ she noted that the time rigor mortis is established in all joints varies from two to 20 hours with a mean eight plus minus one hour.

[336] Referring to Saukko and Knight,⁴⁹ she noted that rigor mortis in ‘average’ conditions might be expected to reach a maximum within six to 12 hours. The finding of full rigor mortis in the large muscles like the upper and lower limbs would significantly increase the PMI.

[337] Holland concluded that the longer PMI was not consistent with the explanation of the circumstances of death as given by the police witnesses in the first inquest. If the evidence of the two forensic pathologists is accepted, then Hoosen died while in the hands of the Security Branch i.e. under interrogation.

⁴⁷ C Henssge and B Knight *The estimation of the time since death in the early postmortem period* (1995), E Arnold, London at 152 and Table 5.3.

⁴⁸ M Shkrum and David Ramsay *Forensic Pathology of Trauma: Common Problems for the Pathologist* (2007) 10. 1007/978 – 1 – 59745 – 138 – 3).

⁴⁹ P Saukko and B Knight *Knight’s Forensic Pathology* 3 ed (2004), Oxford University Press, London at 39-40, 421.

Contrasting the expert evidence with the police evidence

[338] All the police officers who testified in the first and re-opened inquests insisted that Hoosen died in cell number 2 at Brighton Beach Police Station sometime after he was locked up around midnight. The charge office members who were present claimed that Hoosen died between 03h00 and 04h00. Their evidence is in direct conflict with the expert evidence of Naidoo and Holland who asserted that Hoosen must have died several hours earlier.

[339] Gopal insists in his evidence that Hoosen was alive when taken to his cell at midnight and that he was likely murdered in his cell sometime thereafter. Gopal asserted that the evidence of Naude and Meyer ought not be accepted because they would have collaborated with whoever inflicted the injuries on Hoosen in his cell. Gopal appeared to be adamant that Hoosen did not commit suicide but was murdered. This was because: Hoosen was strong psychologically and did not break down in interrogation; he was very thin and after being beaten he was weak; and it was suspicious that Major Benjamin shushed him when he enquired about how Hoosen died. The Security Branch would not go to such lengths if it was actually suicide.

[340] It appears then that Gopal accepts that Hoosen was murdered and did not commit suicide. However, he insisted this did not take place in his presence.

[341] Notwithstanding the conflict between Gopal's version and the views of the aforesaid pathologists, Gopal and his lawyer did not seek to rebut such evidence with their own expert report, nor was any application brought to re-examine Naidoo and Holland.

[342] The legal team for the family carried out an exercise to align the age of Hoosen's injuries with the possible times of death. In this regard Holland and Naidoo did not challenge the age of the injuries in the histology report attached to the post-mortem report. The histopathological investigation estimated that the ages of the injuries were between four and 12 hours before death.

[343] Gordon claimed that Hoosen died between 03h00 and 04h00 in the morning. If we do the subtraction of 12 hours, the outer limit, or the earliest time that the injuries could have taken place on Gordon's estimation of death at 04h00 would have been 16h00 in the afternoon. If death occurred early, say at 03h30 then the earliest injuries could only have taken place at 15h30.

[344] Holland and Naidoo both concurred that based on the assessment of fully developed rigor mortis, that death had occurred between six and 12 hours prior to the declaration of death by Gordon at 06h59 in the morning. The mean time would have been approximately eight hours, working back from that time. On their estimations the latest time of death would have been at 01h00 in the morning and the earliest time of death would have been at 19h00 the night before. The mean time of death would have been at 23h00 the night before.

[345] If one takes the mean time of death as being 23h00 and subtract 12 hours, then the earliest injuries would have taken place at 11h00. If we subtract four hours from 23h00, then the latest time injuries were sustained was at 19h00. So, on the mean time of death, we have injuries being inflicted between 11h00 and 19h00. It is thus submitted by counsel for the Haffejee family that this appeared to be an acceptable range because it is consistent with Gopal's evidence in the statement and his testimony.

[346] If one takes the latest time of death as 01h00 and we subtract 12 hours, that takes us to 13h00. This would not accord with Gopal's evidence that Hoosen received serious assault at least from mid-morning. On Gopal's version at about midday Hoosen was already doubled over in pain. So, the infliction of serious injuries must have taken place well before 13h00 which means he could not have died at 01h00.

[347] If one takes Naidoo's report when he considers the time of death based on core body temperature measurements, his calculation is that the time of death was between 22h23 and 23h23. If one subtracts 12 hours from 22h23, that gives us infliction of serious injuries at 10h23. But if we subtract the four hours, that give us 18h23 which

seems to accord with Gopal's evidence. If the time of death was at 23h23 then you get the earliest infliction of injuries at 11h23 and the latest at 19h23.

[348] The expert evidence on the question of time of death also materially contradicts the evidence of the charge office personnel i.e. Meyer, Naude and Madlala. It is submitted by the family's counsel, that the court must accept the evidence of the two forensic pathologists which has not been rebutted. It is also submitted that Gordon made fundamental errors in his post-mortem report, most notably in relation to time of death and that it must be asked whether Gordon was simply incompetent, or whether he, like Magistrate Blunden, was politely averting his gaze.

[349] On returning to the police cover-up, the aspect already dealt with earlier, it is Marion's strong opinion and view that the SAP investigation was not only sub-standard but aimed at concealing what really happened between 2 and 3 August 1977. In his scathing assessment of the investigations carried out he found that minimum standards of investigation were not adhered to in regard to the whole investigation: from the crime scene; collection of evidence; identification of potential witnesses; going right through to securing of the exhibits collected.

[350] In his opinion, the shoddy investigations were a deliberate attempt to cover up the truth about what actually happened. The investigation was fixated at covering up the crime committed.

Evaluation

[351] What appears not to be in dispute are the approximate times of Hoosen's arrest, arriving at Brighton Beach Police Station and the commencement of the interrogation. Hoosen's interrogation seems to have commenced between 09h20 and 09h35. These involved open palm slaps, punches and kicks. It seems to have gotten progressively worse from 10h00 and continued into the evening.

[352] Gordon's estimate of time of death must be dismissed because on his estimate, the earliest injuries would only have taken place between 15h00 and 16h00, which does not accord with Gopal's account. Gopal's version of torture is the only version available and cannot be jettisoned simply because he might not be seen credible on other aspects. I am however not going to dissect his evidence to expose such disconcerting aspects as one would do to establish guilt beyond reasonable doubt in a criminal trial. Suffice to say that his testimony was believable on multiple points of torture and he probably downplayed the extent and his role in it (as he seemed to distance himself from other unrelated interrogations of political detainees as being merely an observer). His version regarding Hoosen's torture is largely supported by credible medical evidence tendered by the medical experts, although his version did not get to explain for example the burn marks seen on Hoosen's body, by Biggs.

[353] The main issue to be determined is the cause and time of Hoosen's death. Time of death becomes paramount because from it one can infer at what stage Hoosen might have died. Although suggested times of death are varied, one can work out the most likely time of death, taking a cue from Gopal's testimony and working on the uncontested histological evidence which placed the ages of the injuries at four to 12 hours before death.

[354] What emerges from the objective evidence is that Hoosen was killed much earlier than postulated or claimed in the police testimonies. His death was then followed by an elaborate scheme devised or designed by the police involved to cover up the cause of his death, which death was likely to have been directed or carried out with subjective foresight.

[355] The estimated mean time of death of 23h00 by Naidoo, puts the earliest injuries occurring at 11h00 and is aligned with Gopal's time of when the terrible abuse was inflicted. Naidoo's estimate of time of death (based on temperature reading) at 22h23, which brings the earliest inflicted injuries to 10h23 is even closer to Gopal's account of when the serious assaults began.

[356] Therefore, the most probable time of death was between 22h23 and 23h00 on the night of 2 August 1977. One would be stretching it too far to put the time of death at 01h00, 3 August 1977 simply because it does not accord with the rigor mortis findings made by the forensic pathologists. That means Hoosen died while in the hands of the Security Branch of either cardiac concussion during interrogation or of cardiac arrest from neck constriction in the cell.

[357] If Hoosen died during interrogation, which cannot be excluded, it means suicide was staged to mask the death under torture. That is very much a reasonable possibility in view of the cover-up, since there would have been no need of one if he died through a genuine suicide. If he was still alive, as Gopal asserted, apparently barely alive from long, barbaric, unrelenting extensive torture when he was lodged in the cell, I find that his death in the cell was not, as Magistrate Blunden found, self-induced or suicide. He was most likely strangled/strangulated by third parties (none other than his torturers) using his garment. Taking from Thivash's reliable testament; the Security Branch members' elite and feared status which gave them full access to the cells anytime; and applying sheer common sense, it seems improbable in the extreme that Hoosen committed suicide by strangling himself to the lower rung of the grille while in the cell alone. Hoosen appeared to have been a religiously and politically principled man who stuck to his principles through thick or thin. This, apparently, is what enraged his interrogators even more as he was not, as Gopal stated, forthcoming with information useful to them. Such extra-judicial killings and cover-ups were the order of the day during the apartheid era policing methods.

[358] Therefore, what the police conjured up in their testimonies must be rejected. They could not even explain about the garments which Hoosen died wearing. Clearly it must have been garments they provided to him for reasons best known to them before he died. There is also no evidence of an Occurrence Book entry to show that he was lodged in the cell at midnight, or indeed at all.

[359] Whether Hoosen died “on the table”, or in the cell, as it were, one thing is very clear and that is that the Security Branch officers who were involved in his kidnapping and torture were very much responsible for it. It does not matter that possibly a few had to do the dirty job of physically torturing him as others present assisted. It was teamwork and all those present participated in one way or another.

[360] Counsel for Gopal submitted that Gopal was merely a bystander or an observer. I do not agree since his evidence does show that he played a role, minimal or minimised as it may have been, but nevertheless a positive one and he thereafter conspired to conceal the truth. He may not have pulled the proverbial trigger but he participated in a common design to round up, interrogate, assault with intent to extract information, acting together with his colleagues. The extent of the assaults clearly shows that the interrogators and those assisting them must have foreseen, and by inference did subjectively foresee that death would or might follow. Despite this fact, all of them went ahead with their unlawfully designed objectives and reconciled themselves with the foreseen consequences or were reckless of the fatal consequences that could flow from it.

[361] Counsel for Gopal also submitted that up until September 2021, Gopal was under the impression that he would be used by the State as a s 204 witness against his colleagues who tortured Hoosen. She contends that if common purpose was permitted to apply to him, he would not have the right to a fair trial as he was initially promised the protection of being a s 204 witness. As a result, it was argued, he forfeited his constitutional right to remain silent and not incriminate himself. Obviously, one is not dealing with a criminal trial and these proceedings do not attract the s 204 provisions. I therefore, cannot decide his fate based on those provisions.

Findings and recommendations

[362] I have established that there are sufficient reasons to set aside the original inquest findings. This court is now required to determine whether there is prima facie evidence before it upon which a reasonable person might convict a person of an offence

arising from Hoosen's death. The ultimate decision, whether to prosecute or not, will rest with the Director of Public Prosecutions after the record of the proceedings is referred to her in terms of ss 17(1)(a) and (b) of the Inquests Act.

[363] In *Freedom Under Law v National Director of Public Prosecutions and Others*⁵⁰ Murphy J aptly held as follows regarding the purpose of an inquest and what should ideally follow after a finding has been made:

'[72] An inquest is an investigatory process held in terms of the Inquests Act which is directed primarily at establishing a cause of death where the person is suspected to have died of other than natural causes. Section 16(2) of the Inquests Act requires a magistrate conducting an inquest to investigate and record his findings as to the identity of the deceased person, the date and cause (or likely cause) of his death, and whether the death was brought about by any act or omission that prima facie amounts to an offence on the part of any person. The presiding officer is not called on to make any determinative finding as to culpability.

...

[77] ... The only question for the magistrate, in terms of 16(2) of the Inquest Act, was whether the death was brought about by conduct prima facie amounting to an offence on the part of any person. A prima facie case will exist if the allegations, as supported by statements and real documentary evidence available, are of such a nature that, if proved in a court of law by the prosecution on the basis of admissible evidence, the court should convict....' (References omitted.)

[364] In *Re Goniwe and Others (2)*⁵¹ the court held that the standard of proof required to make a finding in an inquest is not that which is applied in a criminal trial. The test is less stringent in inquests. The court explained this rationale as follows:⁵²

'Bearing in mind the object of an inquest it is my opinion that the test to be applied is not the 'beyond reasonable doubt' test but something less stringent. In my opinion the test envisaged by the Inquest Act is whether the judicial officer holding the inquest is of the opinion that there is evidence available which may at a subsequent criminal trial be held to be credible and acceptable and which, if accepted, could prove that the death of the deceased was brought

⁵⁰ *Freedom Under Law v National Director of Public Prosecutions and Others* 2014 (1) SA 254 (GNP).

⁵¹ *In re Goniwe and Others (2)* 1994 (2) SACR 425 (SE).

⁵² *Ibid* at 428C-E.

about by an act or omission which involves or amounts to the commission of a criminal offence on the part of some person or persons.⁵³

[365] I therefore make the following findings:

1. The finding and judgment of Magistrate TL Blunden dated 15 March 1978 in Inquest No. 951/77 is set aside.
2. The cause of death of Dr Hoosen Mia Haffejee is attributable to either of the following two possibilities:
 - (a) Hoosen died following a cardiac incident while under torture; alternatively,
 - (b) Hoosen died from a cardiac incident caused by ligature constriction applied by the Security Branch members either while less conscious, unconscious or debilitated after torture.
3. Time of death was not in the early morning but late on the night of 2 August 1977, the most likely time range being between 22h23 and 23h00.
4. The Security Branch officers primarily responsible for torturing and murdering Hoosen are Captain Petrus Lodewikus du Toit and Lieutenant James Brough Taylor.
5. While Du Toit and Taylor played the leading roles in causing the death of Hoosen, those who played various other roles in the interrogation, torture and cover-up must also be held responsible for acts connected to Hoosen's murder. They associated themselves with what happened to Hoosen and did not raise the alarm. These persons are:
 - (a) Brigadier Steenkamp, Commander of Security Branch, Durban;
 - (b) Colonel Ignatius Gerhard Coetzee, 2IC Security Branch, Durban;
 - (c) Major Joseph Benjamin (formerly Moonsamy);

⁵³ Also see *Padi en 'n Ander v Botha NO en Andere* 1995 (2) SACR 663 (W) at 670D-E.

- (d) Lieutenant Vic MacPherson;
 - (e) Warrant Officer Shunmugam (Schrewds) Govender;
 - (f) Sergeant Veera Ragalulu Naidoo (VR Naidoo); and
 - (g) Mohan Deva Gopal.
6. The former SAP uniform branch members stationed at Brighton Beach Police Station, who turned a blind eye and helped to facilitate the Security Branch cover-up, defeated the ends of justice and are accessories after the fact to murder. They include former Constables Johannes Nicolaas Meyer, Derek Hugh Naude and Shadrack Madlala.

[366] As stated earlier, Du Toit died on 15 April 2008; Taylor died on 19 August 2019; Vic MacPherson died on 20 April 2017; and Joseph Benjamin died on 16 December 2010. Except for VR Naidoo and Gopal all other security branch members have either died or could not be traced, while of the charge office uniform branch members, Madlala has passed on.

[367] It is thus recommended that certain charges be considered by the National Prosecuting Authority (NPA) against the following persons:

1. Surviving members of the Security Branch:
 - (a) Mohan Deva Gopal – Murder (by common purpose); and possibly telling lies under oath in his testimony (i.e. perjury).
 - (b) Veera Ragalulu Naidoo – Further investigations to be done to establish whether he was present or establish his whereabouts during the periods of Hoosen’s interrogation and death with the view to include or exclude him in the murder by association.
2. Derek Hugh Naude and Johannes Meyer – accessory to Hoosen’s murder (from participating with the Security Branch in the cover-up and giving false testimony before the first inquest court; and be investigated for

perjury in providing multiple false statements under oath before this court, knowing them to be false with regard to Hoosen's physical state (i.e. "perfect health") and in the handling of cell no. 2 keys.

3. Matheevathinee Benjamin – perjury, for giving false testimony under oath with regards to e.g. finding bits of metals and nails that looked like shrapnel for bombs while cleaning Hoosen's flat; denying giving Security Branch members a key to Hoosen's flat; denying meeting Gopal and other members of the Security branch at Delhi Restaurant; denying being entertained with booze and cash by the Security Branch members; and claiming to having been threatened by the Haffejee family after Hoosen's death.⁵⁴ Without her handing over Hoosen to the Security Branch, he possibly would still be alive today or would have progressed in his profession; spent a long quality life with his family; and possibly made more invaluable contributions to our hard-fought freedom and democracy. However, her demeanour during her testimony appeared entirely unrepentant.

[368] In conclusion, may I convey my deep gratitude to all counsel involved for their invaluable and professional hard work to get this re-opened inquest concluded and the truth be exposed to afford the Haffejee family some semblance of closure. I am advised that there are many more families awaiting the inquests of their loved ones to be opened or re-opened to get to the truth of how they died while in Security Branch detention.

[369] In the KwaZulu-Natal list, we can mention the names of Joseph Masobila Mdluli who died at the Durban Security Branch, Fischer Street offices on 19 March 1976, allegedly from falling against a chair and hitting his head and chest on a door; Samuel Malinga who died at Pietermaritzburg Prison, on 22 February 1977 allegedly from natural causes; Aaron Khoza, at Pietermaritzburg Prison, on 26 March 1977 from alleged suicide by hanging; Bayempini Mzizi at Brighton Beach Police Station on 10

⁵⁴ Volume G11, pages 1453, para 19; page 1456, paras 25 and 26; page 1455, paras 25-27.

August 1977, allegedly from suicide by hanging; and Ephraim Mthethwa at Durban Central Prison on 25 August 1985, allegedly from suicide by hanging.

[370] With regard to Bayempini Mzizi, I am advised that attempts were made to also re-open his inquest and consolidate it with this inquest but it has not happened since there was still no decision taken in that case.

ZP NKOSI J

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