

REPORTABLE

**IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA PROVINCIAL DIVISION)
(GA-RANKUWA CIRCUIT COURT)**

**CASE
NO: CC113/05**

THE STATE

vs

WILLIAM GADIFELE NKUNA

JUDGMENT

HENDRICKS J:

Introduction:

The fundamental issue to be decided in this case is whether an accused person can be convicted of murder where the body of the deceased person is not found.

Secondary hereto is the question whether such a finding can be made in circumstances where nobody claims to have been told by the accused what became of the body of the person alleged to have been killed, unlike in previous cases of this sort.

[1] The accused, William Gadifele Nkuna, is charged with the offence of murder. It

is alleged that upon or about the 27th day of AUGUST 2004 and at or near Temba, in the district of Moretele, the accused unlawfully and intentionally killed Frances Nyadi Rasuge, an adult female person, in a manner and by ways and means unknown to the State.

To this charge, the accused pleaded not guilty and exercised his right to remain silent.

[2] The following admissions were made on behalf of the accused:-

[2.1] the contents of the statement made by the accused on 03 September 2004 in the conspiracy docket he opened against Frances Rasuge and another policeman;

[2.2] that on the 28th August 2004 between the hours 20h34 and 23h14, the accused used the cellular phone of Frances Rasuge to make seven (7) phone calls and received four (4) phone calls;

[2.3] that Frances Rasuge obtained a protection order against him for threatening to kill her on 10 May 2004;

[2.4] that the blood found on the mat in the boot of the vehicle he was using on 27th August 2004, was taken together with the blood of Frances Rasuge's parents for DNA analysis and that the contents of the forensic report is admitted.

The accused confirmed these admissions, and it was handed in as Exhibit "A".

[3] As Exhibit "B" was handed in, the statement which the accused made on the 03rd September 2004 as a complainant in a conspiracy to murder charge which he laid

against Frances Rasuge and Simon Lesheka, by then a policeman at Temba Police Station. The contents of this statement was read into the record and confirmed by the accused. I will deal later in this judgment in detail with the contents of this statement.

[4] As Exhibit “C” was handed in, the protection order which Frances Rasuge obtained against the accused on the 10th May 2004, because he threatened to kill her.

[5] As Exhibit “D” was handed in, the report on the DNA analysis between the blood found on the boot mat of the vehicle used by the accused and that of the parents of Frances Rasuge. The DNA result is that the probability of parentage is 99,9999%.

The accused also confirmed the correctness of the contents of Exhibits “B”, “C”, and “D” as it was handed in.

Summary of the evidence tendered by the State:

[6] The first witness called by the State was Wiliam Rasuge, the father of Frances Rasuge. He testified that they were a happy family and that Frances was happy within the family. Her personality was described as that of a jovial person. She was a Police Constable. He last saw Frances on the morning of the 27th August 2004 between 10h00 and 11h00 when she left for the hair salon. He cannot think of any reason why Frances would leave the home and not return for in excess of a year. It never happened previously that she would leave and stay away from her parental home without informing anybody at home about her whereabouts. The disappearance of Frances also received a lot of publicity in the media.

[7] He became aware of her disappearance on Sunday, the 29th August 2004, when

her colleagues came to collect her for work, but did not find her. They returned shortly thereafter to collect her service fire-arm.

[8] During cross-examination he stated that he was not aware of Frances' new boyfriend Abner Ramasodi. He also confirmed that the motor vehicle of the accused was used by his family members to travel to Alexandra, Johannesburg, to make funeral arrangements. He did not know that the love relationship between Frances and the accused was terminated.

[9] Percy Sibiya was the second witness called by the State. He is a businessman and the owner of a hotel in Midrand. He is the owner of the vehicle which the accused, being his friend, borrowed from him. It was agreed that the accused would use this vehicle for 2 weeks but he kept it for 4 to 5 months. According to this witness, the accused and the deceased, as his girlfriend, used to sleep at his hotel. It last happened that they slept at his hotel during January 2004. It was established that the vehicle he borrowed to the accused was the vehicle in which the blood of Frances Rasuge was found on the boot mat.

[10] The third witness called was Abner Ramasodi, who testified that he and Frances were lovers since March 2004, and they had a happy relationship. He last saw Frances alive on the Thursday of the week preceding the week in which she disappeared. During the week of her disappearance he was at work, and his place of employment is approximately 70 km from Temba, where he resides. He last spoke to Frances on the morning of the 27th August 2004 at 09h00, when she phoned to inform him that she is going to a hair salon to have her hair done in preparation for that weekend, when she was supposed to accompany him to a family funeral on his side.

[11] He testified that when he arrived at his house after 7pm on the 27th August 2004 he could not obtain the key to his house from his next door neighbour, where he

used to leave it. He received a report from the next door neighbour's children. Acting on the report he received, he phoned Frances on her cellular phone but to no avail as it was switched off. He then proceeded to the parental home of Frances to establish her whereabouts and was told that she was not there. He attended the funeral on the Saturday. When he went back to his house and was still unable to find the key to open the door of his house, he decided to break into the house. He later received a washing machine and a microwave which was delivered at the house of his next door neighbour, Rose Legodi. He never heard of or saw Frances again since he last spoke to her telephonically on the morning of the 27th August 2004. He was also not formally introduced to the parents of Frances as her new boyfriend.

[12] During cross-examination it was put to this witness that the accused will testify that he dropped Frances and did not even know that she was heading to the place of this witness. His reply was that he does not know because he was not present. It was further put to this witness by Mr. Moloto, who appears on behalf of the accused, that the disappearance of Frances happened between the point where he dropped her off and the residence of this witness. His reply thereto is that he don't know.

[13] As it appears, these two submissions are contradictory in their very nature. On the one hand it was suggested that the accused dropped Frances and was not aware that she was heading for the home of this witness, and on the other hand it was put that she disappeared between the point that he dropped her off and the house of this witness, clearly indicating thereby that he knew that she was on her way to the place of this witness (Abner).

[14] Oupa Rasuge, the brother of Frances, then testified. He testified that their's was a peaceful household. He stated that he last saw Frances on the morning of the 27th August 2004, when she borrowed his cellular phone. After she inserted her

sim card into his cellular phone, she left on foot being alone. She appeared to him to be normal and happy when she left. He never saw her again and hasn't heard from her ever since. He enquired about the whereabouts of Frances from the hair salon, where a report was made to him. His cellular phone was retrieved by the police. He testified that Frances told him that she and the accused were no more lovers at the time of her disappearance. He can think of no reason why Frances would leave and not return. It is unusual because as children they were not used to staying away from home for days without telling anybody about their whereabouts.

[15] During cross-examination it emerged that they started worrying when the person she was supposed to visit, Abner Ramasodi, came looking for her later that evening, when he spoke to Nienie. He denies that he shared a beer at his parental place with the accused, after the accused took Frances to Pretoria to attend a course at the beginning of August 2004.

[16] Hester Oosthuizen, who is the credit manageress at Russel's, Temba, testified that Frances bought a washing machine and microwave oven from her store on the 25th August 2004. She approved and processed the hire-purchase agreement. The agreement, consisting of different documents, including a copy of the Police appointment certificate of Frances, a copy of her salary advice, and a delivery note, was handed in as Exhibits "F1 – F4". Of importance is the delivery address given as 3966 Unit D Extention, Temba, which is distinctively different from her residential address being 292 Oustad, Temba. The salary advice also contains the banking details of Frances namely, her ABSA Bank account number 911 256 9373.

[17] The delivery note serves as proof that these items were delivered at house no 3966, Unit D, Extention, Temba. The name of the person who signed for receipt of these items is given as "Rose".

- [18] During cross-examination it emerged that the debit order for the monthly payment of instalments was honoured until as recent as August 2005, which means that there were funds in the account of Frances until August 2005. The debit order for September was unpaid and the account is therefore in arrears by one month.
- [19] Rose Legodi was the next witness who testified. She is the next door neighbour to Abner Ramasodi. She identified Exhibit "F4", as the delivery note that she signed when she received a washing machine and microwave oven on behalf of Abner_Ramasodi. She confirmed that Abner resides at 3966 Unit D, Extention, Temba. She also testified that Abner introduced Frances to her as his girlfriend approximately 2 to 3 months before the 27th August 2004. She used to see Frances at Abner's place.
- [20] The last occasion when she saw Frances at Abner's place was the Wednesday, preceding Friday, the 27th August 2004, when she came to collect the key to Abner's place, which key was usually left at her house. It emerged during cross-examination that she started seeing Frances at Abner's place after May 2004 and that she used to see her there when Abner had his weekends off from work. She estimated that this could have been two weekends per month.
- [21] Lena Nienie Rasuge, the sister to Frances, then testified. She said that Abner, also known as Steward, is the boyfriend of Frances, and they did not have a relationship for a long time when Frances disappeared on 27 August 2004. On 27 August 2004 Abner came to her parental place looking for Frances. According to her, the relationship between Frances and the accused was terminated.
- [22] She stated that she became concerned on Friday, 27 August 2004, after Abner had left. On Sunday morning, after Frances' police colleagues had been to their parental place, and after Oupa made the report to them, she was prompted to call

the accused telephonically and asked him the whereabouts of Frances. The accused said to her that she should not make enquiries about Frances from him and he then dropped the phone. A few minutes later he called her and informed her that he left Frances the previous Friday at the Checkers complex in Tembisa. Initially when she phoned him, the accused was aggressive in his reply, but when he phoned her he sounded sad. She told him that Frances was not yet home and that the family was concerned. He however never approached her or her family during that weekend, and she never spoke to him again after that Sunday.

[23] She confirmed that their family did attend to funeral arrangements of a family member in Alexandra during July 2004, and that the motor vehicle of the accused was used as transport. She was aware that Frances did obtain a protection order against the accused on 10 May 2004. The accused frequently visited her parental home before 10 May 2004 but did not visit between the period 10 May 2004 to 26 August 2004. On 26 August 2004 she saw him again at her parental house seated outside with Frances. This upset her to the extent that she discussed it with her other sister.

[24] During cross-examination she confirmed that she and Wilhelminah accompanied the accused when he took Frances to attend a course in Pretoria at the beginning of August 2004. She denies that on their return, at her parental home, her brother Oupa and the accused shared a beer. She confirmed that her father was not aware of the relationship between Frances and Abner. She also confirmed that Frances used to overnight at Abner's place.

[25] As to the reason why she and Wilhelminah accompanied the accused to transport Frances to attend the course in Pretoria, she said that they were concerned about the safety of Frances following the previous violent incidents between Frances and the accused.

[26] Hendrick Masilo, a Detective Inspector in the S A Police Services, stationed at

Temba, testified that he was the investigating officer in a case of rape. In that case, Frances was the complainant and William Nkuna was the accused. The charge was laid on 10 May 2004 but was withdrawn by the Public Prosecutor on 26 May 2004. As proof thereof, was handed in a copy of the case docket as Exhibit "G". Not much turned up on the cross-examination of this witness.

[27] Ephraim Mphamo, a Captain in the S A Police Services, stationed at Ga-Rankuwa was called as a witness. He testified that he witnessed how Superintendent van der Nest collected blood samples from the vehicle of the accused on 06 September 2004.

It became apparent during cross-examination that the defence admit the date of the taking of the blood sample to be the 06 September 2004. The need to further cross-examine this witness fell away.

[28] Wilhelminah Rasuge, the twin-sister of Frances then testified. She stated that she was very close to Frances. Frances happened to be a jolly person and she knew that Frances had a love relationship with Abner (Steward) Ramasodi. Frances told her that she had terminated her relationship with the accused a few months before 27 August 2004. She was also aware of the protection order which Frances obtained against the accused on 10 May 2004, as well as the charge of rape which she laid against him. Initially she had a good relationship with the accused which lasted until May 2004. She did not talk to the accused since May 2004 because she was angry with him. Between May 2004 and August 2004 she only saw the accused once on the day that they transported Frances to Pretoria, where Frances attended a course. She accompanied the accused and Frances because she was concerned about Frances's safety and did not want Frances to be alone in the company of the accused.

[29] According to her, Frances would not stay away from home without informing anybody. She testified that Frances had a bank account with ABSA and had her

own secret pin code. Frances also knew the pin code of this witness, because she used to withdraw money from the account of this witness in order to pay accounts on her behalf. After 27 August 2004, the police phoned her and asked her about her pin code, which she confirmed. She was asked whether she was aware of the fact that the accused knew her pin code. She said that she was very surprised to learn that he knew it.

[30] During cross-examination she denied knowledge of the existence of a love relationship between Frances and Letsheka. According to her, despite the fact that the motor vehicle of the accused was used to transport Frances to the course, no love relationship existed anymore between Frances and the accused. A love relationship existed at that time between Frances and Ramasodi.

[31] It was put to this witness that a love triangle existed between the accused, Frances, Ramasodi and Letsheka and that the accused will testify to that effect. Meaning that the accused was aware of the fact that Frances had a love relationship with Abner and with Letsheka. It was further put to this witness that she was aware of the fact that there were many tiffs and disputes between the accused and Frances.

[32] Nick Pitsoane, a Superintendent in the S A Police Services, testified that he, as a commissioned officer is also a justice of the peace. He stated that during his investigations, as a member of the investigating team, he became aware of the fact that money was withdrawn from the bank account of Frances. He then decided to interview the accused about it. After he duly warned the accused, the accused indicated to him that he knew the pin codes of Frances as well as that of her twin sister Wilhelminah. Accused provided this witness with those pin codes. Because the only pin code that he could verify is that of Wilhelminah, he phoned Wilhelminah and she confirmed her pin code.

[33] During cross-examination he explained the obvious and well known fact that

there was no way in which he could have confirmed the pin code of Frances with the bank because the bank would not know it. It was put to this witness that the accused will testify that he came to him with the pin codes, which this witness allegedly obtained from Wilhelminah. This witness denied it. It also emerged further that an amount of R4 180-00 was withdrawn from the account of Frances after her disappearance on 27 August 2004 and only R20-00 remained in that account at that stage that could not be withdrawn.

[34] Caroline Rasuge, the mother to Frances testified. This court was made aware of the fact that she sat in court when evidence was presented during the days preceding the day on which she testified. She stated that on the 01st January 2004, she received a report involving Frances and the accused which prompted her to ask for the cellular phone numbers of the accused from her children. She then phoned him.

[35] She asked the accused to leave Frances alone because they used to fight. The accused responded by saying that he is going to kill Frances and thereafter he will kill himself. She then asked the accused why should he do that because he has a wife and children. The accused replied by saying that it doesn't matter because his wife, who will remain behind, can look after the children. His last words were that they (referring *inter alia* to this witness) were not fair and he then dropped the phone. She never talked to him again. The accused also never came to express his concern about the disappearance of Frances despite the fact that he previously frequented their place.

[36] According to her Frances was happy within the family and at work and she can't think of any reason why Frances would disappear and not tell any member of the family about it. She was cross-examined. It was put to her that the relationship between Frances and Letsheka caused friction between the accused and Frances. She then replied, stating that she doesn't know. She was adamant that she did phone and spoke to the accused because she knows his voice.

[37] She was confronted with the differences between her evidence and that of her husband with regard as to:-

(1) whether her husband knew about the assaults by the accused on Frances;

and

2) whether her husband knew about the termination of the love relationship between the accused and Frances. Her husband testified that he doesn't know about the assaults and the termination of the love relationship, whereas this witness said that he knows about it.

[38] Frans Matlebathe, a Superintendent in the SA Police Services, then testified. He is the commander and a senior to Frances. He knew Frances as a respectable, simple, responsible and dedicated person, who regarded her work as important. She was very dedicated in what she was doing. He got the impression that she loved her work and she had a bright future because she was busy furthering her studies. He knows of no reason why she would disappear and not report for duty since 27 August 2004.

[39] During cross-examination it was put to this witness *inter alia* that there was very serious friction between the accused and Letsheka because they were fighting for the love of Frances. He responded by saying that he doesn't know anything about it.

[40] Shaun Nieuwoudt, a fraud investigator of ABSA Bank, then testified. His evidence is to the effect that he was approached by the police to assist in the investigation of the withdrawal of money from the account of Frances after her disappearance on 27 August 2004. He explained how he got hold of the banking records of Frances and confirmed her account number. It was handed in as

Exhibit “H”.

[41] He testified that there were eight (8) withdrawals from the account of Frances between 28 August 2004 and 01 September 2004. A total amount of R4 180-00 was withdrawn. These cash amounts were withdrawn from three (3) different Automatic Teller Machines (ATM’s), situated next to each other at the corner of Pretorius Street and Andries Street, in Pretoria.

[42] At first they concentrated on the transactions of the 31st August 2004 to establish the time of the withdrawals and then looked at the video footage at about that time. Exhibit “J” was handed in being a record of the transactions on the 31st August 2004 at one of the ATM’s. He realized that they could not identify the person that withdrew money on the 31st August 2004 from the account of Frances.

[43] That being so, despite the fact that they managed to identify the person who withdrew money on the 31st August 2004 immediately prior to the withdrawal of money from the account of Frances, as being Piet Malepa, who withdrew money out of his own account. A profile of his account and personal details was handed in as Exhibit “K”. He testified that they studied the video footage of the 31st August 2004, as well as the photo’s printed from that video footage, but it could not assist them in determining the identity of the person who stood behind Piet Malepa in the queue. These photo’s were handed in as Exhibit “L”.

[44] Upon realizing that they were unable to identify the person who conducted the transaction on the 31st August 2004, they resorted to the transactions of the 28th August 2004, where R1200-00 was withdrawn from the account of Frances. “Exhibit “M” is an extract of the journal of one of the ATM machines mentioned and it proves the withdrawal of R1 200-00 from the account of Frances.

- [45] After calculating the time difference between the time of the ATM transaction recording and the time recorded by the video camera recording, they managed to locate the video camera recording of this transaction. Photo's printed from the video footage were handed in as Exhibit "N". These photo's depicts a man clad in a black T-shirt with a white stripe around the collar and two white stripes parallel to one another between the neck and the shoulder on each side of the neck on the front of the T-shirt, as the person who withdrew money from the account of Frances on the 28th August 2004 between 10h37 and 10h39. During cross-examination this witness stated that he could not identify the person save to state that he is a black man.
- [46] Piet Malepa, an employee of the Pretoria Zoo's evidence only confirm that he withdrew his money in the amount of R1 000-00 on the 31st August 2004, from one of the ATM's mentioned. He also identified himself on the photo's handed in as Exhibit "L".
- [47] John Mano, a Captain in the S A Police Services testified. He was given a black T-shirt with a white stripe around the collar and two white stripes parallel to one another between the neck and the shoulder on each side of the neck on the front part of the T-shirt. It was handed in as Exhibit "1".
- [48] He explained that when he looked at the video footage from which Exhibit "N"'s photo's were printed, he satisfied himself of the identity of the male person, who withdrew money from the account of Frances, as being the accused. He explained how he obtained a search warrant from the Magistrate which was handed in as Exhibit "O".
- [49] He proceeded to the house of the accused on 21st June 2005. He found the accused at his house, he showed the search warrant to him and explained the

purpose of his visit. The accused didn't object. He searched the wardrobe of the accused but could not find the T-shirt (Exhibit "1") that he was looking for. Accused suggested that he, (the accused) should look for it in the dirty laundry basket. Which he (the accused) did, and he found Exhibit "1" and handed it over to this witness.

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[50] During cross-examination he reiterated that the man depicted on the photo's in Exhibit "N" is the accused because of:-

1) his physique;

and

2) he had a lot of dealings with the accused since the inception of the investigations and he therefore knows the accused very well.

[51] It was put to this witness that the accused will testify that the search warrant was not shown to him. This witness was adamant that he showed the search warrant to the accused. He further testified that he was satisfied that the accused is the owner of the T-shirt (Exhibit "1"). It was again put to this witness that the accused will testify that on the 21st June 2005 he searched the house, nothing was found, he took nothing, he said goodbye and he left. He didn't say what he was looking for nor did he explain the purpose for the visit as well as the warrant. He reiterated that the T-shirt was handed to him by accused when he conducted the search.

[52] Inspector Rathagana of the S A Police Services, testified and showed his pocketbook of 2004 to the court. On page 33 thereof he made an entry on the 18th May 2004 that he served William Nkuna (the accused) with the protection

order made by Constable Rasuge. A copy of this pocketbook was handed in as Exhibit “P”. He explained where and how he served this protection order on the accused. After he convinced the accused to sign for receipt of the protection order as proof of service, which the accused eventually did, he handed the copy and the original to Frances, who was supposed to take it back to the Magistrate’s office. He was cross-examined and it was put to him that the accused would deny that he was served with the protection order. This witness was adamant that he did serve the protection order on the accused.

That concluded the evidence tendered on behalf of the State.

[53] Mr Moloto applied for the discharge of the accused in terms of section 174 of the Criminal Procedure Act, on the basis, so he submitted, that there was no *prima facie* case made out by the State calling for an answer from the accused.

[54] The court, unanimously in its ruling, refused the discharge of the accused at that stage. The court was convinced that a *prima facie* case had been made out not only by the evidence tendered on behalf of the State but also as a result of the magnitude of admissions made by the accused in terms of section 220 of the Criminal Procedure Act, at the inception of this trial. It is for these reasons that a discharge was refused.

The accused testified and his evidence appears on page 29 of this judgment.

Evaluation of the evidence tendered by the State:

[55] William Rasuge, Oupa Rasuge, Lena Rasuge, Wilhelminah Rasuge and Caroline Rasuge all being members of the Rasuge household on the 27 August 2004 testified that:

- 1) Frances was still staying with them at that stage;

- 2) that she was happy in the family set up;
- 3) that she would not wonder off or absent herself without any member of the family knowing where she was;
- 4) that she was a jovial person with a happy personality.

Their evidence in this regard stands uncontested and must be accepted by the court.

[56] William Rasuge impressed me as an honest and reliable witness. It is understandable that he wouldn't know of all the movements and affairs of his children, due to his work-related absence from home. I have no hesitation whatsoever in accepting his evidence as honest, truthful and reliable.

[57] Oupa Rasuge, though he initially appeared to be frightened, emerged later on as a confident witness. He did not contradict himself nor did he contradict the other state witnesses. I therefore accept his evidence.

[58] Lena Nienie Rasuge also impressed me with the straightforward manner in which she gave her evidence. She appeared to be honest and reliable and as a witness she made a favourable impression on me. She admitted that the accused was at their house on 26 August 2004 when she found him and Frances seated outside. This is a fact which she could easily have denied if she wanted to conceal it. I accept her evidence about the termination of the relationship between Frances and the accused by Frances as it is corroborated by Oupa, Wilhelminah and Caroline.

[59] Wilhelminah was very emotional during her testimony. It is understandable because as a twin-sister to Frances, they were very close and even shared secrets. That explains why she knew about the love affair between Frances and Abner,

when some of the other members of the Rasuge family did not know about it.

[60] After her emotional breakdown, and after she had composed herself, she impressed me with her honesty and reliability. She honestly stated that she initially had a good relationship with the accused until May 2004 when she got angry with him and did not talk to him anymore.

[61] Caroline Rasuge initially appeared to be hostile towards the questions put to her by Mr Moloto during cross-examination. That is understandable because of the loss or disappearance of her daughter. After the court had explained to her that her evidence needed to be tested through cross-examination, she accepted it and responded to the questions put by Mr Moloto.

[62] Her evidence differs from that of William Rasuge (her husband) with regard to whether he knew about the assaults on Frances by the accused and the termination of the relationship between Frances and the accused. I am mindful of these contradictions. However, contradictions *per se* do not lead to the rejection of a witness's evidence. They may merely be indicative of an error. Not every error made by a witness necessarily affects his/her credibility. In my view the nature of the contradictions are not material to the extent that they warrant the rejection of her evidence.

[63] She may well have been under the impression that her husband knew about these things when in fact he did not. These are the only two contradictions in her evidence that I could find, and they do not have a bearing on the other parts of the evidence tendered by her. Despite the existence of these contradictions I have no hesitation in accepting her evidence as far as it does not contradict the evidence tendered by the other state witnesses.

[64] The court is also mindful of the fact that this witness sat in court whilst some of the other state witnesses, who testified before her, gave their testimony. The fact

that a witness sat in court during the trial may or may not affect the weight of his or her evidence. It depends very much on the type of evidence that is presented and the circumstances. One needs to examine the contents of her evidence to determine whether the fact that she sat in court had any bearing on her evidence.

[65] Apart from testifying about the family life in the Rasuge household, she testified about an incident that happened on 01 January 2004, when she phoned the accused and had a telephonic discussion with him. No other witness testified to that effect and the possibility that she could have tailored her evidence in this regard, as submitted by Mr Moloto, does not exist at all. No other witness could possibly have influenced her to testify about the things that she testified about. She is a competent witness and she was therefore allowed to testify.

[66] The evidence of Percy Sibiya is very neutral. I accept it as an honest version of the events of which he testified. More so, because most of his evidence stands uncontested and unchallenged.

[67] Abner Ramasodi's simplicity in the manner in which he testified, his humble appearance and his honesty impressed me, He is a reliable witness. His actions as a boyfriend to the extent that he was concerned about Frances, favourably impressed me. I have no hesitation whatsoever in accepting his evidence.

[68] The evidence of Rose Legodi is on an equal footing to that of Percy Sibiya. Her evidence too is very neutral and an honest exposition of what happened. Her evidence, like that of Percy Sibiya was not seriously challenged or contested and I accept it unconditionally.

[69] Hendrick Masilo's evidence also stands uncontested and unchallenged and I accept it. It is the same as that of Ephraim Mphamo, who testified about the date when the blood sample was taken. The date on which the blood sample was taken was admitted and his evidence is therefore accepted, though I must state

that it appears to have been unnecessary to present this evidence in the light of the admission.

[70] The evidence of Pitsoane is accepted as being truthful. He conceded quite correctly in my view, that it may have been better if he asked Wilhelminah to read her pin code numbers to him so that he could determine whether it corresponds with the pin code numbers given to him by the accused. However, this is a neutral factor, it is neither here nor there and in my view it does not matter. It was his choice how to ask for confirmation of the pin code numbers from Wilhelminah. Be that as it may, it is this honest concession that impressed me. He was adamant that the pin code numbers of Wilhelminah and Frances originated from the accused. I have no hesitation whatsoever in accepting his evidence.

[71] Matabathe's evidence must be accepted as it is also uncontested and unchallenged. The cross-examination had no bearing whatsoever on what he testified about. I accept his evidence.

[72] Shaun Nieuwoudt's evidence is formalistic in nature and I accept it. He honestly did not attempt to incriminate the accused in the commission of any offence. His evidence is therefore accepted.

[73] Of all the state witnesses who testified, I am mostly impressed by the evidence of John Mano. His excellent demeanour in the witness box leaves no doubt in my mind that he was telling the truth. He never contradicted himself nor did he stutter for words. He answered questions put to him forthrightly and without any hesitation. He was steadfast in his testimony and I accept his evidence.

[74] The court is mindful of the fact that this witness, like Caroline Rasuge, sat in court whilst other witnesses gave their testimony before he could testify. He was allowed to testify because he is competent as a witness to testify. He testified

about a search warrant that he obtained and he is also the only witness who testified, on behalf of the State, about the search that was conducted. He could therefore not have tailored his evidence, to fit that of the other witnesses. Nieuwoudt, like Mano testified about the T-shirt, which is clearly depicted on Exhibit “N”, and this could not have influenced Mano because he did not only see the photo’s but also the video footage of the recording made of the person who withdrew money out of the account of Frances on 28 August 2004. The fact that this witness was present in court during the trial is quite immaterial, firstly if regard is had to his evidence *vis-à-vis* that tendered by the other witnesses who testified before him, and secondly with regard to the acceptability of the evidence he tendered.

[75] Rathagana’s evidence is accepted as being truthful and reliable. There is no way that he could have entered the events and occurrences of the 18th May 2004 in his pocketbook in anticipation of the possibility that he might be called more than a year thereafter to give evidence in a criminal trial about these entries.

Summary and evaluation of the evidence tendered by the accused:

[76] The accused testified in his defence. His evidence was at first that he was in love with Frances since May 1998, and later he said that he is still in love with her. The Rasuge family accepted him despite the fact that he is a married man. He and Frances had an agreement to be lovers till death would part them. The idea of Frances being his second wife was also canvassed.

[77] He testified about a friction that they had in May 2004 when Frances laid a charge of rape against him. He explained how Frances met him after his release and how she explained to him that she was instigated by Letsheka to press charges. She apologised and he forgave her. The charge was subsequently withdrawn. That was the only friction between them!

- [78] He further testified that on the 26 August 2004, in the evening, he was with Frances at her parental home. She asked to be transported to the hair salon the following day. Because of the other commitments he had, he could not and she went on her own to the hair salon on the 27 August 2004. Frances phoned him between 11h00 and 12h00 on the 27 August 2004 and asked him to collect her after her hair was done. Ultimately, as arranged, he showed up and they left. Frances said she was going to town and he then dropped her at the taxi rank at the Temba City Complex, approximately 5 to 6 km from the hair salon. He never heard from her or saw her again.
- [79] He had her cellular phone in his possession from that Friday, 27 August 2004 because his cellular phone had a battery problem. She lent the phone to him. It was also not Frances's phone as her cellular phone's battery was flat since she did not charge it. The cellular phone which he got from Frances was stolen the Monday in town and he was never informed that the police recovered it.
- [80] On being asked by his Attorney of the blood on the boot mat, he stated that he did not see the blood, he only heard that blood was found. He explained how he and Frances used to visit a secret place by the name of "Slaughter" where they used to make love. Sometimes it was even in the rain and they would then use the boot mat to lie on. The presence of the blood could be of menstruation, because it happened in the past. Upon realizing the dark spot on the mat he would wipe it, so that his family doesn't see it. He said the police asked him the whereabouts of the boot mat.
- [81] He testified and said that he knows nothing about the allegation of the withdrawal of money or that he knew the pin code of Frances.
- [82] With regard to the T-shirt, he testified that Mano came to his house but he didn't find anything. The search warrant was also never shown to him. He denies that it is he who is depicted on the photos in Exhibit "N".

- [83] He denies any knowledge of the pin code of Wilhelminah. According to him Pitsoane never told him about this or confirmed the number with Wilhelminah in his presence.
- [84] Upon being asked about Abner he said that he only learnt of Abner in this court and he doubt it that Frances visited Abner about 3 weekends in a month.
- [85] He denies that Caroline, the mother to Frances, phoned him on the 01st January 2004. He also denies telling her that he will kill Frances as he has no reason to do so. He testified that he did discuss the Letsheka issue with Frances and she said that she will never talk to Letsheka again.
- [86] He denies that the relationship between him and Frances was terminated during May 2004. According to him Frances used his motor vehicle every day. He testified about the transportation of the family members of Frances to attend to the funeral arrangements during July 2004 at Alexandra, in Johannesburg. He lent his motor vehicle to Frances for that purpose.
- [87] He also testified about the fact that he, Nienie and Wilhelminah transported Frances to attend a course in Pretoria. He said that he had a good relationship with the Rasuge family. When he queued to buy a ticket for Wilhelminah, he send her to buy a cold drink for Caroline, her mother. He is surprised about the evidence of Wilhelminah that they accompanied him and Frances to Pretoria because they did not want Frances to be alone with him. He is unaware if Frances is still alive or dead but he still loves her very much.
- [88] He was cross-examined by Mr Smit SC on behalf of the State. During cross-examination it emerged that he initially testified that:-

- 1) he still loves Frances very much;

- 2) the only friction was in May 2004;
- 3) he had an excellent relationship with the Rasuge family;
- 4) he became a suspect the Monday following the Friday, the 27 August 2004;
- 5) Frances did not hire people to kill him;
- 6) Letsheka, but not Frances, hired people to kill him.

[89] He was then confronted with the contents of Exhibit "B", being the statement which he voluntarily made as a complainant against Frances and Letsheka in a case of conspiracy to murder. It was then that things, or rather the evidence of the accused, fell apart. He contradicted himself on virtually every material aspect contained in the statement which he not only admitted that he made, but also admitted the correctness of the contents thereof.

[90] He advanced flimsy and illogical explanations of how it came about that he made this statement. He even went to the extent of claiming that he was tortured, prior to the making of this statement. On being confronted with the fact that it was a statement by himself as a complainant and not, for example, a warning statement, he then resorted to the explanation that the assaults on him affected his mind and he couldn't think properly.

[91] He thereafter, upon realizing that that won't help, resorted to blaming the person who took down the statement. He stated that that person omitted some information, he inserted some information that he did not tell him and he simply recorded some of the things that he said, wrongly. It is clear that he tailored his evidence as the cross-examination continued. He however did not want his

Attorney to be blamed but rather blame it on insufficient time in order to consult properly on the statement.

[92] Later on, he resorted to hide behind the fact the he told his previous Attorney about the mistakes in the statement but did not inform his present Attorney. Accused quite easily summer saulted to mend and adjust his evidence.

[93] His reason for not discussing with Frances his awareness of the plot to kill him by Frances and Letsheka changed every time that he was asked why he did not discuss it.

[94] At first he said it would hurt her if he discusses it with her, then he said she might have gone to Letsheka and Letsheka would kill him personally; ultimately he said he did not believe that Frances was the actual perpetrator but that she was forced into this by Letsheka. This clearly demonstrates how untrustworthy the evidence of the accused is.

[95] On numerous occasions during cross-examination, the accused not only became argumentative with counsel for the State but he flatly refused to answer certain questions.

[96] Although in his statement he painted a picture of Frances as the main perpetrator in the plot to murder him, he stated during cross-examination that he did not believe that she was, yet he never told the police that he didn't believe that Frances was the main perpetrator.

[97] The demeanour of the accused in the witness box leaves much to be desired. He described in the statement in a chronological order the three incidents when he saw a white Jetta motor vehicle which not only raised suspicion but confirmed what his informers told him. The last of the three incidents was on the 26 August 2004 at the parental house of Frances where they sat outside the house and had

discussions. When the opportunity availed itself he did not discuss it with Frances, despite the fact that he was informed about the plot to kill him.

[98] He only laid this charge of conspiracy to murder against Frances and Lesheka on the 03rd September 2004. That is after he became aware of the fact that Frances disappeared on Friday 27 August 2004 as he was told by Nienie and also Inspector Mokgatle on Sunday, 29 August 2004.

[99] On his own initial version he became a suspect in this case on Monday the 30th August 2004. He later changes to say that he became a suspect on the 01st September 2004. Be that as it may, the fact of the matter is that he laid this charge some days after he became aware of the disappearance of Frances and some days after he became aware of the fact that he is a suspect in this case.

[100] It is clear that he purposely laid this charge in order to have some explanation in the event he is charged for the murder or disappearance through kidnapping of Frances. He was keeping the proverbial backdoor open.

[101] Unfortunately for him, he did not use it as a defence to state that he acted in self-defence in that he killed Frances before she could kill him. He must have thought that seeing that the body of Frances is not found, he will be acquitted. That clearly explains why no defence was raised, not that he is obliged to raise a defence, but that would probably have been a more plausible defence or explanation.

[102] He testified that he had a good relationship with the Rasuge family. It is indeed strange that even after he learnt about the disappearance of Frances, the lady whom he loves so much, on Sunday, the 29th August 2004, he never deemed it necessary to go to their house and enquire about what happened to Frances. Bearing in mind that on that same Sunday he was still in possession of the cellular

phone which he “borrowed” from her. He did not even deem it necessary to attempt to return it to Frances or her family members.

[103] He kept it until, conveniently so, it was stolen on the Monday and he never bothered to lay a charge nor is there any evidence that he tried or attempted to inform Frances about its disappearance. He clearly stated that he chose to go to Inspector Mokgatle rather than going to the Rasuge’s house. This is indeed a strange behaviour towards a family that accepted him as a son, a family which he used to visit with his children, and the parents he respected very much.

[104] It is strange that instead of making enquiries from Frances’s family about the disappearance of Frances, whom he claims to love, he decided to go to Inspector Mokgatle, who had informed him that he was suspected of being responsible for Frances’s disappearance.

[105] His behaviour is remarkably different from that of Abner, who upon realizing that Frances was not coming, went to her parental house, despite the fact that he was not formally introduced as her new boyfriend, and enquire about her whereabouts. Bearing in mind of course that Abner was her boyfriend for only a few months compared to the years that accused claims he had an affair with Frances.

[106] He testified that he had a friction with Letsheka in which Frances was involved on the 31st December 2003. This lends credence to the evidence of Caroline Rasuge, who testified that she phoned the accused on 01st January 2004, which was the very next day. If the incident of the 31st December 2003 did not occur then it would not have been necessary for Caroline, the mother to Frances, to phone him on the 01st January 2004.. I have no hesitation whatsoever in accepting her evidence in this regard.

[107] A ring of truth is also to be found in the fact that Caroline testified that after the accused threatened to kill Frances and himself, she asked him what about his children. He then replied that his wife, who will remain, will look after them. It was not necessary to testify about this if it did not happen. This unnecessary statement is indicative of the fact that she told the truth.

[108] The accused testified that he was in possession of the cellular phone of Frances from Friday the 27th August 2004, at approximately 14h00, when he dropped her at Temba Complex near the taxi rank. He then went home and at home he charged his cellular phone's battery which apparently gave problems. He admits that he then made 88 phone calls on his own cellular phone on Saturday (being the day following the day on which he borrowed Frances' cellular phone). He only started using the phone of Frances that Saturday evening at 20h34. His explanation that Frances lent him her cellular phone because his cellular phone's battery was flat, cannot be believed and is rejected as false. I have no hesitation whatsoever in rejecting the evidence of the accused as false in as far as it differs from that of the state witnesses. The evidence of the State witnesses is accepted as the truth.

[109] Before dealing with the law and applying it to the facts in this case, I need to mention that Mr Moloto attempted to hand in a specimen, empty case docket whilst he cross-examined one of the police witnesses. He did so without laying a proper basis therefore and without satisfactorily explaining the reason why he wanted it to be handed in, let alone the manner in which he attempted to hand it in as an exhibit. I provisionally admitted it as Exhibit "Q". No reference whatsoever was made to this exhibit during the defence case, and the provisional admission thereof falls off. Exhibit "Q" is therefore excluded as evidence, and it is handed back to Mr Moloto.

The Law and its application to the facts:

[110] It is clear that the State relies solely on circumstantial evidence in this case, seeing that no direct evidence was presented.

[111] To require the production or discovery of the body (*corpus delicti*) in all cases would be unreasonable and unrealistic and in certain cases would lead to absurdities. To my mind it would lead to a gross injustice particularly in cases where a discovery of the body is rendered impossible by the act of the offender himself.

[112] It is thus proper for a court to convict an accused on circumstantial evidence provided it has the necessary probative force to warrant a conviction, and the fact that death can be inferred from circumstances that leave no ground for a reasonable doubt.

[113] It is not hard to think what the state of affairs will be in this country, if the legal position were to be that whenever a murder is committed and the body (*corpus delicti*) of a deceased is not found, then the accused is entitled to his acquittal. That being so, despite the existence of overwhelming circumstantial evidence that points a finger to the accused person. Each case must therefore be decided on its own merits.

[114] Mr Moloto referred the court to **The South African Law of Evidence** by Zeffert, Paizes & Skeen, the 2003 edition. In particular, reference was made to pages 135 – 136, where the following is stated:

“Courts are reluctant to convict for murder unless there is direct evidence that the deceased is dead, the absence of a body may be a very good reason for holding that the Crown has not proved its case beyond reasonable doubt, for it lets in the possibility that the person in question may be still alive. But direct evidence is not absolutely essential, and if there is a

satisfactory explanation for why the body should be missing,
death may be inferred from circumstantial evidence.”

(My underlining.)

[115] In this regard, the learned authors made reference to the cases of **R v Nhleko** 1960 (4) SA 712 (A) and **R v Sikosana** 1960 (4) SA 723 (A). I will refer later on in more detail to these two cases.

[116] The absence of the body (*corpus delicti*) is not an insurmountable bar to finding an accused guilty of murder. The learned authors make it a prerequisite that there must be a reasonable explanation for why the body should be missing. What will be a satisfactory explanation will most definitely depend on the evidence tendered. I think that not only must the explanation be satisfactory to the court, but it must also be reasonable and reconcilable with the evidence tendered.

[117] The reason why the body was not found in the **Nhleko**-case, *supra*, was because it ended up, according to evidence tendered, near a river which was infested with crocodiles. The possibility that those creatures could have taken and devoured the body is very high. That explanation in my view is satisfactory.

[118] However, it is not always possible that an explanation may be forthcoming. It may well be that no evidence is adduced in a case from which a satisfactory explanation can be found as to why the body is missing. It may well be that no explanation is forthcoming because the accused exercised his constitutional right to remain silent; or no confession or admission statement is presented as evidence containing an explanation why the body is missing; or no witness is called by the State that can give an explanation as to why the body is missing.

[119] With the greatest respect to the learned authors I cannot agree that it must always be a pre-requisite that a satisfactory explanation must be provided why the body is missing. The circumstances may vary from case to case and each case must be

decided on its own merits.

[120] Unlike in the **Nhleko**-case, *supra*, and in **S v Bengu** 1965 (1) SA 298 (N), in an appropriate case, a conviction of murder can therefore be sustained on the basis that there are facts so incriminating and so incapable of any reasonable or innocent explanation as to be incompatible with any hypothesis other than a finding that the accused has in fact killed the person who has disappeared.

[121] The evaluation of circumstantial evidence must be guided by a test of reasonableness. The onus on the State is not that it must prove its case with absolute certainty or beyond any shadow of a doubt. All that is required is such evidence as to satisfy the court and to prove its case beyond reasonable doubt. It is trite law that the accused is under no legal obligation to prove his innocence. The State must prove the guilt of the accused beyond reasonable doubt.

[122] In the case of circumstantial evidence such as this one, I am guided by the *locus classicus* case of **R v Blom** 1939 AD 188, which sets out the cardinal rules of logic that have to be satisfied when dealing with inferential reasoning.

Firstly, the inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn;

and

Secondly, the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude the other reasonable inferences, then there must be a doubt whether the inference sought to be drawn is correct.

[123] In S v Cooper 1976 (2) SA 875 (A), that court cautiously remarked that when one is faced with circumstantial evidence alone, one must make a distinction between inference and conjecture.

[124] There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. Sometimes these other facts can be inferred with considerable certainty. If there are no positive proven facts from which the inference can be made, the method of inferential reasoning fails and what is left is mere speculation or conjecture.

[125] Of course, the strength of circumstantial evidence will tend to vary depending on the cogency and character of the circumstances. What needs to be pointed out however, is that when the evidence is abundant, such as in this case, it may be equal to or even superior to direct evidence.

[126] I find the following to be the proven facts in this case:-

- 1] that Frances had a happy family life;
- 2] that Frances had a happy new love relationship with Abner Ramasodi. She even bought gifts in order to surprise him on the day of her disappearance. The value of those gifts is almost equivalent to her monthly salary;
- 3] that Frances had planned to go with her new boyfriend, Abner Ramasodi to his family for a funeral;
- 4] that Frances had a happy professional life – she enjoyed her work and was in the process of furthering her studies for a brighter future at work;
- 5] that the relationship between the accused and Frances was turbulent

because there was a rape charge laid by Frances against the accused and she even had a protection order against him;

6] that many people are concerned about her disappearance and it received wide publication and media attention;

7] that despite diligent investigations by the police and even a reward of R500 000-00 nobody came forth with any information about the whereabouts of Frances.

[127] This case is distinctly different from the **Nhleko**-case *supra*. Like in the **Nhleko** case no body or part of the body was found. However, in the **Nhleko** case there was no proof of the disappearance at that time, in that neighbourhood of any person who might have been the victim of a murder. In this case the evidence about the disappearance of Frances is abundant.

[128] In the **Nhleko** case there was evidence by a co-accused and a State witness as to how a body was disposed of. In this case there is no evidence by any witness of how the body was disposed of. In this case it is purely circumstantial evidence that was adduced.

[129] In the **Nhleko** case, the appellant was found to be a credible witness whereas in this case the court is satisfied that the accused is a blatant pathetic liar.

[130] Like in the **Sikosana**-case, *supra*, there is proof in this case of a turbulent relationship that existed between the accused and Frances. Proof thereof are:-

the fact that Frances laid a rape charge against the accused;

that she took out a protection order against the accused; and

that the accused threatened to kill her and himself as he told Caroline, the mother of Frances.

[131] Furthermore, like in the **Sikosana** case, we are dealing with the disappearance of an educated person, who was a devoted daughter with strong family ties and also strongly attached to her family, in particular her twin-sister with whom she shared secrets. This is distinctly different from the **Bengu**-case *supra*, where it was an infant that disappeared.

[132] Frances knew how to utilize the police service (because she was a member thereof) and the court process for her protection. She was happy at work and had no reason to absent herself from work without taking leave in excess of a year; not even handing in her service pistol; and without contacting her colleagues.

[133] Frances had a fixed monthly income in the form of a salary. She took the responsibility upon herself of buying gifts for her boyfriend in the form of a washing machine and microwave oven to the value almost equivalent to her monthly salary. This she did, two days before her disappearance. These goods were delivered at the premises of her boyfriend's next door neighbour on the day of her disappearance. She wanted to surprise her new boyfriend with these goods. There is no reason why she would abscond before she could even surprise her new boyfriend, and observe his reactions thereto.

[134] Blood, proven to be the blood of Frances, was found on the boot mat of the car of the accused. The explanation advanced by the accused as to how it came about that blood was found on that boot mat need some scrutiny.

[135] His explanation is that he had sexual intercourse with Frances on that mat of the boot and she might have menstruated. He however did not say with any certainty when he had sexual intercourse with her. He was very vague. He explained how he, on a previous occasion, wiped himself and removed the marks from the

boot mat because he is a family man and he didn't want his family (in particular his wife) to see the bloodstains. If it was indeed true, it is expected of him to tell the court exactly when it occurred seeing that it is admitted that these bloodstains were detected and samples thereof were taken from the boot mat on 06 September 2004, approximately a week after the disappearance of Frances. His general explanation of how the bloodstains could possibly have been on the mat of the boot is rejected. On the other hand, sight should not be lost of the fact that he also testified that he doesn't know of blood that was found in his absence on the boot mat of his car.

[136] I am satisfied that it is the accused who withdrew money from the account of Frances on the 28th August 2004 in the amount of R1 200-00. Mano testified that he identified the person who withdrew money from Frances' account as the accused from the video footage he saw. He knows the accused very well and had a lot of dealings with him on a daily basis since he started with his investigations. He also recognized the accused through his physical appearance.

[137] Mano's evidence as to how he managed to retrieve the T-shirt (Exhibit "1") from the accused's home is also accepted. He was satisfied that the accused is the owner of the T-shirt (Exhibit "1"). It is a similar T-shirt worn by the person depicted on the photo's (Exhibit "N"), whom Mano identified as the accused.

[138] It is also common cause that the accused was in possession of the cellular phone which Frances had in her possession on the day of her disappearance. The explanation as to how he came to be in possession thereof is rejected. He was in possession thereof at the time when he was contacted by Nienie as well as Inspector Mokgatle who informed him of the disappearance of Frances. The cellular phone, on his version, was stolen either on the Monday or the Tuesday. I am satisfied that he disposed of it.

[139] The fact that, he withdrew money from the bank account of Frances, he used her

cellular phone, and disposed of it after her disappearance leads me to the conclusion, as the only reasonable inference, that he had the positive assurance and certainty that she will not complain about it because she is dead. He had murdered her.

[140] That brings me to the question as to whether Frances is in fact dead. This court is satisfied beyond a reasonable doubt, on the proven facts before me, as the only reasonable inference that Frances is dead, having regard to the following:

- 1] the lapse of time since her disappearance which is now in excess of a year;
- 2] that despite diligent investigations by the police and even holding out a reward of R500 000-00, no one came forward with any information about the whereabouts of Frances;
- 3] that despite wide publicity in the media nothing is heard of Frances;
- 4] the failure of Frances to communicate with any of her family members, her colleagues, her boyfriend or even the accused, who claims that they parted being on good terms, when he was the last person in her company on 27 August 2004;
- 5] the blood of Frances that was found on the boot mat of the car of the accused approximately a week after her disappearance;
- 6] the threats by the accused that he will kill her; and
- 7] the turbulent relationship that existed between the accused and Frances.

[141] No evidence was placed before this court that indicates that the possibility exist that Frances might still be alive. No reasonable inference can be drawn from the

proven facts that she could possibly still be alive. This case is distinctly different from the **Bengu**-case *supra*, where a reasonable possibility existed on the proven facts, that somebody else might have taken the abandoned infant and that the disappearance of the infant did not, therefore, necessarily mean that the infant was dead. The only reasonable inference that can be drawn from the proven facts of this case is that Frances is dead.

[142] The proven facts also exclude the possibility that somebody else could have killed Frances. Abner was expecting Frances to accompany him to the funeral of one of his family members. He was aware that she wanted to surprise him with gifts, as she told him on the Wednesday before her disappearance, though he did not know what type of gifts it would be. She told him on that morning of the 27th August 2004 that she is going to have her hair done in preparation for the weekend's funeral. In view of the aforementioned, the possibility that Abner would have killed her is very remote and can be safely excluded.

[143] As far as Letsheka is concerned, no evidence was presented that he met with or had any dealings with Frances on the 27th August 2004. Unlike the accused, who admit that she was in his company on the day she disappeared, who had her cellular phone in his possession and who withdrew money from her account after her disappearance. Letsheka is therefore also excluded as a person who could have killed Frances because no evidence was presented that there was a turbulent relationship between Frances and Letsheka.

[144] It is true that a crime, even murder, may be proved without the motive being established. But it is always very important to consider whether the accused had or may well have had a particular motive for killing the deceased.

[145] Two possible motives were pointed out by Mr Smit SC during his address namely:-

1] the alleged love affair between the deceased and Letsheka coupled with the jealousy and possessiveness of the accused;

and

2] the conspiracy plot to kill him.

[146] This court is satisfied that the accused, having information about a plot by the deceased and Letsheka to kill him embarked on a mission to get rid of the deceased. He went to her parental place on the 26th August 2004 where he met her and had some discussions with her. He established that she planned to have her hair done at a hair salon the following day, being the 27th August 2004. He took her from the hair salon, he went with her, killed her and disposed of her body.

[147] If one puts aside the far-fetched conjecture it seems to me that the purely circumstantial evidence in this case, consisting of so many probative factors, all pointing in the same direction, leads me irreversibly to the conclusion that the accused carefully planned and executed the removal and killing of his ex-girlfriend, Frances Rasuge.

[148] The court is satisfied that the State succeeded in proving the guilt of the accused beyond reasonable doubt. The accused is therefore found guilty as charged.

R D HENDRICKS

JUDGE OF THE HIGH COURT

DATE OF HEARING : 03 OCTOBER 2005 –
17 NOVEMBER 2005

DATE OF JUDGMENT : 17 NOVEMBER 2005

COUNSEL FOR THE STATE : ADV J J SMIT SC

COUNSEL FOR THE DEFENCE : MR POST MOLOTO