

**REPORTABLE**

**IN THE HIGH COURT OF SOUTH AFRICA  
CAPE OF GOOD HOPE PROVINCIAL DIVISION**

**CASE NO: SS131/2002**

In the matter between:

**THE STATE**

versus

**RASHIED STAGGIE  
RANDALL BOSCH**

**ACCUSED 1  
ACCUSED 2**

JUDGMENT DELIVERED ON 28 JANUARY 2003

**SARKIN, AJ**

The accused in this matter are Rashied Staggie, accused number 1, and Randall Bosch, accused number 2. They were charged with one count of kidnapping and one count of rape in that, using a firearm, they kidnapped and raped the complainant on 22 August 2001 near Mitchells Plain, Cape Town. Accused

number 1 was additionally charged with one count of transgressing Article 2 of Act 75 of 1969.

After both pleaded not guilty, an interlocutory application was brought by the State for the evidence of the complainant to be given in camera and via closed circuit television. This was granted, the reasons for the first application that the complainant testifies in camera, and via closed-circuit television, but that the press could be present was the subject of an earlier extensive judgement.

The complainant in this case, Ms K, then testified in accordance with the above order. She testified that she was 19 years old, married and had a daughter who was almost 3 years old. She had grown up in Manenberg and her formal education was limited. She had not progressed further than standard 3. She was the fifth child in a family of 8 children.

She testified that the dominant gangs in the areas where she grew up were the Hard Livings, the Americans and the Jesters. Accused one, Rashied Staggie was known to her as leader of the Hard Livings gang. Her older brother, Christopher, and brother-in-law, Cyril and another relation Randall, were members of the Hard Livings gang. She knew Randall Bosch, accused two, as a member of the Hard Livings gang. Most of the time the Hard Livings and the Americans gangs fought each other.

She stated that she knew Rashied Staggie well and that he was a frequent visitor at their home, but that when he visited he did not go inside. She stated that he had been to the flat where she lived to bring bullets and a gun for her brother-in-law to use in a gang fight between the Hard Livings and the Americans. She could not remember when exactly this incident took place. She had also seen accused one at meetings of the Hard Livings gang. These meetings used to take place in various places in Manenberg, and particularly at a place called the 'hok' which lay near a block of flats in the vicinity. This place was usually used for gang meetings. She had attended at least two meetings with her brother in law.

The complainant became concerned about her small daughter growing up in this atmosphere and approached a policeman by the name of Fahiem Jacobs for assistance. She made a request for assistance to him after her flat had been searched by a group of policeman which included the aforesaid Jacobs looking for stolen items and illegal firearms.

The complainant was aware that her brother possessed a "zipgun" and bullets and told Jacobs that she had information regarding firearms. She told him about

the gun possessed by her brother and that it was hidden in the warmer drawer of the oven and the bullets amongst her child's nappies.

In the early evening the police returned and searched the flat again. Both the firearm and bullets were found, and her brother was arrested. He and her brother-in-law were in the flat at the time of the search.

The brother was released from custody the next day. She testified that he made no court appearance regarding the case and he was not prosecuted regarding the possession of the zipgun. She did not know why this was so, she only heard that it was because only one bullet had been seized. The evidence of the finding of the zip gun was supported by her brother, Christopher, who testified later in the trial. He testified that it was his gun and he had pleaded guilty in court to the possession of this gun.

The complainant testified further that a few months later she heard that the Hard Livings gang possessed a firearm which was being kept at the home of a friend who was a member of the gang. She saw a policeman, Fahiem Jacobs, in the street and told him about the firearm.

The house was searched but the firearm was not initially found. She then informed Jacobs that the firearm had been hidden behind a woman called Fazlin, in the clothes Fazlin was wearing. As there were no policewomen present to search the women the complainant and Fazlin were instructed to search each other. The complainant retrieved the firearm and handed it to Fahiem Jacobs whereupon both she and Fazlin were arrested and taken to Nyanga Junction police station. The complainant was also arrested to avoid suspicion. The complainant was released the following day, but Fazlin was charged for the illegal possession of the firearm.

The complainant stated that she subsequently went to see Jacobs at the Manenberg police station and expressed her concerns regarding information being leaked by the police to the Hard Livings gang. Members of the Hard Livings gang had informed her that she had provided information to the police regarding the firearm recovered from Fazlin. Fahiem Jacobs then told her to see a person called Charlotte who was a member of the SAPS and was sitting in a vehicle outside the police station.

The complainant subsequently gave information to Charlotte on more than one occasion and received payment for this information. They usually met twice a week. The complainant was not employed at the time but informed her family that she was working as a char for a white woman, so as to avert suspicion. This continued for a month or two prior to the incident in question.

The complainant testified further that she had a woman friend Des. Des was married to a man who was a member of the Americans gang. He used to beat her up and at one time he assaulted her, and as a result she had had a miscarriage. Des would come to talk to the complainant about the problems with her husband. The complainant offered to help her, and suggested that she should give information to Charlotte, about his gang activity, and about guns so that her husband would be arrested and put in jail. She agreed and the complainant took Des to see Charlotte on Tuesday, 21 August 2001. Des talked to the police in the vehicle that Charlotte was in.

On the day of the alleged rape incident, Wednesday 22 August 2001, the complainant testified that she was in her home when she saw Des standing near the driver's window of a white motor vehicle at about mid day. Rashied Staggie, accused one, was seated in the motor vehicle. Although the windows were tinted the driver's window had been rolled down enabling her to see accused one.

The complainant thought it strange to see Des talking to accused one. She then saw Des walk away and accused one drove away. The complainant then decided that she would visit a friend called Nazli who lived nearby to retrieve a blouse that belonged to her. Nazli was not at home. On her way back to her flat the complainant bumped into Des who would not speak to her and said she was a traitor. The complainant observed that Des had money in her hand as well as an 'outfit' which consists of a quantity of dagga and a mandrax tablet. The complainant suspected that the drugs and money had been obtained from accused one, as accused one had on occasion given money to people. The complainant herself had on occasion received R20, 00 from him.

The complainant returned to her flat, but left again for Nazli's home after the television soap opera 'Days of Our Lives' began. Before reaching Nazli's home, however, the complainant came across one Nico who went by the nickname of 'Muis'. He was a member of the Hard Livings gang. The complainant asked 'Muis' if he had spoken to Des. He replied, however that he did not have time for traitors. The complainant thought at that time that he must have spoken to Des who knew that she was a police informant. Although 'Muis' walked away from the complainant she followed him and asked for a cigarette as she wished to speak to him. 'Muis' told her that he did not give cigarettes to traitors. The complainant

nevertheless followed him to the 'hok' where he bought 2 'outfits.' He then went to his home. The complainant knocked on the door and then entered. After passing one 'Barcelona' coming out of 'Muis's' room she entered 'Muis's' room. In the room she saw 'Muis' and Des both of whom were smoking. At that time the complainant realized that she had been exposed as a police informant and left. No one greeted her but she thought someone might have said something about a traitor.

After once again checking to see if Nazli was at home she walked home. On arriving at her building she noticed that accused one's car was parked in front of their gate. It was still light at this stage and her brother-in-law Cyril was speaking to accused one. The complainant turned around and walked around the corner as she did not wish to see him. She knew it was accused one because she recognised the motor vehicle. She identified it as the motor vehicle in Exhibit 'A' and that it belonged to Rashied Staggie, accused one.

After loitering around the corner for a while the complainant started to walk back. As she did so accused one drew up alongside her in his motor vehicle. The driver's window was partially rolled down and accused one told her that he wished to see her and told her to meet him at a place behind Pam Court and Olga Court that evening, although the complainant could not remember the specific time. The complainant never questioned accused one regarding the reason for the meeting as she did not wish to make him suspicious. The complainant then went home.

After two friends visited her the complainant walked out with them. As she was coming around in the vicinity of Olga Court she noticed accused one's motor vehicle again and walked in the direction of the motor vehicle. Randall Bosch and two other men were in the vehicle. The complainant asked what the two men were doing in the motor vehicle. Accused one, Rashied Staggie, told her to shut up and get in the car. The complainant refused, whereupon accused one threatened to kick her in her private parts.

Accused one told accused two, who was sitting on the front seat to sit in the back. The complainant knew accused two as he was a member of the Hard Livings gang and was friendly with her brother-in-law.

The complainant then got into the front passenger seat.

Accused one then drove the vehicle passed Nyanga Junction and in the direction of Mitchell's Plain. It was now dark and accused one parked the car near a tree along a stretch of road that was surrounded by sand and was not busy. Accused two and the two other men climbed out of the vehicle and smoked a combination

of dagga and mandrax. Accused one told her that he had lost trust in her and to restore this trust she must have sex with accused two and the other two men. The complainant refused to do this whereupon accused one took out a firearm from the cubby hole. The car light was on and the back door was open behind her.

Accused one moved the firearm against her right leg and the complainant testified that she knew that something was going to be done to her, and thought that she was going to die. Accused one told her to climb into the back seat of the vehicle. She did this and was told to take her clothes off. She refused to do this. Accused one sat in the drivers seat with the firearm resting on his left knee.

Accused two then came to the open car door and told her to take her clothes off and grabbed her skirt. The complainant then told him she would take her clothes off herself, and took off her skirt and panties and placed them on top of the back seat. Accused two grabbed her right leg and tried to push her down. The complainant lay down on the back seat with her head on the arm rest of the back door on the driver's side. Accused two then climbed into the vehicle and had sexual intercourse with her. He hurt her and she pushed his chest and told him to get off her. She was crying and asked him why he was doing this and he told her to shut up. The complainant saw that accused one was watching them in the rear view mirror. The other two males then also had sexual intercourse with her. The third male whispered to her that he did not want to do it but did not have a choice.

The complainant testified that none of the men had ejaculated in her and that after each man had raped her, he wiped his penis off on a rag with black oily marks on it.

The complainant testified that she did not give any of the men permission to have sexual intercourse with her.

The complainant then put her clothes back on and was told by accused one to climb back into the front passenger seat. He threatened her that if she told anyone about the incident she would be dead within a week. She testified that she thought he meant it.

Accused one then drove back the way they had come. The complainant testified that she was very shocked and cried continuously. She could however remember that accused one said that he wanted to see her again within the week. She thought that she was dropped off at the place where she had been picked up but she could not really remember and she had walked home.

She could not remember what time she arrived home but some people in the house were still awake. She spoke to nobody but bathed and went to sleep. She did not tell her mother about the incident because she was afraid that her mother would accost accused one and that he would then know she had spoken about the incident and would kill her.

The following day the complainant went to meet Charlotte as usual as it was a Thursday. Charlotte sensed something was wrong and asked the complainant if there was a problem. The complainant, Charlotte and a policeman with the name of Chris were in the vehicle. Charlotte told Chris to leave the vehicle. When the complainant was alone with Charlotte in the vehicle she started to cry and told Charlotte about the incident. Charlotte undertook to help her and after leaving the complainant at the Grand Parade in Cape Town went to fetch another policeman by the name of Clint. Clint told the complainant that if she made a case she would receive protection.

The complainant then decided to press charges and she was taken to the Bellville-South police station where she made a statement. The complainant was then taken into the Witness Protection Programme. Later she was taken to a doctor for a medical examination.

At this point in the proceedings the court adjourned to go on an inspection in loco and formal admissions regarding this inspection were recorded and handed in as Exhibit 'B' after that inspection.

The complainant also identified the photographs taken during the inspection in loco and they were handed in as Exhibit 'E'.

The complainant stated that she had described the scene where the incident had occurred, even though it was dark. She had gone with the Investigating Officer, Inspector van Sitters, after she had made a statement at the police station, but as it was raining and he was driving fast she could not point out the scene in question. On the inspection in loco the complainant could not point out the exact spot as she testified that new buildings had been built, trees had been cut down and the area was very different to that which it had been more than a year previously.

The complainant testified that she had never seen the two other men who raped her, in addition to accused two, before, but had assisted the police in drawing up identikits which were handed in as Exhibits 'C' and 'D'.

It was put to the complainant in cross examination that she had made

a practice of making rape charges, for financial benefit from her earliest years, and that this was her *modus videndi* and that she was not raped and her allegations were false. This was vehemently denied by the complainant.

She admitted to having occasionally run away from home when she was younger as a result of her eldest brother assaulting her and sexually molesting her. She stated that she wished to get her brother and brother-in-law out of the house, as it was as a result of gang fighting between the Hard Livings and Americans that a bullet was fired into her flat which narrowly missed her child.

The complainant informed the court that all four of the girls in the family had been sexually molested by her father and that he had received a seven year jail sentence for raping one of her sisters. She stated that she had been told that she had been molested by her father when she was a baby and that he had molested her again when she was at school.

She related that on one occasion when she had left home her brother Christopher and a person by the name of Geronimo had found them at Cape Town station. She had called the police and encouraged her friend, Eva, to lay a charge of rape against her brother regarding a rape, which had taken place in her presence. She testified that she had told the police that the two men had knives and were trying to grab her. The police had confiscated the knives and arrested them for possessing dangerous weapons. She said that her mother had threatened her friend, so as to withdraw the case, because she did not want her son to go to jail. It was put to her that the rape of her friend Eva, which she had described, was a figment of her imagination and had never happened. The witness denied this very strongly and repeated that it had occurred.

The complainant testified that accused two, Randall Bosch, had been to her house frequently, even before her baby was born and before he went to jail in 1999. He apparently used to smoke (dagga) with her brother Christopher. She testified that accused one, Rashied Staggie, had come to their house on various occasions but did not go inside. While the complainant at one point averred that Rashied Staggie gave guns to her brother she denied this at another time.

The statement made by the complainant on the laying of the charges against the



accused was identified by her and handed up as Exhibit 'F'.

The complainant was questioned about the statement but no material deviances from her statement were elicited.

Defence counsel put to the witness that the rape was a conspiracy by the police to put Rashied Staggie in jail and for her to gain financially. This was again strongly denied by the complainant. She did concede that her material circumstances were better than before, now that she was in the Witness Protection Programme, but that in other respects she had lost everything, and would rather go back to her mother if she could and nothing could make up for the loss of her family.

The witness explained that she had not told her mother about the present rape as she was afraid her mother might do something drastic such as kill Rashied Staggie.

Defence counsel made much of the fact that the complainant used the word "sex" in her statement instead of the word "rape". Complainant adequately explained, however, that she clearly meant sex without consent which as far as she was concerned meant the same thing as rape and the word sex was used in that context.

The complainant initially informed the court that she had left school over an incident which happened in the school toilets but which she could not really remember.

The complainant, over a week-end, whilst still undergoing cross-examination in this matter, tried to commit suicide by taking an overdose.

The complainant returned to court to a few days later. She explained that she could not sleep at night and was plagued by nightmares in which she was shot and stabbed and raped. She also dreamt about her daughter being raped. All of this had led to her suicide attempt.

The complainant then went on to describe the incident which happened at school when it appeared that she was between the ages of 10 and 13 years old and which lead to her leaving the school. She had been asked about these events before but she did not bring this out earlier. The complainant testified that at that time she had been raped by the father of her friend, Belinda. The complainant had been teased in the classroom by a boy about the rape case and she had hit him. She had then become hot, dizzy and faint and had gone to the toilets. She began to see herself strangely in a mirror and appeared to have had a collapse

of some sort. She stated that when she opened her eyes she was lying on a bed in the sick room. She testified that she woke up and rose up off the bed in an elevated fashion. She saw herself in the air and spoke to an Imam who had been called in a foreign language and not in her own voice. She testified also about red eyes, blue hands, and having the strength of many people which she had used to push away people who were holding her down.

She described further her dreams she had whilst being in the Witness Protection Programme. She said that she was desperately lonely and just sat in the house and cried. She described how she saw things. One of the things she saw was a creature with a tail like a tokoloshe. She related how she had been unable to sleep and had been plagued all night by thoughts of this creature and thought that the best way out was to end it all.

She denied that she believed in tokoloshes and that when she had described her dream to her sister, the latter had suggested that the creature was a tokoloshe.

The complainant was cross-examined by counsel for accused one. She restated the events of rape as she said the incident occurred, as she had done on chief examination.

She said that she was shocked when she was given the R1 800. 00 for information, she had given, by Charlotte, her police handler. She stated however that the money she was given by the police had nothing to do with her laying the rape charges.

She stated that the two other men who raped her, in addition to accused two, looked like "charras" from Durban. She explained that they were not Indian, but darker than people in her community so it looked like they came from Durban.

The complainant was cross-examined rigorously and aggressively for many days by counsel for accused one and two. Despite this intensive questioning, her evidence about the rape was repeated again and again and she remained consistent throughout as far as the rapes were concerned.

The issue of the complainant not telling her mother the next day about the rape was raised so as to throw doubt on the story of the complainant. However, firstly from the evidence we know that the mother did not believe the complainant in the past about a rape case

involving Eva. As was also stated by Susan Stefan in “The Protection Racket: Rape Trauma Syndrome, Psychiatric Labeling And Law in Northwestern University Law Review (Summer 1994) at 1271

**Non reporting of a rape must be seen at times “in terms of the likelihood of disbelief by police, retaliation by the rapist, hostility of family and support network.” (1333)**

This statement is highly appropriate for this particular case.

One issue that did come out in cross examination was that she was so scared after Mr Staggie told her to meet him that evening that she tried to contact her other police handler Clint. She phoned him but he was not interested in talking to her. This omission was of little significance and can be understood when nothing had been said between the parties. It is however surprising that when an informer phones her police handler at considerable risk, especially when this is an unusual occurrence, that the handler shows little interest and says he is busy. Informers who act outside of their routine meeting and contact times must be in dire circumstances and this call ought to have been treated with far more care and urgency.

The complainant’s version of the rapes and events leading up to the rape were logical and coherent and contained no inherent improbabilities. The one problematic bit of evidence was the amount of times that accused two had come to her house. That he did come to her house on at least one occasion was supported by the evidence of her mother. How many times he had come to the flat was however disputed.

There does not appear to be any reason in her evidence, besides the issue of a possible conspiracy, and that she did it for money, as averred by defence counsel, as to why she would falsely implicate either Mr Staggie or Mr Bosch.

It does not appear that the complainant was personally involved with either of them. There does not appear from her evidence to be any other reason for the complainant to have laid false charges. In fact the complainant is now unable to return to the Cape, and has been separated from her mother to whom she

appears to be closely attached. In view of the reputation of accused one it would in fact appear that there in fact was a strong disincentive to lay a charge of rape against him. The allegations that money and a police conspiracy was the reason for the charges had no foundation and no evidence of this was led.

While there were some minor contradictions in the complainant's evidence nothing was of material significance. The complainant was seen to be a credible, reliable witness whose demeanour, which at many times was angry, upset, and emotional, was consistent with her version of events that the rapes had occurred.

The next witness that was heard by the court was the complainant's sister R. She began her testimony while the complainant was in hospital recovering from her attempted suicide.

Before this witness was heard the state applied for her evidence also to be heard in camera, for various reasons including possible danger to her. The Investigating Officer, Captain Jansen testified that her evidence was necessary, that she was frightened, was in danger, was on the Witness Protection Programme, and that she was fearful of testifying in open court. The court granted the application on that evidence as it was clear that there were grounds for accepting that greater exposure to the public, and hence members of the Hard Livings gang, could increase the chances of her being intimidated in court, for example by way of threatening gestures.

Section 153 of the Criminal Procedure Act was relevant to the issues before the court. Section 153(1) provides that a court can close the court if it appears that it would be in the interests of the administration of justice. Witnesses must be able to testify without fear, and thus it must be in the interests of the administration of justice that witnesses that may be intimidated be able to testify in a conducive atmosphere.

As noted in the earlier judgement in the matter of in camera proceedings and testimony by closed circuit television, with respect to the evidence of the complainant, the effect of a closed court room on an accused is minimal, especially when the press report on a case daily.

The sister of the complainant, Ms R, testified that she was on the Witness Protection Programme and that she was the older sister of the complainant. The witness stated that she was a 25 year old and married with three children. She described how at the time of the incident she was residing with her extended family in a flat consisting of 2 bedrooms, sitting room, kitchen and bathroom. In addition to herself, her husband and three children, various other family members resided in the flat including her mother, three brothers, a sister and the

complainant and her child.

She testified that her husband, Cyril, was a member of the Hard Livings gang, but that he suffered from TB, and that he received a disability pension of R650.00 per month. She used to sell fruit and vegetables at a stall outside the flat to supplement her husband's pension.

She confirmed that she had believed that her sister, the complainant, had been working as a char approximately twice a week at the time of the incident and that she had brought money home as a result of this work.

The witness was asked if she had operated her fruit and vegetable stall outside her home on 22 August 2002 and she confirmed that she had done so. She then stated, however, that she had not seen the complainant that day and did not know where said complainant was on that day. She stated that she knew who Des was, but had not seen her that day either. When she was asked whether anything had happened on that day she replied in the negative.

She stated that she had seen accused one, Rashied Staggie, driving past her in a white motor vehicle. A person who was not before court had accompanied him. She testified that in fact accused one had driven passed her home twice. On the second occasion her husband, Cyril, had approached the vehicle which had stopped, and had spoken to accused one. Her husband had then informed her that he had sought money, and that accused one had told him to go to the hok. This was the place where meetings were held although it was now a church.

That evening, however, instead of going to the 'hok' she had gone with her husband to one 'Dimpa' who was also a member of the Hard Livings gang in order to borrow money. The fruit and vegetable stall was packed up at approximately 7.00 pm, and they left for Dimpa after first having had a cup of tea in the flat. When she had come back from 'Dimpa' she had not seen the complainant in the flat. After eating she had gone to bed. Her bedroom was in fact the sitting room and the complainant usually slept in her mother's bedroom. She could not see whether the complainant was already asleep or not. She added that she thought that the 22 August 2001 was a Tuesday or a Wednesday.

The witness testified that the next morning she saw the complainant. The latter had told her that she was going to work and had left the flat alone. She did not see the complainant that day again or on the next day.

The witness then identified the motor vehicle in Exhibit 'A' as the one belonging to accused one. The witness stated that Des was a friend of both her and the complainant and occasionally visited their flat. Des and a person, Shahieda,

sometimes smoked mandrax with her brother Christopher.

Des's husband was a member of the Americans gang and she was not liked by the Hard Livings gang. She had not seen Des talking to a member of the Hard Livings gang or to either of the accused before court.

The State then produced a sworn statement made by the witness and informed the court that if the witness could not provide a satisfactory explanation for deviating from the statement she was going to request that the witness be declared a hostile witness.

The witness then confirmed that the statement in question had been made by her to Inspector van Sitters, then the Investigating officer, on 26 September 2001 at the Bellville South police station.

Counsel for the State then proceeded to read out the witness' statement to her. The witness agreed with the contents of the statement and went on to describe how on a day in that week when the complainant had been preparing to go to work Des and Shahieda had arrived with a half a mandrax tablet and had smoked it. Then Des and the complainant had left together. Shahieda had waited at the fruit and vegetable stall. The complainant had returned before midday but Des did not return. The witness was unsure on what day that it had occurred. She first stated that it had occurred on the Wednesday.

When confronted with the apparent contradiction between her statement and original oral testimony the witness apologised to the court and stated that her statement had been correctly recorded and that she had become confused between the day of the incident and the day prior to that.

She testified that the complainant had left for work with Des. She was however unclear as to whether she had seen Mr Staggie on the same day or on the next day by her house in his white motor vehicle. Counsel for the state then abandoned her intention to request that the witness be declared a hostile witness.

Cross-examination of this witness then occurred. The witness stated that she had heard about the complainant having been abused when a child but had not personally witnessed this. The witness, with some reluctance, then admitted to having been sexually abused by her stepfather, the complainant's biological father.

When asked why the complainant had left school in standard three the witness explained that the complainant had become sick one day at school and that

some school children had made fun of her and had teased her about the tokoloshe. The witness had not seen what happened but had heard stories, as she had attended the same school as her sister, but had dismissed it as childish gossip.

The complainant had been admitted to another school but had left that school too. She did not know why she had left the school, but then she herself had not always stayed with her mother as she had sometimes stayed with her aunt in Mitchells Plain.

The witness confirmed that the name of the person the complainant had charred for was a person called Charlotte.

She stated that when she and her husband had returned from 'Dimpa,' on the Wednesday night in question only the kitchen and back bedroom lights were on. She spoke to nobody and went straight to bed after she had eaten. She added that her husband did not get on with her family and that she tried to keep to herself and tried not let problems arise between her husband and her family.

She confirmed that the complainant was at least verbally abused by her brother Christopher and that the complainant had on occasion run away from home and stayed with a woman in Woodstock or checked into a hostel for 'brown' children as she put it.

She described the complainant as a person who loved netball, music, and friends and had modelled.

She stated that she had observed accused one in his vehicle between 5:00 pm and 6:00 pm. She knew this because "Days of our Lives" was on as her husband enjoyed watching this particular soap opera on television.

She said that after the complainant had come back from work at about midday she had gone looking for money, and that she had not seen her again after that.

The witness was then cross-examined by counsel for accused two. She stated that she could not believe that the complainant would make an arrangement with the police to have her husband and brother arrested regarding the gang fights.

She confirmed that the police had come looking for things at her flat, but mentioned computers, and that Fahiem Jacobs had been one of the police officers.

She also confirmed that the policemen had returned looking for firearms, but that none were found nor were any arrests made. She did however add that sometimes she was not at home.

She stated that she had seen accused two at the 'gat' at meetings and had also seen accused one many times walking up and down her street.

The witness supported the complainant's testimony that Des had problems with the Hard Livings gang and that she was blamed for her husband's killing of a member of the Hard Livings gang.

The witness denied that she had entered the Witness Protection Programme to escape a bad marriage. She also stated that she had little knowledge of the case against her brother Christopher and the other person, but thought that it had been for possession of dangerous weapons. She described her sister as being a person very unlike a prostitute, and one who dressed respectably. She also said that she would never be able to return to the Cape because of her testimony. Nothing further of any real significance was elicited in cross-examination.

The witness corroborated the evidence of the complainant in a material respect in that accused one was observed driving a white motor vehicle in the road by their flat, that he had stopped the motor vehicle at a point not far from where the witness had had her fruit and vegetable stall early in the evening, although she was unclear as to whether it had occurred on the Tuesday or the Wednesday. While the complainant testified to having seen Des at the car it is clear that the complainant was testifying to the time near noon that she saw the car, while the sister's evidence was that she had seen the car on a different occasion, at between 5pm and 6pm.

The witness also corroborated the complainant regarding the search of their home by the police, but denied that any weapons were found or that arrests were made.

It is not clear why the complainant and witness differ regarding this aspect. This aspect is not material however to the issues to be decided in this case, and could quite possibly be the result of a failure of memory on the part of the witness or that she was testifying about a different occasion.

The witness did not appear to have been a confidante of the complainant or to have paid close attention to the complainant's personal life and could not assist the court any further.

The next witness to be heard was that of the complainant's police handler,



Charlotte. Before her evidence was heard the third application for in camera proceedings was brought by the State. Once again the Investigating Officer, Captain Jansen, outlined the circumstances relevant to the necessity of allowing this testimony to be given in camera. Captain Jansen described the work of this individual in working with informers in Manenberg and why her identity ought to be kept secret by her being allowed to testify in camera. The fact that she, as well as the people she works with would be in danger, if her identity was released or made known, as well as the fact that her testimony about police informers and police procedure would fall within the strictures of the interests of the administration justice provision of the Criminal Procedure Act, section 153(1), saw this application being granted by the Court as well as for her identity to remain hidden.

Charlotte testified about the events which saw the complainant becoming an informer and about the complainant's report to her of the alleged rape. She testified that the first report of the rape by the complainant was made to her.

Charlotte testified that she had known the complainant for a couple of months in 2001. She was out on police business when Ms K approached her. The complainant had said that she was referred to her by somebody in the Manenberg police station. She testified that the complainant had become an informer and that her cover was that she was doing char work for her two days a week.

On 23 August 2001, they had a pre-arranged appointment, and she had observed that the complainant was not her usual self. As they drove in her vehicle she tried to find out what was wrong but the complainant cried and said no one could help her and that she was as good as dead. Charlotte testified that she had asked her male colleague, who was also in the car to get out, and she then spoke to Ms K in private. Ms K then related the whole story about how the alleged rapes had occurred.

Charlotte stated that she was informed that on the previous day, 22 August 2001 accused one had ordered her, the complainant, to meet him at 8:00pm at Olga Court, Manenberg. The complainant had met him there and noticed he was accompanied by three persons, one of whom was accused two, Randall Bosch. She was ordered by accused one to get into the motor vehicle or otherwise he would kick her in her private parts. They drove in the direction of Strandfontein.

En route accused one accused her of being a traitor. They stopped at a deserted place. It was dark and there the three men who accompanied accused one, climbed out of the vehicle. They were given rocks (apparently drugs of some sort) to smoke by accused one which they then smoked.

The witness testified that she was told that accused one then said to the complainant that she must show that she is not a traitor by having sex with the three men. She had refused to do this. Accused one then brought out a firearm and told her to sit on the backseat. She was very afraid and did what he said. He told her to remove her clothes, which she did out of fear. Accused two then raped her. After two raped her, he said: "die ding naai lekker". The other two men then raped her. The witness testified that she had been told that the last male had said to Ms K that he was sorry, but he did not have a choice. Accused one then said that if she told anyone he would kill her and they dropped her off.

Charlotte testified that after this had been told to her she had told Ms K that a crime had been committed against her and that she had the right to lay charges. Ms K said that she was afraid that she would be killed if she reported the matter to the police. Charlotte promised that the police would protect her but she did not discuss the details of the protection with Ms K.

Charlotte dropped her off at the Parade in Cape Town and proceeded to go her office in the city to discuss the matter with her Commander. After some time she went back to Ms K and she told her what the protection entailed, and that she could be put in the Witness Protection Programme if she laid charges. Ms K agreed and Charlotte then took her to Bellville-South police station. She was not there when the statement was taken. She was phoned when the police were ready to go with Ms K to point out the scene where the rape was supposed to have occurred. She accompanied them, but Ms K could not find the place.

Asked if she knew Des, Charlotte said she had seen her with Ms K, but she did not have conversation with her, as Des had talked with her colleague, while she had pretended to be a social worker. She did overhear the conversation about Des's problems, and stated that it took about two to three hours.

As far as payment to Ms K was concerned Charlotte testified that she had made payment of an amount of R500, 00 to Ms K when she became an informer and another amount of R1800, 00 was given to Ms K before she went into the

Witness Protection Programme. The amount of R1800, 00 was payment for two months of information, and the claim for the amount was made on 15 August 2001, in other words, some days before the alleged rape incident occurred. She also testified that Ms K was of great value to her as an informant and when her cover was blown it was a great loss to her.

In cross examination Charlotte did not contradict the version of events or of the rape that she had given in her evidence. She said that after the complainant told her about the incident, she had told the complainant about her rights, and what the police could do to protect her if she chose to exercise these rights, and that it was her decision to lay a charge. Her enquiries about what was wrong with her were precipitated by the fact that she could see that the complainant was not her usual self. She had concluded on her own that Des had informed accused number one about the fact that Ms K was giving information.

When asked by defence counsel whether the charges were a conspiracy, and that such a charge was trumped up as a gang rape because of the minimum sentences legislation, she testified that she did not know anything about a conspiracy or the minimum sentences legislation and what penalties it entailed. She also testified that she made notes of what Ms K had told her about the alleged rape as she spoke, and then prepared her statement afterwards in September 2001 and kept it on her computer.

She testified that she did not know about Ms K's history with respect to her experience in school, her disappearances and sexual abuse by her father.

It was put to her that her statement was not available in the bail application and that the then Investigating Officer, Inspector van Sitters, testified that it was with the legal advisors. Charlotte said that she drafted her own statement on 15 September 2002 on her computer, but signed it only in November 2001. She testified that she gave it to Captain Jansen, who took over as Investigating Officer in August 2002, only in September 2002 and never gave it to anyone else.

The evidence of Charlotte was consistent in cross examination and confirms the evidence of the complainant in material respects. Charlotte remembered some more, about what happened at the rape scene, including utterances that were made by the alleged rapists.

The issue of the payments made to Ms K was focused on extensively by defence counsel since the last payment was made to the complainant after she had made a statement to the police about the rapes.

Defence counsel argued that it appeared as if it was payment for making the case, alleging that the rape was a fabrication. The payments were explained by Charlotte in that the amount paid was for a two month period and that the full amount was requisitioned on 15 August 2001 for payment the following week. She produced official police receipts in this regard marked as Exhibit 'G3'. Entries in her diary showed that the payment was requisitioned long before the alleged rape. These pages were handed in and marked Exhibit 'G2'.

The evidence given by Charlotte was credible, logical and contained no inherent probabilities. She impressed as a diligent and methodical police officer.

Cross examination by both counsel failed to elicit any significant contradictions or improbabilities in her evidence and it may be accepted as reliable and credible.

Sgt. Jerome Edas was then called by the State. He testified that he had been a member of the South African Police Service for 7 years, six of which had been spent in the Public Gang Unit stationed at Bellville South.

On Friday 24 August 2001 at 10:00am while on duty he received instructions to arrest accused one on a charge of rape. He and a number of others proceeded to 17th Avenue Boston (accused one's then address) to make the arrest. On his arrival at the premises he noticed a white VW Golf in the driveway. A man was cleaning the inside of the vehicle with a broom and dustpan. The accused was then informed of the charges against him, and was warned of his rights in terms of the Judge's rules and the Constitution. Sgt Edas recounted his warnings word for word in Court and was very impressive in this regard.

The witness testified that Mr. Staggie appeared to react with surprise at the reason for his arrest. The accused was then taken to Bellville South police station. On arrival at the station Sgt. Edas was ordered to return to accused one's residence to fetch the motor car that had allegedly been used in the crimes. Sgt. Edas then returned as ordered and seized the vehicle. He confirmed it as the vehicle shown in Exhibit 'A'. When he confiscated the vehicle the person who had been cleaning the vehicle was drying the back of the vehicle.

When cross-examined by counsel for accused one he stated that nothing had seemed unnatural about the cleaning of the vehicle as it was a Friday and that he did not have any knowledge of the particulars of the charge against the accused.

He testified that he had seen the accused driving said vehicle on various occasions in Manenberg prior to its seizure. He was familiar with this vehicle as it was his job to know in what vehicle the accused was driving. He had made these observations during the time when there was a cycle of gang fights between the Hard Livings and the Americans.

Questioning by counsel for accused two did not elicit anything further of significance.

In re-examination Sgt. Edas stated that he had also observed other gang leaders and various suspicious individuals in the area of Manenberg in accordance with his work functions.

No fault can be found with the testimony of Sgt. Edas. He testified in a clear logical and concise fashion. His evidence in fact was not challenged in cross-examination and there is no reason for not accepting his evidence as reliable and credible.

At this point the State closed its case.

At this point both accused applied to be discharged in terms of s174 of the Criminal Procedure Act 51 of 1977. After argument their applications were refused. The Court stated that reasons would be given later.

The refusal to discharge an accused at the end of the prosecution's case entails the exercise of a discretion by a Court. As was stated in the case Michael Lubaxa v the State 2001 (2) SACR 703 A by the SCA per Nugent, AJA at 705I-706B:

**It permits a trial court to return a verdict of not guilty at the close of the case for the prosecution if the court is of the opinion that there is no evidence (meaning evidence upon which a reasonable person**

**might convict). S v Khanyapa 1979 (1) SA 824 (A) at 838F - G) that the accused committed the offence with which he is charged, or an offence which is a competent verdict on that charge. If, in the opinion of the trial court, there is evidence upon which the accused might reasonably be convicted, its duty is straightforward - the accused may not be discharged and the trial must continue to its end.**

In this case the state's case was based largely on the testimony of the complainant. By the end of the state's case the complainant had testified and there was certainly was evidence upon which a court could convict the accused.

#### **The defence case**

The defence then called various witnesses. Accused one decided not to testify and called his wife, Mrs. Rashieda Staggie, as the first witness for the defence.

She testified that she had been married to the accused for 11 years and that she had 4 children with him. She was aware that he had approximately seven other children with various women. The witness testified that in 1999 accused one had become a reborn Christian. This occurred approximately three to four months after she had herself become reborn. She testified that since this had occurred, accused one was a changed man. While he had previously spent much time at home or with his children, this had all changed. He was much more of a family man and only stayed away from home when it had to do with church business.

She said further that although she had heard about things that he had done prior to his conversion, she had never personally witnessed any of this. After having become reborn, accused one became very busy with church matters. She had accompanied him once to Johannesburg and once to Port Elizabeth on these activities. On Thursday evening the week of the alleged rape, she had gone with him to a church service.

She had denied any knowledge of continued gang activity on the part of her husband since his changed status. The income of the family at the time of her

testimony consisted of donations from churches amounting to between R2 000.00 and R5 000.00 per month.

Shortly before accused one was arrested on the present case, they had sold their family home and bought a cheaper one due to financial constraints.

She stated further that she was not employed and that at the time of the arrest of accused one, on this charge, they had been using a white motor vehicle. She did not know what make of car it was.

She remembered the week when her husband was arrested well, as it was the week in which she was packing her house to move. She also remembered this week as her mother had come to stay to assist with the packing. She also remembered this week because on the Monday when the accused was in Johannesburg, the dog had been run over and she had had to phone him in Johannesburg to inform him of this.

The accused returned on Tuesday afternoon from Johannesburg and she fetched him from the airport. The accused did not go out again that day.

On the Wednesday accused one left the house at approximately 9:00am for a meeting with a Pastor Woodie. He came back just after 5:00pm. She knew this because "Days of our Lives" soap opera was showing on the television. She was standing in the kitchen and she saw accused one through the kitchen window. He had a bicycle with him. She remembered that her daughters were upset because the accused had bought a present for his son and not his daughters.

The accused then ate his dinner and watched the 7 o'clock news. After this he took the children to the Seven Eleven to buy sweets. He came back just after 8 o'clock. The accused then watched a video on television. She did not know which one it was, but that it was one he had bought cheaply at a Cash and Carry store.

On Thursday the accused went out. She had heard that he had gone to Lavender Hill. That night they went to a church service. The accused was arrested by the police on the following day.

She testified that she was the owner of a Glock 40 firearm which was kept locked in a safe. It was her own firearm for which she possessed a firearm licence.

In cross-examination Mrs. Staggie admitted that her husband had not been employed during the time that they were married, and that she had suspected that they were living off the proceeds of crime.

She admitted that he had been in custody during their marriage but denied any knowledge of any convictions or sentences served. She also denied knowing much about his life before he was reborn in 1999, despite being married to him.

She stated that she had attended court each day during his bail application at Mitchell's Plain and had listened to his evidence regarding his alibi. She also admitted to spending each day of the trial with the accused.

She could not remember what time accused one's flight was on the Monday of the week of the alleged incident but that it was still dark when she arrived at the airport. She could not remember what time she had arrived back home from the airport. She could not say where accused one had stayed in Johannesburg or where he had gone despite having remembered that she had phoned him in Johannesburg regarding the dog. She did appear to recall that he was to appear in a television interview, but could not remember on which channel and she never watched it.

She stated that Rashied Staggie had phoned her twice on the Tuesday from Johannesburg but could not remember at what time he had phoned her for the second time.

When questioned closely about the precise events of the Tuesday it was clear that the witness could only really relate what her normal routine would have been.

She stated that she could remember that accused one had played with the children on his return but she could not remember what they had played. She could remember, however, that they had discussed how difficult the children were when he was away.

She stated that her husband had left for Manenberg on the morning of the Wednesday in a white Golf as shown in Exhibit 'A'.

When questioned about her and her husband's actions, after he had been to the Seven Eleven, she stated, in contrast to her earlier evidence, after the children had been put to bed, accused one had possibly read his newspaper and watched television before going to sleep. She could not remember what she had done. No mention was made of Rashied Staggie watching a video as described in her evidence in chief or of her reading a book. When these discrepancies were brought to her attention, her response was to apologise for being wrong. When asked why she had not revealed that she had read a book while Staggie watched a video, her response was to say she could not remember.



The evidence of this witness should be viewed with a certain amount of caution due to the nature of her relationship with accused one and hence the strong possibility of bias in her testimony. A curious aspect of this witness' testimony is her clear attempt to disassociate herself from her husband's activities prior to his alleged conversion to Christianity in 1999 to the extent that she denied any knowledge of any convictions or of any trial proceedings. This should be contrasted with her admitted and clearly diligent attendance at court during the bail application and duration of the present trial.

The witness also conceded that accused one had never held a conventional job but nevertheless managed to provide for the family in such a manner as to enable the family to live in a R400 000.00 home. The witness would however, only admit to having heard things about Rashied Staggie's activities but never having seen anything.

It appeared that the witness was making an effort to appear to be a normal wife and mother and not to have knowledge of her husband's lifestyle despite it being obvious that she was living off the proceeds of crime, and was inconceivable that she could not have known where the funds came from.

The above-mentioned should lead to strong doubt regarding the truthfulness of her testimony. Although the witness made a valiant effort to give a detailed account of the events of the week of the alleged incident and having had the assistance of the record of the bail proceedings in which accused one set out his alibi, it became clear during cross-examination by the State that she could not really remember exactly what happened and that her testimony was more an account of her normal routine. Rashieda Staggie's contradictory evidence regarding the video accused one may or may not have watched on the evening of the incident would tend to indicate that she was fabricating an alibi for accused one.

Although she claimed not to know Mr. Randall Bosch, she had made available R1 000.00 for the funeral of his mother, although they were living on donations at this time.

The witness in general made an unfavourable impression on the court. Her alleged ignorance of the accused's lifestyle prior to his conversion in 1999 seems far fetched and lacking credibility and her testimony should be regarded as a poor attempt to provide an alibi for Rashied Staggie.

Accused number one then called Mr Zack Mckay, an attorney. He testified that he was instructed by Mr. Staggie to represent him at the bail application in the

case.

He stated that he had consulted with accused one on the Saturday and Sunday shortly after the accused was arrested.

He stated that Mr Staggie had told him he had been watching a programme on TV about wildlife at about 7:00pm on Wednesday 22 August 2001. He testified that he had watched the same programme and it was on SABC 2.

He was also told that accused one had bought an item at Bellville Bicycles and he went to the owner, Mr. Gouws, and obtained a statement from him in this regard. This statement was handed in as Exhibit 'L' after the Court ruled it was admissible, as it was in the interests of justice, although hearsay, as required in the Law of Evidence Amendment Act 45 of 1988.

The witness also testified that he visited the Seven Eleven and it was confirmed that accused one was at the Seven Eleven with his children on the Wednesday. He did not note the name of the person he had spoken to in his file.

In cross examination Mr Mckay was asked in detail about proof of the Johannesburg trip and the appearance on TV. He answered by saying that he would have to refer to his file. He was also asked to produce the receipt for the purchase of the bicycle but said he did not have it in his possession. He also stated that the Seven Eleven shop had closed circuit television, but there were problems with the tapes at the time. When asked whether he took a statement from the lady who served the accused at the Seven Eleven shop, he indicated that the lady was afraid to come and testify in court.

Mr Mckay's evidence was stood down to enable him to produce documentary proof of the purchase of the bicycle and evidence from the lady who served Mr Staggie at Seven Eleven. On resumption he only produced an affidavit from Mr Gouw, that stated that accused one bought a bicycle there on Wednesday 22 August 2001 at 16:30. He stated he could get no evidence with respect to the events at the Seven Eleven.

Mr Mckay testified that as he had represented Mr Staggie in the bail application he had also represented Mr Bosch for free.

Some of Mr Mckay's evidence was hearsay evidence. It was provisionally

admitted not to admit the truth of it but to show that the investigation was undertaken and that counsel for accused one would call the relevant witnesses if it proved necessary and they were available.

Little of significance was elicited through cross-examination. This matter was not greatly assisted by the testimony of Mr. McKay. Most of the evidence lead was hearsay and neither Mr. Gouws, accused one, or the shop assistant at the Seven Eleven were called to testify regarding the purported alibi. The statement of Mr Gouws was admitted but as this is evidence, albeit hearsay evidence, of events that occurred before 5pm, on the day in question, it does not assist the matter as the alleged rape occurred after 7pm. Little value can therefore be placed on the evidence of this witness.

Accused number two, Randall Bosch, then testified.

He stated that he was 33 years old and had completed only the first two grades of schooling. He had only done unskilled work to earn a living and was a member of the Hard Livings gang. He joined the gang as gangs were prevalent in Manenberg and it was more advantageous to be a member of a gang.

He had two children and lived at home with his father and siblings when not serving sentences in prison. It appeared from his testimony that he had spent almost his entire adult life in prison.

He said he did not really know accused one and had never heard anything about accused one being involved in crimes such as rape, murder etc. He said he did not move in the same circles as Rashied Staggie.

This it might be said at this point is a little improbable, as Rashied Staggie was by his own admission the leader of the Hard Livings gang, and accused two was a member of this gang.

He further stated that he had seen Rashied Staggie when he had preached to the gangsters about peace and being reborn.

Randall Bosch stated that his mother died in August 2001 and that he could not afford to bury her. He decided to approach Rashied Staggie for a loan of R1 000.00. He testified that Rashied Staggie brought the R1 000.00 to his home but that the money had yet to be repaid.

He did not know the complainant and had never been to her house. He did, however, know her brother, Christopher and brother in law Cyril and knew where their home was. He had seen the sister of the complainant sitting at her stall

outside her home.

He stated that he did not know why he had been implicated in the crimes but he had been falsely implicated in crimes many times before, and had been convicted of things that he had not done. He admitted to smoking dagga when he was at home.

He stated that he could remember what happened on 22 August 2001 because after he was arrested he cast his mind back to that day so as to remember what had happened.

On 22 August 2001, the day of the alleged incident, he had gone to see Aunty Sadia, a family friend, whose birthday it had been, at about 6:30pm. He was accompanied by his brother Ashley. He, Ashley and Aunty Sadia's son Nazeem then smoked dagga. He and his brother then returned home accompanied by Nazeem, where they ate sandwiches and drank tea.

Still on chief examination, he stated that he found his father watching television in the lounge on his return to their house. Nazeem left at some point, and he and his brother went to bed. This was between 8:00pm and 9pm.

He denied that he was with Rashied Staggie on that night or had any knowledge of any "Charras".

He stated that the last time he had seen Rashied Staggie was when he had come to see the body of his mother.

During cross-examination by Adv Booysen for the State he stated that at the time of his arrest, he had recently been released from prison and was under correctional supervision. He stated that he was only allowed to leave home between 8:00am and 12 noon.

He also stated that he had been arrested on illegal arms and ammunition charges three to four months prior to being arrested on the present case and had been released on bail in the amount of R1 000.00. This was paid by Gamie, the nephew of Rashied Staggie. Gamie was also a member of the Hard Livings gang before being reborn as a Christian. He usually saw Gamie in Manenberg.

It was put to him that his parole had expired on 2 December 2000. He explained that he had never made inquiries regarding the parole conditions as he had lost the telephone number. He had thought that they were still in effect.

He confirmed that he had seen Rashied Staggie driving a white Golf in Manenberg.

He stated that he could not say how Rashied Staggie had known when or where his mother's body was available for viewing. He however stated that he had not seen Rashied Staggie that day, but had heard from his brother that this had happened. He stated that he did not see him at the funeral.

It was put to him in cross examination that in evidence in chief examination he had stated that he had last seen Rashied Staggie when he came to look at his mother's body. He could not account for the contradiction. He could also not explain why he had stated in his bail application that he had seen Rashied Staggie at the funeral but had denied seeing him there, at this trial.

There were thus material contradictions in his statements regarding if and when he had seen Mr Staggie.

He could further not explain why in the bail application he had stated that his sister and her friends were also at home watching TV when he arrived back from Aunty Sadia in contrast to his evidence in chief that he had only seen his father in the lounge watching TV. He then confirmed the contradictory evidence and testified that his sister did not have friends at the house, but never responded to the question as to why he had given contradictory evidence about who was there when he came back home that night.

As far as the day of his arrest is concerned, in examination in chief he stated that on 24 August 2001 he gave himself up at Bellville South police station after he had heard from a friend that the police were looking for him for rape. Accused two stated that he was not told what the charges were but when he arrived at the Bellville South police station he assumed they were looking for him for rape. He also said that Inspector van Sitters told him that he was looking for him on a charge of rape and he was then arrested on those charges.

In cross examination the evidence of accused two changed to some degree and he now mentioned that he had first gone to Manenberg police station before proceeding to Bellville South. He added that at that time he had no idea why he had been sought by the police.

He could not explain why he had stated in his bail application that he had heard

that he was sought as an accomplice of Mr. Staggie in a rape case and that he had gone to give himself up. He did, however, state that he might have made a mistake during the bail application. He believed that his head was not right at the time of his mother's death.

When asked why he went to Manenberg police station he replied that it was to see if they were looking for him for anything.

In the light of his evidence this action seems rather strange especially as going to Manenberg police station was not mentioned previously.

It was placed on record by Counsel for accused one, suddenly during Mr Bosch's testimony, that his client had sent a bakkie to fetch accused two and bring him to Bellville South police station. This admission by accused one raised major questions about the veracity of accused two version' of the events about the day arrest. Why would he have gone to Manenberg police station when he was picked up by people who knew that Mr Staggie had sent them to fetch him to go to Bellville-South police station? How could he not have known why he was being fetched, and where he was going, as he testified?

Randall Bosch made a very poor impression as a witness. There were numerous contradictions between his testimony evidence in chief and that given in cross examination and in his bail application.

The version provided by Mr. Bosch of the events on the day of his arrest is also improbable.

It is improbable that Mr. Bosch would go to Manenberg police station if he had been fetched by an agent of Mr Staggie who had sent him from Bellville South police station where Mr Staggie was already. It is also improbable that Mr. Staggie would have lent him that kind of assistance to a mere acquaintance.

It is also clear that Mr. Bosch had a much closer relationship with Mr. Staggie than what he would admit to. Gamie, a nephew of Mr. Staggie, paid the bail money on his previous case so that Mr. Bosch could be released from custody. Gamie, on Mrs Staggie's evidence lived with them and acted as driver and bodyguard for them from the time the incidents with PAGAD had occurred. Gamie, on Mrs Staggie's evidence, was the person washing the car in question on the Friday when accused one was arrested. Mr. Staggie also loaned R1 000.00 to Mr. Bosch for the funeral of his mother when it was clear it was unlikely he could have been paid back, at the very least not in the short term. Mr Staggie also went to see the body of Mr Bosch's mother as well as going to her funeral. All these issues indicate a closer relation than what was admitted to.

It is also improbable that Mr. Bosch would have such a good recollection of the events of what was a very ordinary day on the day of the alleged incident, but not of the days before and after that.

His evidence was neither reliable nor credible and should be rejected.

The next witness called by the defence was Inspector van Sitters, the previous Investigating Officer in the case. He testified that he was a member of the South African Police Services and held the rank of inspector. He was in charge of the investigation of this case from the beginning, but was no longer involved. He testified that accused one was the first one to be arrested in the case, but accused two suddenly appeared at the police station. He further testified that he followed up the alibi defences of the two accused but the people concerned refused to make statements. He testified that inspector Adams took the statement of the complainant. The statement of Inspector Adams was handed in as Exhibit 'H'. He also testified that the complainant was taken to the district surgeon on the next day, the Friday in the afternoon.

She was taken into the Witness Protection Programme and her child joined her latter.

He testified that he got instructions from Senior Superintendent Verey to investigate the case, and that he did everything in the case while consulting with the other twenty members of their section, as all of them were involved in investigations.

It was put to him that in the bail application he went out of his way to make sure that the fact that the complainant was an informer was not revealed to the court. He stated that it was usual practice at the bail application stage to protect the identity of the complainant. He was also asked about the statement of Charlotte, as to why it was not available at the bail application stage, and who were the legal advisors that he had said were in possession of it, as was stated at the bail application. He stated that he did not have contact with Charlotte, but spoke to her only telephonically and that he had not seen the statement. He said that he thought that the legal advisors might be the State Advocates at the office of the Director of Public Prosecutions. He also indicated that this was not the only case that he was investigating, but there were hundreds of similar cases.

He testified that the Identikits were prepared before the complainant was taken into the Witness Protection Programme. He stated that the identikits were put up at all the police stations in Cape Town, but were not put in the newspapers or broadcast on television.

He also testified that he had not consulted with the possible witness Des, and no money was offered to people to testify against the accused. He also clarified that the crime intelligence referred to in the bail application was not the same as the section that Charlotte was working for. The section referred to is where records of convicted person's previous convictions are kept.

He testified about why warrants of arrest for the accused were not obtained from a magistrate, and why blood test results, and results of aids tests were not available.

His evidence was more of formal nature; and while there were no major contradictions, it is curious why he testified about Charlotte's statement being at legal advisors when, on Charlotte's evidence, it seems that this never occurred. It seems on this issue he had made a statement at the bail hearing, about which he had no knowledge.

Little value was obtained from the evidence of this witness. The evidence of this witness when correlated with the evidence of the complainant and Charlotte however reveals the inadequacy of the investigation. While the defence tried to indicate, without evidence, that there was a conspiracy, it is clear that the mistakes indicated were because of negligence. It is very clear that the case was not given the priority it deserved. There was a delay of more than 24 hours from the time the complainant reported the rape before she was taken to the doctor for a medico-legal examination. The visit to the crime scene was not done in a way as to allow the complainant to find the place in question.

If it was dark and raining as was the testimony of the complainant, when the complainant was taken to the crime scene, another visit should have been scheduled.

Further the evidence of the accused's alibis should have been followed up. If Mr Gouws was willing to give Mr McKay a statement why would he not have given one to the Investigating Officer? Why were other alibi witnesses not followed up? Why was the closed circuit television tape of the seven-eleven, of the night of the alleged rape not obtained?

Of critical significance the IO did not have a detailed consultation with the complainant and never consulted with Charlotte, the person to whom the first report was made. He did not take a statement from her, although he was the IO for more than a year. He further did not go and interview Des, who was seemingly an important witness to various events.



The IO also never interviewed or took statements from a whole multitude of people that testified in this trial never mind other individuals who could have assisted in the investigation of this case. All of this was negligence in the extreme.

This was a case of a high profile nature and the role of the first IO in the case was appalling. Little care was given to the case. It seems that nothing occurred in following up on this case from September 2001 to September 2002 until a new Investigating Officer, Captain Jansen, took over.

In this context Jean Redpath, a researcher for Techikon South Africa (in an article entitled "Should fighting organised crime be a priority as South Africa deals with crime and human rights, and does the need to combat crime justify extraordinary measures that may limit rights?" Law, Democracy and Development 2000(2) 173 in a discussion on policing has stated that:

**you may have noticed that I have so far failed to mention rape. It is common knowledge that South Africa's reported rape statistics are among the highest in the world, and the Western Cape has the second worst rate in the country. It is also widely believed there is significant under-reporting of this crime, with estimates ranging from 1 in 2, to 1 in 35. Yet not a single area I have visited thus far regards rape as a priority. Indeed, an officer who otherwise appeared reasonable and very competent described rape victims older than 18 as "old meat". While discussing the figures for those younger than 18, his comment was that these figures "are not a joke as the old meat can handle it but the young meat can't".**

This comment is highly appropriate in this case, as this case was not taken very seriously by the police who initially investigated it. For a year almost nothing was done on the case. The complainant was given very little assistance and she was only taken a day after her report of the rape for a medical examination. It is not surprising that no medical or other evidence of the rape was found during that examination. See J88 marked Exhibit ' '.

As was noted earlier the first investigating officer was neglectful of his duty on this case for more than a year. It is not surprising that he was relieved of his duties in the case, although it was stated that he went on leave. The second investigating officer, while having had lots of police experience had only been involved in two previous cases of rape. It is surprising to say the least that a high profile case such as this, which would be reported on in the media, and which may have an impact on the culture of crime and violence would have received so little attention and an investigating officer with so little experience.

A criticism has long been that there is inadequate training of the police in dealing with rape survivors and that rape specialists ought to deal with these types of cases.

This is not a new criticism and Janine Rauch as far back as 1994 noted that:

**The low rate of successful prosecutions and the dissatisfaction of complainants at the way rape cases are dealt with suggest a need for an improvement in practical policing skills in relation to rape ... The problems surrounding police handling of rape cases are not simply training problems. ... Broader problems of police attitudes to women in general, and to violence against women in particular, require further attention.” [A Critique of South African Police Training for Dealing with Rape Cases by Janine Rauch In Jagwanth, S., Schwikkard, P.J. & Grant, B. (eds), *Women and the Law*, pp. 225-236, HSRC Publishers, Pretoria 1994.]**

In addition, in 1997 the UN Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, in her Report on the Mission of the Special Rapporteur to South Africa on the issue of Rape in the Community of 1996 (11-18 October 1996 E/CN.4/1997/47/Add.3 24 February 1997 at para 32) stated:

**It appears that the training and specialization of police officers with regard to sexual violence and rape varies greatly, depending on the individuals and on each police district. In order to counter this problem at the national level, the National Standards and Management Department of the South African Police Services was, at the time of the Special Rapporteur's mission, in the process of developing national standards and a code of practice for the police in dealing with victims of sexual violence.**

This type of criticism was again repeated during 2002 by the South African Human Rights Commission (SAHRC Report on Sexual offences against children: Does the Criminal Justice System Protect Children? April 2002) severely criticized the handling of reported rape cases by police, prosecutors and community leaders. The report has also certainly indicated that police officers remain insensitive and inexperienced in handling rape cases and rape victims.

These are important issues as according to the SAHRC in their Report on Sexual offences against children: Does the Criminal Justice System Protect Children? April 2002) note:

**A good police response to a victim of sexual abuse is likely to vindicate the victim's experience of abuse, thereby increasing his/her confidence in the criminal justice system. Conversely, a poor response is likely to invalidate the victim's experience of abuse, thwart his/her confidence in the criminal justice system, discourage him/her from resorting to the criminal justice system for assistance in the future, thereby increasing the victims' vulnerability to further abuse. It is therefore critical that the police respond to reports of sexual abuse with empathy, patience, professionalism and sensitivity."**

These are also important issues as they have critical effects on crime and the community in our country. The norm of failed prosecutions, or no prosecution, perpetuates a lack of respect among citizens for the rule of law and human rights, which further undermines the legitimacy of the criminal justice system. As Chaskalson P, as he then was noted in *S v Makwanyane*, para 122:

**the greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is presently lacking in our criminal justice system; and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness.**

Mahomed J (as he then was) in the same case provided a useful and concise list of the most critical problems confronting the criminal justice system and perceptively describes what needs to be done to create successful deterrence of serious crime. He stated:

**We were not furnished with any reliable research dealing with the relationship between the rate of serious offences and the proportion of successful apprehensions and convictions following on the commission of serious offences. This would have been a significant enquiry. It appears to me to be an inherent**

probability that the more successful the police are in solving serious crimes and the more successful they are in apprehending the criminals concerned and securing their convictions, the greater will be the perception of risk for those contemplating such offences. That increase in the perception of risk, contemplated by the offender, would bear a relationship to the rate at which serious offences are committed. Successful arrest and conviction must operate as a deterrent and the State should, within the limits of its undoubtedly constrained resources, seek to deter serious crime by adequate remuneration for the police force; by incentives to improve their training and skill; by augmenting their numbers in key areas; and by facilitating their legitimacy in the perception of the communities in which they work. (At par 290) (*Makwanyane* at 496A)

The role of the first Investigating officer ought to, at least, therefore be the subject of an internal police disciplinary inquiry as well as an investigation by the Independent Complainants Directorate.

After Inspector Van Sitters had concluded his testimony Captain Jansen, the second IO was called to testify by accused two. He testified that he had twenty years experience within the South African Police Services. He testified that he had always known that the complainant in this case was a paid informer, and she was working closely with Crime Intelligence. He said he was aware of rumours circulating within the Manenberg community that the complainant was prostitute.

He testified that he took the statements of a number of witnesses in the case that had not been taken before, and that he offered to put them in the Witness Protection Programme. He testified further about the methods used when taking statements from witnesses; and whether the stamp of the commissioner of oaths is affixed before the witness or whether this is done at a latter stage. This issue was canvassed extensively by defence counsel who wished to show that the statement of the complainant' brother, Christopher was incorrectly taken.

It was put to Capt Jansen that the police were either negligent in investigating the

case, or that they invented the whole case, as they did not take the complainant to the doctor as soon as possible after she had made the statement, and that the statement of Charlotte who gave evidence of the first report, which was crucial in a rape case was only received a year after the event. Captain Jansen denied a conspiracy.

He also testified, supporting the earlier testimony of Inspector Van Sitters, that it was policy not reveal the identity of the complainant and the person to whom the first report was made at a bail application.

He also testified that he spoken to accused number one in Wynberg, who said that as a result of this case, he was no longer reborn.

He was asked to explain the extent to which the police tried to find the two other perpetrators in this case. He testified that they had put copies of the identikits in police stations. He was asked why they did not put them in the media and in Durban, and why they did not offer a reward for information about the two other supposed perpetrators. He could not answer but stated that he limited experience with rape cases.

He also testified, after being recalled, after the complainant's brother Christopher had testified, about the method of taking Christopher's disputed statement. He testified that he not known about the information before the witness had told him about it, and that he had drafted the statement, as is usual practise using his own language, but had in places used the specific wording used by the witness which he had put in quotation marks. He testified further that he read the statement back to Christopher who had agreed with contents and signed it, and that he did not make any promises to him.

He testified further that the reason that he went to see Christopher in prison was that he got a message from the prison authorities that Christopher wanted to see him regarding the case. He testified further that he used the same method in taking statements from other witnesses, as was usual practice.

There are no grounds for not accepting the evidence of Captain Jansen as reliable and credible. He was further more called as a witness for the defence, and counsel for accused two, at one point, stated that he did not intend to discredit his own witness. In the circumstances there are no grounds for not accepting that the statement of Christopher was not taken down in the manner described by Captain Jansen. Captain Jansen's demeanour, throughout the trial, was such as to allow him to be seen as satisfactory, honest, and reliable witness who was doing his job to the best of his ability.

The next witness called for the defence was Ashley Bosch, the 31 year old brother of accused two. He testified that he had been employed as a taxi guard for about 11 years and was not a member of a gang. He only achieved standard one at school and shared a bedroom with accused two. He added that two of his brothers had been murdered.

He stated that on 22 August 2001 he came home from work at about 6:15pm, the time he usually came home from work. Accused two was at home. He had a cup of tea and he left with accused two to see Aunty Sadia. Accused two went to congratulate her on her birthday, whilst he and her son smoked a dagga pipe downstairs.

They returned home at about 7:45pm. He knew this because there was a clock across from the door when he walked in. They ate sandwiches and drank tea. At about 9:00pm he and accused two went to bed.

He could not remember what he did on the other days of the week in question.

In cross-examination by the State the witness conceded that he could not remember the date of the bail application despite having asserted that he had worked that day and thus could not attend.

The witness could also not say with certainty how long after his brother's arrest the bail application was held.

He said that he did not know on which date specifically his brother was arrested but that it was on a Wednesday. He then immediately said that he was not sure but that he thought it was on a Wednesday. Then he conceded that he could not really remember very well. In fact, accused two was arrested on a Friday.

On further questioning he stated that he and Nazeem had smoked dagga pipes on the Wednesday. He then said it was the Wednesday or the Tuesday. Then he said he could not say on which day it had happened, but that it was the day before accused two was arrested. He then stated that he could not say in which month it had occurred.

On questioning by the Court, the witness stated that the evening he had smoked the dagga pipes at Aunty Sadia's was definitely the day before accused two was arrested. He conceded that if accused two had been arrested on the Friday then he must have gone to Aunty Sadia's on the Thursday. This was in contradiction to the evidence of accused two that they had gone there on the night of the alleged rape, i.e. the Wednesday.



He stated that the incident happened in the summer, and it had only begun to get dark when they returned home from Aunty Sadia's. The incident happened however in August when it is winter and it must have been dark long before they came home supposedly at 7 45pm.

Ashley Bosch not only became increasingly confused throughout his testimony but also contradicted his brother, Randall Bosch, in whose favour he was called to testify.

Ashley Bosch testified that the visit to Aunty Sadia took place the evening before the arrest of accused two in contrast to the latter who testified that it took place two evenings before his arrest.

It is clear that Ashley Bosch had no real memory of the evening of the alleged incident. He quite clearly came to testify to try and provide an alibi for his brother but ended up giving muddled and contradictory evidence which should be rejected as unreliable and not credible. It was in fact clear that in cross examination this witness was shown to be anything but credible.

Mrs J, the mother of the complainant, was then called as a witness for accused one. She testified that she had come to testify as a result of a communication she had had with her son, Christopher.

She stated that she knew nothing about an intended R10 000.00 bribe to try to get the case withdrawn, or about any request for a photograph of the complainant. She said she did not feel threatened.

She stated that all she knew about the alleged rape was that the complainant had gone to work on the day after the alleged rape, but that she was not told by her about it. The witness testified that the complainant did not have breakfast and asked her for R8.00 for taxi fare to go and meet the lady that she charred for. The complainant had asked her about how she looked to which she had replied that she looked excellent. Mrs J testified that her daughter kept looking in the mirror and stated that everyone was saying that she was getting fat and wanted her mother's opinion on this. Her mother testified that she agreed.

Mrs J testified that her daughter then left and had not returned that day. She saw her only two or three days later, when she had arrived home accompanied by the police to fetch clothes. One of the policemen had told her that the complainant

had been raped.

She confirmed that there had been an incident regarding the complainant which occurred in the school toilets. She had been told about it. After the incident it was suggested to her that she take the complainant to see a psychologist, which she had failed to do.

She confirmed the complainant's evidence that on one occasion her flat was searched by the police and a zip gun was found in the warmer drawer of the stove.

She testified that although she had seen accused one on various occasions she had spoken to him for the first time at court during this case. Accused two had come to her house once, to greet her, after he had come out of prison.

She confirmed the complainant's testimony that Christopher used to hit the complainant.

She also confirmed the complainant's testimony that all 4 daughters in the family were sexually molested by the complainant's father, and that he had raped her daughter R, and that he had been sentenced to 7 years imprisonment.

Mrs. J conceded that she had had a visit from two members of the Hard Livings gang who tried to persuade her not to allow her daughter to withdraw the case against Rashied Staggie. She stated that she suspected that it was a trap and told them she did not have time to think about it.

She further conceded that she had told Christopher not to become involved in the case at all, as she was afraid he would land in trouble.

The witness then started to cry in court and stated that she was not going to let her son be shot dead, and she also did not want to be shot dead. She stated that maybe not the accused, but their friends would do it.

She stated further that the complainant was safe away from Manenberg, whilst Christopher still lived in Manenberg. She stated that she was suffering from stress and that she was taking medication for it.

She testified further that members of the Hard Livings gang had wanted to shoot Christopher the previous year, alleging he was also an informant of the police. It appeared to her that even without the orders of Mr. Staggie or Mr. Bosch, there were people who were prepared to shoot Christopher.

As far the events at the time of the alleged rape were concerned, the witness stated that the complainant was at home with three of her friends at about 7 pm on that day. They had asked her for money to buy cigarettes, and thereafter they had left. She testified that the complainant came back when she was asleep and she had only seen her the following morning when she was preparing to go to work.

Mrs J also testified and confirmed evidence by the complainant that she had experiences with tokoloses, had problems at school, and how she had tried to help her.

She also confirmed evidence of the complainant regarding searches by the police and the finding of the zip gun in the house. She stated that she knew Fahiem Jacobs and that he used to come to their flat frequently, and that she suspected there was a love relationship between him and the complainant.

She also confirmed the evidence of complainant in relation to the various rapes and sexual abuse by her father. She testified that the complainant's father abused and raped all the daughters and was arrested and convicted for raping her daughter, R.

She testified about various episodes when the complainant left home to live with her friend, Eva, in various parts of Cape Town, and that rape charges were laid by Eva against her son, Christopher. She stated that Eva had a bad influence on the complainant, and that after Eva disappeared, the complainant no longer left home, and that she got married and had a child.

In contrast to her testimony it is clear that Mrs. J did in fact feel threatened, and to that extent she was prepared to interfere in the court case, and try to prevent her son from testifying. This is clearly demonstrated by her demeanour while testifying, and her breakdown in the proceedings and her expressed fears for her own life and that of her son's. The witness was clearly intimidated to the degree that she was initially prepared to mislead the court and interfere with the testimony of another witness. In the circumstances it will be difficult to regard her

as a completely reliable and credible witness. It is however clear that she supported the complainant's version on a few crucial aspects.

After this witness had testified the defence closed its case

### **Court witnesses**

The court then called the complainant's brother, Christopher, in terms of section 186 of the Criminal Procedure Act, who testified he knew nothing about the case. He was questioned about allegations that he been approached by the accused with regard to having the case withdrawn by the complainant, that money had been offered and threats made. Initially, when questioned by the court he denied having spoken to any of the accused in this matter. He later changed this and admitted to having spoken to the accused on at least two occasions, one at the beginning of 2002 and once after coming out of prison in December 2002.

He testified that he was living at the flat when the alleged incident occurred, and was subsequently arrested for events unrelated to the case, and was released from jail just before Christmas 2002, and that he served his sentence under a different name.

He testified that he consulted with Captain Jansen and had made a statement while in prison, but that he disputed the contents of the statement.

He stated that he had not stated certain of the facts in the statement, but they were things the Investigation Officer had told him. He stated that he made the statement as he was told that he would be released early, and that he would receive preferential treatment in jail. He therefore, as a result of the promises, deposed to a statement some of the contents of which he had no knowledge.

Adv Booysen, for the state, put it to him that she had consulted with him in jail about the statement and had read the statement to him in the absence of Captain Jansen, and that he had confirmed that he understood and agreed to the

statement. He agreed that he had confirmed, on her visit with him in prison, the correctness of the contents of the statement, and never disputed its contents with her at any point during their consultation. When asked about this the witness's explanation was that he thought that Ms Booyesen and Captain Jansen were working together.

He also stated that he did not understand what an oath was, and the implications of taking it, on paper. He said that the reason for refusing to testify was that he was still in jail, and that he said he would testify when released from prison.

He was asked about the offer of the ten thousand rand from the accused and the request for a photo of the complainant, and he said that he heard about this from Captain Jansen, but he did not, on his own know anything about it. He had also heard rumours from the newspapers, whilst he was in prison.

He denied that he was approached by accused one with respect to the allegations contained in his statement.

The witness then requested legal assistance. This request was supported by counsel for the accused, although he was in fact a court witness. The witness was then sent to Legal Aid. Legal Aid however, refused to assist him. The Court then was able to arrange pro amico assistance for Christopher from Advocate Bisschoff, a member of the Cape Bar, and the Court is indebted to him. The court adjourned for this to occur.

After receiving legal advice the witness resumed testimony and was questioned further regarding his statement.

The witness asserted that certain aspects of the statement were taken down correctly, for example that he took money from Mr. Staggie for food but that he knew nothing about an alleged R10 000.00 to withdraw the case, although he had told Captain Jansen that he had heard rumours about it.

He admitted to hitting his sister, the complainant, with belts when she did something he disapproved of. He also admitted to beating her with his fists to the degree that on one occasion her mouth bled. He admitted to being almost 10 years older than her. He also admitted that his own girlfriend, Eva, used to sleep with his mother as she was too afraid to sleep in his room, although he denied assaulting her.

He also testified and confirmed the complainant's problems at school and gave

evidence that he used to go looking for the complainant when she ran away from home. Once he fetched her from a drug house in Woodstock where she was watching a blue movie without her clothes on. He attempted to insinuate that she was involved in prostitution.

He testified that the police searched the house and found a zip gun in the warmer and that he had placed it there and that he was arrested and sentenced to clean a court for a day for this offence.

He also testified that some time after making the statement to Captain Jansen he had received a phone call in prison on a cell phone from the complainant to ask if he could assist with identifying the two other perpetrators whom the complainant said had raped her and that she said she thought they were from Westside.

He testified that when he came out of prison he went to the place where accused one usually held meetings, to talk to him about the case, as he wanted to clear his name. This was occasioned by the facts that his friends, who were gangsters were no longer talking to him.

Christopher was not a credible witness. It is not believable that he was prepared to depose and claim that the contents of an affidavit which was read back to him, on more than one occasion by more than one person (Captain Jansen and Adv Booysen) are true, and yet he was prepared to come to court to deny its contents. It is improbable that he was unduly influenced in the making of the statement since he on his own evidence he was a member of the 28's prison gang, which, on his evidence, lays down the law in prison. While he initially denied talking to accused one, latter in the record he admitted talking to him on two occasions, once immediately after he came out of prison. It is clear that he was afraid and it is very probable that he therefore attempted to retract his statement regarding offers and/or threats from the accused.

Little reliance can be placed on the testimony of this witness. The relationship between him and the complainant was not a good one. The witness admitted behaviour towards the complainant that was somewhat less than brotherly love, caring and of concern. He clearly tried to damage his sister's credibility by insinuating an involvement with prostitution, despite there being no evidence of this or grounds for believing this to be so.

He is a member of a gang and has served various prison terms and it would appear that his loyalty towards the gangs is paramount, whether this is as a matter of choice or coercion.

He disputed the statement he made to Captain Jansen in which he alleged he

was approached about getting the case withdrawn for a sum of money. When he was released from prison he went to see accused one immediately to discuss the matter. The bias of this witness towards accused one can be in no doubt.

The second witness called by the Court in terms of its section 186 powers was Dr. Marian Viljoen, who had a doctorate in psychology. She was called as she had been seeing the complainant, and the Court was told during the trial that she was a psychologist. She was, however, not a registered psychologist.

She had taught the subject and had seen a number of patients in various capacities over a number of years, including rape victims. She has her own private practice as a therapist. The complainant was referred to her by a medical doctor in July 2002, and the referral letter, Exhibit 'M', stated that the complainant was suffering from anxiety and sleeplessness.

Dr Viljoen stated that between July and October 2002 she had about 5 one hour sessions with the complainant and she had diagnosed her to be suffering from post traumatic stress syndrome. Dr Viljoen read from her extensive notes taken during those consultations and gave a report of the rape that was the same as that which the complainant testified to.

She testified that the complainant had anxiety and fear for the safety of her family and the problems relating to her school situation were possibly related to dyslexia. This manifested itself in left handedness, a lack of concentration, frustration and outbursts. Dr Viljoen stated that the complainant had attempted to take her life more than once.

The defence in cross examination raised the fact that she was not registered and that she was not entitled legally to make a diagnosis and to hold her self as somebody who could cure any psychological defect. The defence was asked on numerous occasions for authority that the witness ought not to be heard and the court stated its willingness on a number of occasions for the defence to make such an argument, and provide authority in this regard. This did not occur. Mr Mihlak simply wanted the court to rely on the testimony of Mr Van Wyk, the defence psychologist, on the law regarding the status of Dr Viljoen. A special entry was then requested and was made.

The defence also questioned the techniques that Dr Viljoen had followed in making a diagnosis of the complainant. She responded that she used interviews and that she had relied on the information given to her by the complainant and had not verified it since she was not performing a forensic role, but rather a therapeutic one. She stated that if she done otherwise she would have transgressed the rules of ethics governing her profession.

She testified that she had told the Witness Protection Programme to refer the complainant to a psychiatrist. This had not occurred.

Dr Viljoen is not a registered psychologist and is not entitled to make a diagnosis in terms of the Health Professionals Act 56 of 1974 as amended.

The version of the rape given by Dr. Viljoen was not a first report, and is hearsay evidence, and of no value in itself. If Dr. Viljoen had been a registered psychologist, the information given by the complainant to her would no doubt be material.

In these circumstances, therefore the testimony of Dr. Viljoen is of no value.

The next witness was Mr Gerhard van Wyk who is a registered Clinical psychologist in private practice. He was called by the defence after the Court had at the time of giving notice of its intention to call the person who had been giving the complainant psychological care, permitted the defence to appoint an expert, to listen to and testify after listening to the evidence of this person. The court made an order for the state to pay for this services of this witness for the defence.

Mr van Wyk, testified that he had testified in 60 out of 60 criminal cases as a defence witness and that he has an M A degree in clinical psychology. He stated that Dr Viljoen was not practicing lawfully, and that her evidence must not be trusted by the court.

He testified further that from what he has heard he was concerned that the complainant might be suffering from anti social personality disorder or a borderline personality disorder which were serious mental illnesses, and that if this was suspected it would be dangerous for the court to accept the complainant's evidence.

He placed emphasis, when criticizing Dr. Viljoen, on the fact that she did not obtain a full and detailed history from the complainant. He stated that one would also have to test the veracity of what was told by the person under assessment by interviewing family members and others.

He did not however exclude the possibility of the truth of the diagnosis that Dr Viljoen had made, that the rape had occurred and that visions she had had were the result of post traumatic stress or the result of epilepsy or some illness in her childhood which could have lead to a high temperature which could have resulted in what she supposedly saw. He conceded that most of the criteria for



determining the condition that he possibly diagnosed were broad and could be eliminated by other factors. He admitted that he had not interviewed the complainant, nor read her evidence in chief, nor any other parts of the record and had read only a portion of her cross examination.

The evidence of Mr van Wyk was not of much assistance since he was willing develop an alternative diagnosis without examining the complainant. As the court noted in *S v Lister* 1993 (2) SACR 228 (A) at 232A:

**Ultimately it really appears that Dr Sidley, although possessed of vast general experience and expertise, was at a disadvantage as far as appellant is concerned. He ostensibly has consulted her only once.**

In this case the witness never consulted the complainant. It is however curious that he was professionally willing to state, albeit as a possibility, that the complainant suffered possibly from a serious psychological disorder on a minimal amount of information regarding the complainant.

He described the complainant as a person who made the lifestyle choice to slip out of home and mix with gangsters and visited drug dens and knew about drugs.

All of this is a misinterpretation of the facts. There is no evidence apart from that of complainant's clearly hostile brother, that the complainant frequented drug dens or used drugs. That the complainant would have been familiar with drugs and their uses is only to be expected considering the environment in which she lived.

Mr. van Wyk alludes to mixing with gangsters as if it was a specific choice and a negative one made by the complainant.

It is clear that the complainant was brought up in a household where her brother and brother-in-law were gangsters. The area in which she lived was on the

border of three gang areas. The complainant not only had no choice in mixing with gangsters but it is clear that one of her motivations for becoming an informant was to try and rid the area of gang activity.

The complainant's work record was noted as a possible sign of a personality disorder. In the light of the fact that the complainant is still a teenager, and was only 17 when the alleged raped occurred, has a standard three education, no skills, and a small child, this is a remarkably harsh observation. It is important to note that the complainant was assisted financially by her husband, who was employed as a security guard, before going to jail.

Mr. van Wyk also stated that the complainant kept adjusting facts as would be most useful to her during her testimony, and noted this as an example of deceitfulness.

It is hard to understand on what basis Mr. van Wyk could judge facts that were being adjusted in light of the fact that, on his own evidence, he never read her evidence in chief or any of the other evidence in the case. It is therefore appropriate to note the comments of the court in *S v Randall* 1995 (1) SACR 559 (C) 564J where Steyn AJ agreed with the submission that:

**There is also the problem that Dr Oxtoby appears to have permitted himself something less than an objective approach, and to have adopted a partisan attitude towards the appellant's plight.'**

Mr van Wyk's evidence must therefore be treated with caution.

Before I move to the summing up of the evidence in this case I want to comment on the assessors in this case. While it is not usual for a Court to explain the choice of assessors which a judge has made, during the trial Mr Mihalik questioned why one of the assessors had been appointed when another assessor was originally to have sat in the trial. The first assessor, a retired magistrate, was not appointed eventually as he brought to my attention on the day that the trial was to begin that he had sat as an assessor in a trial concerning the brother of accused one. As a perception of bias was possible, that assessor was not appointed. Let me add that my choice of assessors was also made to ensure representivity. I therefore, besides issues of legal background, skill and experience, took into account South African demographics and gender. I

therefore appointed an African advocate, who is a member of the Cape bar, as well as a woman with 10 years experience as a state advocate. They have both been very useful members of this Court and the Court is indebted to them for their insights and assistance throughout the trial.

## **Conclusion**

In the majority of rape cases, there is no one else present besides the victim and the rapist or rapists. The only proof often available to the prosecution is the victim's word and any circumstantial evidence that may or may not be available. This is the context within which this case needed to be decided.

The evidence of the alleged rape was that of a single witness, the complainant. Section 208 of the Criminal Procedure Act provides that an accused may be convicted of any offence on the single evidence of any competent witness

It is critical to note that there used to be a specific cautionary rule in sexual offences, but that the Supreme Court of Appeal in *S v Jackson* 1998 (1) SACR 470 per Judge Olivier, at 476E, found that the rule:

**in sexual assault cases is based on irrational and out dated perception. It unjustly stereotypes complainants in sexual assault cases (overwhelmingly women) as particularly unreliable.**

The court, at 476F, found that the rule should not be applied in sexual cases only but that:

**the evidence in a particular case may call for a cautionary approach, but that is a far cry from the application of a general cautionary rule.**

In this regard the Supreme Court of Appeal in *S v M* 1999(2) SACR 550 (A) per Melunsky AJA, noted at 554G-555B that:

**Prior to the decision in *S v Jackson* 1998 (1) SACR 470 (SCA), it had long been accepted that criminal cases of a sexual nature fell into a special category. It was said that there was an 'inherent danger' in relying upon the unconfirmed testimony of a complainant in a sexual case. This resulted in the courts adopting a cautionary rule of practice. The rule required -**

**(a) the recognition of the 'inherent danger'; and  
(b) the existence of some safeguard that reduced the risk of a wrong conviction, such as corroboration of the complainant in a respect implicating the accused, or the accused's failure to give evidence or his obvious untruthfulness. (See *S v Snyman* 1968 (2) SA 582 (A) at 585C - H.) In *S v Jackson* it was pointed out at 476E-F that the application of the cautionary rule to sexual assault cases was based on irrational and outdated perceptions. Although the evidence in a particular case might call for a cautionary approach, this, it was emphasised in the judgment, was not a general rule: the State was simply obliged to prove the accused's guilt beyond reasonable doubt. The factors which motivated this Court to dispense with the cautionary rule in sexual assault cases apply, in my view, with equal force to all cases in which an act of a sexual nature is an element.**

Thus, no such rule exists exclusively in relation to sexual offences, but a cautionary approach ought to be adopted where needed.

While it could be argued that no cautionary ought to be adopted in this case, this court has adopted a cautionary approach regarding the evidence of the complainant. Certainly the background and context of this case, as well as the psychological issues raised in this case, give rise to the need to possibly treat the evidence of the complainant with caution.

That the complainant testified about seeing various things on two occasions, once while at school and once during the trial when she attempted to commit suicide, ensures that her evidence may possibly be needed to be treated with caution.

However, the state of mind of the complainant must not be overstated. The fact that victims suffer from various effects of sexual abuse has long been recognised.

In *S v Van Wyk* 2000 (1) SACR 45 (C) Davis J at 50H-I noted:

**The Court has taken note of the circumstances of the rape and the extent of the post-traumatic rape syndrome which has been suffered by the complainant.”**

Davis J, at 51J–52C, further noted that:

**“Ms Friedman - to whom the Court is grateful - clarified aspects thereof. It is helpful to read but a passage from this report:**

**'Complainant reported for the first three months after the assault. She withdrew from her friends and boyfriend and described a state of prolonged shock. She moved out of her flat in Wellington and moved into her aunt's home in Bothasig. This was largely due to her anxiety of being alone for a period of time. She concurrently experienced a set of psychological symptoms: sleeplessness, anxiousness, nightmares, severe appetite and weight loss, inability to be alone, associative symptoms, avoidance of males and depressive affective states. Her memory and concentration also reportedly deteriorated markedly. She had been an avid reader but after the alleged rape could not read for four months. She also developed panic attacks with the first one occurring one week after the rape. The panic attacks are accompanied by visual, olfactory and auditory flashbacks to the alleged rape incident.'**

**Ms Friedman explained how this reflected a classic set of symptoms suffered by rape victims. Dr Malcolm goes on to state:**

**'In August 1998 she was particularly depressed and made a suicide attempt by overdosing on her sister's sleeping pills.**

Ann Wolbert Burgess, and Lynda Lytle Holmstrom, conducted a study of victims of sexual violence in 1973 and found that the victims

frequently reacted similarly to the attack. (cited in [Cynthia F. Feagan, “Rape Trauma Syndrome Testimony as Scientific Evidence: Evolving Beyond State v. Taylor”, 61 University of Missouri Kansas City Law Review 145, 151 \(1992\).](#)) This study has been further supported by other studies. ([Susan Stefan, “The Protection Racket: Rape Trauma Syndrome, Psychiatric Labeling, and Law” 88 Northwestern University Law. Review 1271, 1289-91 \(1994\)](#))

Kenneth M. Gordon, “Rape Trauma Syndrome in Sexual Assault Cases”, [20 Colorado Law Review 2509 \(1991\)](#) has found that Rape Trauma Syndrome is a type of post-traumatic stress disorder (PTSD) suffered by women who have been raped and Feagan, at 152, notes that the scientific community has recognized RTS as a clinical description that distinguishes rape victims from other groups of victims."

The court in [State v. McQuillen, 689 P.2d 822, 831 \(Kan. 1984\)](#) noted that:

**“Experts in the field have established through their work with rape victims that there are reactions to forcible rape common to all rape victims. . . . Many victims develop phobic reactions to a wide variety of circumstances, such as fear of crowds, fear of being alone, or fear of the sights, sounds and odors associated with the rape. All victims are left with some paranoia.”**

Jennifer J. Hackman "Henson v. State: Rape Trauma Syndrome used by the Defendant as well as the Victim" American Journal of Trial Advocacy (Fall 1995) 453 has noted:

**To be classified as suffering from RTS, the rape victim's "stress responses" must meet four criteria: First, the event that causes the stress must be of significant magnitude as to evoke distinguishable symptoms in almost everyone. Second, the trauma must be re-experienced, usually by recurrent and intrusive recollection of the rape. Dreams and nightmares are common; and nonmastery dreams, where the victim is unable to successfully overpower the assailant, occur. The third diagnostic criterion is the numbing of responsiveness to the environment or a reduced involvement with the environment. Finally, two of the following list of six symptoms should be present that were not present prior to the rape: (1) exaggerated, startle response of hyper-alertness; (2) disturbance in sleep pattern; (3) impairment of memory and/or power of concentration; (4) avoidance of activities that arouse recollection; (5) increased symptoms that symbolize or resemble the event (commonly when the victim is confronted with sexual activity); and (6) guilt about surviving or about behavior during the rape. Symptoms of RTS are, for simplicity's sake, divided into two categories of behavior that a woman who has been raped may**

**exhibit: avoidant behavior and intrusive ideation. Avoidant behavior can be present in a number of ways, but is best characterized by a woman who, after the rape, avoids any person, situation or location that reminds her of the rape. Intrusive ideation is the opposite. These women relive the rape over and over in their minds and can have flashbacks based on anything that reminds them of the rape, resulting in a lack of concentration and sleep.**

The symptoms suffered by the complainant are consistent with rape and other types of sexual violence. The occasion it occurred in her childhood could be explained by similar events of sexual molestation and her own rape by the father of her friend, Belinda. It was the evidence that the earlier rape that been perpetrated against her by the father of her friend, Belinda, occurred at the time of the events that occurred in the school toilets, where she had seen things. In the toilets she was being teased about the rape and thus, it is more than likely that there is a connection between the traumatic events she had suffered then and the things she saw as occurs in Rape Trauma Syndrome, as was noted above.

In spite of this the court has adopted a cautionary approach to the evidence of the complainant and has evaluated the evidence given in the trial to determine if there is corroboration, even though the



complainant's version was very detailed and remained consistent in her statement, in her first report to her police handler and in her testimony in which she repeated and repeated the same allegations and facts over a long period of time while under gruelling cross-examination.

The circumstantial evidence supports the version of the complainant. Her version that she was a police informer who was uncovered was supported by her handler, as well as documentary evidence of payments to her.

That she went with her friend Des, who then went to tell on her to members of the gang, to see her police handler the day before the rape occurred was supported by the evidence of her sister R and her handler Charlotte.

That Mr Staggie drove past the house on a number of occasions and stopped outside the flat twice once at mid day and once in the early evening was the testimony of the complainant. That Mr Staggie's care was there at least once was also supported by evidence of the complainant's sister, R despite her lack of clarity regarding whether it had occurred between 5pm and 6pm on the Tuesday or the Wednesday.

One must question why Christopher would have gone to see accused one immediately on his release from prison in December 2002 while this trial was on, and before he had testified?

Furthermore the complainant organised to phone her brother while he was in prison to see if he could help identify the two other perpetrators. While it could be argued that she was attempting to bolster her story, the chances of her working this out and calculating that the phone call occurred would come out during the trial are remote.

As far as the alibis offered by the accused, the court had grave doubts about the evidence of the alibi witnesses, as was noted above and the alibis cannot be accepted.

The fact that Mr Bosch was fetched by people under orders of Mr Staggie on the day of his arrest as well as the fact that Mr Staggie organised for his legal representatives to represent Mr Bosch for free, must also be considered as to whether a close relationship exists as was mentioned before in this judgement and also as to why Mr Staggie performed these acts.

I am satisfied that the State has proved the two accused guilty beyond reasonable doubt. On the evidence therefore, not only of the complainant, but also of the other circumstantial evidence, the accused are guilty of kidnapping and rape, in that they forced the complainant to accompany them against her will, and then either in the case of accused one ordered her rape, and in the case of accused two, raped her personally.

It is clear that complainant was coerced by means of threats into getting into accused one's vehicle and leaving with him and the others; thereby being deprived of her freedom to act. Accused two clearly associated himself with accused one at all times in the commission of the offences. He was in the vehicle when the complainant was forced to go with them. He participated in a gang rape at the instruction of accused one. He remained with accused one when the complainant was dropped off. He further made no disassociative acts throughout the commission of the offences. In the circumstances it can be inferred that accused two, acted in furtherance of a common purpose with accused one with respect to the kidnapping may be convicted of kidnapping also as charged.

A common purpose is found to have occurred on the basis of the decision in *S v Mgedezi* 1989 (1) SA 687 (A) which relied on *S v Safatsa and Others* 1988 (1) SA 868 (A), the court found, at 705I-706C, that certain prerequisites must be satisfied:

**In the first place, he must have been present at the scene where the violence was being committed.**

**Secondly, he must have been aware of the assault on the inmates of room 12.**

**Thirdly, he must have intended to make common cause with those who were actually perpetrating the assault.**

**Fourthly, he must have manifested his sharing of a common purpose with the perpetrators of the assault by himself performing some act of**

association with the conduct of the others.

**Fifthly, he must have had the prerequisite *mens rea*; so, in respect of the killing of the deceased, he must have intended them to be killed , or he must have foreseen the possibility of their being killed and performed his own act of association with recklessness as to whether or not death was to ensue.**

These prerequisites existed in this case, and accused two is therefore also guilty of kidnapping.

I am satisfied on the basis of the complainant's evidence that accused was in possession of a firearm at the time of the rapes and is not in possession of a firearm licence. Accused one is therefore guilty on count 1 on a charge of kidnapping the complainant, guilty on count two of raping the complainant, and guilty on count three of transgressing Article 2 of Act 75 of 1969.

Accused two is guilty on count one on the charge of kidnapping the complainant, and guilty on count two of raping the complainant.

This is a unanimous decision of this Court.