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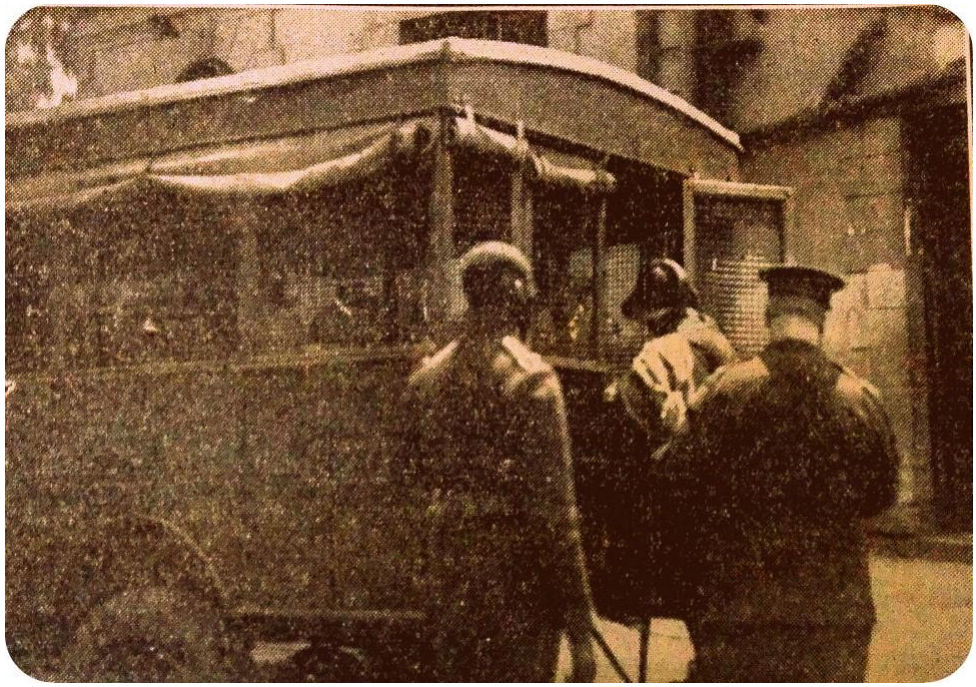
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"Killed her husband with an axe…": Narratives of Mariticide and the Female Criminal Subject, Transvaal, 1917-1935



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A dissertation submitted to the School of Social Sciences, Faculty of Humanities, University of the Witwatersrand, Johannesburg, in fulfilment of the requirements for the Degree of Master of Arts, History.

20 September 2018

D e c l a r a t i o n

This study represents an original work by the author and has not been submitted in any form to another university. It is being submitted for the Degree of Master of Arts, History at the University of the Witwatersrand, Johannesburg. Where use has been made of the work of others it has been duly acknowledged in the text.

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A b s t r a c t

“Killed her husband with an axe…”: Narratives of Mariticide and the Female Criminal Subject, Transvaal, 1917-1935

by

Chavonne Cupido

Supervised by: Dr Prinisha Badassy

This thesis examines the crimes of mariticide, attempted murder and assault with intent to murder in the Transvaal between 1917 and 1935. This was a period marked by increased migration to the cities, rapid industrialisation and urbanisation, crucial legislative changes, and socio-political transformations as the Union government firmly established a new system of administration. The thirteen cases examined in this study were tried before the Supreme, Magistrate, and District Circuit Courts. The cases used in this study explore the crimes of mariticide, attempted murder and assault with intent to murder, with a particular focus on how the women accused of these crimes were treated by the legal system. By exploring the development of the Criminal Procedure and Evidence Act of 1917, this study endeavours to examine these cases on the basis of intent, premeditation and malice. Additionally, this thesis pays special attention to the relationship between mercy and the death penalty and how it impacted the ways in which these women were sentenced. The relationship between urbanisation and the agency of women within these spaces is an important point of consideration that influenced the verdicts reached by juries. This project explores the various motives some women proffered to justify why they committed these crimes and how others manipulated the court system to warrant a lighter sentence. By exploring the legal and social history of this time, the study then concludes with an analysis of how these women were represented in newspaper narratives of the *Rand Daily Mail*. Additionally, it explores how these media narratives in conjunction with legal discourses pandered to common ideologies of racial and class hierarchies. Therefore, this study focuses on the female criminal subject and their agency within the courts and society more broadly, as their crimes were seen as considerably rare cases of violent acts. This dissertation contributes to the historiographies of female criminality and subjectivity, the socio-legal context of the early Transvaal, women’s agency, the domain of marriages and domestic violence, and the racial and gender dynamics of an unfair and biased legal system that operated in segregation-era South Africa.

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mariticide (noun)

(from Latin *maritus* "husband" + *-cide*, from *caedere* "to cut, to kill") literally means killing of one's husband.

INTRODUCTION

This thesis begins with one of the most notorious mariticide cases in South Africa's criminal history, that of infamous serial poisoner, Daisy de Melker (1886-1932). In popular and academic discourses, the story of de Melker has received peculiar attention attaining unprecedented infamy in South Africa's collective memory. In popular culture, her story has been reproduced many times, as a novel, television mini-series, even as a musical.[1] From mythical folktales, to specialised ghost tours to occupying a prominent part of the permanent exhibition on display at the old Johannesburg Women's Gaol, the story of Johannesburg's 'Black Widow' lives on in perpetuity. Daisy, who was a professional nurse, married her first husband, William Cowle in 1909. Due to William's untimely death in 1923, Daisy soon married her second husband, Robert Sproat in 1926. Sproat and Daisy were only married for four years when he also died under unnatural circumstances. Like Daisy's first husband, Sproat died of a cerebral haemorrhage in 1927, which in turn raised concerns about the circumstances surrounding both of Daisy's husbands' deaths. It was only after Daisy's son died in 1932, that the authorities suspected Daisy of murdering the three aforementioned men. Daisy was accused of poisoning her two husbands and son with strychnine. She was tried and hanged in December of that year. The extensive criminal records of her case, as well as the many newspaper articles narrating her trial, was what spurred the development of this dissertation, as it produced more questions surrounding spousal murders in South Africa. It was from Daisy's scandalous history that this thesis started to take form.[2]

This study explores the crime of mariticide within Johannesburg and the broader Transvaal area between the years 1917 and 1935. Mariticide is defined as the murder

[1] See Sarah G Millin, *Three Men Die*. Chatto & Windus, 1934; Annie, Basson. *Daisy de Melker*. Drama. Accessed May 19, 2018. http://www.imdb.com/title/tt0106652/; and Matthew Krouse, "Driving Ms Daisy." The M&G Online. Accessed May 19, 2018. https://mg.co.za/article/2006-07-12-driving-ms-daisy/.

[2] National Archives Repository [hereafter SAB], Registrar of the Supreme Court of South Africa, Executive Council Archive [hereafter URU], 1326, 3062, Rex v. Daisy De Melker, 24 December 1932.

of one's spouse but has primarily been used to refer to the murder of a husband. Much of the existing research on mariticide in South Africa has focussed on the 1940s onwards. There remains a significant gap in southern African historiography on this topic for the early part of the twentieth century. While there are a significant number of cases that have been tried by South African courts, only a few high profile cases have been examined and discussed by historians working on this region. Therefore, this study attempts to bridge this gap by analysing mariticide cases that were sourced from the archival collections of the Executive Council (URU), Registrar of the Supreme Court of South Africa, Witwatersrand Local Division (WLD), Registrar of the Supreme Court of South Africa, Transvaal Provincial Division (TPD) as well as newspaper reports from the *Rand Daily Mail*. Hence, this thesis argues that murder and attempted murder cases enacted by women against men throughout 1917-1935 was fundamentally impacted by the gendered and racial nature of the South African criminal justice system. Additionally, this study asserts that various ideological constructions of identity and agency held by colonial and state representatives and the broader public at large, impacted the trial outcomes and the public perceptions during this time period.

The time period chosen for this study is significant because it was during this time that South Africa became unionised and introduced the first consolidated Criminal Procedure and Evidence Act in 1917. Previously, the different colonies operated under their own sets of legislation. A newly unionised and free (from the British Crown) South Africa was soon able to provide an efficient court system that could handle most criminal cases that appeared before the courts. Therefore, this project explores the way in which these women convicted of the crime of mariticide and attempted murder were punished and remanded through South Africa's criminal justice system. In relation to this, this study investigates whether or not the court extended a helping hand to women they thought were going astray and needed to be saved. Keeping this in mind, the project will first explore the history of the South African criminal justice system, particularly the establishment of the Criminal Procedure and Evidence Act in 1917 with reference to how the female criminal subject was treated by the authorities during this time.

Robert Turrell argues in his book *White Mercy: A Study of the Death Penalty in South Africa,* that females who were convicted of murder were generally treated with

clemency.[3] He argues that this was based on gender inequality, where women were usually identified as the "weaker" sex. This project aims to extend this argument by ascertaining whether the state provided greater clemency to white women as opposed to women of colour. By exploring various court cases, this thesis also attempts to gain insight into the private and domestic spaces in urban Transvaal where intoxication, greed, infidelity, self-defence and the exploitation of preconceived gender roles resulted in the main motives for women wanting to murder their partners.

When investigating mariticide and attempted murder cases in the Transvaal during the period 1917-1935, there are five main themes that are examined. The first theme is the influence of the new South African Criminal Legal system on the ways in which these women were tried. As this thesis discusses the 1917 Criminal Procedure and Evidence Act, the First chapter explores how this act affected these women's sentencing and introduces a discussion on the relationship between mercy and the death penalty. The relationship between mercy and the death penalty is one of the main arguments explored in Chapter One and essentially examines the factors that would result in a woman being hanged or granted leniency. The second theme analysed in this thesis is the effects of urbanisation and migration on the agency of women in the cities, as it led to many African women moving to the urban spaces and taking on positions as beer-brewers, liquor-sellers and prostitutes. Although there were a few other 'respectable' positions that the women could have worked in, beer-brewing, liquor-selling and prostitution proved to be more lucrative avenues for them. In these urban spaces women did not only produce the alcohol but intemperance soon became an urban vice that needed alleviation. Chapter Two of this thesis explores the fact that some women used drunkenness as a reason for murdering their partners. They argued that while they were under the influence of alcohol, it affected their state of mind. Therefore, if they had an altercation with their partner while they were intoxicated, they believed that they could not control their actions which resulted in the eventual death of their partner. The third theme recurring throughout this thesis concerns the legal usage of provocation as defence in many of the mariticide cases that this study investigates. Many of the perpetrators argued that they were provoked by their partner. As seen in many of these cases the perpetrator was provoked to some

[3] Robert Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. (Praeger Publishers. 2004), 4-5.

degree as they discovered that their partner had betrayed them in some way. Provocation therefore became a compelling reason as to why these women committed these crimes and at times helped them to gain a lighter sentence. In relation to this is the question of motive. Motive was a significant factor in both the jury's verdict and the judge's sentence. A good motive, therefore, aided these perpetrators in gaining a lenient sentence.[4] As will be illustrated throughout the cases discussed in this thesis there were various motives argued in the court such as extramarital affairs by the husband, abuse, intoxication, insanity and self-defence. It was therefore the responsibility of the court to determine whether or not these motives were in fact strong enough for these women to gain a lighter sentence. The final theme that is evident in both Chapter Three and Chapter Four was the power of the newspaper coverage of these crimes. The *Rand Daily Mail* newspaper had a significant influence on how the public viewed these female perpetrators. Although the newspaper informed the public of the happenings of local crimes it was also through this reportage that the public developed skewed perspectives of South African female criminality, as most of these reports displayed some degree of prejudice.

By investigating mariticide and attempted murder cases in the Transvaal, this study aims to investigate the wider history of South African female criminality. As argued by Anni Hesselink and Pearl Dastile, in an article titled 'A Criminological Assessment on South African Women who Murdered Their Intimate Male Partners,' there has been very little written on South African female criminality, and much less so on mariticide.[5] Although there have been some accounts of mariticide cases in Latin America and Asia, Hesselink and Dastile argue that existing historiography of female criminality are largely Western-based. This is evident when Hesselink and Dastile further argue that South African female criminality should not be interpreted based on Western scholars' ideas of mariticide because they do not take into account "unique African experiences."[6] Hesselink and Dastile explain that these unique experiences, which are often forgotten or silenced, result from an intertwining of Christianity with traditional and cultural practices such as customary marriages, polygamy and domesticity, specifically with regards to family life. It is suggested that negative and encumbering

[4] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 5.

[5] Anni Hesselink and Pearl Dastile. "A Criminological Assessment on South African Women who Murdered their Intimate Male Partners". *Journal of Psychology in Africa.* (2015 25.4: 335–34).

[6] Hesselink and Dastile. 'A Criminological Assessment on South African Women', 342.

experiences, as mentioned by Hesselink and Dastile's, are what usually drive women to murder their husbands. The traditional values, which are generally based on patriarchal ideas, usually suppress women to live under the control of their husbands. This is clear when exploring Martin Chanock's work on the development of the South African legal system and how marriage was understood by various sectors of society. Chanock argues that there was a clear divide between 'European' marriage and African marriage in South Africa. He discusses the comparison between 'European' marriages, which was based on monogamy, and African customary marriages, which was based on polygamy. Monogamy was based on Christian belief systems, which "teaches that marriage is the sacred union of one man and one woman for life and that fidelity to a single love is much the duty of the man as the woman."[7] Polygamy, was considerably different, as it was the practice of having more than one wife or husband at the same time. Due to this difference, African marriages were legally separated and distinguished from Christian marriages as state officials argued that it "should not be accorded the same status as Christian marriage, but that it should be registered, and be the legal source of inheritance rights for children."[8] Chanock argues that the Transvaal Supreme Court was of the opinion that African marriages were not to be treated equally to that of European marriages as they were uncivilised and based on customary practices. Although "polygamy was a central feature of African life" there were many black South Africans who were in monogamous relationships.[9] In relation to this, Chanock then discusses the role and power of the husband in the household and the transferral of rights to the husband in the black South African families. The transferral of rights to a husband is particularly interesting to note because it questions the level of power a man held over his wife and the assets that she previously owned. This form of control is also evident in the mariticide cases discussed in this dissertation as it highlights the issue of gender inequality during this time period. Chanock offers a similar view on white marriages. He states that "a white woman was under the tutelage of her husband, was a legal minor and had no independent contractual capacity. The joint marital estate was administered by the husband, who had unfettered control over

[7] Martin Chanock. *The Making of South African Legal Culture 1902-1936: Fear, Favour and Prejudice.* Cambridge University Press, 2001, 197.

[8] Chanock, *The Making of South African Legal Culture*, 197.

[9] Chanock, *The Making of South African Legal Culture*, 197.

it."[10] It is usually under these exploitative conditions that women became frustrated, embittered, and vengeful which led them to commit such crimes as mariticide. Although Hesselink and Dastile provide an interesting take in comparing mariticide cases in the West to that of South African cases, it should be noted that the experiences they refer to as uniquely South African are still rooted in western ideas of gender inequality and religious practices. Taking cues from Hesselink and Dastile, this study also investigates whether or not there are any obvious differences between mariticide cases in South Africa and other global contexts. While the study explores the influence of Western ideas in South African law and mariticide and the ways in which it impacted how the court dealt with spousal murder cases. This has been dovetailed with a consultation of secondary sources from further afield, particularly in other parts of Africa.

A further issue that will be explored is the universal and local aspects of patriarchal control. The fact that society was male-dominated affected the laws put in place by the government and various aspects of citizens' everyday lives. These aspects include the effects of marriage, gender inequality and racial discrimination on how these murders occurred. These aspects were rooted in the way men and women lived their lives, how they thought and how they reacted to certain situations. Therefore, this study explores how marriage, gender inequality and racial discrimination affected men and women in their decision/motive to murder their partners as well as the consequences that those in power gave them once they have murdered their spouses. The next section of the Introduction offers an overview of the key literature and historical texts which provide the theoretical framework for this study.

Literature Review

There have been a considerable number of studies focussing on mariticide. The majority of this literature has been written by Western scholars and has either focussed on histories of the eighteen and nineteenth century or has been of studies in criminal psychology. Although there has been limited research on mariticide in South Africa, this study aims to extend this field of enquiry and use the works of notable feminists

[10] Chanock, *The Making of South African Legal Culture*, 201.

and legal scholars who have studied mariticide, as much of the literature on spousal murder in South Africa has focussed on intimate femicide and femicide suicide.[11]

As Nikki Kalbing has argued in her study on intersectionality, violence, and African women as perpetrators, there has been scant research done on the "relationship between race, class, gender and violence by African women."[12] In the past, criminology generally focused on crimes enacted by men and overlooked violent crimes committed by women. Kalbing further argues that this was due to how the nineteenth and twentieth century portrayed criminology as, "a masculine trait and female crime as a biologically based abnormality."[13]

These factors played a significant role in shaping female criminality within the early twentieth century as prior investigations into the legal history of this time period tended to concentrate mainly on "African women's subordinate civil status under codes of customary law or women as victims of abuse."[14] Despite these studies, Kalbing argues that scholarly analyses of "such factors which have shaped female criminality in Southern Africa remain notably thin, for both African and white women."[15]

Kalbing stated that there are limited studies into the research on violent female crimes. She has acknowledged three scholars who have provided ground-breaking work on violent female perpetrators during the colonial period and early twentieth century.[16] Like this study, she also draws heavily on the work of Rob Turrell, Sarah Hynd and Tapiwa Zimudzi when discussing how women were viewed by the court and society, more generally, and how their sentences usually differed to that of violent male

[11] Shanaaz Mathews; Naeemah Abrahams; Rachel Jewkes; Lorna J Martin; Carl Lombard and Lisa Vetten. Intimate femicide suicide in South Africa: a cross-sectional study. (30 May 2008) https://www.scielosp.org/scielo.php?pid=S0042-96862008000700015&script=sci_arttext&tlng=es (Accessed on 14 May 2018). Mohamed Seedat, Ashley Van Niekerk, Rachel Jewkes, Shahnaaz Suffla and Kopano Ratele. "Violence and injuries in South Africa: prioritising an agenda for prevention". *ScienceDirect* (2009, 374.9694: 1011-1022); and South Africa. Independent Complaints Directorate. Proactive Research Unit. *Femicide: A Case Study on Members of the South African Police Service.* (Independent Complaints Directorate, 2009).

[12] Nikki Kalbing. "Race, Class, Gender, and African Women as Perpetrators of Murder in Natal, 1900–1929." *Journal of Natal and Zulu History* (2018, 4).

[13] Kalbing. 'Race, Class, Gender', 4.

[14] Kalbing. 'Race, Class, Gender', 4.

[15] Kalbing. 'Race, Class, Gender', 4.

[16] Kalbing. 'Race, Class, Gender', 5.

criminals.[17] Additionally the work of South African Police Service profiler Micki Pistorius is also vital in exploring narratives of violent female perpetrators.[18]

Turrell's study of the death penalty in South Africa is effective in providing a balanced exploration of men and women of different races who murdered their spouses, which allows readers to question racial and gender differences between the perpetrators.[19] Similar to Turrel's study is the work of Pistorius. In her book titled *Fatal Females: Women who Kill*, Pistorius explores various cases of South African females who have killed their spouses, partners and children.[20] One case that is particularly interesting to note and will be discussed at greater lengths in the first chapter was the case of Dorothea Kraft, alias Dina van der Merwe. Dina was a widower who owned a farm in the Transvaal. Due to a severe drought in 1914, Kraft was unable to maintain her farm and was in the process of losing it.[21] As she was desperate to gain control of her farm Kraft soon sought help from her lover who was a "Jewish immigrant from America" named Louis Tumpowski. Although Tumpowski provided a sound contract Kraft did not read the terms and conditions carefully.[22] When Kraft finally decided to sell her farm she realised that she was unable to do so since the contract stated that Tumpowski had the right to buy her farm for a small sum if she ever wanted to sell. Due to this deceit, Kraft plotted many elaborate ways to murder Tumpowksi. With the help of four other men, Kraft murdered Tumpowski on the 2nd of February 1918. When his body went missing, neighbours grew suspicious of his disappearance which resulted in Kraft being arrested. Due to her previous plots to murder Tumpowski, and the overwhelming evidence presented during the trial, Kraft together with one of her accomplices, a man named Hermanus Swartz, were both found guilty and hanged at the Pretoria Central Prison in 1921.

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[17] Turrell, *White Mercy: A Study of the Death Penalty in South Africa.,* Stacey Hynd. "Murder and Mercy: Capital Punishment in Colonial Kenya, ca. 1909—1956." *The International Journal of African Historical Studies* (2012, 45.1: 100-101). Stacey Hynd. ""The extreme penalty of the law": mercy and the death penalty as aspects of state power in colonial Nyasaland, c. 1903–47." *Journal of Eastern African Studies* (2010, 4.3: 543-544); and Tapiwa B. Zimudzi. "African Women, Violent Crime and the Criminal Law in Colonial Zimbabwe, 1900-1952". *Journal of Southern African Studies* (2004, 30.3:501).

[18] Micki Pistorius. *Fatal Females: Women who kill.* (Penguin UK 2012).

[19] Turrell, *White Mercy: A Study of the Death Penalty in South Africa*.

[20] Micki Pistorius. *Fatal Females: Women who kill.* (Penguin UK 2012).

[21] Pistorius, *Fatal Females: Women who kill,* 187-188.

[22] Pistorius, *Fatal Females: Women who kill,* 187-189.

Turrell and Pistorius' works both provide a substantive look at South African mariticide cases. Both Turrell and Pistorius' work explores cases of mariticide where the couple was not legally married but lived together for a considerable number of years. As seen in many of the cases discussed throughout this thesis some of the perpetrators who were not legally married to their partner but lived together in a domestic partnership for a substantial time. These relationships soon soured once their partner betrayed them in some way (e.g. infidelity, cheating them out of money, falling out of love, physically abusing them). The only way that they believed they could guarantee that they would never be harmed by their partners again was to kill them. These perpetrators believed that by committing these crimes that they would be able to gain a sense of freedom from their partner's betrayal.[23]

Turrell's work on violent female perpetrators is extremely vital to the research on female criminality as his main argument focuses on how women were sentenced in terms of the death penalty or granted mercy. What is interesting to note throughout his study on the relationship between mercy and the death penalty is that the court usually granted women some degree of leniency as, within the criminal legal system, they were seen as members of the 'weaker sex' and, in the cases of African women also as belonging to the 'weaker race'. This led to many women surviving the death penalty but instead resulted in them being sentenced to imprisonment with hard labour.[24] Turrel also shows that there were some instances where white women were given the option of paying a fine as an alternative to imprisonment. The ways in which these women were granted mercy is noteworthy as it depicted the existing gender and racial stereotypes of that time which was based primarily on "a chivalrous paternalism."[25] Tapiwa Zimudzi strengthens this argument by stating that,

> Judicial treatment of such accused women was also highly paternalistic and partly based on the offenders' conformity to traditional gender-role stereotypes.[26]

[23] Turrell, *White Mercy: A Study of the Death Penalty in South Africa*; and Pistorius, *Fatal Females: Women who kill*.

[24] Turrell, *White Mercy: A Study of the Death Penalty in South Africa*, 4-5.

[25] Kalbing. 'Race, Class, Gender', 5.

[26] Zimudzi, 'African Women, Violent Crime and the Criminal Law in Colonial Zimbabwe', 499.

Zimudzi's scholarship on colonial Zimbabwe provides a thought-provoking examination into how these violent female perpetrators used paternalism and gender stereotypes to manipulate the court to gain a lighter sentence. In relation to this, Hynd delivers valuable insight into how the court exercised their leniency based on how they viewed black South African's 'mindset.' As will be discussed in Chapter One of this study, Hynd argues that people of colour would usually be granted leniency as the court thought that they had a "primitive mentality" compared to that of white South Africans. Although this helped black South Africans avoid execution, the racial stereotypes practised in the courts were exercised due to the existing influence of their previous British colonisers and played out in other detrimental ways.[27]

In his seminal work on the relationship between legal history and social history during the early twentieth century, Martin Chanock argues that the South African legal system was based primarily on British law. Despite South Africa becoming an independent state in 1910, the laws that were created after the unification was "created by Britain for British imperial purposes."[28] For instance, to punish those who were considered criminals to the state, the newly formed South Africa established the Criminal Procedure and Evidence Act of 1917. Peter Bekker *et al.* define this act as a "comprehensive code of criminal procedure, popularly also called 'The Code'."[29] Essentially, this act was implemented to regulate all crimes such as theft, burglary and homicide. In 1935, when this project ends, this Act was amended and remained as such until 1977. The project then uses these important dates of 1917 and 1935, when the Criminal Procedure and Evidence Act was first introduced and subsequently amended as the time frame for this study.

The criminal procedure and laws of evidence codes were based on British imperial models which had an enduring legacy over the new South African court procedures. This impact was maintained by employing bureaucrats who were "predominantly

[27] Stacey Hynd. "Murder and Mercy: Capital Punishment in Colonial Kenya, ca. 1909—1956." *The International Journal of African Historical Studies* (2012, 45.1: 100-101). Stacey Hynd. ""The extreme penalty of the law": mercy and the death penalty as aspects of state power in colonial Nyasaland, c. 1903–47." *Journal of Eastern African Studies* (2010, 4.3: 543-544); and Tapiwa B. Zimudzi. "African Women, Violent Crime and the Criminal Law in Colonial Zimbabwe, 1900-1952". *Journal of Southern African Studies* (2004, 30.3:501).

[28] Martin Chanock. "Writing South African Legal History". *The Journal of African History* (1989, 30.2: 269).

[29] Peet Bekker, Tertius Geldenhuys, JJ Joubert, JP Swanepoel, SS Terblanche and Steph E van der Merwe. *Seventh Edition Criminal Procedure Handbook*. (Juta & Co. Ltd. 2005), 18-19.

'British'" for approximately the first twenty years after South Africa had become a union. This included the "magistracy, police, legal profession, etc." who "were dominated by former imperial civil servants or English-speaking South Africans."[30] Significantly, the position of judges played a vital role in the "oppressive structure of domination".[31] As mentioned previously, the court granted leniency to black South Africans based on their perception. Although this leniency helped people of colour to evade execution it also entrenched racialised stereotypes in the court setting and throughout black South African's lives. Chanock argues that,

> The analysis of crime was also set in a complex of fears about black urbanization which included anxiety about black proletarianisation, potential political agitation, and competition for jobs. To the rulers of South Africa, those most criminally dangerous were quite clearly visible. They were not an undifferentiated mass of blacks but specifically the inhabitants of the racial interface in the urban slums. The targets of South African criminological thinking and policy were not simply the drunks, feebleminded, vagrants, and habitual criminals who inhabited the overseas discipline's world, but those with a specific location in social geography.[32]

Essentially, South African criminology was used to maintain the power of white South Africans and oppress black South Africans, who they deemed as a threat to their state power. Many historians have argued that much of the bureaucratic efforts of the South African state was geared towards increasing control over the black South African population. As seen in Charles Van Onselen's seminal works titled *New Babylon, New Nineveh: Everyday Life on the Witwatersrand 1886-1914* and *'*Crime and Total Institutions in the Making of Modern South Africa: The Life of 'Nongoloza' Mathebula, 1867-1948' as well as Linda Chisholm's scholarship on crime, class and nationalism within the Transvaal, the relationship between crime and power in South Africa was palpably evident and criminal law, as well as prisons and compounds, were used to control the black populous.[33] This is evident when exploring the case of 'Nongoloza'

[30] Chanock, 'Writing South African Legal History', 269.

[31] Martin Chanock. "Criminological Science and the Criminal Law on the Colonial Periphery: Perception, Fantasy, and Realities in South Africa, 1900-1930". *Law & Social Inquiry* (1995, 20.4: 938).

[32] Chanock, 'Criminological Science and the Criminal Law', 919-920.

[33] Linda Chisholm. "Crime, Class and Nationalism: The Criminology of Jacob de Villiers Roos, 1869–1918." *Social dynamics* (1987, 13.2: 46-59). Charles van Onselen, *New Babylon, New Nineveh: Everyday Life on the Witwatersrand 1886-1914* (Johannesburg and Cape Town: Jonathan Ball Publishers, 2001) and Charles Van Onselen. "Crime and Total Institutions in the Making of Modern

Mathebula, a well-known criminal who was later arrested and sent to the "labour-repressive" prison compounds. Despite his imprisonment, 'Nongoloza' Mathebula became an infamous prison gangster in the compound. It was due to his influence in the prison that he was later given the option of becoming a warder. Chisholm further argues that this choice was made possible, "by new conditions in the prisons of the Union which made rehabilitation of prisoners a central goal."[34] This rehabilitation is interesting to note since there were a few cases in this thesis where women were granted some form of rehabilitation which would essentially result in them being released earlier.

Although the above-mentioned works focus more on the relationship between crime and the black South African man, Van Onselen's *New Babylon, New Nineveh* investigates the lives of people from all walks of life. Van Onselen provides an insightful discussion of the issue of alcohol usage and prostitution which were used to maintain control over both black and white mine workers by the state. Additionally, Van Onselen highlights how the issues of alcohol consumption and prostitution affected women in the city during the early twentieth century. It is clear in this thesis that the issue of alcohol usage and prostitution played significant factors in how these women committed these crimes and how it inevitably influenced the jury's verdict.[35]

In relation to this, Kalbing argues that in order to gain an understanding of women as both victims and perpetrators it would be vital to explore the types of careers women occupied throughout the early twentieth century and how their experiences within the workforce represented the "'triple oppression' of being black, women and workers."[36] It is within this context that the works of Katherine Eales, Phil Bonner, Laura Philips and Deborah James; and William Beinart and Saul Dubow's studies on segregation within the new South African state as well as the position of black South African women within the urban spaces will be explored.[37]

South Africa: The Life of 'Nongoloza' Mathebula, 1867-1948." *History Workshop*. Editorial Collective, History Workshop, Ruskin College, 1985.

[34] Chisholm. 'Crime, Class and Nationalism', 46.

[35] van Onselen, *New Babylon, New Nineveh.*

[36] Kalbing. 'Race, Class, Gender', 5.

[37] Katherine Eales. "Patriarchs, passes and privilege: Johannesburg's African middle classes and the question of night passes for African women, 1920-1931."(1987). William Beinart and Saul Dubow, eds. *Segregation and apartheid in twentieth-century South Africa*. Psychology Press, 1995. Phil Bonner, 1990. 'Desirable or undesirable Basotho women? Liquor, prostitution, and the migration of

Beinart and Dubow argue that after the unification of South Africa that, "white power was used to forge one of the most extreme forms of racial discrimination in the twentieth-century world."[38] Black South African women suffered most under this oppressive state as the government soon attempted to control the movement of women who migrated to the urban spaces. Eales argues that women who migrated to these urban spaces attempted to move away from traditional paternalistic ideologies within the rural areas. Although women hoped to break away from being dependent on men, most of the opportunities within the urban spaces were male-dominated. Even women who moved to provide more stability within their nuclear family were unable to find 'respectable' positions within these areas. Domestic positions which are currently occupied by women differed in the early twentieth century as white employers preferred employing men to undertake domestic duties. The lack of job opportunities became a major issue for black South African women as the money their husbands earned was not enough to provide for their family. Children at times took on jobs "selling newspapers, hawking fuel or doing odd jobs in the neighbourhood," but this would also not provide a substantial amount for their families to live on.[39] Women, therefore, sought alternative careers to subsidise the rest of the family income. One job that was considered "respectable" by the white "superior race" was black women taking on the position of washerwomen.[40] Philips and James affirm that there were additional positions for women. They state that women could take on the roles involving "hawking, laundry, dressmaking, sewing, gambling, traditional medicine, trading."[41] Although this did provide women with an income, it was not enough to live on. This lack of lucrative job opportunities resulted in many women becoming involved in "immoral" activities such as beer-brewing, prostitution as well as a liquor-selling which provided them with a generous income.[42] Phil Bonner has argued that these positions helped women to survive within the urban spaces but that these kinds of activities in the urban centres became an issue for the state. Since the state wanted

Basotho women to the Rand, 1920–1945', in Walker (ed.) Women and Gender in Southern Africa to 1945.and Laura Phillips and Deborah James. "Labour, lodging and linkages: migrant women's experience in South Africa". *African Studies* (2014, 73.3: 410-431).

[38] William Beinart and Saul Dubow, *Segregation and apartheid in twentieth-century South Africa*, 3.

[39] Eales. 'Patriarchs, passes and privilege', 4

[40] Eales. 'Patriarchs, passes and privilege', 4-6.

[41] Philips and James, 'Labour, lodging and linkages', 413.

[42] Philips and James, 'Labour, lodging and linkages', 413.

to control the black population in terms of labour and housing, they became wary of the influx of women to these urban areas. As there was limited housing for black South Africans in the city there was an increase in slums where many black families lived and brewed beer. The state saw this lack of control as a major problem and blamed women who migrated to the cities as the cause for the social illnesses within these local spaces. They argued that the increase of women led to an increase in slums, venereal disease and immorality.[43] The excessive consumption of alcohol by African men and women was not seen as respectable, as the state as well as missionaries believed that being intoxicated made black South Africans vulnerable to temptations, violent disruptions, abusive behaviour and criminal activities. In relation to this, prostitution was also considered highly immoral as missionaries believed that women were luring and tempting men into a web of disrepute and shame. The ways in which the state regarded these women who took on these alternative positions is evident in this thesis. The use of alcohol also played a vital role in some court proceedings as a few of the accused women used intoxication in relation to provocation as a motive for murdering their partners. Essentially, the way in which women were viewed within the legal and social spaces strengthened certain racial and gender stereotypes as judges took into account that intoxication could in fact disadvantage the already "weak-minded" and "inferior" African woman who was charged with murder.[44] It is, therefore, vital to contextualise the gender inequality issues of that time period.

Karen Jochelson and Cheryl Walker's innovative studies have offered great discussions on gender inequality during the early twentieth century.[45] Both these scholars have acknowledged the fact that women's history has been absent in certain social histories and have attempted to rectify these omissions of women from South African historiography. They, therefore, provide interesting discussions on the agency of women in the domestic and public spaces and argue that these women should not only be seen as housewives who submit to their husbands but instead explore their individual experiences as many tried to escape male-domination during this time period.

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[43] Phil Bonner. 'Desirable or undesirable Basotho women?', 8-9, 38.

[44] Turrell, *White Mercy: A Study of the Death Penalty in South Africa*, 4-5.

[45] Karen Jochelson. "Women, migrancy and morality: a problem of perspective." *Journal of Southern African Studies* 21.2 (1995, 21.2: 332) and Cherryl Walker, ed., *Women and Gender in Southern Africa to 1945* (: David Philip Publishers, 1990), 1.

As David Buss discusses in his book *The Murderer Next Door: Why the Mind Is Designed to Kill,*[46] women who usually murder their spouses generally do so in an act of self-defence so that they could break free from their abusers who harmed them either physically or mentally. Jennifer K. Wesley, writing on the lived experiences of women and victimisation, also discusses abuse as a leading factor of mariticide.[47] She differs in her approach to abuse and instead explores women's abusive histories. She discusses how women were previously abused by their partners and also by family members. Abuse in the family affects women on different levels as their trust is broken and also creates an inability to defend themselves since a majority of women believe that they deserve to be abused. Although abused women find solace in partners who promise security, a majority of these partners also deceive them and soon abuse these women. Whilst there are some women who choose not to or find themselves in positions where they cannot protect themselves, there are those who get frustrated and unexpectedly defend themselves which at times leads to the murder or attempted murder of their spouse.

Although mariticide and attempted murder is a universal problem, the underlying issues are somewhat different in South Africa with regards to cultural and patriarchal control. Sociologist Abeda Sultana defines patriarchy as: "the prime obstacle to women's advancement and development".[48] She argues that patriarchy essentially refers to the control of men. What is particularly interesting in Sultana's study is that she discusses how various social norms such as cultural, traditional and religious beliefs and gender roles are embedded with patriarchal ideology.[49] One example of this could be when exploring traditional values, which are usually based on Christian ideas or African customary practices. These values usually require women to live under the control of their husbands. This can also be seen in how the press reported on female perpetrators in relation to the social expectations of how women were to act within that era.

[46] David Buss. *The Murderer Next Door: Why the Mind Is Designed to Kill*. (Penguin Press 2005).

[47] Jennifer K. Wesley. Considering the context of women's violence: Gender, lived experiences, and cumulative victimization. *Feminist Criminology*. (2006, 1.4:303-328).

[48] Abeda Sultana. Patriarchy and Women's Subordination: A Theoretical Analysis. *The Arts Faculty Journal*. (July 2010-June 2011) 1.

[49] Sultana, Patriarchy and Women's Subordination: A Theoretical Analysis, 14-15.

Prinisha Badassy's study on the power of press narratives within this era also serves as a vital source for understanding how the press shaped the perceptions of the women accused of murder and how it ultimately affected how the public viewed these female perpetrators.[50] Similarly significant is Peter King's work on the reporting of crime during the late eighteenth and early nineteenth century London. He argues that the press only reported on crimes that they deemed newsworthy or sensational.[51] This is noteworthy as the *Rand Daily Mail* also only reported on female spousal murder cases that they deemed interesting as more sensational stories increased their readership. Some readers became so captivated by these articles that they attended some of these trials to support the accused or to formulate their own opinions on the cases on trial. Therefore, the relationship between the press and the public also played a large role in the cases discussed in this thesis as this public perception impacted a few of the verdicts for the female perpetrators.

The Significance of Archival Sources and Methodology

This dissertation is based on archival and newspaper sources, and as such it is necessary to think through the implications of using archival and newspaper records for historical research. As seen in Carolyn Hamilton, Verne Harris, and Graeme Reid's work on refiguring the archive, they argue that "the archive is primarily the product of judgement, the result of the exercise of a specific power and authority".[52] This thesis relies heavily on court records from the Pretoria National Archives as well as newspaper articles sourced from the *Rand Daily Mail*, which dates back as far as 1902. Like newspapers, it will be taken into account that court records are not immune to the problems associated with rumour, testimony under pressure and imprecise interpretation. Therefore, it is necessary to provide a short discussion on the advantages and disadvantages of using archival sources. As Nigel Penn discusses in his study of eighteenth-century Cape criminals and castaways, which were based on

[50] Prinisha Badassy. 2011. *"A Severed Umbilicus: Infanticide and the Concealment of Birth in Natal, 1860-1935"*. PhD Diss. University of KwaZulu-Natal, 202-255.

[51] Peter King. "Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth- and Early-Nineteenth-Century London". *Continuity and Change* (2007, 22.1:97).

[52] Carolyn Hamilton, Verne Harris, and Graeme Reid, *Refiguring the Archive* (Dordrecht: Springer Netherlands, 2002) 20.

archival research, many of the characters who emerged from the archival documents "refused to be ignored, nor would they suffer banishment to a footnote."[53]Penn further argues that,

> In keeping with the turbulent natures they displayed more than two hundred years ago, and consistent with the irrepressible qualities with which they first forced themselves into the historical record, they demanded attention. They might have been marginal but they were visible, having left better documentary evidence of their lives than many of their fellows. For all the ordinariness they were thus anomalous, the 'exceptional normal' of their day, standing out sufficiently clearly to be noticed by both their contemporaries and by historians."[54]

This argument is imperative as it mirrors what this project attempts to achieve. By exploring the archival sources found in the records of the Executive Council (URU), the Justice Department (JUS), the Supreme Court (WPD), the Registrar of the Supreme Court of South Africa, as well as the office of the Governor-General (GG), this project attempts to offer a glimpse into the lives of women who murdered or attempted to murder their partners and gain an understanding of their agency within the court, society and the press. Despite the difference in the number and length of records of each case discussed in this thesis, the lives of these women should still be explored, as fully as possibly, as their cases were considered quite rare by the early twentieth-century society. It is within this context that this project provides a deeper exploration of their cases. It also "draws attention to the forces and processes which were responsible for shaping it."[55]

These micro-histories, therefore, attempt to discuss certain members of society who were charged with the crime of murder or attempted murder and explores whether they were granted leniency or the death penalty. Their motives behind committing these crimes as well as the environments that they lived in draws attention to the norms practised within that society. These archival sources also provide captivating accounts of gender and racial stereotypes that proliferated throughout the early twentieth century period. Penn supports this by stating that, "their stories, taken simply

[53] Nigel Penn. *Rogues, Rebels and Runaways: Eighteenth Century Cape Characters*. (Cape Town: David Philip Publishers, 1999) 1.

[54] Penn, '*Rogues, Rebels and Runaways: Eighteenth Century Cape Characters',* 1.

[55] Penn, '*Rogues, Rebels and Runaways: Eighteenth Century Cape Characters',* 2.

as stories are intrinsically fascinating human dramas, replete with tragic twists and the odd, enjoyable, comic turn."[56]

This is evident when exploring both the archival and newspaper material, but specifically the latter. As seen in many of the *Rand Daily Mail* articles as well as the headlines, the reporting of these human dramas were not only there to inform people of certain crimes but to make the article so enthralling that readers would want to know more about them. Although this form of documentary evidence does provide insight into the social norms of that time, it does have its shortcomings when it comes to crime reportage. As Joseph Baumgartner discusses in his study on using newspapers as an archival source, because of the constant need to print out articles as fast as possible, newspapers at times had certain discrepancies in omitting certain information or only reporting on parts of the case that they found exciting.[57] This, therefore, brings in the issue of reliability as both the newspaper and archive held certain irregularities when it came to recounting court testimonies. Although witness testimonies helped the jury to reach a verdict it should be noted that these testimonies should be treated with some degree of caution. The testimonies shared by the witnesses could have been biased based on their memory of the event as well as their relationship with the accused and the victim. Therefore, their perceptions of the lives of the victim and the accused should not be taken at face value.

Another issue concerning the use of court records is the detailed but illegible shorthand notes. Most cases explored within this thesis contains lengthy sheets of shorthand notes which exceeds the actual amount of legible pages. This proves to be a problem for some of these cases as some of them only contain four pages of the actual court record which do not provide historians with an adequate understanding of the case. A further issue is the use of translators in these court cases. When reading these judgments it is apparent that the language of the court was English. As most of the witnesses and women accused in this study had used English as their second language or had trouble speaking it, the court usually employed the services of a translator. Although the translator was there to provide the court with the events

[56] Penn, '*Rogues, Rebels and Runaways: Eighteenth Century Cape Characters',* 2.

[57] Joseph Baumgartner. "Newspapers As Historical Source". *Philippine Quarterly of Culture & Society* (1981, 9.3:256).

leading up to the crime it could negatively influence the jury's verdict as the testimonies provided by the witnesses and the accused could, in fact, be lost in translation.[58]

It should be noted that although some of the cases comprise a full volume on their own, there are some which simply exist in the archives as single page missives or log entries. Even though some of the voluminous records are incomplete due to missing or misfiled pages, this does not present itself as a great disadvantage to readers as the story of each case has been explained through various witness accounts. The judge's report of the case, which can be found either at the beginning or the end of the trial records also provides a great summary of what each case entails. Although these cases can be criticised on the basis of reliability it does provide a glimpse into past societies, politics and give a voice to those who were not necessarily always heard. From this study it is apparent that mariticide cases were rare but because of the nature of the archive and sources available to the public, this thesis is unable to ascertain with any certainty the quantitative amount of mariticide and attempted murder cases. Deeper research into court cases and legal records will provide future scholars with more information pertaining to female criminality throughout this time period. However, it should be noted that this thesis focuses on thirteen cases of mariticide and attempted murder which sheds light on limited accounts of women who were affected by both the legal system and public perceptions of colonial ideologies.

The study of these cases creates a voice for women, in particular, who were considered to be inferior and second-class citizens during this era and provides an understanding of why they murdered their spouses. The use of archival sources and newspaper records, therefore, helps readers to criticise and comment on past events and acknowledge the voices of the oppressed.

Chapter Outline

As mentioned above, this study will be separated into four chapters that will explore the history of South African law and produce a narrative of South African mariticide cases based on court records and newspaper articles for the period 1917 to 1935. By analysing the narratives of selective South African mariticide cases, this study also

[58] Penn, '*Rogues, Rebels and Runaways: Eighteenth Century Cape Characters',* 6.

aims to explore the various motives surrounding mariticide such as marriage, abuse and patriarchal control. Additionally, this study explores whether women were granted mercy based on their race and gender. This research will be presented in four chapters. The first three chapters will explore South Africa's criminal law system, and various mariticide cases tried in the Transvaal courts, thinking through the socio-economic, political, and traditional reasons and consequences behind the crime of mariticide. The final chapter will discuss how cases of mariticide have been presented through the press, specifically from the *Rand Daily Mail.*

The first chapter explores the passing of the Criminal Procedure Act No. 31 of 1917. As this first chapter mainly explores the history of the South African criminal law system it is necessary to examine where South African criminology originated from, how it changed over time, how murder was defined during this time period, how the legal system handled those who were accused of murder and how the legal fraternity conceived the female criminal subject. This chapter also provides a discussion on the relationship between mercy and the death penalty and how it fundamentally impacted how women were sentenced during the early twentieth century. This discussion is strengthened by exploring the earliest mariticide case found for this study and attempts to use this as an example of how the new South African law system affected women and their sentencing.

The second chapter explores court narratives of five mariticide cases in the period of 1925-1935. This chapter firstly contextualises the social norms of this period and pays special attention to how urbanisation and migration affected women within the urban spaces. It is in this context that a discussion on women's positions within these local spaces is provided. Women who migrated to the cities struggled to find 'respectable' jobs which led them to work as prostitutes, beer-brewers and liquor-sellers, which provided them with generous incomes. Taking this into account this chapter also explores the relationship between alcoholism, intoxication and provocation as motives for mariticide. This at times, helped women to gain a lighter sentence. The chapter then concludes with a discussion on how these women were sentenced based on race, leniency and gender stereotypes.

The third chapter examines both media and court narratives of attempted murder and assault with intent to murder cases in the period 1917-1935. This chapter primarily focuses on the motives behind why women attempted to commit these crimes. A few

of the motives discussed are abuse, infidelity, self-defence and mental health and introduces poisoning as another method used to commit murder. Additionally, this chapter explores other avenues of mercy granted to these women and further explores how women manipulated the court into gaining a favourable verdict.

The fourth and final chapter analyses how seven cases of mariticide were chronicled in the *Rand Daily Mail* between the years 1921-1935. By analysing the reportage of these cases, this chapter will determine whether or not the *Rand Daily Mail* selected the cases that they thought were more sensational and how it helped them increase their readership and ratings. This chapter, therefore, aims to examine whether or not the *Rand Daily Mail* pandered to common ideologies of racial and class hierarchies.

The conclusion provides a summary of the thirteen cases explored throughout this thesis and provides a brief discussion of the themes and major arguments offered in each chapter. The thesis ends with the Appendix, which comprises relevant sections of the Criminal Procedure and Evidence Act No. 31 of 1917, summaries of the cases examined as well as an example of evidence used in one of the cases. These appendices are included to provide a reference point and further clarity in the chapters where these Acts and cases are discussed.

CHAPTER ONE

The Criminal Procedure and Evidence Act of 1917 and the Crime of Mariticide

This chapter examines the development and adoption of the Criminal Procedure and Evidence Act No. 31 of 1917 by the newly formed Union of South Africa with a particular focus on the Transvaal and how this piece of legislation was utilised in arbitrating mariticide cases. Since the Transvaal province was previously a colony of the British Empire, there were still certain systems in place that were based on English law even after South Africa became a union in 1910. After South Africa gained independence, a new codified Criminal Procedure and Evidence Act provided a more effective structure for criminal investigation and prosecution but at the same time these new bureaucratic functions further entrenched gender, class and racial stereotypes that persisted from the colonial years.

This chapter first provides a brief discussion on the development of the Criminal Procedure and Evidence Act No. 31 of 1917. Essentially, it explores the relationship between the passing of the 1917 Act and the incidences of mariticide in the Transvaal during the period 1917 and 1935. By exploring this act, this study aims to provide a deeper understanding of criminal law and how it dealt with those who were accused of murder specifically. The chapter then examines the issue of mercy, the death penalty, the justifications employed for the granting of mercy, and how this strengthened inferior ideas about race, class and gender during the opening decades of the twentieth century. This is then followed by a brief discussion on social transformations of the first decade of the Union taking into consideration the ways in which urbanisation, migration, political developments, labour control and social welfarism impacted everyday discourses on race and gender. This chapter then ends with an analysis of the high profile case of Dina Dorothea van der Merwe, which was brought before the Supreme Court in 1921. By exploring this mariticide case and fundamentally, the relationship between criminal law and women who were accused

of murder, this chapter explores how women were seen through the eyes of the courts and whether or not they were granted more leniency. The correlation between the Criminal Procedure and Evidence Act No. 31 of 1917, the socio-economic transformations in the Transvaal during this time period and Dina's case will be discussed further.

The Criminal Procedure and Evidence Act of 1917

The South African criminal justice system is historically complex. This is due to the fact that South Africa was colonised by both the Dutch and British during the seventeenth and nineteenth centuries. As colonisers, the Dutch and British imposed a system of Roman-Dutch law on their colonies.[1] In the seventh edition of *The Criminal Procedure Handbook*, Peet Bekker, Tertius Geldenhuys et al. provide an introduction into the history of criminal law in South Africa.[2] They state that the South African criminal law system has been influenced by Roman, Roman-Dutch and British jurisprudence. What is interesting to note about the first two criminal law systems is that both the Roman and Roman-Dutch criminal law systems practised legalised torture when the perpetrator had to be punished. Bekker, et al. argue that punishments included: "hanging, strangling, breaking on the wheel, burning, drowning, whipping, branding, keelhauling, dismemberment and the pillory."[3] Although a few of these forms of punishments ceased once the British took control of the South African colonies, some of these such as hanging and whipping continued.[4]

With the advent of British occupation, first at the Cape in the 1790s and later in Natal and the Transvaal in the nineteenth century, the legal systems in these regions was realigned to the metropole and imperial world. Bekker et al. discuss how the British eliminated legalised torture in 1796 but that this was later reintroduced during their second occupation of South African colonies in the 1800s. Although various amendments were implemented to the law system, the shift of colonisers from the

[1] Jonathan Burchell & John Milton. *Principles of Criminal Law: Second Edition*. (Juta & Co. Ltd. 2002), 6.

[2] Peet Bekker, Tertius Geldenhuys, JJ Joubert, JP Swanepoel, SS Terblanche and Steph E van der Merwe. *Seventh Edition Criminal Procedure Handbook*. (Juta & Co. Ltd. 2005), 18-19.

[3] Bekker et al., *Seventh Edition Criminal Procedure Handbook*, 20.

[4] Stephen Peté and Annie Devenish. "Flogging, fear and food: punishment and race in Colonial Natal." *Journal of Southern African Studies* (2005, 3.1: 3-21).

Dutch to the British created confusion specifically within the criminal procedure practices in South Africa. This confusion "led to the Chief Justice and members of the Court of Justice issuing a code of criminal procedure in 1819", which adopted various components of the English criminal law system, most notably a more organised and formal trial setting. Bekker et al. highlight this development by stating that criminal trials now involved: "…the prosecutor and the accused with the court acting as a passive adjudicator".[5] This was significant as the introduction of a trial system supposedly provided a fair legal system in which criminals were tried with greater compassion and interest in their well-being.

By 1910, the formation of the Union of South Africa, which led to South Africa becoming a dominion of the United Kingdom, prompted the formulation of new codes of law. The decade following the Union saw the ex-British colonies adopting a codified national legislative system that was an amalgamation of old colonial laws as well as newly devised acts, laws and ordinances. For instance, and of particular importance to this study, in 1917 the South African state established the Criminal Procedure and Evidence Act No. 31 of 1917 for the purposes of consolidating and amending the laws in force in the various provinces of the Union, relating to procedure and evidence in criminal cases.[6] Bekker et al. define this act as a "comprehensive code of criminal procedure, popularly also called 'The Code'."[7] Essentially, this act was implemented to include all crimes such as theft, burglary and homicide.

The Criminal Procedure and Evidence Act consisted of twenty-two chapters that outline the process that should be followed to charge and convict a criminal accused of rape, theft, burglary or murder. These various chapters deal with all matters relating to summons, indictments, collection of evidence, witness depositions, sentencing and so forth. As this study focuses specifically on murder and attempted murder as well as assault with intent to murder, it would be useful to explore the relevant sections of this act which relates to this.

[5] Bekker et al., *Seventh Edition Criminal Procedure Handbook*, 20.

[6] Union Gazette Extraordinary, 19 July 1917, Act No 31, 1917. The Act reads: "To consolidate and amend the laws in force in the several provinces of the Union, relating to procedure and evidence in criminal cases; and to make provision for other matters incidental to such procedure and evidence."

[7] Robert Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. (Praeger Publishers. 2004), 2.

Starting in numerical order, the first chapter that is pertinent to the crime of murder is Chapter 9, Section 135,[8] which provides details pertaining to the indictment of the accused who was charged with culpable homicide. This indictment is the first instance which clearly states what the formal charge or accusation is. In the murder cases examined for this study, that arraignment usually reads: "…did wrongfully, unlawfully, and maliciously, kill and murder the deceased,"[9]

Another pertinent section in Chapter 9 is s.139,[10] which states that people who committed an offence together may be charged as a group. This segment is significant as a few mariticide cases involved a group of people participating in the crime. In this scenario, the main perpetrator did have the right to request a separate trial from their accomplices in the hope that they would be tried fairly.[11] Section 217[12] of this chapter allows for this request and as will be seen in the case of Dina Dorothea van der Merwe, and in other cases discussed later in the dissertation, this request when granted mostly worked in the favour of the main accused.

One significant section that should be explored in relation to murder is Chapter 13, Section 232.[13] This section pays attention to the charge of assault with intent to murder or to do grievous bodily harm.[14] Chapter Three of this study offers a detailed examination of 'attempted murder' cases to think through issues around mercy, leniency and sentencing. Section 232 states,

> (1) Any person with assault with intent to murder may be found guilty of an assault with intent to do grievous bodily harm, or of a common assault, if such be the facts proved.[15]

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[8] See Appendix for the full version of Section 135 of the Criminal Procedure and Evidence Act of 1917.

[9] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 135 of Act 31 of 1917,250.

[10] See Appendix for the full version of Section 139 of the Criminal Procedure and Evidence Act of 1917.

[11] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 139 of Act 31 of 1917,252.

[12] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 217 of Act 31 of 1917,298. See Appendix for the full version of Section 217 of the Criminal Procedure and Evidence Act of 1917.

[13] See Appendix for the full version of Section 232 of the Criminal Procedure and Evidence Act of 1917.

[14] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 232 of Act 31 of 1917,308.

[15] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 232 of Act 31 of 1917,308.

Following this, it is also necessary to explore how a murder conviction could be replaced with a lesser charge as many of the women accused of the crime of mariticide eventually received a reduced charge once the preparatory examinations were complete and further evidence mitigated reducing criminal charges. Chapter 9, Section 234[16] of this act stipulates that the court could charge the accused who was previously convicted of murder with culpable homicide if there was evidence proving that the accused did not intend to murder the victim. If there was no evidence of the accused murdering the victim, but there was proof that they assaulted the deceased, their charge of murder would be replaced with assault with intent to murder or assault with intent to do grievous bodily harm or common assault. Similarly, those charged with culpable homicide could instead be charged with intent to do grievous bodily harm or common assault.[17] The replacements of these verdicts are significant as it portrays how the court granted certain degrees of leniency based on the lack of intent or evidence found to prosecute those accused with a harsher sentence. This is apparent when examining the cases of Elina Ndjobo and Rachel Taljaard as discussed in Chapters Two and Three of this study.[18]

Once a charge has been proffered, the police investigation completed, the preliminary examinations undertaken and the Supreme Court trial has concluded, the guidelines and rules for sentencing are laid out in Chapter 18, Section 339.[19] Once the accused has received the verdict, they are either sentenced to death or granted some form of mercy. This section states that those convicted of a punishable offence would be sentenced to death by hanging. The accused would first be returned to custody but then be “hanged by the neck until they are dead”.[20] Despite the use of capital punishment, the court did provide other forms of punishments for those convicted of

[16] See Appendix for the full version of Section 234 of the Criminal Procedure and Evidence Act of 1917.

[17] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 234 of Act 31 of 1917,310.

[18] National Archives Repository [hereafter TAB], Registrar of the Supreme Court of South Africa, Witwatersrand Local Division [hereafter WLD], 515/1935, Rex v. Elina Ndjobo, 9 October 1935; and ‘Forgiveness By Husband: Taljaard Tragedy: Wife Hysterical: Now In Fort’. *Rand Daily Mail*, 11 February 1930, 7.

[19] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 339 of Act 31 of 1917,370.

[20] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 339 of Act 31 of 1917,370.

heinous crimes. As outlined in Chapter 18, Section 343,[21] some of the accused who were also convicted of murdering their partners were given lighter sentences, such as imprisonment with hard labour or paying a fine where they did not have to serve any jail time. These two types of punishments were prime examples of how the courts practised mercy.[22]

An alternative form of punishment that was mentioned only once in a mariticide case discussed in the following chapter was whipping. Chapter 18, Section 352 of the Criminal Procedure and Evidence Act specifies that whipping as a form of punishment was primarily meted out to men. [23] Male children who were charged with a crime could be whipped but the court had the option of issuing alternative forms of punishment that was age-specific. What is interesting to note further on in this chapter is that Section 354 stipulates that no matter what crime a woman may have committed, she would never be punished with whipping. [24] An example of this rule of whipping will be discussed at greater lengths in Chapter Two.

Flogging, whippings and hanging – which was the "preferred method of state execution" – were routine methods of punishment and sentencing in the Cape, Natal and Transvaal, as well as other previous African colonies.[25] In her study of 'Capital Punishment in Colonial Kenya, 1909-1956,' Stacey Hynd provides an excellent examination of how hangings were used to maintain colonial control. Although Kenya only gained independence decades later, they shared similar laws concerning capital punishment. While whipping and hanging was the ultimate punishment for convicted criminals, the use of violence was used to control crime in the Transvaal.[26] However, on the other end of the spectrum was the option of pardoning a convicted felon. The

[21] See Appendix for the full version of Section 343 of the Criminal Procedure and Evidence Act of 1917.

[22] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 343 of Act 31 of 1917,374.

[23] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 352 of Act 31 of 1917,380. See Appendix for the full version of Section 352 of the Criminal Procedure and Evidence Act of 1917.

[24] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 354 of Act 31 of 1917,382. See Appendix for the full version of Section 24 of the Criminal Procedure and Evidence Act of 1917.

[25] Stephen Peté and Annie Devenish. "Flogging, fear and food: punishment and race in Colonial Natal." *Journal of Southern African Studies* (2005, 31.1: 3-21).

[26] Stacey Hynd. "Murder and Mercy: Capital Punishment in Colonial Kenya, ca. 1909—1956." *The International Journal of African Historical Studies* (2012, 45.1:100-101).

Governor-General who participated in murder trials, had the option of using the Royal Prerogative of Mercy, which can be seen in Chapter 21, Section 377 of the Criminal Procedure and Evidence Act No. 31 of 1917.[27] Section 377 states,

> (1) In any case in which the Governor-General is authorised to extend the Royal mercy conditionally to an offender under sentence of death, he may, without the consent of the offender, commute the punishment to any other punishment provided by law.[28]

As seen in her exploration of capital punishment in Nyasaland during the first half of the twentieth century, Hynd further argues that the Royal Prerogative of Mercy "allowed the Governor of a colony to reprieve a capital conviction and moderate the rigour of the law to suit colonial societies and modes of governance."[29] Robert Turrell also argues that the Royal Prerogative of Mercy was aimed at devising "a legal way of restricting hanging to the most heinous murders…"[30] Essentially, this form of mercy was created to provide a more stable and fair criminal law system.

The Criminal Procedure and Evidence Act No. 31 of 1917 played a significant role throughout the early years of the union. Although amended over time, particularly in 1935, this act served as a convenient guideline for the criminal justice system. While capital punishment and the Royal Prerogative of Mercy still existed after the 1935 amendment, one change that did occur after 1935 was the movement towards punishing criminals with the death penalty based on "both the elements of deliberation and planning".[31] This meant that juries and presiding judges had to ascertain the degree of murder, as in first or second degree of murder, before the death penalty could be pronounced.

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[27] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 377 of Act 31 of 1917,400.

[28] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 377 of Act 31 of 1917,400.

[29] Stacey Hynd. ""The extreme penalty of the law": mercy and the death penalty as aspects of state power in colonial Nyasaland, c. 1903–47." *Journal of Eastern African Studies* (2010, 4.3: 543-544).

[30] Robert Turrell, "It's a Mystery: the Royal Prerogative of Mercy in England, Canada and South Africa." *Crime, Histoire & Sociétés / Crime, History & Societies* (2000, 4.1: 85).

[31] Turrell, "It's a Mystery: the Royal Prerogative of Mercy in England, Canada and South Africa.", 100

Mercy and the Death Penalty

As mentioned earlier, although the newly formed South Africa established its own legal system, most of their laws were based on both the Roman-Dutch and British law. For the years 1917 to 1935 – when the Criminal Procedure and Evidence Act was amended – South African criminal law mirrored British law, while the Roman-Dutch influence was especially seen through South African marriage law. In his book titled *White Mercy: A Study of the Death Penalty in South Africa*,[32] Turrell argues that, "South Africans inherited the wide definition of murder, the mandatory death sentence, and the secret process of mercy in death-penalty cases from the English."[33] Although Turrell's book focuses specifically on mercy and the death penalty, he provides in-depth discussions on the history of British law and how it impacted South African criminal law. As this study explores mariticide cases it would be helpful to discuss Turrell's understanding of mercy and the death penalty in the criminal cases that this thesis analyses, as many women were granted mercy, while others were sentenced to death.

Turrell argues that there are three distinctions to be made when exploring mercy and the death penalty in criminal cases. The first would be to distinguish between murder and culpable homicide.[34] Murder was termed as a secret and cold-blooded killing, while culpable homicide was seen as a public and hot-blooded killing. Essentially, murder was defined as an unlawful killing with intent and culpable homicide was an unlawful killing without intent. The absence of motive became the key distinction between murder and culpable homicide. This meant that the English took into account that some murders were not planned and therefore lacked motive. By keeping this in mind, the English created a system where they would punish those who murdered with intent differently to those with no intention of murder. Therefore, planned and premeditated murders were punishable by the death penalty, while murders committed

[32] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 4.
[33] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 4.
[34] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 1.

on impulse, where there was no intent, were punished by life imprisonment or incarceration spanning a few years with hard labour.[35]

The second distinction made was between express and implied malice. Express malice was termed as the "positive wish or desire to kill" while implied malice referred to either the "intention to cause grievous bodily harm, or the intention to expose another to a serious risk of death."[36] By differentiating between express and implied malice the British authorities were able to decide whether or not the accused should be hanged or serve a life sentence. Therefore, those who had the intention of causing grievous bodily harm were usually hanged.[37]

The third distinction made was between malice and motive. Turrell argues that "the last chance for a convicted murderer was to hope that a good motive counted in his or her favour."[38] Although motive was unrelated to the intention of murdering a person, a good motive could help the accused after conviction as it did play a vital role in deciding whether or not a person had to be hanged or if they could be granted mercy in the form of life imprisonment. Furthermore, as will be discussed in Chapter Three, provocation as defence came to be used increasingly as grounds for acquittal in murder and attempted murder cases.

When exploring mariticide cases during the period 1917-1935 it is imperative to ascertain whether these three distinctions determined if the accused would be pardoned and granted mercy or sentenced to death. By keeping this in mind this study will be able to determine whether or not the female criminal subject was fairly punished for murder or culpable homicide on the basis of the intention to kill or not to kill.

Mercy and the female criminal subject

Since this study explores mariticide cases where women are seen as the antagonist, it is vital to explore how the state and official commentators constructed the female criminal subject during the period 1917 to 1935. As the Union still embraced and advocated many colonial ideologies, it can be argued that the courts granted women

[35] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 2-4.
[36] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 4.
[37] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 4-5.
[38] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 5.

mercy based on their gender. Through these court narratives, it is evident that the courts viewed female criminals, regardless of their race, as the “weaker sex” who needed the help of a strong, yet compassionate judge. Hynd supports this by stating that:

> Violent female offenders usually escaped the gallows through a combination of a colonial ‘‘chivalry of mercy’’ and a cultural reluctance to inflict violence publicly on female subjects, alongside the belief of many judges that ‘‘the mind of the female native is insufficiently developed to justify the application of the extreme penalty of the law’’.[39]

As women were treated as an inferior being so too were African men and women who were charged with murder. The belief was that Africans were not to be judged on the same basis and behaviour as a “European”, due to the fact that “Non-Europeans” were considered to be primitive. As Hynd argues this "primitive mentality" helped those accused to be treated mercifully by the courts, albeit paternalistically.[40] She further argues that

> Colonial rule was predicated upon the supposed difference between the ‘European’ and ‘African’ mind, and the European official’s power to define and defend this alleged difference.[41]

This type of racialized stereotype became more prevalent in court narratives of “Non-Europeans” who were convicted of murder. Since the courts viewed “Non-Europeans” as “individuals with inalienable rights”,[42] the black African was often isolated as “an object of study and control in the service of state power”.[43] Nikki Kalbing further supports this in her discussion on violent female perpetrators in Natal during the period 1900-1929. She stated that,

> The legal and economic interventions of the colonial and segregation-era state served to exacerbate pre-existing tensions or create new

[39] Hynd. ‘“The extreme penalty of the law”: mercy and the death penalty as aspects of state power in colonial Nyasaland, c. 1903–47,’ 548.

[40] Hynd. ‘Murder and Mercy: Capital Punishment in Colonial Kenya, ca. 1909-1956,’ 91-92.

[41] Hynd. ‘“The extreme penalty of the law”: mercy and the death penalty as aspects of state power in colonial Nyasaland, c. 1903–47,’ 549.

[42] Hynd. ""The extreme penalty of the law": mercy and the death penalty as aspects of state power in colonial Nyasaland, c. 1903–47." 551.

[43] Hynd. ""The extreme penalty of the law": mercy and the death penalty as aspects of state power in colonial Nyasaland, c. 1903–47." 554.

> ones, particularly by promulgating a codified customary law regime that subordinated women on the basis of their race and gender…[44]

It was through these tensions that the African female criminal was treated completely different to the "European" female criminal as African women were treated more leniently based on the court's preconceived ideas of race and gender stereotypes. This point will be further discussed in Chapter Two with the examination of the cases of Johanna Kumalo, Elina Ndjobo and Christina Marry.[45]

Another reason why women who were charged with murder were granted mercy was based on cases where intoxication was evident as a compounding factor. When alcohol was involved in a murder trial, the courts would usually condemn and dismiss this as typical "African social behaviour."[46] Hynd maintains that "officials had long noted that ''beer and women'' were the main causes of violent crime in colonial Africa."[47] As beer-brewing became increasingly popular in the urban areas throughout the 1920s, the authorities believed that alcohol consumption was the root of murder cases as intoxicated people became more aggravated in a violent altercation. Hynd argues that it became increasingly problematic:

> In sentencing such cases, judges and officials were torn between the desire to inflict punishment to deter future cases and the knowledge that such measures would undoubtedly fail. Mercy was usually accorded only where the accused was judged sufficiently intoxicated to compromise their ability to resist provocation.[48]

Another significant factor that played a vital role in the granting of mercy was the issue of doubt in a trial.[49] If a criminal was convicted of a crime but there was no evidence to prove their guilt, the court would find it difficult to convict them. Therefore, the

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[44] Nikki Kalbing. "Race, Class, Gender, and African Women as Perpetrators of Murder in Natal, 1900–1929." *Journal of Natal and Zulu History* (2018, 20).

[45] TAB, WLD, 127/30, Rex v. Johanna Kumalo, 1 May 1930., TAB, WLD, 515/1935, Rex v. Elina Ndjobo, 9 October 1935, and TAB, WLD, 145/1935, Rex v. Christina Marry and Paulina Moema, 22 March 1935.

[46] Hynd. ""The extreme penalty of the law": mercy and the death penalty as aspects of state power in colonial Nyasaland, c. 1903–47." 548.

[47] Hynd. ""The extreme penalty of the law": mercy and the death penalty as aspects of state power in colonial Nyasaland, c. 1903–47." 548-549.

[48] Hynd. ""The extreme penalty of the law": mercy and the death penalty as aspects of state power in colonial Nyasaland, c. 1903–47." 549.

[49] Hynd. ""The extreme penalty of the law": mercy and the death penalty as aspects of state power in colonial Nyasaland, c. 1903–47." 549.

accused would be granted mercy on the basis of reasonable doubt. This will also be explored at greater lengths in the mariticide cases discussed in the following chapters.

Although there are numerous reasons as to why some criminals were granted mercy, in this study of mariticide, it is strikingly evident that gender and race were significant markers of difference. The gender and race stereotypes discussed in this section mirrored the social norms of that time. The way in which women and people of colour were treated and viewed was not only prevalent in the courts but in how society acknowledged them. These women and people of colour were seen as "weak-minded" and "primitive", and the court cases supports this by providing a glimpse into how they struggled to attain respectability within their society. One struggle that they faced was the consumption of alcohol which was considered an immoral act that the "inferior races" were predisposed to. The courts took pity on those who were provoked based on intoxication and were lenient on those who were charged with reasonable doubt. Therefore, mercy functioned as a "get out of jail free" card and as a tool to strengthen gender and race stereotypes.

The Making of Criminal Jurisprudence and Social Transformations

Building on Bekker et al. and Turrell's examination of the development of South African law, specifically criminal law, Martin Chanock offers an alternative way of understanding South African law. In *The Making of South African Legal Culture 1902-1936*, Chanock considers the ways in which South African law developed in the first three decades of the twentieth century essentially in relation to social transformations during this time period. Chanock argues that the onset of urbanisation and migration in the 1860s transformed South Africa's economy and impacted upon its legal system.[50] Urbanisation was brought on by the discovery of minerals such as diamonds in Kimberley in 1866 and gold in the Witwatersrand in 1886.[51] This mineral revolution led to the creation of a more routinized and cheap labour force to mine diamonds, gold and other precious metals. This demand for cheap labour led to migration, where people, particularly men, moved from agrarian areas to urban settlements where they

[50] Martin Chanock. *The Making of South African Legal Culture 1902-1936: Fear, Favour and Prejudice.* (Cambridge University Press, 2001), 60.

[51] Cheryl Walker. *Women and Resistance in South Africa*. (Onyx Press, 1982), 9.

could work as miners and earn an income. The increased interest in minerals from numerous countries led to South Africa evolving into a capitalist state. However, South Africa's advancement into a capitalistic economy negatively affected the lives of many black South African mineworkers throughout the late 1800s and 1900s.

Chanock argues that the formation of the Union of South Africa and the ongoing growth of urbanisation led to an "accelerating motion of an engine of oppression".[52] Chanock discusses the relationship between the early years of the South African state, the increase of urbanisation and the laws implemented during this time, arguing that during the early years of the state, many black men in the Transvaal were sentenced and imprisoned under "taxation, pass and masters and servants laws."[53] As Chanock and many scholars of this time have shown, the law was strategically exploited to further the advancement of urbanisation and white capitalism. By forcefully controlling the influx of migrants through legislation, the new South African state was firmly establishing a racist society where the new white state, controlled black South Africans. This ultimately affected the lives of many black families, specifically the wives and mothers of the migrant workers. The rural homesteads that were abandoned by men who left the city for brighter prospects now saw women assuming their husband's role in the homestead as the caretaker of the family.

Although Chanock explores a more general history of South African law and the social issues that were linked to it, he does not provide an understanding of how women were affected by migration. Despite this lack of exploration into women and migration in Chanock's work, there are many historians and scholars who have provided excellent discussions on this.[54] As this study attempts to identify the lost voices of women in the court narratives, it should be noted that historians have made strides to correct the issue of providing a voice to women who were not recognised in the past.[55] This scholarly lacuna of exploration into women's roles during this era should be noted,

[52] Chanock. *The Making of South African Legal Culture*, 60.

[53] Chanock, *The Making of South African Legal Culture*, 61.

[54] Caroline Wanjiku Kihato. *Migrant Women of Johannesburg: Life in an In-Between City*. (Wits University Press, 2013). Peter Delius. *A lion amongst the cattle: Reconstruction and Resistance in the Northern Transvaal*. (Heinemann, 1996).

[55] Maxine Molyneux. *Women's Movements in International Perspective: Latin America and Beyond.* (Palgrave Macmillan, 2001). Shireen Hassim. 'Where have all the women gone? Gender and politics in South African debates. Conference Paper, University of Natal, 1991; and Debbie Budlender. Women and men in South Africa: Five years on. (Statistics South Africa, 2002).

as it portrays the absence of women's voices. Cheryl Walker argues that this absence is similar to that of scholars who neglected women in history. Walker stated that this neglect, which was often unconscious, were based on social constructs which emphasized women's inferior positions within society. She suggested that the "study of history needs to broaden to incorporate the female world as a legitimate area of research."[56] Of course, since the publication of Walker's *Women and Resistance in South Africa*, historians and feminists scholars have made great advances to rectify this and recoup women's history.[57] Therefore, this study falls into this historical turn, which directs the focus towards woman protagonists. By keeping the above information in mind, the first woman protagonist that will be discussed in this chapter is Dina Dorothea van der Merwe.

Dina Dorothea van der Merwe –

South Africa's first convicted murderess sent to the gallows

In August 1921, forty-one year old Dina Dorothea van der Merwe[58] became the first women to be hanged for the capital crime of murder in the Union of South Africa.[59] Her case first came to trial in June 1921 at the Supreme Court of South Africa in the Potchefstroom and Lichtenburg Circuit, Local Division.[60] The trial consisted of the presiding Judge J. De Waal and a jury. It also included Mr Hole,[61] who was a representative of the Crown, Mr Murray, who stood for the accused (Dorothea van der Merwe) and Mr de Wet, who defended the four co-conspirators (Hermanus Lambertus

[56] Walker. *Women and Resistance in South Africa*, viii.

[57] Cheryl Walker. *Women and Resistance in South Africa*. (Onyx Press, 1982). Belinda Bozzoli. *Women of Phokeng: Consciousness, Life Strategy, and Migrancy in South Africa, 1900-1983*. (Boydell & Brewer, Limited, 1991); Nomboniso Gasa. *Women in South African History: They Remove Boulders and Cross Rivers*. (HSRC Press, 2007).

[58] It should be noted that Dina Dorothea van der Merwe was also known as Dorothea Kraft.

[59] In 1904, Emily Chinea was hanged in the Orange Free State, but Dina was the first women to be hanged after the union of South Africa. This is also evident in the *Rand Daily Mail*. Mervyn Rees. "Marshal Square is sentenced: 70-year police H.Q. to vanish". *Rand Daily Mail*, 10 March 1967, 5.

[60] National Archives Repository [hereafter SAB]. Decisions of the Executive Council (1910 - 1985) [hereafter URU], 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[61] The spelling of Mr Hole's surname changes throughout the trial. It is sometimes also seen as Mr. Hoal.

Swarts, Hermanus Monoto, Andries Monoto and Picannin Modesi) who were all arraigned for the murder of Louis Tumpowski.[62]

In the Decisions of the Executive Council (URU) collection found at the Pretoria National Archives, it becomes apparent that when the crime was first reported in 1918 and investigations ensued, Dina Dorothea carried the surname of Kraft. When the case did go to trial, three years later, she had subsequently married and her surname changed to van der Merwe. It should, therefore, be noted that there was a considerable amount of time between the murder of Louis Tumpowski and the actual trial where Dina was convicted and tried for the murder. It should also be noted that the accused was recognised by her second name in various witness accounts.[63] This difference in the name is one example of the misleading challenges that exist in many archival documents. Some of these misspellings or different aliases may lead to dead-end trails and in other cases open up new paths. It is, therefore, the responsibility of the historian to employ some creativity in discovering the voices of the past.[64]

Dina's case is especially interesting as her mariticide trial is one of the most detailed accounts found for this study. Her records as well as those of her accomplices provide a well-informed account of how and why each of them were charged with murder and how they were sentenced. The first set of records include an index which lists the judges report of the case, the indictment, the plea and application for a separate hearing, the opening address by Counsel for the Crown (Prosecutor), the evidence: which includes thirty-three witness accounts and character references of the deceased and those accused, the defence, the verdict, the statement of accused before sentence, the sentence and the shorthand writer's certificate.[65]

Following the index, the formal charge sheet (indictment) is presented as the first official document relating to the criminal case. The indictment mentions all those who were accused of murdering the victim Louis Tumpowski. The names of the accused were Dina van der Merwe, Hermanus Lambertus Swarts, Hermanus Monoto, Andries Monoto and Picannin Modesi. The plea, which was not guilty, is a joint document that also requests to have a separate trial hearing for each of the accused. The accused's

[62] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.
[63] SAB, URU, 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.
[64] Kalbing. 'Race, Class, Gender', 6.
[65] SAB, URU, 517A, 1937, Rex v. Dina Dorothea van der Merwe , 13 June 1921

defence attorney, Mr. Murray requested that: “I ask for a separate trial. If the accused are all tried together I am of opinion that my client [Dina Dorothea van der Merwe] will be prejudiced by certain evidence which is not admissible against her and which is admissible against some of the other accused.”[66] Although the judge did ask the defence attorney why there should be separate trials, Mr Murray argued that there was different evidence that would either advantage or disadvantage each of the accused. He argued,

> this is a case where there is a quantity of evidence, for instance against Mrs. van der Merwe, which does not touch the other prisoners at all. There is also evidence, against Swarts, which does not affect Mrs. v. d. Merwe, and the evidence against them is almost entirely not evidence against the three natives, Hermanus Monoto, Andries Monoto and Picannin Modesi.[67] It is entirely a matter within his Lordship’s discretion.[68]

By taking the impact of evidence into account the presiding judge, J. De Waal agreed with Murray’s argument and stated that:

> I have come to the conclusion that there is a possibility of prejudice to one or other of the accused in the event of a joint trial, and for that reason there should be separate trials. I do not lose sight of the fact, of course, that by granting the application it means very serious inconvenience to everybody concerned, but I cannot allow that to influence me. That being so, the accused van der Merwe shall be tried separately.[69]

The judge then goes on to suggest to Mr De Wet, the defence attorney of the other four accused should also apply for separate trials for each of his clients.

The records found in the URU then moves onto the opening address by Counsel for the Crown, Mr Hole, the prosecutor. Hole gives an in-depth summary of the case where he states the reasons why and how the accused murdered the victim, Mr Tumpowksi. As he was acting for the state, he argued why the accused should be punished based on witness accounts and character references from neighbours, family members and farmers. By providing a detailed summary of how and why the

[66] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[67] Although both Hermanus Monoto and Andries Monoto share the same surname, it was not recorded whether they were in fact related.

[68] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[69] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

accused was charged with murder, the prosecutor then attempted to give the jury a better understanding of what to expect throughout the trial.

In the book titled *Fatal Females: Women who Kill*, South African Police Service profiler, Micki Pistorius explores various prolific cases of South African females who have killed their spouses, partners and children.[70] One case she focuses on is that of Dina Dorothea van der Merwe.[71] Dina, as we learn from both the court records and Pistorius' account, was a widow who owned a farm in the Transvaal. She lived there with her daughter named Polly, formerly known as Janetta Christina Bighl according to the court records. Due to the severe 1913 drought that wreaked havoc on the farming community across South Africa, Dina was unable to maintain her farm and was in the process of losing it. As she was desperate to retain ownership of her farm, Dina soon sought help from a lover who was a "Jewish immigrant from America" named Louis Tumpowski. On the 12th May 1914, Dina and Tumpowski entered into a contract where Dina leased her Treurfontein farm to Tumpowski, which she owned for the sum of £25 per year. The lease was for nine years where she also gave him the option of buying the farm at the rate of £3 per morgen.[72] Although Tumpowski provided a sound contract Dina did not read the terms and conditions.[73] When Dina finally decided to sell her farm she found that she was unable to do so since the contract stated that Tumpowski had the right to buy her farm for a small sum if she ever wanted to sell. Due to this deceit, Pistorius relays how Dina decided to visit a 'witchdoctor' that provided her with many materials to kill her partner. [74]

As revealed in the URU transcript, the 'witchdoctor' that she contacted was a coloured man by the name of Jim Burds. Burds played a pivotal part in the demise of Dina as he was the primary witness for the case against her and he was also one of her

[70] Pistorius. *Fatal Females: Women who kill*.

[71] It should be noted that Pistorius uses Kraft but for the purposes of clarity this study will use van der Merwe since this was used in the archival records and the newspaper sources that were consulted.

[72] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[73] Pistorius, *Fatal Females: Women who Kill,* 187-189.

[74] Pistorius, *Fatal Females: Women who Kill,* 187-189. It should also be noted that Pistorius uses the term 'witchdoctor' in her book. She also states in brackets in her book of how they were called witchdoctors at that time. It should also be noted that the *Rand Daily Mail* also called Burds a 'witchdoctor' which will be discussed further in the fourth chapter. 'Death Sentence Passed On A Woman: Judge Holds Out No Reprieve: Dramatic Scene In Tumpowski Trial: "Innocent Before God And Man"'. *Rand Daily Mail*, 16 June 1921, 5.

accomplices in murdering Louis Tumpowski.[75] According to Burds, he first met Dina in June 1917 in Lichtenburg. At the time, Burds was working for a woman by the name of Mrs Scholtz. Although unclear of Burds' work responsibilities for Mrs Scholtz, he did state that: "… I was then working for Mrs Scholtz in the lands…"[76] Burds was also employed as a teacher, preacher and 'witchdoctor'. When Dina first visited Burds, her immediate request was for him to 'throw the *dolos'* [77] for her. She then asked him to look at the cards to see whether or not the man with whom she was living with loved her. Burds then stated that: "I threw the cards, and I told her: "Yes, the man loves you". That is what the cards told me."[78] After relaying this to her, Dina then asked Burds to give her something that would make Tumposwki love her more.[79] Burds then gave her rooi-laventel and dupa,[80] which he referred to as medicine. Burds then recalled how he saw Hermanus Swarts and Dina leaving together on that day.[81]

Although Pistorius[82] states that Hermanus Swarts was Dina's daughter's suitor, there is further evidence in the court records which contradicts this. Despite giving a witness account of her life on the farm with her mother, Polly's testimony was unclear which made the court question the reliability of her statements.[83] During his cross-examination, Hermanus Swarts argued that on his way back from serving in the South African War he met Polly at the train station.[84] From that moment onwards, he started courting her and often visited her on the farm. It was during these visits that he met Dina. Polly denied Swarts' statement about him courting her, but she did make a mistake where she mentioned how she visited Swarts' mother. Although she argues that it was a different Swarts with the same name, the prosecutor questioned her credibility. Swarts claimed that they were in fact involved but only for a short period of

[75] Also recorded as Jim Bird in Pistorius' book.

[76] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[77] Dolos refers to livestock knuckle bones used as toy oxen.

[78] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[79] 'Veld Mystery Recalled: Woman Charged With Murder: Sensational Trial At Potchefstroom'. *Rand Daily Mail*, 14 June 1921, 5.

[80] Rooi-laventel and dupa refers to medicinal plants that were used for folk healing traditions.

[81] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[82] Pistorius, *Fatal Females: Women who Kill,* 187-189.

[83] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.It should also be noted that Polly was not Dina's only child, Dina had another daughter. Although the case only mentions the one daughter there is a letter written from her other daughter relating to Dina's will, after she was hanged.

[84] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

time as Polly married one of her other suitors. Despite ending the relationship, Swarts was still in contact with Dina which was recorded by many of the witnesses, specifically Jim Burds.[85]

The next time Burds saw Dina was when he was looking for a new job. Initially, Burds wanted to apply for a labourer position at Dina's brother's farm, but Dina suggested that he ask Mr Tumpowski for a position at their farm. Although Burds did ask Mr Tumpowski, he was unsuccessful as the farm already had an adequate workforce. After being turned down, Dina offered Burds some food. After eating Dina asked him to accompany her to fetch water. While on their way to get water Dina asked him to give her something else to kill Tumpowski. Although Burds was confused at the request he obliged and then asked her to bring him some of Tumpowski's hair. According to Burds, he added the hair to two needles and some pieces of wood. He then covered the mixture and buried it next to the door where Tumpowski lived. After burying it, Burds then decided to go back to Dina's brother, Michael Denyssohen to ask for work there. He was given a three-month labourers contract at Denyssohen's farm. During this time Dina, Burds and Burds' wife were on friendly terms. They would often dine with each other, although there was no mention of the plot to murder Tumposwki during these visits. These materials failed to kill her partner which led to Dina changing her tactics.[86] Burds recalled one day, early in February 1918 where his wife told him to go and visit Dina, as she requested him at her place. On his way to Dina's place he met up with Picannin Modesi, one of Dina's labourers and accomplices. They arrived at Dina's place that evening. Although Picannin stayed outside Dina's house, Burds remembers seeing Dina, Swarts, Hermanus Monoto and Andries Monoto, who were Dina's farm labourers and accomplices.[87]

Burds stated that: "We all first went into the kitchen. There was a light in the kitchen. Mrs. Kraft and Swarts were in the kitchen, and the three of us natives (Hermanus Monoto, Andries Monoto and Picannin Modesi). Then the missis said we must storm into the Jew's room and kill the Jew." Although Burds was unclear of the date of the murder, much of the evidence points to 2 February 1918 as the date of the murder. As night fell on 2 February 1918, Swarts, Burds, Hermanus, Andries, Picannin and Dina

[85] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.
[86] Pistorius. *Fatal Females: Women who Kill,* 189-192.
[87] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

charged Tumpowski's room. Burds recalled striking the helpless Tumpowski with a knobkierie on the right side of his head. Although this was a powerful blow they wanted to ensure that Tumpowski was dead. Swarts then strangled him with a riem[88] and slit his throat with a pocketknife.[89] As Tumpowski bled profusely, Dina produced a flannel piece of material to soak up the blood and control the spillage. Once they were sure he was dead, Swarts, Dina, Hermanus Monoto, Andries Monoto and Picannin Modesi buried Tumpowski's body beneath an ash pit. Although there were no other witnesses to this crime, people soon became suspicious of the disappearance of Tumpowski. As there were people who had good personal and professional relationships with Tumpowski they were concerned about his mysterious disappearance. Tumpowski's sister, Dina's neighbours as well as visitors who passed the farm on the night of Tumpowski's murder aided in the arrest of Dina. Many of the witness accounts, including that of Dina's brother, other farmers in the area, Tumpowski's relatives and neighbours recalls how Dina was upset about the contract agreement. Witnesses remember how Dina and Tumpowksi argued over the ownership of the farm. This is evident when mealie-seller and transport-rider, David Samuel Morris Miliner recounted how he used to see Dina and Tumpowski arguing when he went to visit. He stated that they constantly argued over selling the farm. Although Dina wanted her farm back, she begged Tumpowski to sell it so that she could receive some compensation, but Tumpowski ignored her pleas, which resulted in her usually storming off into her bedroom.[90] Some farmers also remembered how Dina would threatened Tumpowski's life at social gatherings.

It was only years later when Dina moved off the farm and attempted to sell it for a cheaper price to farmers that individuals, such as Tumpowski's brother-in-law, as well as Dina's brother, grew more suspicious.[91] Since Tumpowski's relatives reported Tumpowski as missing, the authorities in the surrounding areas of the Treurfontein farm started searching the premises and eventually dug up a body. Although they were unsure that it was Tumposwki's many witnesses who were present when the body was

[88] The word refers to a rope-like material. SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[89] 'How Tumpowski Was Killed: Birds' Shocking Allegations: Victim Overpowered and Throat Cut'. *Rand Daily Mail*, 15 June 1921, 7.

[90] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[91] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

being exhumed saw various similarities between Tumpowski and the corpse. They noticed that a few of the corpse's front teeth were missing, that it had a similar hair colour and texture to that of Tumpowski. Most of the witnesses who saw the corpse also saw a ring that was similar to what Tumpowski used to wear. What was also interesting to note was that Burds was one of the people that dug up Tumpowski's body.[92] Due to a previous confession, Burds had made at the police station, that was similar to his cross-examination and the body found on the farm, the authorities were able to arrest Dina, Swarts, Burds, Hermanus Monoto and Andries Monoto and Picannin Modesi.[93] Taking into consideration her previous plots to murder Tumpowski as well as the actual murder which was enacted by Swarts, Dina and Swarts were both found guilty and hanged at the Pretoria Central Prison in 1921.[94]

What is particularly interesting to note during Dina's trial was how she was not given a chance to plead her case. Although she uttered only a few words throughout the sentencing, Dina's lack of voice and representation is indicative of the limited agency of women during this time. As mentioned in the previous sections, women were seen as being subordinate to men. Despite Dina pleading her innocence, the judge, who was the male authoritative figure in the trial dominated the courtroom. This form of gender inequality is evident when analysing the cross-examination of Hermanus Swarts and Jim Burds. As recorded in the URU trial transcripts, both Hermanus Swarts and Jim Burds had a chance to plead their case. Although Swarts blamed the three 'natives', Jim Burds' plea was considered favourable by the court as it strengthened the prosecutor's argument against the accused. All that had been recorded in the court proceedings regarding Dina's own account is when the judge charged her with murder and sentenced her to death:

> The accused in Dutch: "I have not given my evidence. Am I to be judged without saying anything on Jim Burds' evidence?"
> Registrar: "Have you anything to say why sentence of Death should not be passed upon you?"
> Accused, in Dutch: "I do not want to be punished innocently on native evidence. Before God, I am not guilty."[95]

[92] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[93] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[94] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[95] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921; and 'Death Sentence Passed On A Woman: Judge Holds Out No Reprieve: Dramatic Scene In Tumpowski Trial: "Innocent Before God And Man"'. *Rand Daily Mail*, 16 June 1921, 5.

Although Dina argued that Jim Burd's evidence was not true, the judge did not believe her evidence and barred her from sharing her account:

> De Waal, J., in Dutch: "Dina Dorothea van der Merwe, you have been found guilty of murder, that you were an accomplice in the murder of Louis Tumpowski. It is my painful duty to pass the only sentence upon you that is known to our law. I must say that I can hold out little hope that the sentence will not be carried out."
> Sentence: Death
> Accused: "Why do they want to hang me? I have done nothing. I don't want them to hang me for nothing." (Prisoner was removed)[96]

Although the judge seemed uncomfortable with sentencing Dina to death, due to her sex and race, and the way in which Tumpowski was murdered, the judgement passed on this case could not have been reduced on the grounds of mercy. Dina intended to murder Tumpowski so that she could take back her farm. Her case falls under both express and implied malice, but she used the latter first. As previously discussed implied malice refers to the "intention to cause grievous bodily harm, or the intention to expose another to a serious risk of death" while express malice was termed as the "positive wish or desire to kill" while implied malice referred to either. After asking Jim Burds for a love potion to give to Tumpowski, she then asked Burds to find a way to murder him. The concoction that Burds buried near Tumpowski's room was aimed at exposing him to a serious risk of death. The positive wish to kill was evident when she asked Burds to murder Tumpowski and when she called Burds, Swarts, Andries and Hermanus to murder Tumpowski. Although she pleaded not guilty to murdering Tumpowski she was still charged as an accomplice to murder because she did not provide a good motive to why she wanted to murder Tumpowski. The desire to have her land returned to her was not a good motive but instead portrayed malice, in that she wanted to harm Tumpowski to reclaim her land. Therefore, instead of being granted mercy, she was given the death penalty.[97]

Dina's case is a significant case to explore as it introduces the issues of race and gender inequality. Although Dina was considered to be a "European" woman, she was still sentenced to capital punishment. As mentioned previously, "Europeans" who were

[96] SAB, URU 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[97] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 1-5.

considered to be a civilised race were highly esteemed amongst their race group. If they diverted from what was expected of them they were punished harshly. Dina's sentencing opens up a forum in which to explore women who were charged with the murder of their husbands. It is through her court narrative and others that this study will be able to explore the social norms, stereotypes and laws enacted that shaped the way in which women were viewed in the courts throughout the years 1917 and 1935.

Conclusion

While this chapter primarily aimed to present a discussion on the development of the Criminal Procedure and Evidence Act No. 31 of 1917, it also attempted to present a better understanding of how criminal law in relation to mariticide cases was practised during the period 1917 and 1935. When exploring the 1917 Act it is evident that it entailed a range of policies to control crime in South Africa. One aspect of this act that played a significant role in curbing crime was the use of capital punishment, which officials anticipated would create fear amongst some criminals and in turn, maintain control for those in power. To decrease the use of harsh punitive measures, the courts provided various forms of mercy so that they could only hang or whip those who participated in the most heinous of crimes while instilling a sense of discipline and obedience.

To be granted mercy, criminals had to fall into certain categories that would make the court pity them. If criminals were female or "non-European", they were granted mercy on the grounds that they were considered to be of inferior race and gender. Females and "non-Europeans" were granted mercy by the colonial representatives who tried and judged their cases because they believed that the inferior race and gender were weak minded and primitive. Although criminals could be granted mercy on the basis of reasonable doubt or alcohol consumption which led to aggravated assault, the stereotypes discussed in this section, which was also linked to social transformations of that time symbolised the various social inequalities meted out by a state that was still based on ideas created by their colonial predecessors.

By using the case of Dina Dorothea van der Merwe, this chapter attempted to portray how the Criminal Procedure and Evidence Act No. 31 of 1917, particularly the death penalty and mercy affected Dina's case. More importantly, her case offers a vital

contribution to women's histories. By discussing how her voice was not heard in her own trial and how she was punished due to racial stereotypes of that time, Dina's case opens a network of possibilities of how to focus on cases where women were silenced and disregarded. Dina's case is still considered to be one of the most documented examples with regards to spousal homicides in the early years of the new union of South Africa. Although these cases do have their limits regarding reliability, it does offer a better understanding of past societies, politics and provides a voice to those who did not necessarily have one during this period.

What follows in Chapter Two is an exploration of several mariticide cases where "Non-European" women are prosecuted by the state. By reviewing their court narratives and examining how they were charged and sentenced, the second chapter will extend the argument pertaining to the ways in which the granting of mercy in cases such as these were dependent on the race and gender of the accused.

CHAPTER TWO

Beer-brewing, Provocation and Sentencing

This chapter focuses on the period of 1925-1935, analysing the trials and narratives of a set of cases that appeared before the Transvaal courts. These cases include Agnes Mpalweni (1925), Mimie Madebe (1930), Johanna Kumalo (1935), Elina Ndjobo (1935) and Christina Marry and Paulina Moema (1935).[1] To gain a better understanding of the society in which these six women lived, it is necessary to contextualise the political and socio-economic conditions of that time. The first section, therefore, explores the development and effects of alcohol consumption and beer-brewing within the urban spaces in the Transvaal, as a way to understand why a significant number of mariticide cases revolved around the question of levels of intoxication of the accused. The first case discussed in this chapter is that of Agnes Mpalweni, who argued that intoxication caused her to murder her partner. Following this thread of argument, the next section explores the case of Mimie Madebe who was assumed to be a "liquor-seller and prostitute" by the judge who reviewed and presided over her case.[2] By discussing the effects of liquor and how inebriation came to be used as a marker of liability in determining whether the women in question did and could commit the murders, the next section then explores the use of provocation as the grounds for defence as to why women committed these crimes. This is followed by three cases, Johanna Kumalo, Elina Ndjobo and Christina Marry, where it becomes evident that the presiding judges used provocation as a defence to warrant the issuing

[1] National Archives Repository [hereafter TAB], Registrar of the Supreme Court of South Africa, Witwatersrand Local Division [hereafter WLD], 28/1925, Rex v. Agnes Mpalweni, 12 February 1925; National Archives Repository [hereafter SAB], Registrar of the Supreme Court of South Africa, Executive Council Archive [hereafter URU], 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931; TAB, WLD, 127/30, Rex v. Johanna Kumalo, 1 May 1930; TAB, WLD, 515/1935, Rex v. Elina Ndjobo, 9 October 1935; TAB, WLD, 145/1935, Rex v. Christina Marry and Paulina Moema, 22 March 1935.

[2] TAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931;

of a light sentence to guilty verdicts. The final section then explores reasons for how these women were sentenced on the basis of race, leniency and gender stereotypes.

Beer-brewing and Wayward Women on the Rand

The first two cases that will be explored in this section are those of Agnes Mpalweni (1925) and Mimie Madebe (1930).[3] These two cases are particularly interesting to note as their trial records depict the very complex and problematic issue of women and beer-brewing in the early twentieth century in the Transvaal. In an article titled 'Liquor and Leadership: Temperance, Drunkenness and the African Petty Bourgeoisie in South Africa,' Alan Cobley discusses how there was a stark increase in the availability of liquor during the South African colonial period.[4] This increase of liquor consumption and the development of beer-brewing was seen by missionaries and state administrators as a negative influence on black South Africans. Missionaries and "Europeans" saw alcohol consumption amongst black South Africans as "physically debilitating and unhealthy, and as a potentially dangerous substance, both socially and morally."[5]

These missionaries and "Europeans" assumed that black South Africans were more predisposed to drinking and intemperance because of their biological features.[6] These racist ideologies set out by 'superior' colonial officials was the motivation behind the attempt to enforce laws to control alcohol consumption amongst black South African communities. However, black South Africans resisted these regulations, as they believed that alcohol consumption was essential to everyday African life.[7] In his study of alcohol consumption in Durban between 1902 and 1936, Paul La Hausse further argues that the drinking of beer "was interwoven with everyday rural life, functioning as an exchange for services rendered, as a means of tribute and also as a way of

[3] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925, and SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.

[4] Alan Gregor Cobley. "Liquor and Leadership: Temperance, Drunkenness and the African Petty Bourgeoisie in South Africa." *South African Historical Journal* (1994, 31.1:130)

[5] Cobley, 'Liquor and Leadership', 130.

[6] Cobley, 'Liquor and Leadership', 130.

[7] Cobley, 'Liquor and Leadership', 131.

placing others under obligation."[8] Alcohol consumption in the Transvaal followed a similar pattern and was used in much the same way.

The emergence of beer-brewing played a significant role in the lives of black South Africans as it was a part of social gatherings and provided alternative job opportunities in the ever-increasing migrant labour environment. As Laura Philips and Deborah James discuss in their paper "Labour, Lodging and Linkages: Migrant Women's Experience in South Africa", migrant labour increased at a gradual pace, where many African women first came to the cities to work in the informal sector.[9] Phillips and James provide a good explanation of the informal sector by extending Philip Bonner's eminent research on Basotho women on the East Rand.[10] Bonner's work is particularly interesting to note as it provides this study with a deeper understanding of the agency of women in relation to beer-brewing, and prostitution in the informal sector.

Cobley goes on to say that,

> …relatively few women were heavy drinkers since, broadly speaking, the traditional role of women in South Africa had been as brewers rather than imbibers of alcohol.[11]

Although Cobley makes a valid point, the case of Agnes Mpalweni is just one example which contradicts this statement. There is no evidence of Agnes being a beer-brewer, but her court case reveals that she regularly enjoyed drinking. Supposedly, this was the cause of the murder of her partner, George.[12]

Like Bonner, and Phillips and James, Cobley also provides a useful discussion on how beer-brewing was related to prostitution. These two informal activities provided a livelihood and became the main sources of income for African women in urban spaces. Since urbanisation relied specifically on "cheap black male labour on the mines, in homes and in factories", there were few job opportunities for women who moved to

[8] Paul La Hausse. 1984. 'The Struggle for the City: Alcohol, the Ematsheni and Popular Culture in Durban, 1902-1936.' Diss. University of Cape Town, 12.

[9] Laura Phillips and Deborah James. "Labour, lodging and linkages: migrant women's experience in South Africa". *African Studies* (2014, 73.3: 410-431).

[10] Phil Bonner, 1990. 'Desirable or undesirable Basotho women? Liquor, prostitution, and the migration of Basotho women to the Rand, 1920–1945', in Cheryl Walker (ed.) *Women and Gender in Southern Africa to 1945.* (David Philip, James Currey, 1990).

[11] Cobley, 'Liquor and Leadership', 136.

[12] It should be noted that throughout the criminal case records of Agnes Mpalweni's trial, that there was no record of George's surname. He was just referred to as George throughout the case.

the big cities.[13] Although women were employed to do "hawking, laundry, dressmaking, sewing, gambling, traditional medicine, trading, prostitution and beer-brewing," the last two became increasingly popular as it provided women with the opportunity to resist "economic and cultural control by those in power by the broader society."[14] Phillips and James argue that there were various dangers involved in the informal sector but through the above-mentioned jobs "women tried to overcome these obstacles to continue to earn an income in the townships of 'white' South Africa."[15] As seen in Mimie Madebe's case, there was an assumption that she was a "prostitute and liquor-seller". [16] Although this was not discussed at great lengths nor was it corroborated, if it was indeed true, these sources of revenue should be seen as her way to obtain financial security, as there were no other records of her having any formal employment to provide for herself.

As seen above it is evident that alcohol consumption, beer-brewing and prostitution became a notorious activity and pastime in urban spaces and these activities swayed the direction of the cross-examination particularly in the cases of Agnes and Mimie[17]. What will be discussed in the following paragraphs of Agnes and Mimie's cases was that the former consumed alcohol excessively which played a role in the death of her partner, George. Although it is unclear if Mimie was in fact under the influence when the murder occurred, during her trial the Minister of Justice, Judge Tindall stated that she was known as "a liquor-seller and prostitute."[18] This assumption is significant as it portrays how the judge attempted to identify her as a wayward and dishonourable woman prone to vice and therefore capable of murder. This effort to sketch Mimie's character in the negative was a prime example of how those in power assumed that black South Africans were vulnerable to alcohol consumption and the insalubriousness surrounding it. Although beer-brewing and alcohol consumption became increasingly popular within the black urban spaces it should be argued that there was a complex

[13] Philips and James, 'Labour, lodging and linkages', 410.

[14] Deborah James. "Urban life and the struggle for autonomous culture in some Transvaal communities." *African Studies* (1992, 51.1:4).

[15] Philips and James, 'Labour, lodging and linkages', 413.

[16] SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.

[17] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925 and SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.

[18] SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.

interaction between alcohol consumption and black South Africans.[19] Since black South Africans lived in an oppressive state that was ruled by the "civilised European" race, they attempted to find activities that would temporarily free them from their reality. [20] Therefore, alcohol was used as a strategic coping device in the city.

"…chopped him twice with the hatchet…"- Agnes Mpalweni

The first case that will be explored in this section will be that of Agnes Mpalweni which was sourced from the records of the Registrar of the Supreme Court of South Africa, Witwatersrand Local Division (WLD) at the Pretoria National Archives. This resource provides detailed records of Agnes Mpalweni's criminal trial including substantial evidence on her intent to murder her husband, George.[21] The trial commenced on the 12 February 1925 and comprised the acting judge of the Supreme Court, Gey Van Pittius and a jury of nine. It also included Mr E. Beardmore, who was a representative of the Crown and Mr Krieger, who stood for the accused.[22]

Her case is particularly interesting to explore because it was one of the earliest mariticide cases found for this project where the accused openly confessed to the murder of her live-in partner. This occurred when Agnes was given permission by the registrar to speak in the court after the verdict had been handed down. Agnes stated:

> I did not wish to kill George, my Lord. I was in a temper caused by liquor. I never thought of killing him, because I never quarrelled with him. This was purely an accident my Lord due to liquor. Now I ask for forgiveness.[23]

As recorded in the WLD volumes, her case begins with a single blue piece of paper from the Supreme Court of South Africa. This form gives a summary of the criminal case, which includes the accused's name, the names of the judge, attorneys and jury,

[19] Charles van Onselen. 'Randlords and Rotgut 1886-1903: An Essay on the Role of Alcohol in the Development of European Imperialism and Southern African Capitalism, with Special Reference to Black Mineworkers in the Transvaal Republic,' *History Workshop*. Editorial Collective, History Workshop, Ruskin College, 1976, 52.

[20] Deborah James. 'Urban life and the struggle for autonomous culture in some Transvaal communities', 4.

[21] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

[22] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

[23] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

as well as the charge, the plea, the verdict and the sentence. This form is then followed by an indictment, an index which lists the indictment, the judge's report of the case, the list of witnesses for the prosecution, the witnesses for the defence, the judgement and sentence, as well as exhibits.[24]

When analysing mariticide cases it is important to view the indictment and judge's report as it gives readers an understanding of the severity of the charge and a comprehensive summary of why the accused murdered the victim. However, this cannot be taken at face value, as the severity of the crime is entirely dependent on the judge's interpretation, which could have been biased, prejudicial or apathetic. In his study of the relationship between law and history, and thinking through the similarities between the historian and the judge, Carlo Ginzburg argues that historical documents have been seen "as an open window that gives us direct access to reality."[25] Essentially, these archival documents allow future generations to gain a better understanding of the social norms of a particular period in history. Writing about the colonial archives, Ann Stoler further argues that,

> As such, these archives are not simply accounts of actions or records of what people thought happened. They are records of uncertainty and doubt in how people imagined they could and might make the rubrics of rule correspond to a changing imperial world. Not least they record anxious efforts to "catch up" with what was emergent and "becoming" in new colonial situations.[26]

What will be seen in this case and those that follow are that certain aspects of colonial ideologies were present in these criminal records even after the union of South Africa. As mentioned in the previous chapter, 'non-Europeans' were seen as the inferior race who had to be controlled and managed by the 'Europeans', who took on the role as the 'civilised' rulers. Carolyn Steedman, who has written extensively on the impact of archives, supports this by arguing that:

> "Archive" is thus inflated to mean-if not quite the Everything-then at least all the ways and means of state power: Power itself, perhaps,

[24] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

[25] Carlo Ginzburg. 'Checking the Evidence: The Judge and the Historian.' *Critical Inquiry* (1991, 18.1:83).

[26] Ann Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense*. (Princeton University Press, 2009), 4.

> rather than those quietly folded and filed documents that provide the mere and incomplete records of some of its inaugural moments.[27]

It is in this context that this study explores how the archival court narratives reflected state power in the case of Agnes Mpalweni. As seen on the indictment form, Agnes Mpalweni, a "native female" was "guilty of the crime of murder" of George, a "native male."[28] The judge's report then provides a detailed summary of the events surrounding the day of the crime. It spans five pages and opens with establishing why Agnes was charged with murder. Judge Gey van Pittius stated: "The prisoner, who gave evidence at the trial, admitted having caused the death of George, the defence being based on drunkenness and provocation."[29] The judge's report then provides a summary of the doctor's post-mortem report and witnesses' accounts of events surrounding the murder of George. Additionally, it provides a summary of the police sergeant's findings of the murder, the accused's statement, the verdict and the sentencing.

According to the post-mortem report, Dr Fehrsen found three wounds on the body of deceased,

> one across the jaw and neck, probably caused by a hatchet; further two deep cuts below the jaw, caused by a sharp instrument. One of these cuts was six inches long and severed the blood vessels of the windpipe; the other one was two and a half inches long. In the doctor's opinion these two cuts were not caused by a hatchet, but a sharp instrument, e.g. a razor. Death was caused by shock due to haemorrhage. He discerned the smell of alcohol in the stomach of the deceased.[30]

It was recorded in the indictment that Agnes murdered her live-in partner George on the 10th November 1924 at their home in Benoni. Although Agnes and George lived together at the Benoni location for eleven months, the judge recorded that "They were not married, neither according to Christian rites nor according to native custom."[31] This statement is interesting to note as it reflects very particular ideas surrounding marriage and respectability. As mentioned in Sandra Burman and Eleanor Preston Whyte's

[27] Carolyn Steedman. 'Something She Called a Fever: Michelet, Derrida, and Dust.' *The American Historical Review* (2001, 106.4:1162).

[28] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

[29] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

[30] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

[31] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

work *Questionable Issue: Illegitimacy in South Africa*, marriage law was extremely strict on the basis of Christian beliefs. Christianity, through the missionary movement in South Africa, was largely imposed on urban Africans and greatly influenced and altered traditional ideas about sex, sexuality, romantic love, marriage and the nuclear family. Burman and Whyte discuss how there was an

> …early Christian rejection of sexuality: the attitude towards sexuality which led to the celebration of celibacy and chastity and the attitude towards marriage encapsulated in St Paul's grudging concession that 'it is better to marry than to burn'.[32]

Although these 'moralistic' views changed over time, it is evident in Agnes' court records that the judge had a certain perception of marriage and morals. Settler societies and white South Africans zealously imposed Christian and 'European' ideas of respectability and decency over Africans in this region. Since Agnes was not married to George but still chose to live with him, her choice could have made the judge question her moral judgement. This could be a contributing factor to the outcome of her case, as her lack of morals and the act of murdering George added impetus to the existing stereotypes regarding her race and gender. Since she was seen as a "weak-minded" "Non-European" woman by the court, the judge and jury provided a verdict that they thought would best suit a person who needed guidance and assistance to reject the temptations of the world, such as alcohol overindulgence.

Based on the witness accounts it was recorded that on the 10 November 1924 at dusk, George, Agnes and a "native woman" named Ida[33] shared a full bottle of brandy amongst the three of them. They shared this bottle in the room that Agnes and George occupied at the Benoni house. After they finished the bottle, Ida decided to return to her own home. Sometime after eight o'clock that evening, another witness by the name of Violet, a neighbour living in the same location as the accused and the deceased, heard George saying to Agnes: "Agnes, where do you come from? Go back to where you have come from, I am tired of the women on the goldfields."[34] Violet then heard Agnes leave the room and George bolting the door.

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[32] Sandra Burman, Eleanor Preston-Whyte. *Questionable issue: illegitimacy in South Africa Contemporary South African debates*. (Oxford University Press, 1992), 5.

[33] This name is also recorded as Isa and Iba throughout the court case records.

[34] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

Ida, who also gave her witness account, stated that a few hours after she left Agnes and George's place that Agnes came to her home twice that evening. She further stated that Agnes suggested that the two of them should go in search of more liquor. Although Ida did not go with Agnes to find more liquor, she does recall Agnes visiting her place again to collect her apron. The next day when Ida woke up she found that Agnes took her apron, and a hatchet as well which she kept outside her door. Ida said that the hatchet was used the previous day to plant potatoes which resulted in it having dirt on the handle. Ida claimed that the hatchet was lying in front of her door the previous evening before Agnes came to visit her.[35]

The next witness accounts that were recorded in the court case were from "several native women" presumably neighbours of Agnes and George, who heard a commotion but specifically a loud bang on the door.[36] This resulted in them going to the room of the accused and the deceased, where they found that the door of Agnes and George's room was broken. Another witness by the name of Douglas, also a neighbour residing at the landlord's quarters, was the first person who went to investigate what had happened to the door and Agnes and George. Although the door was closed Douglas looked through the broken door and saw "George lying on his bed, on the floor with blood on his throat; he also saw the accused in the room."[37] Douglas then decided to contact the police.

While this was taking place another witness named Agnes Klaas, the landlady of the Benoni location, went to Violet's room where they decided to look through the partition connecting Violet's room to Agnes and George's to inspect what had happened. She stated that she saw Agnes washing her hands in the basin in their room. She also stated that she saw blood mixed with the water in the basin and she saw a candle burning in the room. She later heard the water being thrown outside. The thrown-out water was not investigated as the yard was previously damp. Therefore, the police could not determine whether the water had been thrown out the previous evening.[38] By investigating the water in the yard the police would have been able to determine

[35] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.
[36] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.
[37] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.
[38] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

whether Agnes did in fact murder George, as George's blood mixed with the water would have provided further proof to convict Agnes of the murder.

The police only arrived at 12:15 am. The police sergeant, L.J.W. Bergh, found no signs of a struggle in the room. Bergh only found blood on the pillow. While the room was being searched, Bergh advised Agnes to not enter the room. When she ignored his request he questioned her as to why she would enter. She then confessed to murdering him as she found George sleeping with another woman. Upon her arrest, Bergh also found two razors in Agnes' possession, but no blood was found on them. A hatchet was also found in the room, which Ida recognised as her missing axe. While Bergh was transporting Agnes to the police station he did notice that she was under the influence of alcohol as "she was staggering and could not walk straight."[39]

Although Agnes confessed to murdering George at the scene of the crime, she proffered a more extensive explanation when she was put on trial and this was summarised and recorded in the judge's report. Agnes denied that George demanded that she leave the room. She admitted to visiting Ida's place that evening but denied taking Ida's hatchet. She admitted to sharing brandy with George and Ida and confessed to consuming more alcohol throughout the evening. When she returned home she noticed a candle burning in their room and saw George and a "native woman" sitting on their bed and talking. She recalls asking George to open the door but he ignored her request. She then found a hatchet in their yard and broke the door with it. The woman that was with George decided to leave the room, which was then in darkness. Agnes decided to follow the woman for a short distance who she later found out was called Lizani. Agnes then decided to go back to their room, where she lit a candle and found George lying down on their bed. She then went up to him and "chopped him twice with the hatchet."[40] Agnes denied using the razors to murder George, but could not give an explanation as to why she was holding them when she was arrested. Although their neighbours stated that they never heard Agnes and George quarrelling, Agnes did state that she had a "slight quarrel with George in the morning"[41] of his death.

[39] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.
[40] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.
[41] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

Using the doctor's post-mortem examination, the witness accounts and Agnes' own statement, the judge and the jury came to the same conclusion:

> I directed the attention of the jury to the defences raised, viz. drunkenness and provocation. The jury in bringing in a verdict of murder, evidently found that the state of intoxication of the prisoner was not of such as degree as to deprive her temporarily of the power of self-control, and of the faculty of realising the probable consequences of her acts. Having regard to the various acts of the prisoner I agree with the finding of the jury.[42]

However, the judge disagreed that Agnes should plead provocation as there was not "sufficient provocation in law to reduce the crime to culpable homicide."[43] He furthermore questioned the validity of Agnes' story of the events that led to George's death, as the police could not trace the woman named Lizani. The judge believed that Agnes murdered George with a hatchet, but did not support her argument of being under the influence of alcohol. By keeping this in mind the judge then ended his report by agreeing with the recommendation made by the jury that the original sentence of death should be commuted to one of life imprisonment.[44]

Agnes' case is noteworthy as her mariticide trial reflects the legal complexities created by the distinction between murder and culpable homicide. As discussed in the previous chapter the difference between murder and culpable homicide was determined by the degree of premeditation and intent, and consequently by the punishment enacted by the court. Agnes, who was charged with a capital offence and sentenced to death, was accorded the normal sentencing as Turrell describes, but was later given life imprisonment which was usually handed down to those charged with culpable homicide.[45] As seen above the judge refused to charge Agnes with culpable homicide but still decided to commute her death sentence as requested by the jury. Although this change in sentencing produces many questions as to why this occurred, one reason could be due to her race and gender, which will be discussed further in the following sections.

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[42] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

[43] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

[44] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

[45] Robert Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. (Praeger Publishers. 2004), 2-4.

"...in the heat of the quarrel..."-Mimie Madebe

The case of Mimie Madebe – charged with murder – was tried in the Supreme Court of South Africa in the Witwatersrand Local Division on the 4th December 1930. The trial consisted of the presiding judge J. Tindall and a jury of nine. It also included Mr E. Beardmore, who was a representative of the Crown, and Mr Juta, who stood for the accused.

On the 12th October 1930, Mimie Madebe murdered her live-in partner Lukas Makope.[46] The details of the murder case were recorded in the Decisions of the Executive Council (1910-1985) collection. The file included a form from the Supreme Court of South Africa that provided a summary of the criminal case; an indictment and then an index which listed the indictment. Following from this is the judge's report of the case; the witness accounts for the Crown; the witness accounts for the defence and the testimonies of witnesses recalled by the court. This file then ends with the judge's summary; the verdict; the sentence; the post-mortem report and the pathologist's report.[47]

Mimie and Lukas, who were viewed by the court as a married couple, lived in a two-bedroom house in the Alexandra Township, just outside Johannesburg.[48] In the early hours of 12 October 1930, Lukas was found dead, thirty yards from their kitchen door. Although the story behind the murder of Lukas was unclear, witnesses reported that he was stabbed in the heart with a pocket-knife. He was then dragged outside and found close to a well. It was assumed that he was to be dragged and dropped into the well. On 12 October, a detective Muller found the knife under a hedge near the gate opposite the front door of Mimie and Lukas' kitchen. The detective who initially questioned Mimie about the events of the night of the 12th later discovered that she provided two contradicting versions of how the murder occurred. In her official story to the police, she recounts how in the early hours of the 12 October there was a knock

[46] SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.

[47] SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.

[48] In the judge's report the judge only acknowledges that they were co-habitating, but in the verdict the judge acknowledges that Lukas was Mimie's husband. Mimie does state that they were together for four years but were not married by the church.

at the back door of the kitchen. Her husband Lukas went to the door and spoke to their visitor. Mimie heard another "native" by the name of Jim Sebe arguing with her husband about money and decided to go into the kitchen while Lukas left the room. She told Sebe to leave but he grabbed her by the throat. Her husband then re-entered the kitchen and started fighting with Sebe. Mimie left and ran to her neighbour Thomas Komani to relay the story. When she and Thomas returned to the house they found Lukas lying dead thirty yards from their kitchen door. Mimie blamed her husband's death on Sebe and told Thomas to call the police. Thomas instead advised her to go to the police station to report the crime. At three o'clock in the morning Mimie reached the station in Wynberg and reported the death of her husband. Mimie remained at the police station for most of the day where she was intermittently questioned about the events from earlier that morning. What the detective found particularly interesting about this case was that Mimie only accused Sebe in the afternoon of the twelfth. This delay made him question the sequence of events surrounding the murder. This created a considerable amount of doubt for the detective as Mimie could have concocted this story with another neighbour. Mimie, who initially claimed that she did not recognise the knife that killed her husband, later told police officers that she saw that exact knife in the pocket of Sebe's jacket. This testimony was contradicted by that of a crown witness named Jack[49], who recalled how he saw the same knife on Mimie's kitchen dresser a few days before the murder.[50]

Another witness by the name of Jacobus gave a different version of what happened on the eve of Lukas' death. He recalled how he passed the gate of the deceased and Mimie. He saw another man and woman with them but noticed that Mimie was fighting with the deceased. Although Mimie did not recall this, two other witnesses named Matilda and Sophia who walked past their place at two o'clock that morning recalled how Mimie came out of the house and told them that she had gotten into a quarrel with Lukas and that he was injured. She led them to the kitchen door and showed them the blood. The witnesses asked where he was and Mimie stated that she thought he had run away. One of the witnesses ran to her husband Ephraim and called him to help. Ephraim found Makope's body in the yard and once he returned home advised his wife and her friend to file a police report, which they did at the same time as Mimie.

[49] It should be noted that Jack's last name was not recorded.

[50] SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.

During this time, Mimie found Thomas and told him a different story of how Sebe had murdered her husband.

Due to these two different accounts that Mimie gave to the police and as well as varying eyewitness accounts, Judge Tindall questioned the validity of the evidence given. This is clear when he states:

> In view of her calling as a liquor-seller and prostitute, it is possible that there is something in her evidence that a third party or third parties did come to the house at this early hour of the morning, or as it is put in the petition from residents in the neighbourhood although it is not impossible that she may have been the person who struck the fatal blow, it is just as probable that Mimie's husband was killed by some other person as narrated in the evidence given at the trial by Thomas Komani, particularly as the evidence of Matilda, Sophia and Ephraim do not clearly eliminate the possibility of their having misunderstood or misinterpreted the prisoner's remarks to them.[51]

One section of the judge's statement that is particularly interesting to note is when he referred to "her calling as liquor-seller and prostitute". This statement was extremely judgemental as it mirrors how the state viewed the presence of African women in the city. African men and women in urban spaces were seen by the Union state as the source of vice, immorality and sin. During this time period, with increased urbanisation and migration, the state not only attempted to control the labour and movement of the African population, but leisure time and social interactions were heavily policed in an attempt to inhibit social decay and degeneration. As mentioned in the previous discussion regarding beer-brewing and women, the state were not in favour of women migrants in particular, as they purportedly only assumed the role of prostitutes or were involved in the selling and making of liquor. As Katherine Eales argues in her study of "Gender Politics and the Administration of African Women in Johannesburg 1903-1939",

> Black female settlement in Johannesburg from the turn of the century to World War Two was blamed for an extraordinarily broad range of urban malaises, ranging from crime to liquor abuse, miscegenation, the growth and spread of slums, disease, rising juvenile delinquency and 'detribalisation'. 'The native question'- particularly as it played itself out in the country's urban areas- was reduced in some respects

[51] SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.

> to one of morality, in which black women played the dominant vitiating role.[52]

The state aimed to control, punish or rehabilitate all those who deviated from the expected social norms of society. As more women migrated to the urban areas, the state found that they could not control the movement of women.[53] State officials believed that the movement of women resulted in the "growth of slums" and the "shortage of black housing". Eales further argued that the state attempted to exclude black women from the cities for 'their own protection'. This was clear when certain governmental departments and social activists campaigned against female liquor-sellers and prostitution. Although the state believed that they could maintain control by evicting these women, they instead stigmatised black women as the burgeoning force "for a multitude of urban ills".[54] This form of stigmatisation was related to the struggle for morality within the urban areas. Although the state did not view these activities as respectable careers, which is made clear in Judge Tindall's statement above, these occupations, for many women during this time was the only way to survive within the urban spaces. By exploring Judge Tindall's statement it is clear that the state held very particular views of African women in the city and this in turn influenced the ways in which cases were tried.

Although Mimie was found guilty of the murder of Lukas, she was granted mercy due to the circumstantial evidence. As there was no substantial proof linking her to the murder, she was sentenced with life imprisonment with hard labour instead of the expected death sentence that this crime would normally carry. This is evident when the Minister of Justice stated in his closing remarks that:

> Both on the grounds of her sex, as well as on the assumption that the fatal blow was struck not in pursuance of a preconceived plan but in the heat of the quarrel, and mainly on the ground that the true facts have not been revealed, it seems safer to commute the sentence of death to imprisonment. I would suggest that the period of imprisonment be fixed at imprisonment with hard labour for life.[55]

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[52] Katherine Eales. "Gender Politics and the Administration of Women in Johannesburg, 1903-1939", MA Wits 1991,196.

[53] Philip Bonner, *'"Desirable or undesirable Basotho women?" Liquor, prostitution and the migration of Basotho women to the Rand, 1920-1945' in C. Walker, Women and Gender in Southern Africa to 1945*. (David Philip Publishers, 1990) 38.

[54] Eales. 'Gender Politics and the Administration of Women in Johannesburg, 196.

[55] SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.

Although this was the initial sentence, the presiding judge did give the option of reviewing her case in five years' time on 24 January 1931.[56]

When reading this case it is clear that there are some gaps in the statements made by the witnesses, which leaves space for readers to question whether Mimie did in fact murder Lukas. There was no overwhelming evidence that Mimie was definitely guilty of the crime of murder. Based on the evidence, the murder could also have been committed by Sebe, but Mimie was found guilty, and due to this uncertainty the Minister of Justice instead decided to sentence her to life imprisonment.

Agnes and Mimie's cases portray the complexities of the relationship between alcohol and black South African women in the urban spaces. Although there was no other evidence regarding the extent of Mimie's alcohol use at the time surrounding the murder, it is clear in Agnes' case that she argued that due to her being intoxicated she was more susceptible to being provoked into murdering George. This reasoning of provocation will be discussed at greater lengths in the following paragraphs. These two cases, in conjunction with the next three, all contain some degree of pre-meditation and provocation, which will be explored in the next section.

Provocation as a Defence

The next three cases that will be interrogated are those of Johanna Kumalo (1930)[57], Elina Ndjobo (1935)[58] and Christina Marry (1935)[59]. These three cases have been examined together as it was argued in the judge's summation that each of the accused experienced some degree of provocation leading up to the murders.

Provocation is the action of being motivated to enact a deed based on emotions such as "jealousy, mercy, anger or fear".[60] As Jonathan Burchell and John Milton discuss in their book *Principles of Criminal Law*:

[56] SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.

[57] TAB, WLD, 127/30, Rex v. Johanna Kumalo, 1 May 1930.

[58] TAB, WLD, 515/1935, Rex v. Elina Ndjobo, 9 October 1935.

[59] TAB, WLD, 145/1935, Rex v. Christina Marry and Paulina Moema, 22 March 1935.

[60] Jonathan Burchell & John Milton. *Principles of Criminal Law*. Second Edition. (Juta and Company Ltd, 1996) 278.

> Provocation, or severe emotional stress, may deprive a person of the capacity to appreciate the wrongfulness of his or her conduct or to act in accordance with this appreciation.[61]

The use of provocation as a defence in these cases functioned as a way to reduce the charge of murder to manslaughter. Although provocation would not revoke the murder charge, it did help to explain that the accused committed the crime due to extenuating circumstances. In his work titled "The Doctrine of Provocation," Andrew Ashworth[62] further argues that:

> Even in murder cases the defence ought only to succeed where the jury is left in reasonable doubt that the accused killed during a sudden loss of self-control caused by provocation which was enough to make a reasonable man do as he did, a test which has been criticised as unduly restrictive.[63]

As mentioned in the first chapter those accused of manslaughter or culpable homicide were handed a lighter sentence than those who were charged with murder. As Turrell states “murders committed on impulse, where there was no intent, were punished by life imprisonment or fewer years imprisonment.”[64] Although all of the cases mentioned below are examples of premeditated murders, it should be noted that the judges state that since the accused in each were all provoked, they were given lighter sentences instead of the death penalty.

Another likeness that these three cases have is that their archival record of the court proceedings is somewhat slim. Unlike the voluminous collections for other cases examined in this thesis, these criminal cases simply comprise a one-page summary provided by the Supreme Court of South Africa, an indictment and the judge’s closing remark, with a few extra pages here and there. One similarity that will be discussed in the following paragraphs is that all of the cases that are analysed in this chapter involve women who were all found guilty but were granted mercy in the form of imprisonment with hard labour.

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[61] Burchell & Milton. ‘Principles of Criminal Law’. 278

[62] Andrew Ashworth. "The Doctrine of Provocation." *The Cambridge Law Journal* 35.2 (1976, 35.2: 292-230).

[63] Ashworth. ‘The Doctrine of Provocation’, 292

[64] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 2-4.

The first case that will be discussed in this section is that of Johanna Kumalo. It should be noted that this case file is limited and the documentary evidence, as mentioned is thin. The one-page summary provided by the Supreme Court of South Africa lists the accused's name (Johanna Kumalo), the judge's name, Judge J. Solomon and the attorney for the Crown, Mr Beardmore. Although there is no record of a jury and the verdict, it does provide a plea and sentence. According to the indictment:

> Johanna Kumalo (hereinafter called "the accused") a housewife residing at Kliptown in the district of Krugersdorp is guilty of the crime of culpable homicide. In that, upon or about the 10th February 1930 and at or near Kliptown Location in the district of Krugersdorp, the accused did wrongfully and unlawfully kill Philemon Karabi in his lifetime a native man and then there residing.[65]

Although this case contains the least amount of information pertaining to the murder of Johanna's husband, it does provide a basic reason as to why she murdered him, from the point of view of the judge. As seen in the judge's remarks, Johanna

> certainly had a great deal of provocation, but you did not kill your husband immediately afterwards, you waited until you could take him unawares and then killed him. I take into account that you were provoked.[66]

Although there is no evidence that states why she was provoked Judge Solomon did believe that the murder was premeditated. Even though judge Solomon did acknowledge that she did plan to murder her husband, he still granted her mercy as he took into account the fact that she acted out based on her emotions in that specific moment. This becomes evident when he sentenced her to twelve months of hard labour – a very light sentence for murder.[67]

The second case that will be explored in this section will be that of Elina Ndjobo who was charged with the murder of her partner, Gingwena.[68] Archived under the case file Rex vs Elina Ndjobo, the accused's records contain limited information on what actually happened to her partner. Containing only six pages of information, this file included a one-page summary provided by the Supreme Court of South Africa, an

[65] TAB, WLD, 127/30, Rex v. Johanna Kumalo, 1 May 1930.
[66] TAB, WLD, 127/30, Rex v. Johanna Kumalo, 1 May 1930.
[67] TAB, WLD, 127/30, Rex v. Johanna Kumalo, 1 May 1930.
[68] TAB, WLD, 515/1935, Rex v. Elina Ndjobo, 9 October 1935.

indictment, one page of short-hand notes, the judge's passing remark, minutes taken from the Prime Minister's Office and a report of Elina being released on probation.[69]

The Supreme Court of South Africa document provides a summary of the case, where they recorded the accused's name (Elina Ndjobo), the judge's name, the attorney's for and against the Crown, the plea, the verdict and the sentence. The indictment offers a bit more information relating to why Elina was charged. It states that:

> Elina Ndjobo (hereinafter called "the Accused"), a native female residing at Newclare in the district of Johannesburg, is guilty of the crime of murder. In that, upon or about the 7th July 1935, and at or near Newclare in the district of Johannesburg, the Accused did wrongfully, unlawfully and maliciously kill and murder Gingwena, in his lifetime a native male and then there being.[70]

Although the indictment provides a summary of why Elina was on trial, it does not provide a reason as to why she murdered him. The next page which contains short-hand notes from the trial is ineffective as it is illegible. It is only on the following page, where the judge's passing remark offers a glimpse of what happened.

As Judge Martiz states:

> Elina, you pleaded guilty to culpable homicide and the Crown has accepted that plea, no doubt, because you received some provocation and became very angry. Your counsel has said all he can say in your favour, and I was disposed to give you a very severe sentence. I see now the knife you used is a very small thing. But this just shows that though the knife is small your attack on your husband was a determined one. The least sentence I can pass on you is one of three years imprisonment with hard labour.[71]

The above-mentioned statement by the judge was the only information given in regards to the murder of Elina's husband, Gingwena. Although it records the murder weapon and gives a reason as to why Elina enacted the crime, there are still no reasons given as to why she was provoked or why she became very angry, but it does prove that the murder was premeditated. The lack of information creates numerous questions surrounding this case as the judgment is not as in-depth as Agnes or

[69] TAB, WLD, 515/1935, Rex v. Elina Ndjobo, 9 October 1935.

[70] TAB, WLD, 515/1935, Rex v. Elina Ndjobo, 9 October 1935.

[71] TAB, WLD, 515/1935, Rex v. Elina Ndjobo, 9 October 1935.

Mimie's. Although Elina did confess to the murder of her husband, as seen in the judge's passing remark, there are no eyewitness accounts in support of her confession. There are also no records of her pleading her case. Her case then ends with two documents. The first being minutes taken from the Prime Minister's Office and then a report of Elina being released on probation. The former states that there had been a request to release Elina on probation, while the latter, which was written by the Minister of Justice, requested that Elina be released on the 6th February 1938.[72]

The third case that will be discussed in this section is that of Christina Marry who was guilty of the crime of culpable homicide. The records pertaining to her case are similar to that of Johanna and Elina's as the information regarding her case was limited.

As stated in the indictment:

> Christina Marry and Paulina Moema (hereinafter called "the Accused"), native females residing at Krugersdorp in the district of Krugersdorp, are both or one or other of them, guilty of the crime of culpable homicide. In that, upon or about the 9th January 1935, and at or near Krugersdorp in the district of Krugersdorp, the Accused did, both or one or other of them, wrongfully and unlawfully assault Myburgh, in his lifetime a native male and then there residing, by then and there stabbing him in and upon the abdomen or body with a knife or other sharp instrument, giving to him then and there and thereby a certain mortal wound or injury, upon or about the 11th January, 1935, and at or near Krugersdorp aforesaid, the said Myburgh died; and thus the Accused, both or one or other of them, the said Myburgh wrongfully and unlawfully did kill.[73]

This indictment is particularly interesting to note as it provides more information on why both Christina and Paulina were charged with murder. It records how they murdered Christina's husband (stabbing) and what weapon they used to murder him with (knife/sharp instrument). This indictment is actually stronger than the judge's passing remark, as the latter only mentions the sentencing of the two accused. Although the three pages of shorthand notes are unclear, the judge's passing remark does provide readers with the understanding that Christina Marry had an accomplice named Paulina Moema who murdered Christina's husband. There are no reasons as to why the murder was enacted (such as in self-defence) but there was found to be

[72] TAB, WLD, 515/1935, Rex v. Elina Ndjobo, 9 October 1935.

[73] TAB, WLD, 145/1935, Rex v. Christina Marry and Paulina Moema, 22 March 1935.

some degree of provocation when the judge examined Paulina's role in the murder. In his summation, Judge J. Grindley-Ferris, does mention each of the accused's criminal histories, or lack thereof. He states that:

> It is true there are no previous convictions against you but this is a serious offence because you stabbed your husband and caused his death. Were you a man I would have ordered you to be whipped; as I cannot do that I must give you a fairly substantial sentence, and let it be a lesson to you not to use a knife or any dangerous weapon again. You will be kept at hard labour for two and a half years.
> Paulina, it is quite impossible for me to give you a suspended sentence; you have three previous convictions for theft and two for assault with intent to do grievous bodily harm. I take into consideration that you had a certain amount of provocation but I must have regard to the fact that you used a piece of iron against the man's head. At the same time, I must remember that you have been convicted only of common assault. Six months in (prison with) hard labour.[74]

It is clear from the above cases that the use of the defence of provocation aided these women in avoiding the death sentence. As mentioned in the previous chapter there was a distinction made between murder, which was based on premeditation, and culpable homicide which was a murder based on the lack of intent. In all three of these cases the judge acknowledges that they were premeditated, but still sentenced them to imprisonment instead of the death penalty. This is notable as these sentences went against the legal norm of hanging criminals who were known to murder their victims on the basis of intent and malice. Ashworth provides a good explanation of why some criminals were given the lighter sentence:

> Evidence of provocation came to be accepted in rebuttal of this implication of malice, the theory being that such evidence showed that the cause of the killing lay not in some secret hatred or design in the breast of the slayer but rather in provocation given by the deceased which inflamed the passions.[75]

This explanation is vital to understanding the effectiveness of using provocation as a defence to gain a lighter sentence. The use of provocation as a motive therefore influenced the judge and jury to decide on the outcome of the accused's trial. As seen in the previous chapter Turrell stated that:

[74] TAB, WLD, 145/1935, Rex v. Christina Marry and Paulina Moema, 22 March 1935.

[75] Ashworth. 'The doctrine of provocation', 292-293.

> …a good motive could help the accused after conviction as it did play a vital role in deciding whether or not a person had to be hanged or if they could be granted mercy in the form of life imprisonment.[76]

Sentencing and Leniency

By exploring these five cases, Agnes Mpalweni, Johanna Khumalo, Mimie Madebe, Elina Ndjobo and Christina Marry it is evident that they share some similarities with regards to sentencing. Each of the accused were all found guilty, and by the end of their trials were sentenced to life or a few months imprisonment with hard labour. Even though Mimie was first sentenced to death, this was eventually reduced to imprisonment. As seen in the above section one of the reasons why these women were granted mercy was on the basis of using provocation as a defence to gain a lighter sentence. Another reason why these sentences should be explored is to determine whether race influenced the way in which these women were tried.

As seen in the first chapter, Dina Dorothea van der Merwe[77] was classified as a "European", while the five women discussed in this chapter were categorised as "native". The difference in the sentencing of these two racial groups should be explored as it is evident that the five women of colour were granted mercy in the form of imprisonment, while Dina Dorothea van der Merwe[78] was sentenced to death and then hanged. Mimie's case in particular needs to be read alongside that of Dina's.

Mimie who was considered to be a "non-European" was initially sentenced to death but was later given mercy and was instead imprisoned with hard labour. Mimie's case specifically, is a good representation of the drastic racial prejudice that was instilled in the legal system. Turrell argues that most of these laws mirrored colonial ideologies. One specific ideology would be the process of civilising South Africans. During the colonial era and the early years after unification, South Africans were still divided into two race groups. They were classified as either "European" or "non-Europeans". Throughout the various criminal cases, the prosecutor, as well as the government, viewed "Europeans" as civilised while "non-Europeans" were seen as barbaric. Due to their race, "non-Europeans" who murdered other "non-Europeans" were at times given

[76] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 5.

[77] SAB, URU, 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[78] SAB, URU, 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

a lighter sentence than “Europeans” who murdered within their own race group. This was due to the fact that “non-Europeans” were assumed not to know the difference between right and wrong. The reason behind this lighter sentence is evident when Turrell explores two scholars who discuss the racial stereotypes between “Europeans” and “non-Europeans” within South African Criminal Law. Jack Simons stated that: “Not only is less value attached to the life of a Non-European, but Non-Europeans as a group are assumed to observe low standards of morality and self-restraint.” Legal academic, Ellison Khan then supports this by stating that “in crimes of violence among themselves, Whites should be treated more strictly, for they are expected to maintain higher standards of behaviour and exercise greater control over their aggressive instincts.” Although these lighter sentences were considered to be a positive for “non-Europeans”, the way that they were treated represents racial prejudice which was evident in the way in which society viewed them.[79]

Another reason concerning the idea of leniency with regards to sentencing should be the extent to which the murder was planned. Turrell makes an interesting distinction between mercy and hanging. He argued that based on the British law system, which is evident in numerous South African criminal laws, that those who had premeditated ideas of murdering anyone would be hanged while those who committed a murder without an initial plan to commit harm to a person would be granted mercy. As seen in Dina’s records, her trial included evidence that depicted how she had planned to murder her partner which resulted in her being hanged. The five cases discussed here were considered to be murders based on impulse which resulted in the accused being granted clemency.[80]

Another reason that would influence the way in which the judge and jury would sentence the accused would be on the grounds of gender stereotypes. This can be seen in the cases of Mimie Madebe and Christina Marry. As mentioned firstly in Mimie’s case, the judge stated that, “…on the grounds of her sex… it seems safer to commute the sentence of death to imprisonment.”[81] Similar to Mimie’s case was what

[79] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 8-9.

[80] Turrell, *White Mercy: A Study of the Death Penalty in South Africa*, 3-5.

[81] SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.

the judge stated in his passing remarks for Christina Marry's case, "were you a man I would have ordered you to be whipped."[82]

As mentioned in the previous chapter, Section 354 of the Criminal Procedure and Evidence Act No. 31 of 1917 stipulates that women were never to be punished with whipping.[83] Turrell supports this by arguing that "women were likely to be treated more leniently than men by juries, judges, and the King's Council, largely because their suffering might excite sympathetic pity rather than awe of the law."[84] Turrell's main reasoning behind this is the fact that the legal system used to interact with women on the basis of paternalism and marginality. Paternalism was a clear influence on the actions of the authorities, who tended to sympathise with women as they were seen as the "weaker sex". As such, it was accepted that women were inferior beings who were less capable of appreciating the impact of their actions. Since there are more accounts of men partaking in criminal acts, female criminals are considered to be part of a marginal group and are usually not seen as a threat. They were generally granted mercy, "because the few murders they committed were usually domestic."[85] Thus, race and gender stereotypes played a significant role in how people were tried in a court of law, which also the way in which society operated.

Conclusion

While this chapter primarily aimed to present court narratives of mariticide cases during the period 1925-1935, it also attempted to present a better understanding of the social predicaments of the early union years within the Transvaal. Each of this chapter's sections explore certain social issues such as alcohol usage, prostitution and racialised ideologies and gender stereotyping. It is clear that the problems of beer-brewing affected the agency of women within the urban spaces, and affected the way in which society viewed them. As the urban areas had limited economic opportunities for black South African women, who migrated from the rural areas, beer-brewing and

[82] TAB, WLD 145/1935, Rex v. Christina Marry and Paulina Moema, 22 March 1935.

[83] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 354 of Act 31 of 1917,382.

[84] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 16.

[85] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 17.

prostitution became the main avenues for creating an independent livelihood. It allowed them freedom to provide for themselves and enabled them to resist state and patriarchal control. However, the migration of women within these urban spaces was unwelcomed and the state shifted blame to these women for social decay and moral deterioration within these locations. A good example of this is the judge's emphasis of the fact that Mimie was a "liquor-seller and prostitute."[86]

The detrimental effects of alcohol proliferated into many levels of society in the urban spaces and because of this it came to be seen as a common cause as to why some criminals were provoked to commit murder and other violent crimes. As seen in Agnes' case, she claimed that being inebriated aggravated her emotions, which led her to a feeling of provocation.[87] This use of provocation which helped the accused to get a lighter sentence also unfortunately helped strengthen racial stereotypes, as the state thought that black South Africans were more vulnerable to drinking which would lead them to partake in illegal and immoral activities.

The stereotypes that existed within this era were based on old colonial ideologies which maintained racial superiority amongst "European" and "non-European" South Africans and also reinforced the idea of gender inequality. In criminal cases, women were granted mercy based on the idea that they were the "weaker sex" who were not fully responsible for their own actions and therefore in need of rehabilitation. Colonial perceptions of race also played a role in sentencing. "Non-Europeans" were considered to be uncivilised by the legal system and were usually given leniency when they enacted a crime upon someone of the same race. The reasoning behind this was that "non-Europeans" did not know any better and were too 'unenlightened' to know the difference between right or wrong. Although this was beneficial for both women and "non-Europeans", this treatment exacerbated existing issues of race and gender inequality within society.[88] These gender and racial inequalities were evident in all five cases.

Following on from the exploration of the mariticide cases discussed above, the next chapter will analyse cases of attempted murder and assault with intent to murder.

[86] SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.
[87] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.
[88] Turrell, *White Mercy: A Study of the Death Penalty in South Africa*, 9-17.

Exploring these cases will be beneficial to determine whether or not these women were tried similarly to the women charged with murder as a capital offence. The following chapter will also explore cases of provocation in relation to motives as to why women attempted to murder their partners. Therefore, the main theme for the next chapter will be the various forms of motives that women used to gain a lighter sentence.

CHAPTER THREE

Attempted Murder or Assault with Intent to Murder, 1917-1934

This chapter examines media and court narratives of attempted murder and assault with intent to murder court cases during the period 1917 to1934. The cases analysed here include Rex vs- Mary Adeline Gonsalves (1917),[1] Elizabeth Marie Amies (1919),[2] Florence Georgina Atkinson (1932)[3] and Margereta Magdalena Rust (1934).[4] By exploring these cases this chapter attempts to provide insight into the socio-economic issues and motives that led to women attempting to murder their partners. The chapter starts with a brief discussion of Mary's case and focussing on how women's mental health increasingly came to be used as a defence plea by the 1920s.[5] As the narrative of her case is drawn primarily from the *Rand Daily Mail* it reinforces the stereotyped perceptions of women's mental stability held by society and the courts. Following on from this, the chapter then explores the case of Elizabeth and discusses instances of domestic abuse and infidelity.[6] This case also considers how the *Rand Daily Mail* sensationalised and questioned the decency of her character as it presented a biased account of the case.

[1] 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke'. *Rand Daily Mail*, 20 July 1917, 6.

[2] 'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial'. *Rand Daily Mail*, 8 July 1919, 8.

[3] National Archives Repository [hereafter TAB], Registrar of the Supreme Court of South Africa, Witwatersrand Local Division [hereafter WLD], 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.

[4] National Archives Repository [hereafter TAB], Registrar of the Supreme Court of South Africa, Transvaal Provincial Division [hereafter TPD], 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[5] 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke'. *Rand Daily Mail*, 20 July 1917, 6.

[6] 'Domestic Drama: Wife Charged With Shooting Her Husband: "A Jealous Disposition"'. *Rand Daily Mail*, 4 October 1919, 10.

The next section explores Florence's case and discusses how her trial differed from the others in terms of sentencing and the judge's assessment of her.[7] The chapter then proceeds to examine Margereta's case and discusses the use of poisoning in attempted murder cases and the unexpected sentence she received for the crime.[8] By examining all of these cases and the issues related to them the chapter explores the motives for these crimes and concludes with a comparative analysis of the difference between mariticide and attempted murder or assault with intent to murder.

Mary Adeline Gonsalves: …'known for murdering a cat!'

The first case that will be explored in this section is the case of Mary Adeline Gonsalves, which was reported on in the *Rand Daily Mail* on Friday 20th July 1917. With the headline 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke' this newspaper article relates the story of how Mary attempted to murder her husband.[9]

The preparatory examination, which started on the 19th July 1917, was opened by Mr E.H. Hugge at the Roodepoort Criminal Court. Mary Adeline Gonsalves was defended by Mr Blake. Mary, who was classified as a 'European woman' was charged with assault with intent to murder her 'Portuguese husband, Manuel Gonsalves.'[10] Manuel Gonsalves was a vegetable gardener who lived on the Klein Paardekraal farm, near Maraisburg. Manuel stated that on the 23rd June he "burned some papers and books belonging to Mary."[11] He stated that he did it to show her that she was neglecting her domestic duties. While burning her belongings he heard a shot. Trying to find the source of the sound, Manuel saw Mary standing outside the kitchen door with a gun in her hand. Manuel did not respond to his wife's violent act but instead walked to a

[7] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.

[8] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[9] 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke'. *Rand Daily Mail*, 20 July 1917, 6.

[10] 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke'. *Rand Daily Mail*, 20 July 1917, 6.

[11] 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke'. *Rand Daily Mail*, 20 July 1917, 6.

nearby neighbour for assistance. He was later admitted to the Johannesburg Hospital where he was examined by a Dr Black.[12]

When Mr Blake (Mary's attorney) interrogated Manuel about the events of that day, the victim stated that Mary looked very frightened by what she had done. Although she had experience in handling a gun and a rifle and "was known for murdering a cat," he did not believe that Mary wanted to harm him. Manuel was perhaps taking into consideration that the shot could have been in response to him burning her books, as she might have thought that the shot would scare him and stop him from destroying her possessions. He, therefore, believed that she only wanted to frighten him which was why he also later stated that he was willing to reconcile with her, as they had been married for nine years.[13]

A witness by the name of Mrs Eva Campbell recalled how she was present when the shot was fired and saw Manuel running away moaning. She asked Mary to put her gun down and remembers Mary saying in a "laughing way, that she had shot her husband."[14] When cross-examined by Mr. Blake, Eva stated that "she [Mary] regarded the whole matter as a joke," and remembered seeing "the man was running for his life, with accused [Mary] laughing behind him."[15] This questioning from the defence attorney is interesting to note as it proves Mary to be guilty of the crime of attempted murder. However, Eva's responses to Blake could have in fact been beneficial for Mary as he could have used it to argue that she was not of a sound mind and therefore he could plead insanity instead of being guilty of attempted murder.

Further investigation showed that the shots fired towards Manuel did, in fact, harm him. As one of the primary physicians working on Manuel's case, Dr I. Maisele who worked at the Johannesburg Hospital, stated that when Manuel was admitted he was suffering from a number of gunshot wounds at the back of the right shoulder and arm. Dr I. Maisele further stated that "after the X-rays had been applied, it was found that all the wounds caused by pellets were superficial, except one shot which had lodged

[12] 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke'. *Rand Daily Mail*, 20 July 1917, 6.

[13] 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke'. *Rand Daily Mail*, 20 July 1917, 6.

[14] 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke'. *Rand Daily Mail*, 20 July 1917, 6.

[15] 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke'. *Rand Daily Mail*, 20 July 1917, 6.

in the lung, and still remained there."[16] Despite the observations made by Maisele, it is clear that the shots display a certain degree of intent. As mentioned before, Mary was a skilful shooter. By aiming at Manuel's arm, shoulder and lung, it is clear that she was not just trying to harm him, but in fact attempting to murder him, as the wounds could have been fatal. If she simply wanted to harm or injure him, she would have targeted his legs and lower body.

Unfortunately, not much else is known about Mary's case. While it is possible that Mary's case was recorded and archived, various searches of the Supreme, Magistrates and District courts records did not warrant any results. The *Rand Daily Mai'sl* reportage of this case was the only account found of Mary's trial. Moreover, this solitary article which provides the only commentary of the attempted murder ends off by stating that, "…further evidence was tendered during the afternoon, and the accused, who reserved her defence, was formally committed to trial."[17]

Although this case ended abruptly, Mary's case is a primary example of attempted murder cases by wives against their husbands. Despite the limited records found on Mary's trial, there are certain distinctions that could be made when exploring this case. Firstly, the position of women in the city. Based on the victim's statement, where he declared how he had burned Mary's books due to her ignoring her 'domestic duties', readers can glean from the article that Mary was a housewife who lived under the control of her husband. If she deviated from his expectations of what a good housewife should be, she would have to suffer the consequences (e.g. burning her books). However, knowing what the consequences would be, namely that there was a possibility of going to jail, she still responded in the way that she did. This is important to note as it demonstrates how women, in general, tried to break away from patriarchal control, even if it resulted in them going to jail. As Tapiwa Zimudzi argued in his study on African women and criminal law in colonial Zimbabwe, based on feminist criminologist's interpretations, that women were portrayed as,

[16] 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke'. *Rand Daily Mail*, 20 July 1917, 6.

[17] 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke'. *Rand Daily Mail*, 20 July 1917, 6.

> …inherently non-violent and their violent crimes as intra-familial, taking place in the domestic surroundings to which most of their activities are confined. [18]

Although Zimudzi only explores the relationship between criminal law and African women in colonial Zimbabwe, his arguments are beneficial when exploring these attempted murder cases. His study bears certain similarities to the South African cases discussed in this chapter with regards to how the courts treated women who were accused of crimes and also how women were viewed in these spaces.

It is also worth highlighting that there are certain indications from the evidence presented in the trials as well as the manner in which the *Rand Daily Mail* reported on this case that there were serious considerations about the mental health and well-being of the accused. Although the article does not discuss this at great length, nor do we know for certain whether this point was raised during the court proceeding, the headline does imply that there might have been an issue of mental stability as she thought that shooting her husband was a joke and there was mention of her murdering a cat. There are additional hints in this article that infer that her defence attorney, Mr Blake, wanted her to be seen as of 'unsound mind' probably with the intention of seeking leniency from the courts. As mentioned above, he re-stated one witness' account of the crime. He reiterated that Mary was laughing while chasing Manuel after she had shot him. The emphasis on Mary laughing during the crime suggests a lack of self-control. This lack of self-control, which was brought on by Manuel provoking Mary, by burning her books, was possibly used to argue that the accused was unstable which aimed to save Mary from imprisonment.[19]

The discussion of this case was used to highlight a few of the social issues that will be presented in the next three cases. These include how women were affected by and viewed in the domestic spaces, how their sanity was questioned and whether there was a degree of intent regarding the crimes they had committed.

[18] Tapiwa B. Zimudzi. "African Women, Violent Crime and the Criminal Law in Colonial Zimbabwe, 1900-1952". *Journal of Southern African Studies* (2004, 30.3:501).

[19] George B. Crawford. "Murder, Insanity and the Efficacy of Woman's Role: The Gwendolyn Hoyt Case". *Florida Historical Society* (2010, 89.1:52).

Elizabeth Marie Amies 'and her jealous disposition'

A few years later, the *Rand Daily Mail* reported on a case of attempted murder between a husband and wife. On the 8th of July 1919, an article titled '*Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed For Trial'* was published reporting on the case of Elizabeth Marie Amies. [20]

Elizabeth, aged 23 stood trial in Court A, on Monday 9th July 1919. She was charged with the attempted murder of her husband, John Stafford Amies, by shooting him with an automatic pistol in their apartment building, close to the Johannesburg High Court Chambers, on 21st April 1919.[21] Although Elizabeth listened to the evidence against her, she proclaimed at the end of the preparatory examination that, "I reserve my defence".[22]

Since Elizabeth did not plead her case at the preparatory examination, the court relied on her husband's accounts to recall the events of that day. Her husband, who "reluctantly gave evidence against the accused," believed that he was to blame for the incident.[23] This is noteworthy as it shows a similarity between this case and Mary's case as both husbands defended their wives' crimes.[24] By defending their wives, it is apparent that they were attempting to shift the blame or take responsibility for the crime enacted upon them. John described how they attended the races together on 21st April, but that Elizabeth decided to leave earlier. When her husband returned to their apartment near the High Court Buildings at around six o'clock, he found Elizabeth lying on the couch listening to a gramophone. He stated that "I noticed she was a little strange in her demeanour towards me and not at all herself."[25] He believed that her mood was due to an altercation they had at the racecourse. This altercation should be analysed at greater lengths as it provides further implications for physical abuse and

[20] 'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial'. *Rand Daily Mail*, 8 July 1919, 8.

[21] This automatic pistol is then mentioned in later articles as a revolver.

[22] 'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial'. *Rand Daily Mail*, 8 July 1919, 8.

[23]'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial'. *Rand Daily Mail*, 8 July 1919, 8.

[24] 'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial'. *Rand Daily Mail*, 8 July 1919, 8; and 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke'. *Rand Daily Mail*, 20 July 1917, 6.

[25] 'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial'. *Rand Daily Mail*, 8 July 1919, 8.

domestic violence. Although there is very little substantial evidence as to what exactly transpired at the racecourse, domestic violence as a reason for the attempted murder will be discussed further in the following paragraphs.

Although John was aware of her mood after their dispute at the races, he decided to meet friends for dinner, which resulted in her pleading for him to stay with her. Her husband ignored her plea and decided to go to dinner, but invited her to go with him. Despite her agitation, she obliged and asked him to fetch her hat from another room. When he returned with her hat, he remembered how she asked him again if he was still considering going to dinner. Once he said yes, he noticed that she was holding his Colt pistol, which was usually stored in his box. He knew that it was loaded "owing to the native trouble, as there had been "native" riots in March and April of that year."[26]

The subsequent section of the newspaper article titled "Lost Control of Herself" was used to increase the sensationalism of the story. Although this section further explains the events of that day, the title used for this segment of the article created a particular narrative about unstable irrational women, that of people who behaved recklessly and who were not in control of their facets. This narrative was also evident in the media treatment of Mary's case. This is apparent when Elizabeth's husband then recalled how he had asked her what she was going to do with the "little gun" and she responded by stating that she wanted to protect herself, which resulted in her running behind a table. While this was happening, her husband moved closer to the door as he still planned to go to dinner. At this point, he noticed that "she had lost control of herself."[27] He then stated that, "…I ordered her to put down the gun, at the same time putting my hand on the door to go out."[28]

This presumably enraged Elizabeth who shot her husband in his left buttock. He was then shot in his abdomen and arm. Although there were six shots fired, only three of those shots injured her husband. To protect himself, Elizabeth's husband ran out of their room and into the hallway. Due to the commotion, their neighbours came out of

[26] 'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial'. *Rand Daily Mail*, 8 July 1919, 8; and 'Domestic Drama: Wife Charged With Shooting Her Husband: "A Jealous Disposition"'. *Rand Daily Mail*, 4 October 1919, 10.

[27] 'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial.' *Rand Daily Mail*, 8 July 1919, 8.

[28] 'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial'. *Rand Daily Mail*, 8 July 1919, 8.

their apartments to find out what was happening. During this time the accused also decided to follow her husband, which resulted in her husband warning the neighbours to "stop her as she had gone mad."[29] Elizabeth then decided to throw the revolver at her husband. Although their evening erupted in violence, her husband still decided to go back to their room and lie on the couch. The newspaper article records the aftermath of the shooting:

> The witness also told how he went back and lay down on the couch, and his wife returned and stooped beside the couch and asked if he were hit anywhere. He showed her the wound in his stomach and told her to send for an ambulance. She helped him into the bedroom, where he lay down on the bed till the ambulance arrived.[30]

Following this, the article then moves onto to describe John's cross-examination in the court, where he was asked several questions concerning Elizabeth's cocaine usage. He shared with the court how his wife was in possession of a large quantity of cocaine which she had used for her eyes. It was then hinted at in the article that her cocaine usage would be taken into account as a reason why she would want to attempt to murder John. During the trial, John is asked: "When you came back from the races she was agitated and quite unlike her usual self?" To which he responded, "Yes."[31] Although it is unclear who had asked John this question, John's answer of 'Yes', was used to argue that the cocaine usage had negatively affected Elizabeth's emotions which ultimately led to her attempting to commit murder.

Although the court acknowledged that John was partly to blame for the shooting, due to the altercation and him wanting to go out to socialise with his friends, the evidence from other witnesses aided in the accused being committed for trial. One witness, a broker by the name of Murray Mareuson, who resided in the same building as the Amies, near the High Court Buildings, recalled how he heard gunshots which led him to investigate. Despite Elizabeth informing him that she had shot her husband and asking him to call an ambulance, Murray decided to follow her back to her room. It was

[29] 'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial'. *Rand Daily Mail*, 8 July 1919, 8.

[30] 'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial'. *Rand Daily Mail*, 8 July 1919, 8.

[31] 'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial'. *Rand Daily Mail*, 8 July 1919, 8.

there that he saw Elizabeth's husband lying on the bed. Murray recalled how Elizabeth's husband spoke to her. He stated that her husband said, "It's all right, dear, it was only an accident."[32]

A few months after this, another article published on the 4th of October 1919, titled '*Domestic Drama: Wife Charged With Shooting Her Husband: "A Jealous Disposition"',* relayed new evidence of the events leading up to Elizabeth's crime. Elizabeth, who was then tried in the Rand Criminal Sessions Court on the 3rd October 1919, was charged with assault and intent to commit murder. This court session was considerably different to the initial one as the newspaper was now able to record that the altercation between John and Elizabeth was due to her, "…charging him wrongfully with his association with other women on the course."[33]

This statement was then followed by an analysis of John and Elizabeth's characters as a married couple. Mr Mullin who was the cross-examiner and Elizabeth's defence attorney first questioned John with regards to Elizabeth's disposition. John had stated that they had only been married for only a few months but they had previously known each other for a considerable amount of time. Although he stated that she was very attached to him, he did not consider her to be a good wife as he believed that she had a 'jealous disposition'. Mr Mullin then started questioning John about his own character. This is apparent when the *Rand Daily Mail* records the following interaction between Mr Mullin and John,

> "You yourself have a temper," proceeded Mr Mullin, and when the witness denied the imputation, counsel drew his attention to a letter in which an admission of temper was made before the magistrate.
> "Do you realise," counsel went on, "that your own conduct, this day, may have had something to do with this unfortunate occurrence?"
> - I don't think so.
> The witness ultimately confessed that if he had behaved in a kinder manner it might have never happened.[34]

[32] 'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial'. *Rand Daily Mail*, 8 July 1919, 8.

[33] 'Domestic Drama: Wife Charged With Shooting Her Husband: "A Jealous Disposition"'*. Rand Daily Mail*, 4 October 1919, 10.

[34] 'Domestic Drama: Wife Charged With Shooting Her Husband: "A Jealous Disposition"'*. Rand Daily Mail*, 4 October 1919, 10.

Following this, the newspaper then reported on how devoted Elizabeth was to John even after shooting him. Although she was apparently 'hysterical' after the shooting, Elizabeth still accompanied him to the hospital where the Dr could not extract the three bullets. Dr Morris Schwartz explained that it "…would be an inconvenience rather than a menace to life."[35]

Four days from this report, the *Rand Daily Mail* then printed another sensationalised piece on Elizabeth's case. Titled 'Wife Shoots Her Husband: Remarkable Trial At The Sessions: A Blood-Stained Blouse: Judge Defers Sentence',[36] this article gave readers an insight into Mr Mullin's closing remarks of the case and the Judge's (Mr Justice Bristowe) summing up. The newspaper reported that,

> "I put it to you, gentlemen of the jury," said Mr Mullin on behalf of the accused woman yesterday, "that she was much attached to him. You have seen her dress produced in Court stained with blood. These blood-stains could only have been created in one way, and that was by her body touching his after he had been wounded, and when endeavouring to give him assistance.
> Counsel, leaning forward, and speaking in louder tones, said: "At the time when she shot him, her mind must have been worked up to a tremendous state. We have heard that she rushed away 'beside herself.' I submit that she was not responsible for her actions."
> Continuing, he showed that the absence of self-control was sufficient to reduce the seriousness of the crime.
> "If one of those bullets, he added, "had unfortunately taken effect, would you have put this young woman in such a position that the death sentence would have to be passed? You would have brought in a verdict of culpable homicide. I say, therefore, that in this case the crime was not assault with intent to kill, but one of common assault."[37]

Although Mullins had provided a convincing case for Elizabeth to be charged with common assault, Judge Bristowe still wanted to abide by the law and believed that there was a degree of intent when Elizabeth attempted to murder John. As recorded in the *Rand Daily Mail*,

> "Mere jealousy and temper," said his Lordship, "are no justification, but they may create circumstances which may affect the punishment

[35] 'Domestic Drama: Wife Charged With Shooting Her Husband: "A Jealous Disposition"'. *Rand Daily Mail*, 4 October 1919, 10.

[36] 'Wife Shoots Her Husband: Remarkable Trial At The Sessions: A Blood-Stained Blouse: Judge Defers Sentence'. *Rand Daily Mail*, 8 October, 8.

[37] 'Wife Shoots Her Husband: Remarkable Trial At The Sessions: A Blood-Stained Blouse: Judge Defers Sentence'. *Rand Daily Mail*, 8 October, 8.

> to be awarded in a crime of this nature. Insanity is also a plea for defence: but insanity has not been raised, nor would the Court find insanity proved unless supported by medical evidence. Consequently, any idea of insanity is out of the question in this case. We are thus driven back to the question of drunkenness."[38]
> Dealing with the evidence of the accused woman to the effect that she had contemplated suicide after the quarrel with her husband, and had drunk cocaine, his Lordship said that the cocaine solution was very mild, and there had been no medical testimony as to what the effect of cocaine would be. Medical testimony would be needed to explain its effect, for it was not to be expected that without such evidence they could bring the necessary scientific knowledge to bear. He suggested that they should consider the matter from the viewpoint of the brandy, increased slightly by the solution of cocaine. Yet drunkenness was *prima facie* and no excuse for crime, although if the jury considered that there had been intoxication so great as to take away the idea of malice, they might bring in a verdict of common assault.[39]

In light of Mr Mullin and the Judge's remarks, the jury brought in a verdict of guilty of common assault, with a recommendation to mercy. Despite this charge, Mr Mullins requested that the Judge give Elizabeth a suspended sentence, as "…no good purpose would be served by sending her to prison."[40] The judge did not suspend the sentence but also provided a valid reason as to why he disagreed with Mullin's request. This is clear in the newspaper article titled 'Mrs. Amies Sent to Gaol: End of Painful Drama: Why The Judge Did Not Suspend The Sentence'. Dated on the 9th October 1919, the *Rand Daily Mail* provided further details to the Judge's remarks. It was clear in both this article and the previous article, that the judge was not in favour of the verdict based on the reasons explaining why Elizabeth attempted to murder her husband. In this article, the judge acknowledged that her crime should have been considered as serious since she harboured the intention of murdering him. This is clear when she attempted to shoot him six times. Although the Judge did accept the jury's verdict he did question a few of the claims made in her trial. Seen in the Judge's remarks, he further argued that,

> "The jury have found you guilty of common assault, with a recommendation to mercy. I don't know on what grounds the

[38] 'Wife Shoots Her Husband: Remarkable Trial At The Sessions: A Blood-Stained Blouse: Judge Defers Sentence'. *Rand Daily Mail*, 8 October, 8.

[39] 'Wife Shoots Her Husband: Remarkable Trial At The Sessions: A Blood-Stained Blouse: Judge Defers Sentence'. *Rand Daily Mail*, 8 October, 8.

[40] 'Wife Shoots Her Husband: Remarkable Trial At The Sessions: A Blood-Stained Blouse: Judge Defers Sentence'. *Rand Daily Mail*, 8 October, 8.

> recommendation to mercy is made in addition to the reduction of the verdict to one of common assault. I am not sure that I altogether agree with the verdict which the jury have come to in this case. I do not doubt that in the dispute between you and your husband he was to blame in some respects. He appears to have treated you with some degree of roughness and want of consideration; but that does not justify you in, as nearly as possible, taking his life. There are certain points in your case for which I have not been able to find a solution satisfactory to my mind…
> ...You say you have forgotten what took place in regard to the shooting, but the extraordinary thing is that you remember the circumstances immediately before and immediately afterwards. To put it quite plainly, you remember the things in your favour and forget the things against you. I have not the slightest doubt that your memory is a great deal more accurate than you would have us to believe. Still, the jury have found you guilty of common assault, and, of course, I must accept the verdict. Therefore I assume that whatever you did, and whatever the state of your consciousness, you did not intend to murder your husband, and did not intend to do grievous bodily harm."[41]

Despite the Judge's uneasiness about the jury's verdict, he still sentenced Elizabeth to six months hard labour. This is evident when he stated that, "You will be sentenced to six months' imprisonment, with such hard labour as you can perform."[42]

Although the newspaper articles provided detailed reportage on the circumstantial evidence surrounding the case such as Elizabeth's attempted suicide, John's infidelity and the effects of mixing cocaine and alcohol together, one aspect that should be discussed at greater lengths is that of domestic violence. The discussion above depicts how there was a limited understanding of domestic abuse and how it affected the reasons behind murder or attempted murder. Zimudzi argues that some forms of violent female criminality, specifically attempted murder in this case, was seen by female criminologists as, "a reaction to long-term physical, psychological and verbal abuse by their husbands and other men involved in their lives."[43]

He further argues that,

> The violence perpetrated by … women against their husbands and lovers can be seen as essentially the violence of victims-turned-

[41] 'Mrs. Amies Sent To Gaol: End of Painful Drama: Why the Judge Did Not Suspend Sentence'. *Rand Daily Mail*, 9 October 1919, 8.

[42] 'Mrs. Amies Sent To Gaol: End of Painful Drama: Why the Judge Did Not Suspend Sentence'. *Rand Daily Mail*, 9 October 1919, 8.

[43] Zimudzi, 'African Women, Violent Crime and the Criminal Law in Colonial Zimbabwe', 501.

> offenders who were reacting to the emotional and physical violence they were subjected to in their lives. In desperation, some killed abusive husbands who consistently opposed or frustrated their efforts to be granted official divorces or settle other major marital problems in the colonial civil courts.[44]

Despite Elizabeth's case having scant evidence that there was a persistent issue of domestic violence troubling their marriage, it does become apparent through one of the newspaper reports, that she attempted to murder John based on marital problems and because he had associated himself with other women. As this related to the altercation at the races and his reluctance to spend that evening with her, it is possible to infer that Elizabeth sought alternative ways to gain John's attention. As Cynthia Lee argues in her study of defence of provocation and self-defence, there was a clear distinction between men and women who killed their partner in "response to perceived or actual infidelity."[45] She further argues that if a man caught his wife cheating the court would sympathise with him as they believed that this infidelity would provoke him to commit murder. This was different when the roles were reversed as,

> A woman who finds her man in a compromising position is supposed to accept his philandering…or leave him. She is not supposed to kill him.[46]

This statement is noteworthy as it represents the gender inequalities of that time period and how society, even in the courts, viewed the roles of men and women in the domestic spaces. Zimudzi supports this by arguing that this is partly why women murder or attempt to murder their partners. He stated that,

> The gender violence perpetrated by and on … women was fundamentally rooted in subordinate female economic and social status.[47]

These ideologies, of course, still very much persists in the contemporary period as well.

In correlation to this, it is worth discussing the similarities with Elizabeth and Mary's husband's reactions to the assaults. Although they both shared their witness accounts

[44] Zimudzi, 'African Women, Violent Crime and the Criminal Law in Colonial Zimbabwe', 505.
[45] Cynthia Lee. "Murder, He Wrote". *Harvard Law Review* (2003, 117.2:712).
[46] Lee, 'Murder, He Wrote', 712.
[47] Zimudzi, 'African Women, Violent Crime and the Criminal Law in Colonial Zimbabwe', 505.

in the courtroom, they still wanted to continue their relationships and marriages with their wives. While some may read this as a dependency or a need to legitimate control over their wives, to some extent it could also be read as a sign of devotion. This is evident when Manuel Gonsalves was still willing to reconcile with Mary, in an effort to save their marriage of nine years.[48] Elizabeth's husband, who spoke reluctantly about his wife's attempt at taking his life was present throughout the hearing and even followed her to the jail where she was to live out her sentence. As the *Rand Daily Mail* reported, "her husband at once followed her. An affecting scene took place before she was ultimately driven away in a cab to gaol."[49]

Despite the dependency mentioned above, it is apparent that it was clearly only one-sided with regards to Elizabeth and John's marriage. A year after her trial the *Rand Daily Mail* published an article where John filed an order for restitution as Elizabeth did not want to return home. The article contains written correspondence between John and Elizabeth.[50] The first letter written by Elizabeth to John reads as such:

> Dear Jack,
>
> I have been thinking things over and find I shall never be happy with you again; so do not intend ever (underlined) to return to you…Wishing you the best in the future.
>
> Sincerely yours, Nita.[51]

In response to this, John then wrote,

> Dear Nita,
>
> Yours of the 23rd inst. reached me yesterday, and I note the contents, but as I wish to place on record my offer of a home for you I repeat that made verbally in Mr Davidoff's office. I am prepared to provide for you if you will return to me and start our lives afresh.
>
> Awaiting your reply.[52]

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[48] 'Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women's Impression of a Joke'. *Rand Daily Mail*, 20 July 1917, 6.

[49] 'Mrs. Amies Sent To Gaol: End of Painful Drama: Why the Judge Did Not Suspend Sentence'. *Rand Daily Mail*, 8 July 1919, 8.

[50] 'Amies Shooting Case: Husband Suing For Restitution: Wife Won't Return'. *Rand Daily Mail*, 19 March 1920, 2.

[51] Amies Shooting Case: Husband Suing For Restitution: Wife Won't Return'. *Rand Daily Mail*, 19 March 1920, 2. It should also be noted that Nita was Elizabeth's nickname and Jack was John's nickname. It could have also been a misprint or misspelling.

[52] Amies Shooting Case: Husband Suing For Restitution: Wife Won't Return'. *Rand Daily Mail*, 19 March 1920, 2.

In the third and final letter published in this article regarding Elizabeth and John's correspondence, Elizabeth responds by stating that,

> Dear Jack,
>
> Your letter dated February 27 to hand, in which you offer me a home and ask me to start our lives afresh. I again repeat I shall never return to you, as I know I will never be happy.
>
> Wishing you the best, sincerely yours, Nita.[53]

As seen in the above paragraphs it is evident that although the jury sympathised with her, the judge's apprehension to accept the jury's verdict is significant as it makes the readers question Elizabeth's sincerity, specifically when he calls out her selective memory of the events on the night of the murder. Zimudzi supports this when he discusses how women who were charged with murder used their gender to manipulate the courts into serving them a lighter sentence. This is clear when Zimudzi states that,

> …colonial judges' interpretations of … female criminality often sought to diminish these women's moral responsibility for their crimes and to deny the rational nature of their crimes. Judicial treatment of such accused women was also highly paternalistic and partly based on the offenders' conformity to traditional gender-role stereotypes… contrary to the opinion of colonial judges, such female offenders were rational agents who had an awareness of the legal merits of their cases and often made a conscious effort to exploit those aspects of the colonial criminal justice system which they believed could work in their favour.[54]

Although Elizabeth's attempted murder charge could have been a way to break free from John's control and suspected domestic abuse, her actions during and after the trial are questionable. Throughout the trial, Elizabeth was portrayed as being a devoted wife who felt guilty for trying to murder her husband, but after the six months in prison, she decided to leave him. Keeping the judge's remarks and Zimudzi's discussion on how women exploited the criminal justice system, it is clear that Elizabeth was quite calculating to a certain degree as she used the criminal justice system to work in her favour and in turn finally gain freedom from John.

[53]Amies Shooting Case: Husband Suing For Restitution: Wife Won't Return'. *Rand Daily Mail*, 19 March 1920, 2.

[54] Zimudzi, 'African Women, Violent Crime and the Criminal Law in Colonial Zimbabwe', 499.

Even though Elizabeth's case is considerably different from the next case of Florence Georgina Atkinson it should be noted that there was a drastic variance in how the judge viewed and treated Florence. This is discernible in the following paragraphs.

Florence Georgina Atkinson: "…one cannot help feeling a great deal of sympathy with a woman like yourself…"

> Florence Georgina Atkinson (hereinafter called "the accused") residing at Johannesburg in the district of Johannesburg is guilty of the crime of assault with intent to murder.
> In that, upon or about the 2nd March 1932 and at or near Johannesburg in the district of Johannesburg, the accused did wrongfully, unlawfully and maliciously assault Thomas Joseph Christian Owen, a European man there residing, by discharging a loaded revolver at and towards him, hitting him in the body, giving to him then and there and thereby certain wounds or injuries with intent the said Thomas Joseph Christian Owen then and there and thereby wrongfully, unlawfully and maliciously to kill and murder.[55]

On the 27th May 1932, Florence Georgina Atkinson stood trial for assault with intent to murder her partner, Thomas Joseph Christian Owen.[56] This case was tried in the Supreme Court of South Africa, Witwatersrand Local Division (WLD). The trial consisted of the presiding judge of the Supreme Court, J. De Wet and a jury of nine. It also included Mr Dickenson, who was a representative of the Crown and Mr Tucker, who stood for the accused (Florence Georgina Atkinson).[57]

As documented in the volumes of the WLD, her case file first starts with a one page summary from the Supreme Court of South Africa. This form gives a summary of the criminal case, which includes the accused's name, Florence Georgina Atkinson, the names of the judge, attorneys and jury, as well as the charge, the plea, the verdict and the sentence. This form is then followed by an indictment, twenty-one pages of short-hand notes, a seventeen-page summary written by the judge, a record of the fine paid by the accused, a three page newspaper article written by the accused slandering her

[55] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.

[56] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.

[57] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932; and 'Shooting By Woman Alleged: For Trial On Attempted Murder Charge'. *Rand Daily Mail*, 6 April 1932, 15.

lover and five sheets of paper which comprise letters that recorded the amount of money that Thomas owed Florence.[58] Although the twenty-one-page shorthand notes are illegible, the seventeen-page summary provided by the judge does give a more detailed account of how the trial unfolded and why Florence Georgina Atkinson attempted to murder her partner.

As gleaned from the judge's summary, Florence was a wife and mother, who was previously married to a wealthy man who was highly respected in the Johannesburg community. Florence's ex-husband and children's names are never mentioned. Florence met Thomas during her first marriage. Through the judge's summary, it is evident that Thomas, who worked previously as a "Baker's van man" made advances towards Florence which compelled her to leave her husband.[59] Thomas and Florence's relationship was highly volatile as it was mentioned that they courted on-and-off, had many quarrels and argued about Florence's drinking habits. Throughout all of these issues, as well as a change in career for Thomas to a fire fighter, the couple still planned to get married. Judge De Wet supported this by stating that, "at one time they intended to get married - the banns were actually published…"[60] Despite the planning of the wedding, Thomas argued that he decided not to marry due to Florence's drinking issues, but it was later discovered that it was also due to Thomas' infidelity. An illicit affair resulted in the unnamed woman becoming pregnant. Once Florence discovered this betrayal, she decided to write an open letter to the small newspaper publication "The New L.S.D"[61], where she publicly shamed Thomas in his deceit. Although the names were changed, the judge argued that:

> The identity of Owen[62] was very faintly veiled, his initials were given in another paragraph, and it was not very difficult for everyone connected with the Fire Brigade who read that paper to at once see to whom it had made reference.[63]

The situation took a turn when on 2 March 1932, Florence decided to visit Thomas at his residence, based at the Fire Station. Although his colleagues enquired about her

[58] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.
[59] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.
[60] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.
[61] Presumably referring to the magazine/periodical founded by Herman Charles Bosman in 1931.
[62] Judge De Wet uses Thomas' last name in this record.
[63] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.

visit she argued that she was only there to collect money that Thomas owed her. This resulted in one of Thomas' colleagues waking him up at eleven o'clock. The judge believed that the sole reason why Florence visited Thomas was to get a reaction out of him. She started arguing with Thomas and while he tried to calm the situation down, she decided to draw a pistol out of her right-hand pocket. Thomas attempted to get a hold of her arm, but through the struggle, she shot him in the back.[64] Although he survived and provided a substantial eye-witness account during the trial, the judge sympathised more with the accused. It is evident through the final ruling that although Florence was charged with assault and intent to murder, the court still favoured her more than the victim, Thomas. As mentioned in the previous chapter, women were seen by the court as meek beings, who were incapable of making their own decisions.[65] This is evident when the judge announces the verdict:

> Now as I said in my summing up, one cannot help feeling a great deal of sympathy with a woman like yourself who has made a wreck of her life because of a man who has proved not to be worth the trust that she put in him…but I have to take into account the recommendation of the Jury, and in view of the very generous attitude that the Crown Prosecutor has taken up here, who says that he thinks under the circumstances that a fine could be imposed, and also sees danger and the inadvisability of sending you to gaol when you are in fixed employment, I am prepared to treat this as a very exceptional case and to impose a sentence of a fine. The sentence of the Court is that you are fined £25 or in default go to prison for six months with hard labour. The fine is payable in instalments of £5, beginning from the 1st June.[66]

Florence's case is interesting to note as it is the first one of this study where the judge gave her the option of paying a fine or going to prison for six months. One reason could be the extent to which the judge pitied her as she was a housewife who was supposedly led astray by a man who later broke her heart and in turn ruined her life. Nevertheless, Florence's case introduces criminal trials where certain women, particularly women of "European" descent were granted the option of paying a fine to make the outcome of the trial and sentencing more bearable. Similar to this is the next

[64] 'Fireman Shot In Shoulder: Charge Against A Woman'. *Rand Daily Mail*, 18 March 1932, 13.

[65] Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. 17.

[66] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.

case of Margereta Magdalena Rust who was given the option of being released on bail.

Margereta Magdalena Rust: Poisoned His Coffee with Arsenic

On the 14th February 1934 Margereta, a "European housewife", approximately 45 years of age attempted to murder her husband, John Bernard Rust, a "European man" by poisoning his coffee with arsenic. The couple lived together, with their children in Weltevreden, in the district of Carolina. Although not much has been said about why Margereta attempted to murder her husband, John's court deposition provides better insight into their lives.

John, a 58-year-old farmer in the Weltevreden region, confessed that his marriage to Margereta was an unhappy one. Despite having a family, John stated in his deposition that their children were all from previous relationships. Therefore, he makes it clear in his deposition who he acknowledges as his own children and those who belong to Margereta. This is evident when he uses the terms "my son", "the daughter of the accused" and "her children".[67] He stated that on the 14th February 1934 he was busy with his farming responsibilities. One of these responsibilities was tending to one of his sick animals. On his way to the sick animal, John stopped by his kitchen. He recalled:

> As I was going through [the) kitchen [the] accused handed me a cup of coffee. She put the coffee down on the table and said there is a cup of coffee. The coffee was not hot so I swallowed it down and within a few seconds, I felt a burning sensation at my throat and in [the] pit of [my] stomach. I walked a short way forward and then suspecting something I went to my office and drank a large quantity of Olive Oil. I drank a quarter of a bottle at first and later I took more from time to time as I felt the sensation come on. I got worse and next morning I went to Belfast and saw Dr Faure. He examined me and told me what his suspicions were. I then reported to [the] police."[68]

Although there are limited eye-witness accounts, these depositions provide a background into the unhappy lives of the Rust family. As John repeatedly stated that

[67] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[68] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

his marriage was an unfortunate union, he does give one example of why he was unhappy with his marriage:

> Our married life there was a misery and rows were frequent, especially at [the] latter end. On one occasion about 4 years ago after working hard in apple orchard I went home and found no breakfast had been made. I thereupon set about making my own breakfast after we prepared it we sat down to eat it in [the] kitchen. The daughter of accused was sweeping and all dust was coming in on our food. I went to close [the] door but she intervened and held [the] door against me. I then pushed her away and shut [the] door. She then pulled [the] door open and cursed and swore at us and said 'Nou sal ons julle vergewe' [Now we will forgive you] Then [the] accused came out and commenced fighting with my son. My son had taken no part in the argument. I prevented her from continuing by placing my arm between them and told my son to get out of the house."[69]

Despite the victim's deposition focusing on their unhappy marriage, it is evident that there was suspicion concerning the extent of the quarrels between Margereta and John. John tried to get sympathy from the court by stating that:

> We have never been on friendly terms. For over a month before I got sick I slept in the office and meal at midday I had with [my] son. In [the] morning I was sent coffee and sandwiches. In [the] evening I seldom ate mielies with my son. I have never threatened the accused.[70]

Although this case was based primarily on the eye-witness account of John, there was little to be said by the accused. To defend Margereta, her daughter Anna Margrieta Du Plessis offered her observation of their marriage and provided her account of the altercation between her and John. Anna firstly acknowledged that her mother and John had a terrible relationship. Throughout her deposition, she acknowledged John as her father. Despite her account being recorded in Afrikaans, her explanation questions John's version. She stated that:

> Ek onthou 'n sekere dag terwyl my stiefpa en broer in huis geëet het. Ek het gevee en my ma het in bed gewees met 'n seer been. Ek het die more tafel gedek. Daar was nie 'n dag gewees wanneer hulle moet self hulle ontbyt kry.Terwyl ek besig was het klok gelui vir breakfis. Toe ek daar kom het my pa en stiefbroer al opgeskep en was besig om te eet. Toe ek sien alles was reg het ek gaan werk. (Ek het nooit aan tafel geëet met my pa saam). Ek het gevee. Ek het stof in kombuis

[69] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[70] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

> gevee. Toe ek besig was het my pa deur toegedruk nadat hy my op my bors gestamp het. Dit kan my nou nie meer voorstaan wat hy gesê het. Hy het seker deur toegemaak vir die stof. Hy het nie vir my gestoot nie, hy het my propers gestamp. Ek het deur toe weer oopgemaak om stof op te tel. My pa het opgespring en my in die deur vasgeruk. Ek het weg van hom gekom en het gegaan naar my ma toe en het gehuil. Ek het glad nie gedreig en gesê ek sal hom vergif. Ek kan nie onthou dat ek iets gesê het nie."[71]

The English translation reads:

> I still remember a certain day whilst my stepdad and stepbrother were having something to eat at home. I was busy sweeping while my mom was in bed with a sore leg.
> That morning I laid the table, this was something that I had to do every day. While I was busy, the bell rang for breakfast. When I got to the kitchen, my stepdad and stepbrother had already dished up and were busy eating. After I had ensured that everything was in order, I left for work. (I never ever had a meal with my dad.)
> I swept the dust out of the kitchen. While I was busy sweeping, my dad closed the door. Thereafter he hit me against my chest. I can't remember what he exactly said. He might have closed the door because of the dust. He did not push me, but shoved me. I then opened the door to pick up the dust. My dad jumped up and shoved me against the door. I managed to get away from him and went to my mom's room where I cried. I never threatened that I was going to poison him. I can't remember me ever saying something like that.[72]

In her statement seen above, Anna claimed that while visiting her mother she decided to clean their house and decked the table for breakfast for her father and step-brother as Margereta was lying down due to a leg injury. While Anna was busy dusting some of the dust speckles was swept into the kitchen. This resulted in John closing the door and hitting Anna in the chest. Although she could not recall what John said during this altercation, she does remember John bumping her. Anna then decided to open the kitchen door again and collect the rest of the dust. John then jumped up and pushed her towards the kitchen door. Anna was able to run away to her mother's room where she cried but stated that she never threatened John or her step-brother.[73]

[71] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[72] Translated by Mr Stephen Cupido who is the Head of Department of Afrikaans at the Jakes Gerwel Technical School.

[73] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

To strengthen her mother's case, Anna stated, that once this altercation happened that her mother came to her defence, pushed John away, and informed him that Anna was John's child, not a dog. John then stated that he was done with them and took his bedding and left. It is evident that through Anna's witness account that there was some extent of physical violence in the Rust household. Although this is not evident in the other depositions, one witness named Lena Tshilwane, a 30-year old "native lady" who worked at the Rust household claimed that Margereta complained that John was not taking care of her. She also recalled how she had to hide a bottle for Margereta. Although she did not know the contents of the bottle, she was suspicious as to why it had to be hidden.[74] Despite the vagueness of Lena's statement, her account did create suspicion regarding Margereta poisoning John and a perception that Margereta wanted to poison John to live a better life without any domestic quarrels.

Despite Margereta being charged with attempted murder, based on a doctor's report, which proved that she did, in fact, try to murder John, the court granted her leniency. During her trial, Margereta was committed to the Carolina jail but was granted bail amounting to £50. This was recorded on the 14th May 1934. Although there was no exact date recorded for the end of the trial, it is evident that Margereta was granted mercy as her case was discharged.[75]

Margereta's case is considerably different to the previous cases discussed throughout the project as she was the first one to be discharged of the crime of attempted murder. Her attempted murder case was also the first one found for this study where she used poison, specifically arsenic, instead of a gun or a sharp object to end her husband's life. Although the case of Daisy de Melker who used poison to murder two of her husbands and son was briefly discussed in the Introduction,[76] Margereta's case provides insight into how women chose alternative ways of murdering or attempting to murder their partner. The use of poison to commit the crime also offers certain inferences about the lives of the accused women and their situations. As seen above Margereta and John were not happy in their marriage. There was evidence of John abusing Margereta's daughter and John and Margereta sleeping in separate rooms.

[74] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[75] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[76] Mrs. De Melker's Trial Opens: Alleged Murder Of Two Husbands and Son: Dead Men's Estates: Crown Evidence From Rhodesia'. *Rand Daily Mail*, 18 October 1932, 9-10.

Despite these issues, it was clear that Margereta still took on some of the expected housewife duties, such as preparing the morning coffee for John on a daily basis. This coffee when analysed revealed traces of arsenic, depicts how Margereta had exploited the domestic duties that John expected her to do, as she knew his daily routine and used it to her own advantage. Badassy supports this by stating that,

> Poisoning occupies a special place in the history of crime. It requires a considerable degree of premeditation and planning and, because it often produces very little incriminating evidence and until comparatively recently was virtually undetectable, it was the more attractive and favoured method of killing.[77]

Badassy furthermore argued that in the early nineteenth century that there were certain advancements made in Western medical and scientific knowledge to test for poisoning. She stated that there were certain symptoms that the victim exhibited which would prove that they were poisoned. These included, "stomach cramps and dizziness."[78] Badassy also argued that a "chemical analysis of the substances which supposedly contained the poison and the victim's description of the taste, smell, and experience of the poison," would help to determine whether they were poisoned.[79] Some of these symptoms were apparent in John's response to drinking the coffee laced with arsenic as he recalled how he had felt a burning sensation in his throat and in the pit of his stomach. By using this method of killing, it was evident that Margereta wanted John to feel some semblance of pain, which could have in fact represented the pain she had endured during their marriage. Although it was unclear why she was discharged of the attempted murder charge, the leniency of the court is notable as there was a degree of malicious intent to murder John which should have resulted in her facing a few years imprisonment. As there is no discernible answer to the jury's leniency, one could argue that the jury sympathised with her due to her unhappy marriage and the indications of abuse within their family that was mentioned throughout the trial.[80]

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[77] Prinisha Badassy. 2004. *"…and my blood became hot!" Crimes of Passion, Crimes of Reason: An analysis of the crimes against Masters and Mistresses by their Indian Domestic Servants, Natal, 1880-1920*. MA Diss. University of KwaZulu-Natal, 133.

[78] Badassy, *"…and my blood became hot!"*, 134.

[79] Badassy, *"…and my blood became hot!"*, 135.

[80] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

What Margereta's case does represent is a type of female criminal that often appeared before the courts throughout the nineteenth and twentieth century.[81] When exploring the use of poison between slaves and their masters, Badassy also discusses the ways in which women used poison to murder their husbands or children. She states that,

> For instance, since women have generally been considered to be in charge of the kitchen and the preparation of food, most often one will find the description of your average 'poisoner' to be female and their victims, often children and adultering/abusive/forlorn husbands.[82]

This will be discussed at greater lengths in the next chapter which provides a deeper analysis of Daisy de Melker's mariticide case.[83]

Motives for Attempted Murder

By reading the above-mentioned cases, it is evident that there were various factors that influenced the way in which these attempted murders were enacted. Two examples of this are evident when exploring Elizabeth Marie Amies[84] and Margereta Madalena Rust's[85] cases. In Elizabeth's case, it was apparent that there was an assumption made that her motive for attempting to murder her husband was not only based on infidelity but also self-defence.[86] Despite this being the only case that mentions self-defence, this motive should still be acknowledged as self-defence has become a legally viable reason as to why someone would attempt to murder their partner. As David Buss discusses in his book *The Murderer Next Door: Why the Mind Is Designed to Kill,* women who usually murder their spouses generally do it in an act of self-defence so that they could break free from their abusers who harmed them either physically or mentally.[87] Zimudzi supports this argument by discussing how self-

[81] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[82] Badassy, *"…and my blood became hot!"*, 135.

[83] Mrs. De Melker's Trial Opens: Alleged Murder of Two Husbands and Son: Dead Men's Estates: Crown Evidence From Rhodesia'. *Rand Daily Mail*, 18 October 1932, 9-10.

[84] 'Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial'. *Rand Daily Mail*, 8 July 1919, 8; and 'Mrs. Amies Sent To Gaol: End of Painful Drama: Why the Judge Did Not Suspend Sentence'. *Rand Daily Mail*, 8 July 1919, 8.

[85] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[86] 'Mrs. Amies Sent To Gaol: End of Painful Drama: Why the Judge Did Not Suspend Sentence'. *Rand Daily Mail*, 8 July 1919, 8.

[87] David Buss. *The Murderer Next Door: Why the Mind Is Designed to Kill*. (Penguin Press 2005).

defence was a reaction to long-standing abuse by their partner, be it physically, verbally or psychologically.[88] Criminologist Jennifer K. Wesley also discusses abuse as a leading factor of mariticide.[89] She differs in her approach to abuse and instead explores women's abusive histories. She discusses how women were previously abused by not only their partners but family members. Abuse in the family affects women on different levels as their trust is broken and also creates an inability to defend themselves since a majority of women continue to believe that they deserve to be abused. Although abused women find solace in partners who promise security, a majority of these partners also deceive them and soon abuse these women. Whilst, there are some women who choose to not protect themselves, there are those who get frustrated and unexpectedly defend themselves which at times leads to the murder of their spouse. As Lisa Vetten briefly discusses in her study of intimate femicide some,

> …murders occurred as a result of sexual jealousy or arguments. The causes of the arguments were left unspecified, suggesting that 'argument' may be a handy, catch-all assumption used to explain those deaths where no clear motive is apparent.[90]

This is evident when exploring Elizabeth's case as the newspaper articles represented her as a woman with a jealous disposition.[91] As previously mentioned above, Lee argued that there was an obvious gender disparity when it came to infidelity.[92] The understanding during this time period, which is also mirrored in the *Rand Daily Mail*, was that men who caught their wives cheating had justifiable reasons to respond in violent and irrational ways but women who uncovered their husband's affair were expected to be docile and accepting. Therefore, these expectations could be another motive for committing these crimes as women attempted to deviate from the expectations forced on them by their society. When they did, they were usually recorded as hysterical, jealous or irrational.

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[88] Zimudzi, 'African Women, Violent Crime and the Criminal Law in Colonial Zimbabwe', 499.

[89] Jennifer K. Wesley. Considering the context of women's violence: Gender, lived experiences, and cumulative victimization. *Feminist Criminology*. (2006, 1.4:303-328).

[90] Lisa Vetten. 'Intimate Femicide.' *Agenda: Empowering Women for Gender Equity, No. 27, Reproductive Rights*. (1995, 79).

[91] 'Domestic Drama: Wife Charged With Shooting Her Husband: "A Jealous Disposition"'*. Rand Daily Mail*, 4 October 1919, 10.

[92] Lee. 'Murder, He Wrote', 712.

Margereta's reasoning behind attempting to murder her husband is evident when exploring her husband's trial deposition and the letter he wrote to her. As seen in John's deposition, there were striking examples of patriarchal control in the household. One such example is when he stated: "on one occasion about four years ago after working hard in apple orchard I went home and found no breakfast had been made."[93] This statement clearly depicts his perception of a woman's place. Another example is a letter he wrote to Margereta in response to a letter she had received from her daughter named Maggie. In the letter, her daughter states how concerned she was for Margereta's health. She offered to send money to Margereta so that she could go live with Maggie and her husband, Matthys. Amused by this letter, John then writes one to Margereta:

> Dear Mrs Rust,
>
> Just a few lines to let you know that I received your letter; and grately (sic) surprised to see the tone in which you wrote the letters not withstanding I am sending you the money that was returned as will make the sum of £9-10 and hearing from your friends that you and them that your children is pay for the treatment this should be enough for pocket money and seeing that you came back as wounded lioness would advise you to get some treatment from an expert on treating your husband and master of the house and whom you are depending on for everything.
>
> Yours
>
> John Rust.[94]

The last part of the letter is significant as it depicts John's understanding of what Margereta's role as a housewife should entail. Bearing this in mind it should be noted that John's obvious ideas of male dominance in the household is a good example of the effects of patriarchal control throughout this time. Sociologist Abeda Sultana provides a brilliant explanation of patriarchal control and how it affects the lives of women in both the household and the work-place.[95] Sultana firstly explains that patriarchy is the main challenge in women's advancement and development. Patriarchy is primarily defined as male dominance within all sectors of society. This

[93] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[94] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934. Letter transcribed verbatim.

[95] Abeda Sultana. Patriarchy and Women's Subordination: A Theoretical Analysis. *The Arts Faculty Journal*. (2010-2011, 4:1).

male dominance favours men above women and also creates a form of subordination in which the women are dependent on the men.[96] This is evident from John's statement that: "treating your husband and master of the house and whom you are depending on for everything".[97] This statement depicts the imbalanced power relationship between John and Margereta. Although John was considered to be the breadwinner, it is evident that he deemed himself to be superior to Margereta. He believed that he was in control and knew that Margereta relied on him for resources. Although this power relation could not be the primary motive as to why Margereta attempted to murder her husband, it should still be recognised as an effective underlying reason for her crime as she could have wanted to break free from male dominance within her home.

The difference and similarities between Attempted Murder/Assault with Intent to Murder and Mariticide cases

As seen in the cases discussed above, there are certain similarities when comparing attempted murder or assault with intent to murder cases to that of mariticide cases.[98] By analysing the above-mentioned cases there is a clear distinction made in comparison to the mariticide cases discussed in the previous chapters.

The one distinction that is necessary to examine is the difference in the sentencing when compared to the cases discussed in the first three chapters. The accused women were either sentenced to be hanged (Dina Dorothea van der Merwe); given life imprisonment (Agnes Mpalweni); or life imprisonment with hard labour (Mimie Madebe); or a few years of imprisonment with/without hard labour (Johanna Kumalo, Elina Ndjobo and Christina Marry), or a few months of imprisonment (Paulina Moema who was Christina Marry's accomplice).[99] Similar to the Paulina's sentence both

[96] Sultana. 'Patriarchy and Women's Subordination', 1.

[97] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[98] See in appendix as it provides a summary of all of the cases examined throughout this thesis. It therefore depicts both similarities and differences between each of these cases.

[99] SAB, URU, 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921. TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925. SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931. TAB, WLD, 127/30, Rex v. Johanna Kumalo, 1 May 1930. TAB, WLD, 515/1935, Rex v. Elina Ndjobo, 9 October 1935. TAB, WLD, 145/1935, Rex v. Christina Marry and Paulina Moema, 22 March 1935.

Elizabeth and Florence were sentenced to six months imprisonment.[100] Florence's case is different in that she was the only woman who was given the option to either go to prison or pay a fine of £25.[101] This option depicts a clear racial and class divide when exploring the cases of "European" women to "non-European", as seen in the previous chapter. By exploring the mariticide cases compared to those in this chapter, it is evident that the "non-European" women were never given the option of paying a fine, but life imprisonment instead. Margereta similarly also had the option to use her financial resources to gain her freedom. After the jury had given their verdict Margereta was given the opportunity to pay a bail amount of £50.[102] Although both Florence and Margereta's sentencing is unique, Margereta's case was exceptionally different as she was the only women who was discharged even though the evidence pointed to a great degree of premeditation in her attempted murder case.[103]

As seen in all of the cases mentioned throughout these chapters it is evident that premeditation was extremely complex. The judge and jury had to consider all the facts given throughout the trial. Although the court did sympathise at times with the accused based on their domestic situations, there were moments where the judge was not in favour of giving a lighter sentence. This is evident when exploring both Christina Marry and Elizabeth Marie Amies' cases where the judge implied that he wanted to punish them with harsher sentences.[104] Essentially, the complexities of premeditation determined who would be given the death penalty and who would be granted mercy in respect of the crime that they had committed. Although the mariticide cases shared certain similarities with attempted murder and assault with intent to murder cases, it is clear that the defining distinction made between the two was on the basis of whether or not the murder was enacted, and the degree of premeditation and intent. Attempted murder was therefore defined as a reduced crime which resulted in a reduced sentence.

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[100] 'Mrs. Amies Sent To Gaol: End of Painful Drama: Why the Judge Did Not Suspend Sentence'. *Rand Daily Mail*, 9 October 1919, 8. and TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.

[101] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.

[102] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[103] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932. and TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.

[104] TAB, WLD, 145/1935, Rex v. Christina Marry and Paulina Moema, 22 March 1935; and 'Mrs. Amies Sent To Gaol: End of Painful Drama: Why the Judge Did Not Suspend Sentence'. *Rand Daily Mail*, 9 October 1919, 8.

Conclusion

Following the court and media narratives of selected cases of attempted murder and assault with intent to murder that were tried before the magisterial and supreme courts of the Transvaal, this chapter focused on cases during the years 1917-1934. This chapter explored four cases in which women were punished and remanded through South Africa's criminal justice system. It determines whether or not the courts granted leniency to women who committed the crime of attempted murder or assault with intent to murder.

This chapter also attempted to explore the various motives that these women used to plead their convictions. These ranged from issues of abuse, self-defence and infidelity and punishments enacted by their husbands when they resisted their domestic duties. The investigation into these motives attempted to provide an understanding of why some women committed these crimes within the private spaces and how their crimes were viewed by the court and society.[105]

This chapter then endeavoured to introduce the use of poison as an alternative method of murdering one's partner. What this discussion aimed to depict was how the use of poison represented a severe degree of intent, as a woman had to carefully plan the execution of the crime. By exploring the use of poison in the case of Margereta it was surprising to note that even though there was evidence of premeditation and intent that her trial was discharged. This type of treatment from the court depicted how attempted murder cases were at times more lenient when it came to sentencing compared to mariticide cases.[106]

Following on from this, the chapter then attempted to briefly discuss the comparison between mariticide, attempted murder and assault with intent cases with regards to how each woman was sentenced. By using the cases discussed in Chapter One and Two compared to the cases explored in this chapter it was evident that some of these criminals did serve similar periods of imprisonment while others gained more leniency.

[105] 'Mrs. Amies Sent To Gaol: End of Painful Drama: Why the Judge Did Not Suspend Sentence'. *Rand Daily Mail*, 9 October 1919, 8.

[106] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

One example of this leniency could be when women, specifically women of "European" descent were sometimes given the option to serve the sentence given to them by the jury or choose to pay a fine or bail which allowed them to opt out of jail time.[107] This is noteworthy as it was only white women who were accorded this degree of mercy which depicted the existing racial stereotype of the early twentieth century and ultimately strengthened the exclusion of the inferior race during the sentencing process. Chanock supports this by arguing that,

> The state was a creation of the imperial state, with its overarching ideology of explicit racist hierarchies, exploitative efficiency and regulation. In South Africa, it was the bulk of the population who were considered to be not wholly adult either culturally or politically.[108]

In keeping with the theme of media narratives mentioned in this chapter, the next chapter explores how the *Rand Daily Mail* reported on mariticide cases. By examining this newspaper reportage, the final chapter also analyses the length and number of reports written on the trials of certain women. Additionally, this chapter also explores how the *Rand Daily Mail* sensationalised specific mariticide cases. This is particularly evident when exploring the case of Daisy de Melker found in the next chapter.[109]

[107] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932, and TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[108] Chanock. *The Making of South African Legal Culture 1902-1936*, 114.

[109] 'Mrs. De Melker's Trial Opens: Alleged Murder Of Two Husbands and Son: Dead Men's Estates: Crown Evidence From Rhodesia'. *Rand Daily Mail*, 18 October 1932, 9-10.

CHAPTER FOUR

Sensationalism: Public and Media Discourses of Mariticide

This chapter examines media narratives, specifically from the *Rand Daily Mail's* reportage on mariticide and attempted murder cases from the period 1921-1935. This chapter analyses newspaper articles about the cases of Dina Dorothea van der Merwe (1921), Agnes Mpalweni (1925), Rachel Wilhemina Taljaard (1930), Florence Georgina Atkinson (1932), Winifred Agnes Maud Fagan (1932), Daisy De Melker (1932), and Christina Marry (1935). By analysing these articles, this chapter aims to explore issues of racism and gender stereotypes. It also aims to discuss how the casting of the female criminal subject as "hysterical" shaped public opinion and how the *Rand Daily Mail* sensationalised these cases to increase their readership. Given the centrality of the *Rand Daily Mail* in this chapter, it is necessary to provide a brief discussion on the newspaper and its influence on society.

Newspapers played a significant role in recreating the events of courtroom drama and criminal activities, be it fraud, theft or murder. Despite the limited accounts of mariticide cases in the Transvaal newspapers, there were some newspapers that printed sequential articles on trials that they deemed newsworthy or sensational. These articles would usually include detailed trial reports, which emulated the structure of the events of the case and trial. In an article titled 'Newspaper Reporting and Attitudes to Crime and Justice in Late-eighteenth- and Early-nineteenth-century London, Peter King states that some articles started off "with the prosecutor's evidence about the crime and that of other witnesses in support of the prosecutor's case, such as the victim's servants or companions and those who had helped to detect and arrest the accused."[1] A record of the accused's defence then followed this as well as evidence from eyewitnesses who either supported the prisoner's claims or provided vital

[1] Peter, King. "Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth- and Early-Nineteenth-Century London". *Continuity and Change* (2007, 22.1:97).

information regarding the accused's character. As a conclusion to some of these sensational cases, a few of the articles presented the judge's summation, which included the verdict and whether or not the accused was granted mercy.[2]

Although King's work focuses specifically on London crimes at the turn of the nineteenth century, his work is still significant to this study as the analysis of the newspapers he uses mirrored that of the early writings and reportage in the *Rand Daily Mail*. Despite the unification of South Africa, which formally ended British rule in this region, there were still existing ideologies and practices of these previous colonisers that were embedded in the social norms of the new state. Many historians have shown how the English press system influenced local newsprint media. In her study on the ways in which Natal newspapers reported on the crime of infanticide, Prinisha Badassy discusses how "imperial press systems present in the colonies were instrumental in maintaining, producing, and re-producing ideas about Britishness."[3] These ideas still persisted for a considerable number of years after the union of South Africa. One example of this could be when analysing the scope and length of mariticide articles written about white South African women compared to South African women of colour. The lack of information pertaining to mariticide articles focusing on women of colour reflected previous ideas of the British colonisers with regards to race, as they did not have too much interest in the issues of women of colour compared to their vast interest in problems concerning white South African women.

The length of these mariticide articles is interesting to note as it also represents which reports were considered fascinating to the general public. In longer reports, the journalist would usually add detailed accounts of the initial crime, reasons as to why the accused enacted the crime, the murder weapon used to commit the crime, the process in identifying the accused and the arrest that followed. As the prolonged reports provided significant details on the case, readers were able to gain insight into the overall running of the court. Readers were able to learn more about the roles of lawyers, judges and the jury in the court. Readers were also given the occasion to peruse examples of cross-examination offered through these articles.[4] King further

[2] King, 'Newspaper Reporting and Attitudes to Crime and Justice', 97-98.

[3] Prinisha Badassy. 2011. *"A Severed Umbilicus: Infanticide and the Concealment of Birth in Natal, 1860-1935"*. PhD Diss. University of KwaZulu-Natal, 199-200.

[4] King, 'Newspaper Reporting and Attitudes to Crime and Justice', 97.

argues that these reports also presented the types of "justice being offered" during that time period.[5] What is evident through the following accounts of mariticide reportage is the degree of leniency the courts granted some of the women discussed in this chapter.

The newspaper reports used for this chapter is drawn from one prominent Transvaal newspaper of that era. The *Rand Daily Mail* (1902-1985) was a progressive newspaper that published daily reports and was one of the main sources of information for the Transvaal for much of the twentieth century. When it was launched in 1902, the recently urbanised society was informed about a variety of topics, ranging from international news, women's recipes, fashion, the economy, health, sports and crime stories. When reading these articles, readers were informed about the happenings of that time, but this led to them becoming increasingly dependent on the newspaper to enlighten them about the trends of that period and what was deemed as acceptable by society. The newspaper, therefore, had a significant impact on how the public perceived everyday happenings including crime and how crime should be dealt with.[6]

Based on the time period of this study it should be noted that by exploring the articles that reported on the crimes of mariticide and attempted murder, the *Rand Daily Mail* displayed certain prejudicial biases based on perceived ideas about race and gender. These biases were rooted in the social norms of the early twentieth century where people of colour were seen as inferior and women were seen as the "weaker sex". Although this was based on colonial ideologies, the *Rand Daily Mail* later became a progressive newspaper that stood against the apartheid government in its later years. Despite its main aim to "champion the cause of the working man",[7] it developed into a liberal newspaper that informed the public about issues in the "townships and tribal "homelands" to which black South Africans were consigned".[8] The *Rand Daily Mail was* later known as one of the most popular anti-apartheid newspapers which went

[5] King, 'Newspaper Reporting and Attitudes to Crime and Justice', 98.

[6] King. 'Newspaper Reporting and Attitudes to Crime and Justice', 104.

[7] Nathan Manfred. *The South African Commonwealth*. The Specialty Press of South Africa ltd, 1919, 424.

[8] Robin Knight. 12 June 2000. The Daily Courage. http://content.time.com/time/world/article/0,8599,2056304,00.html [Accessed On 13 May 2018] &

against the social norms and reported news that was “ignored by the country's mainstream white-run press.”[9]

Although substantial strides have been taken in creating scholarly content on the effects of the South African press in reporting crime, greater analysis on crime reportage and criminal justice issues in newspapers in the early twentieth century still need to be undertaken.[10] By focusing on the *Rand Daily Mail* from the early twentieth century, this study aims to explore how crime and justice reporting, specifically that of mariticide cases, were recorded to inform the public of criminal activities and courtroom happenings. Additionally, this chapter will touch on how the court used certain laws to sentence women of different races and also explore the types of narratives that were reproduced and published in the *Rand Daily Mail*.

A Familiar Case - Dina Dorothea van der Merwe

Although the case of Dina Dorothea van der Merwe[11] is a familiar case that was discussed in the first chapter of this study, it would be beneficial to explore her case from the perspective of the *Rand Daily Mail* newspaper. As mentioned in Chapter One Dina Dorothea van der Merwe murdered her live-in partner, Louis Tumpowski, after discovering that he had cheated her out of her land. With the help of her daughter’s ex-suitor and a few men who were employed by Dina, Louis Tumpowski was murdered with a knobkerrie on the night of 2 February 1918, The two main articles found on her case in the *Rand Daily Mail* dated Tuesday, 14 June 1921 and Wednesday, 15 June

[9] Robin Knight. 12 June 2000. The Daily Courage. http://content.time.com/time/world/article/0,8599,2056304,00.html [Accessed On 13 May 2018] & Les Switzer (ed.) *South Africa"s Alternative Press: Voices of Protest and Resistance, 1880s-1960s*. Cambridge University Press, 1997.

[10] King. ‘Newspaper Reporting and Attitudes to Crime and Justice’, 73. It should also be noted that some South African studies that have done this. There are in fact few sources on crime reporting in the early decades of the 20th c. such as Prinisha Badassy. 2011. *“A Severed Umbilicus: Infanticide and the Concealment of Birth in Natal, 1860-1935”*. PhD Diss. University of KwaZulu-Natal. Robinson, Cynthia A. *The power behind the press: English newspapers in the Transvaal, 1870-1899*. Diss. University of British Columbia, 1989. Radebe, Nomshado Maria. *"Thieving Blacks": gangs and crime in Soweto as reported in white English newspapers during the 1940's and 1950's*. Diss. University of Johannesburg, 2007. & Martens, Jeremy C. "Settler Homes, Manhood and Houseboys': An Analysis of Natal's Rape Scare of 1886." *Journal of Southern African Studies* (2002, 28.2: 379-400).

[11] National Archives Repository [hereafter SAB], Registrar of the Supreme Court of South Africa, Executive Council Archive [hereafter URU],517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

1921, provide an overview of the case as well as detailed eyewitness accounts proving her culpability in the murder.[12]

The first article titled 'Veld Mystery Recalled: Woman Charged with Murder: Sensational Trial at Potchefstroom' provided a summary of the trial.[13] It included the story of why Dina Dorothea van der Merwe murdered Louis Tumpowski and goes into detail about the various ways she tried to murder him. Additionally, this article mentions the witnesses who made strong cases against the accused and strengthened the conviction that she had, in fact, murdered Tumpowski, without doubt.

The second article, dated Wednesday 15 June 1921, was titled 'How Tumpowski was Killed: Bird's Shocking Allegations: Victim Overpowered and Throat Cut' and provided a similar summary to the article of the previous day, but focuses specifically on one key witness' account.[14] As discussed in Chapter One and confirmed by this article, the court valued the witness account of a Mr Jim Burds[15], who was also on trial for the murder of Louis Tumpowski. Although the newspaper article replicates the confession that Jim Burds shared with the court in the archival records, the newspaper did not provide further information regarding the trial in the subsequent court round-up reports. The second article ends off with the *Rand Daily Mail*'s correspondent stating that "the cases was still unfinished when the Court adjourned this afternoon."[16]

The following day, the *Rand Daily Mail* published another article titled 'Death Sentence Passed on a Woman: Judge Holds out No Reprieve: Dramatic Scene in Tumpowski Trial: "Innocent before God and Man".'[17] This next instalment of Dina's case reported the judge and jury's verdict and sentence. After just two and a half days of "sordid evidence" the jury did not take too long in reaching their decision. According to the *Rand Daily Mail*, the jury only took a few minutes to reach a verdict. Their verdict was

[12] 'Veld Mystery Recalled: Woman Charged With Murder: Sensational Trial At Potchefstroom'. *Rand Daily Mail*, 14 June 1921, 5 and 'How Tumpowski Was Killed: Birds' Shocking Allegations: Victim Overpowered and Throat Cut'. *Rand Daily Mail*, 15 June 1921, 7.

[13] 'Veld Mystery Recalled: Woman Charged With Murder: Sensational Trial At Potchefstroom'. *Rand Daily Mail*, 14 June 1921, 5.

[14] 'How Tumpowski Was Killed: Birds' Shocking Allegations: Victim Overpowered and Throat Cut'. *Rand Daily Mail*, 15 June 1921, 7.

[15] The surname Burds, as recorded in the archival records has a different spelling to the newspaper records. In the *Rand Daily Mail* it is recorded as Birds.

[16] 'How Tumpowski Was Killed: Birds' Shocking Allegations: Victim Overpowered and Throat Cut'. *Rand Daily Mail*, 15 June 1921, 7.

[17] 'Death Sentence Passed On A Woman: Judge Holds Out No Reprieve: Dramatic Scene In Tumpowski Trial: "Innocent Before God And Man"'. *Rand Daily Mail*, 16 June 1921, 5.

that Dina was found guilty of being an accomplice to the murder of Tumpowski. The judge then sentenced her to death. Although this has been discussed in the first chapter, what is significant about this specific article was how the *Rand Daily Mail* shared certain biases on Dina and Jim Burds' character. As discussed in their study on the effects of newspaper reportage and the public construction on homicide Moira Peelo *et al*. argue that,

> News coverage can endorse the invisibility of certain groups and can enhance the visibility of other groups. Both are different ways of distorting reality. As such, newspapers make a complex contribution to the public narratives that shape the criminological problem.[18]

This is evident when exploring how Dina was portrayed by the newspaper. Dina was referred to as a "wretched" woman and was also recorded as being hysterical. This is evident when the *Rand Daily Mail* stated that,

> When asked if she had anything to say before the passing of the death sentence, the accused again burst out, *hysterically*: "I don't want to be condemned to death. I am innocent. I know, before God and man. I am innocent."[19]

In relation to this statement, the article then restates the court's theory that Jim's testimonies should not have been taken at face value as he appeared to be, "…in his own admission… a liar, an adulterer, a witch doctor and murderer."[20]

Based on certain inconsistencies in his statements in court, Dina's defence attorney, Mr Murray, questioned the validity of Jim's testimony as he believed that Jim, who was seen as corruptible, was only helping the Crown to convict Dina on the basis of circumstantial evidence. By portraying Jim as an unreliable, Coloured man, he wanted the jury and judge to be more cautious when exploring Jim's statements while Dina's final sentence was being deliberated. This is clear when the *Rand Daily Mail* recorded Murray's final argument,

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[18] Moira Peelo, Brian Francis, Keith Soothill, Jayn Pearson and Elizabeth Ackerley. "Newspaper Reportage and the Public Construction of Homicide". *The British Journal of Criminology* (2004, 44.2: 274).

[19] 'Death Sentence Passed On A Woman: Judge Holds Out No Reprieve: Dramatic Scene In Tumpowski Trial: "Innocent Before God And Man"'. *Rand Daily Mail*, 16 June 1921, 5. [Emphasis added]

[20] 'Death Sentence Passed On A Woman: Judge Holds Out No Reprieve: Dramatic Scene In Tumpowski Trial: "Innocent Before God And Man"'. *Rand Daily Mail*, 16 June 1921, 5.

> …did they not know that [Burds] had himself killed Tumpowski, they would be even inclined to doubt his evidence on that point. The life of a woman was at stake, he concluded, and if there was any doubt it was her right to be declared not guilty.[21]

Despite the request to doubt Jim's testimony the judge and jury still believed that Dina participated in Tumpowski's death. This is apparent when the court discussed the medical evidence which supported Jim's claims. Based on the medical examination on the deceased's body, *The Rand Daily Mail* reported that "the fractures of the skull corroborated the story of [Burds] as to the injuries inflicted before death."[22] This statement ultimately helped the jury and judge to reach their verdict and sentence.

The next article dated the 30th July 1921 was titled 'The Tumpowski Murder: Will Sentence on White Woman be Confirmed?'[23] This article consisted of a short column and discussed whether the Cabinet meeting held in Durban would, in fact, support the death sentence passed on Dina by Justice De Waal. The article concluded with a short sentence stating that one of the accomplices, Hermanus Swarts was also sentenced to death.

In response to the above-mentioned column, the *Rand Daily Mail* then wrote an article titled 'Woman To Pay The Penalty: No Reprieve of Tumpowski's Murderers: Sentence Confirmed.' Although Dina and her defence attorney hoped that her sentence would be commuted, the Cabinet supported the Judge's sentence that she was to be hanged for her crime. To emphasise the severity of Dina's case the *Rand Daily Mail* emphatically declared that, "…for the first time in many years in South Africa a white woman was condemned to death."[24]

By stating this the press wanted to highlight how Dina's case deviated from the social norms of that time. As she was both white and a woman, the article wanted to inform the public that this was an extremely rare case as women were not usually sentenced to the death penalty. The *Rand Daily Mail* attempted to stress this fact when they

[21] 'Death Sentence Passed On A Woman: Judge Holds Out No Reprieve: Dramatic Scene In Tumpowski Trial: "Innocent Before God And Man"'. *Rand Daily Mail*, 16 June 1921, 5.

[22] 'Death Sentence Passed On A Woman: Judge Holds Out No Reprieve: Dramatic Scene In Tumpowski Trial: "Innocent Before God And Man"'. *Rand Daily Mail*, 16 June 1921, 5.

[23] 'The Tumpowski Murder: Will Sentence On White Woman Be Confirmed?', *Rand Daily Mail,* 30 July 1921, 8.

[24] 'Woman To Pay The Penalty: No Reprieve Of Tumpowski's Murderers: Sentence Confirmed'*, Rand Daily Mail,* 10 August 1921, 6.

wrote, “So the last scene of a drama unique in South African criminal history is fated to take place shortly.[25]

Although this reportage aimed to sensationalise Dina’s sentence there was one discrepancy in this article. In previous articles, the *Rand Daily Mail* described how five people were accused of murdering Tumpowski. This was also seen in the court records, but this article only mentions how Dina, Hermanus and “two native boys” were charged. In his discussion on newspapers as historical sources, Joseph Baumgartner questions the reliability and accuracy of some newspaper reports. He states that,

> In the first place, their every effort to get the news out as quickly as possible -- and perhaps to beat the competition with a "scoop" -- militates against the accuracy and reliability of their reports. Yet, rarely do newspapers take the trouble to correct whatever misinformation they may have been guilty of.[26]

The omission of one of the accused’s names who was sentenced with Dina and the other accomplices in the above-mentioned article is interesting to note as it represents the inconsistencies in news reportage of that time.

The last article written on Dina’s case titled ‘The Tumpowski Murder: Appeal to the Prince for the Female Convict,’ provides a short description on how women from various political and social organisations met on the 16th August 1921 to write a letter to the Governor-General to suspend Dina’s death sentence. Despite this letter, Dina was still hanged the following morning. The article then concluded by stating that Hermanus would also be hanged the following day.[27]

When exploring these articles written on Dina’s case it is evident that the *Rand Daily Mail* created a sensationalist story to not only keep readers informed about the current crimes in their city but to also entertain them with drama and scandals. This is clear when reading the headlines of the newspaper articles relating to Dina’s case. All six of these titles are particularly interesting to note as they all carry the intention of enticing the readership to become enthralled in these scandalous female spousal

[25] ‘Woman To Pay The Penalty: No Reprieve Of Tumpowski’s Murderers: Sentence Confirmed’*, Rand Daily Mail,* 10 August 1921, 6.

[26] Joseph Baumgartner. “Newspapers As Historical Source”. *Philippine Quarterly of Culture & Society* (1981, 9.3:256).

[27] ‘The Tumpowski Murder: Appeal To The Prince For The Female Convict’*, Rand Daily Mail,* 16 August 1921, 6.

murder cases. As seen in the first article discussed in this section, the title reads 'Veld Mystery Recalled: Woman Charged with Murder: Sensational Trial at Potchefstroom.'[28] This title lures readers into discovering why there was a mystery behind this murder and makes it even more attractive to them as the murder was committed by a woman. The next article titled 'How Tumpowski Was Killed: Bird's Shocking Allegations: Victim Overpowered and Throat Cut' reveals a bit more about this shocking case as it gives readers insight into how and why the murder occurred.[29] Words such as 'shocking' and 'throat cut' were used to capture the reader's attention. The third article with the headline 'Death Sentence Passed on a Woman: Judge Holds out No Reprieve: Dramatic Scene in Tumpowski Trial: "Innocent before God and Man"' is particularly noteworthy as it provides a quote from the court trial.[30] Additionally, this title was aimed to garner a certain type of sympathetic reaction from the readers as it was seen as both appalling and sad that a woman would be charged with the death sentence. In relation to this, the next headline 'The Tumpowski Murder: Will Sentence on White Woman Be Confirmed?' was pivotal as it represented the question that all their readers and those who were at the court hearings wanted to be answered.[31] Although the *Rand Daily Mail* had made certain biased comments on Dina's disposition, it still acknowledged the fact that a white South African woman, who was seen as a socially respectable person in society, would have to face the ultimate punishment. The fact that it was the first time a death penalty was served to a woman in the Union of South Africa was an issue that most Transvaalers and South Africans would have been fixated on. Due to race and gender issues of that time, it was dreadful for them to see a person of that class to be given the death penalty. To answer this question the *Rand Daily Mail* then published an article titled 'Woman To Pay The Penalty: No Reprieve of Tumpowski's Murderers: Sentence Confirmed,' which depicted how the legal system wanted to produce a fair sentence despite the gender

[28] 'Veld Mystery Recalled: Woman Charged With Murder: Sensational Trial At Potchefstroom'. *Rand Daily Mail*, 14 June 1921, 5.

[29] 'How Tumpowski Was Killed: Birds' Shocking Allegations: Victim Overpowered and Throat Cut'. *Rand Daily Mail*, 15 June 1921, 7.

[30] 'Death Sentence Passed On A Woman: Judge Holds Out No Reprieve: Dramatic Scene In Tumpowski Trial: "Innocent Before God And Man"'. *Rand Daily Mail*, 16 June 1921, 5.

[31] 'The Tumpowski Murder: Will Sentence On White Woman Be Confirmed?', *Rand Daily Mail,* 30 July 1921, 8.

or race of the accused.[32] This was apparent in the concluding article titled 'The Tumpowski Murder: Appeal to the Prince for the Female Convict,' despite the obvious request to suspend her sentence.[33] What these headlines essentially portray is the relationship between the press and their readership. The *Rand Daily Mail* provided detailed reports on Dina's case as readers became engrossed with the trial. This is clear when the articles became increasingly longer throughout her trial. This, unfortunately, was not the norm for all mariticide cases as newspapers only reported on crimes that would interest their readership. Some articles on spousal homicide cases would at times only provide a few short articles on some of these women's crimes. This is apparent in the case of Agnes Mpalweni.

"Killed Her Husband With An Axe…" - Agnes Mpalweni

Another familiar case that was reported on in the *Rand Daily Mail* was the case of Agnes Mpalweni. The two articles on her case are interesting to note as they illustrate the pattern of some news reports during the early twentieth century. As historian Heather Shore mentions in her work 'Undiscovered Country': Towards a History of the Criminal 'Underworld', some news articles were unreliable as they did not provide the overall story of some crimes. [34] Shore further argued that some women's criminal careers continued after their disappearance from newsprint, which suggests that the press had lost interest in the activities of these women.[35] This is particularly interesting to note as the decision of the press to cease some crime stories portrays how selective newspapers were.[36] In the Transvaal, however, it becomes apparent that this selectivity was dependent on the race of the accused and their social standing.

[32] 'Woman To Pay The Penalty: No Reprieve Of Tumpowski's Murderers: Sentence Confirmed'*, Rand Daily Mail,* 10 August 1921, 6.

[33] 'The Tumpowski Murder: Appeal To The Prince For The Female Convict'*, Rand Daily Mail,* 16 August 1921, 6.

[34] Heather Shore, '"Undiscovered Country": Towards a History of the 'Criminal Underworld''.*Crimes and Misdemeanours* (2007, 1.1:54).

[35] Shore. 'Undiscovered Country', 55.

[36] 'Native Woman Charged With Homicide: Stated Her Husband Was Unfaithful'. *Rand Daily Mail*, 13 February 1925, 11; and 'Killed Her Husband With An Axe: Native Woman Gets Death Sentence'. *Rand Daily Mail*, 14 February 1925, 13.

Dated Friday, 13 February 1925, the first article titled 'Native Woman Charged with Homicide: Stated Her Husband Was Unfaithful'[37] consisted of four short paragraphs which provided a brief summary of why Agnes was charged with murdering her partner, George, with an axe. This account of Agnes' case is significant as it portrays the glaring issue of racial inequality throughout this time. In Agnes' articles, the press identifies her as 'Native' emphasising the point that she was of an inferior race and strengthened this point by writing a shorter column of her case compared to that of Dina's, who was considered to be more respectable due to her race.[38] In her study on infanticide in colonial Natal, Badassy observed a similar trend with regards to how newspapers reported on infanticide cases involving black women. She says,

> …when an African person committed the crime it was seen as heinous and almost inherent to their nature and either worthy of reportage that highlighted the incivility of the African woman or of no commentary at all.[39]

Although there were inconsistencies regarding the reportage of Dina's case, what is clear is the fact that the press took more time in informing the public of her mariticide case. The short and brief coverage of Agnes' case continued into the second report dated Saturday 14 February 1925.[40] In this article titled 'Killed Her Husband With An Axe: Native Woman Gets Death Sentence,' the press described how Agnes who was charged with murdering her husband was sentenced to death but was later given mercy. Although this mirrors the records of the court case, it does not provide a definitive explanation of what type of mercy was given or why. The article just ends off by stating that "She heard the sentence with stoical calm. Mr J. D. Krige defended, and Mr F. Beardmore prosecuted."[41]

This is a primary example of how selective the press was in deciding which cases were acceptable to expand on for the public. Agnes' case was clearly deemed as an

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[37] 'Native Woman Charged With Homicide: Stated Her Husband Was Unfaithful'. *Rand Daily Mail*, 13 February 1925, 11.

[38] 'Native Woman Charged With Homicide: Stated Her Husband Was Unfaithful'. Rand Daily Mail, 13 February 1925, 11.

[39] Badassy. *'A Severed Umbilicus: Infanticide and the Concealment of Birth in Natal',* 202.

[40] 'Killed Her Husband With An Axe: Native Woman Gets Death Sentence'. *Rand Daily Mail*, 14 February 192, 13.

[41] 'Killed Her Husband With An Axe: Native Woman Gets Death Sentence'. *Rand Daily Mail*, 14 February 1925, 13.

insignificant case to share with the public as the press tended to condense news stories that they were not interested in. The short length of the articles related to women of colour represented the overall resentment towards race groups that were seen as the inferior race of that time. The newspaper, therefore, aimed to focus the attention of the public upon specific individuals, and reinforce criminal typologies and stereotypes.[42]

"...fatally shot her husband..."-Rachel Wilhemina Taljaard



RAND POLICEMAN KILLED—Constable H. J. Taljaard (who was fatally shot in his house at Primrose Township) and his wife, Mrs. Taljaard, who has been arrested on a charge of murder. The photograph was taken on the occasion of their marriage.

Image 1: Constable Hendrik Jacobus Taljaard (left) and Rachel Taljaard, (right), 1924.[43]

[42] Shore. 'Undiscovered Country', 56.

[43] 'Forgiveness By Husband: Taljaard Tragedy: Wife Hysterical: Now In Fort'. *Rand Daily Mail*, 11 February 1930, 7.

On Tuesday the 9th of February 1930, Rachel Wilhemina Taljaard fatally shot her husband, police Constable Hendrik Jacobus Daniel Taljaard at their home in Primrose and surrendered herself to the police later that day. Rachel was then removed to the Fort in Johannesburg the following day, where she had to await preparatory examination at Germiston on the 21st February 1930. On the 11th February 1930, the *Rand Daily Mail* reported how Mr Taljaard was admitted to the Germiston Hospital and was visited by Mr F. C. W. Caller, the Magistrate; Mr C. W. John, the Prosecutor and Mr M. Rossenstein, Rachel's Defence Attorney.[44] It was during this visit that the press recorded how Rachel was in an extremely distressed condition and frequently begged forgiveness from her husband.[45]

The crime ensued during a quarrel between Mr and Mrs Taljaard. It is through the *Rand Daily Mail*'s reportage that the public discovered that Mr Taljaard attempted to take a gun away from Rachel which resulted in a struggle that led to the fatal shot.[46] The first substantial witness account that was given to the magistrate was from Mr Taljaard. This was then recorded by the *Rand Daily Mail* who received the account from Dr C. T. Moller and Dr D. Strachan who were present when the witness made this statement. They stated that the victim said:

> My wife shot me with a revolver, the bullet hit me on the right side. I cannot remember if anyone else was present. I was sober, and I think my wife was sober. I was on duty until 5 a.m. and got home some time after that. My wife accused me of being with another woman…and she said that was why I was late. I denied this and she pulled a revolver from behind her back and fired. She fired three times. The revolver is hers. It is an old-fashioned Webly pattern weapon. I had it fixed for her and bought her some ammunition.[47]

After he had concluded his statement it was reported that Rachel went to her husband's bedside and pleaded for his forgiveness yet again. As illustrated in the

[44] 'Forgiveness By Husband: Taljaard Tragedy: Wife Hysterical: Now In Fort'. *Rand Daily Mail*, 11 February 1930, 7.

[45] 'Forgiveness By Husband: Taljaard Tragedy: Wife Hysterical: Now In Fort'. *Rand Daily Mail*, 11 February 1930, 7.

[46] 'Forgiveness By Husband: Taljaard Tragedy: Wife Hysterical: Now In Fort'. *Rand Daily Mail*, 11 February 1930, 7.

[47] 'Forgiveness By Husband: Taljaard Tragedy: Wife Hysterical: Now In Fort'. *Rand Daily Mail*, 11 February 1930, 7.

Rand Daily Mail, Mr Taljaard responded by stating that, "Well, as I am passing out, I may as well forgive you."[48] Despite this unenthusiastic forgiveness, it was recorded that Mr Taljaard had then passed away. This news was then followed by the details of his funeral.

The hearing, which started on the 21st of February 1930, was a public affair as a large crowd of people attended the trial. Despite the initial report of the magistrate, prosecutor and defence attorney, it was later recorded that the actual trial was presided over by Judge Solomon, Mr Beardmore as prosecutor and Mr Juta as Rachel's defence attorney.[49] The *Rand Daily Mail* placed significant interest on the crowd that attended the trial. This is noteworthy as the reportage on Rachel's case garnered a great deal of support from the public, which became a common theme in a few of the cases mentioned in this chapter. As Badassy discusses in her study on newspaper representations and public responses she explores the case of how the Layton family was charged with infanticide. In her exploration of the newspaper articles written on the Layton trial, she discusses the impact of the press and the public in criminal cases. She argues that the newspaper articles reporting on these scandalous crimes "sheds further light on public participation and interest in cases" which were "scandalous and violent".[50] This is clear when exploring the headlines used on Dina's newspaper articles mentioned above as well as Rachel's, specifically, the one titled 'Early Morning Tragedy: Taljaard Shooting Case: Wife In Court: Morbid Curiosity Of Crowd.'[51] This title represented how the newspaper spurred on the curiosity of the public which resulted in a drastic increase in crowd appearance throughout Rachel's trial. Public interest in Rachel's case was also due to the fact that her husband was a long-serving member of the South African police and presumably a well-known figure in and around Johannesburg.

In the above-mentioned newspaper articles, the press informed readers about the principle witness of the trial who gave evidence that would influence the court's perception of Rachel and her husband's relationship. Since their daughter, Georgina

[48] 'Forgiveness By Husband: Taljaard Tragedy: Wife Hysterical: Now In Fort'. *Rand Daily Mail*, 11 February 1930, 7.

[49] TAB, WLD, 160/1930, Rex v. Rachel Wilhelmina Taljaard, 21 May 1930.

[50] Badassy. *'A Severed Umbilicus: Infanticide and the Concealment of Birth in Natal',* 230 & 239.

[51] 'Veld Mystery Recalled: Woman Charged With Murder: Sensational Trial At Potchefstroom'. *Rand Daily Mail*, 14 June 1921, 5; and 'Early Morning Tragedy: Taljaard Shooting Case: Wife In Court: Morbid Curiosity Of Crowd'. *Rand Daily Mail*, 22 February 1930, 11.

Walker was present during the fatal shooting, the court relied on her account to provide a deeper understanding of why the crime was committed. According to the *Rand Daily Mail*, Georgina stated that she overheard a discussion between her mother and her stepfather.[52] She had heard her mother ask her stepfather where he had been. He then responded by stating that, "…it has nothing to do with you; for all you know I might have been at -----'s place (mentioning a certain woman's name)."[53]

Georgina continued to listen to their conversation for a while and later heard the sound of a gunshot. She then goes on by stating that:

> I ran into the kitchen and saw mother and dad struggling. Father had mother by the throat, pressing her backwards. Mother was trying to push his hands away, and at that moment I heard another shot. I do not know who fired the shot. I could not see my mother's right hand. Father's hands were both on her throat.
>
> I then saw the revolver. Father was trying to take it from her, but she threw it across the kitchen. They continued to struggle for two or three minutes. I took the revolver and put it on the box outside where I had been working.
>
> I then saw my mother come stumbling down the steps leading outside, and dad was leaning against the door with his head hanging down. It looked as though father had pushed my mother out of the kitchen.
>
> Mother then went away to the charge office, and dad called me. I went inside and found him sitting on the bed, where he had laid down. He was holding his hand to his right side. He asked me to telephone for the doctor, and I sent my little brother to tell mother that dad was very bad. I went out into the yard, and almost immediately heard a fall. I ran to the kitchen, and saw dad lying on the floor near the kitchen steps. While dad had his hands on mother's throat I heard dad say, 'I will kill you.' This was before the shot was fired.[54]

According to the *Rand Daily Mail*, Georgina believed that her parents had a troubled marriage because they had argued countless times over the existence of another woman. This woman was previously named in a letter written by the late Mr Taljaard, on 1 May 1929, which was also read in the court and used as evidence. It read:

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[52] 'Early Morning Tragedy: Taljaard Shooting Case: Wife In Court: Morbid Curiosity Of Crowd'. *Rand Daily Mail*, 22 February 1930, 11.

[53] 'Early Morning Tragedy: Taljaard Shooting Case: Wife In Court: Morbid Curiosity Of Crowd'. *Rand Daily Mail*, 22 February 1930, 11.

[54] 'Early Morning Tragedy: Taljaard Shooting Case: Wife In Court: Morbid Curiosity Of Crowd'. *Rand Daily Mail*, 22 February 1930, 11.

> I, Constable H.J. Taljaard, swear to God and promise my wife that I will never set eyes again on a woman by the name of Mrs. ---------, of Primrose. I, further promise, if I cause my wife anymore grief and sorrow through this woman, my wife will have the full right to take me to justice, as this woman was lately trying her very best to make me up against my wife and to break up our home.[55]

After these accounts, the court was then adjourned until Monday the 24th of February 1930.

The next article written on 25th February 1930 by the *Rand Daily Mail* was titled 'Wife's Sobbed Denial: The Germiston Shooting: Mrs Taljaard Sent for Trial.'[56] This article was particularly interesting to note as it recorded Rachel's son's testimony which contradicted that of his sisters. Rachel's son Henry, gave evidence where he stated that he and his younger brother were playing in their yard when he heard two shots. When questioned in court, Henry stated that his sister could not have been present in the house when the second shot was fired. He stated that "When the first shot was fired, Georgina was standing by the kitchen door. She was in the yard when the second shot was heard."[57] Although Henry's statement was taken into account, it did make the court question the validity of both of Rachel's children's testimonies.

After a few weeks, the *Rand Daily Mail* then published a report on the proceedings of the trial dated on the 21st May 1930. The main events of this day consisted of a revolver test in the yards of the High Court, as well as Rachel's own confession. To test whether or not Rachel had the intention of murdering her husband, the court decided to run a revolver test in the yards of the High Courts. Although many people were there to witness the test, Rachel's defence attorney later argued that the shooting should be seen as accidental.[58] Besides this test, there was also a re-enactment performed to illustrate the altercation between Rachel and her husband. The image of the re-enactment was found in the archival records of this trial and is reproduced below.

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[55] 'Early Morning Tragedy: Taljaard Shooting Case: Wife In Court: Morbid Curiosity Of Crowd'. *Rand Daily Mail*, 22 February 1930, 11.

[56] 'Wife's Sobbed Denial: The Germiston Shooting: Mrs Taljaard Sent For Trial'*, Rand Daily Mail,* 25 February 1930, 10.

[57] 'Wife's Sobbed Denial: The Germiston Shooting: Mrs Taljaard Sent For Trial'*, Rand Daily Mail,* 25 February 1930, 10.

[58] 'Revolver Tests in Yard At High Courts: Shots Fired At Trousers Of Dead Policeman: Taljaard Trial: Accused's Wife Tearful Story Of Reef Tragedy'. *Rand Daily Mail*, 22 May 1930, 8.



Image 2: A photo re-enacting the struggle between Rachel and her husband, Pretoria National Archives, Date unknown.[59]

This *Rand Daily Mail* newspaper article is particularly interesting as it published Rachel's testimony, allowing her voice to be presented. In the courtroom, Rachel shared her version of the story. She discussed how she had previously been married in 1908. Eleven years after this, the couple then ended their marriage as her husband left her for another woman. At the time, she already had a daughter and son. Rachel later met Hendrik and they married in 1924. Although they were initially happy, their marriage took a turn for the worse in 1928. Rachel became ill in the year 1924, which required her to employ a live-in nurse who was named Mrs Colyn. Throughout her care, Rachel discovered that her husband and her nurse were having an affair. Despite the initial problems, Rachel and Hendrik attempted to repair their relationship but in January 1930, Mrs Colyn visited the Taljaard home and a quarrel ensued. Although Mrs Colyn left a few hours later, the quarrel continued between Rachel and her husband until the fatal shooting.[60] Rachel argued in court that, "in my excitement I fired

[59] TAB, WLD, 160/1930, Rex v. Rachel Wilhelmina Taljaard, 21 May 1930.

[60] 'Revolver Tests in Yard At High Courts: Shots Fired At Trousers Of Dead Policeman: Taljaard Trial: Accused's Wife Tearful Story Of Reef Tragedy'. *Rand Daily Mail*, 22 May 1930, 8.

at the wall. But never at my husband. I never fired a shot at him. It was purely an accident."[61]

Keeping this declaration in mind, the *Rand Daily Mail* then published a report the following day to conclude the case of Rachel Taljaard. This report included the defence attorney's closing argument, the judge's sentencing and notes. The attorney's closing argument is interesting to note, as it not only aimed to influence the court to sympathise with the accused but to also pity Rachel on the grounds of her sex.[62] Defence attorney Mr Juta stated that:

> This unfortunate woman has been gravely wronged by members of both sexes. She has suffered terribly, and the future can hold very little happiness for her. The unpleasantness of that last year, from May onwards-living with Taljaard; the weary loneliness of that last Saturday in the house; the horrors of that Sunday morning; the nightmare of the months awaiting trial, culminating in her present position in the dock, must have exacted a terrible toll of her. Her freedom, her life, are in your hands. Can you, in view of the evidence, take that from her?[63]

Despite this address, which lasted two hours, the judge urged the court to not be influenced by the above mentioned argument. Judge Solomon instead wanted the jury to decide whether Rachel should be charged with murder or culpable homicide. The *Rand Daily Mail* further reported that:

> The latter verdict (culpable homicide) should be returned if they held that the Crown had failed to prove that she intended to kill her husband, although the Crown had proved that she killed him unlawfully and not by accident.[64]

Even though Rachel pleaded not guilty to the charge of murder, based on the grounds of an accidental shooting, the judge still charged her with culpable homicide and

[61] 'Revolver Tests in Yard At High Courts: Shots Fired At Trousers Of Dead Policeman: Taljaard Trial: Accused's Wife Tearful Story Of Reef Tragedy'. *Rand Daily Mail*, 22 May 1930, 8.

[62] 'Five Years For Mrs Taljaard: Culpable Homicide Verdict: Final Scenes: Moving Appeal By Defence Counsel'. *Rand Daily Mail*, 23 May 1930, 8.

[63] 'Five Years For Mrs Taljaard: Culpable Homicide Verdict: Final Scenes: Moving Appeal By Defence Counsel'. *Rand Daily Mail*, 23 May 1930, 8.

[64] 'Five Years For Mrs Taljaard: Culpable Homicide Verdict: Final Scenes: Moving Appeal By Defence Counsel'. *Rand Daily Mail*, 23 May 1930, 8.

sentenced her to five years imprisonment with hard labour.[65] In giving the sentence to Rachel, Justice Solomon stated that,

> You killed your husband, although you did not intend to kill him. It is a very serious offence, and the jury have not added any recommendation to mercy.[66]

Although the trial ended, the *Rand Daily Mail* still feigned some interest in the life of Rachel Taljaard. In writing three short separate reports on the 11th, 13th and 17th of June 1930, the press recorded how the Johannesburg Women's Civic Society attempted to appeal against Rachel's sentencing as the society viewed it as an unfair sentencing.[67] Despite these short reports, it is evident that the press still had a considerable amount of interest in the case, as the news reports gained a large audience who was interested in reading about the issues and scandals surrounding Rachel's case. In much the same manner as Dina's case.

As seen above, Rachel Taljaard's case was discussed through the use of court cases and newspaper reports. Her case is a primary example of how two historical sources can work in conjunction with one another to retell stories that were not given great attention in the past. Even though the court records of Rachel's case was limited, the vast amount of articles written on her case compliment the information recorded at the archives. Badassy strengthens this argument by stating that, "…newspaper accounts, especially crime reporting, like court records reveal just as much as they conceal."[68]

Although Rachel's court records include substantial information, such as the indictment, judge's remarks, a deposition made by the deceased, letters written by the deceased and a picture re-enacting the crime, there is no other information relating to the actual court case. Based on the narratives of Rachel's court case records, "it would be possible to construct some sort of historical account."[69] The newspaper, on the other hand, provides a more colourful, nuanced narrative of crime. Throughout the

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[65] TAB, WLD, 160/1930, Rex v. Rachel Wilhelmina Taljaard, 21 May 1930.

[66] 'Five Years For Mrs Taljaard: Culpable Homicide Verdict: Final Scenes: Moving Appeal By Defence Counsel'. *Rand Daily Mail*, 23 May 1930, 8.

[67] 'Mrs Taljaard's Sentence: Women's Civic Society Move For Remission'. *Rand Daily Mail*, 11 June 1930, 11; 'Mrs Taljaard's Sentence: Women's Civic Society To Approach Minister'. *Rand Daily Mail*, 13 June 1930, 11; and 'Appeal Against Mrs Taljaard's Sentence: Move By Women's Civic Society'. *Rand Daily Mail*, 17 June 1930, 4.

[68] Badassy. *'A Severed Umbilicus: Infanticide and the Concealment of Birth in Natal',* 213.

[69] Badassy. *'A Severed Umbilicus: Infanticide and the Concealment of Birth in Natal',* 214.

reports of Rachel's court cases, readers were able to empathise with Rachel, even though the reports recorded her as being of a hysterical nature. During her trial, the *Rand Daily Mail* always portrayed her as a weeping widow to be pitied by readers of the *Rand Daily Mail*. The support provided by the Johannesburg Women's Civic Society was proof of this as they pitied Rachel and believed that she should have been given a lighter sentence. This motivated them to try to repeal her sentence of five years.

Rachel's case is a notable example of how mariticide cases were sensationalised in newspaper articles. The number of newspaper articles written about her trial illustrated how the press favoured stories such as hers. It was also due to the increased readership and audience at the trial, that the *Rand Daily Mail* provided detailed accounts of her case. Therefore, the press became increasingly dependent on the interest of their readers which resulted in the press selecting newsworthy stories that would increase their circulation. Historian, Esther Snell aptly observes that "…newspaper content was constructed according to notions of newsworthiness and availability of stories."[70]

"I'll do six months, then I'll have you." -Florence Georgina Atkinson

Florence Atkinson's story, as discussed in Chapter Three, is a good example of a matricide case that was not reported at great lengths. Despite her being of a "respectable" race, her case was only mentioned in four *Rand Daily Mail* articles. The first, titled 'Shooting Sensation: Fireman in Hospital: Woman Arrested,' was published on the 3rd March 1932. Although this article is short, it provides adequate information on the shooting and Thomas' condition. The article begins by stating that Florence was detained by the Johannesburg Criminal Investigation Department the previous evening. It then reported that Florence was accused of shooting Thomas in his back, outside of the Central Fire Station at eleven o'clock in the evening. Thomas was then sent to the General Hospital. It is apparent that this report focuses more on Thomas' condition as the newspaper stated,

[70] Esther Snell. Discourses of criminality in the eighteenth-century press: the presentation of crime in The Kentish Post, 1717–1768. *Continuity and Change* (2007, 22.1: 16).

> It is alleged that the woman, who is a widow and has two children, walked up to the fireman standing at the entrance to the fire station and asked for Owen. When he appeared she drew an automatic and shot him, hitting him between the shoulder blades. Owen will undergo an X-ray examination this morning in order to locate the bullet.[71]

The next article published on the 18th March 1932 offers a more in-depth explanation of why the crime occurred. In the preparatory examination, Thomas stated that he was a fireman at the Central Fire Station until five days after the shooting. [72] He had known Florence for ten years and had lived with her for a few of those years, but as there was constant quarrelling between the two of them he decided to move to the fire station. He then argued that they had not been on good terms for two-and-a-half years before the shooting.[73] The *Rand Daily Mail* then relayed how the shooting occurred,

> On March 2, he added, about 11 p.m., Fireman Suthie told him that she was downstairs, and he went down to see her.
> "She said 'I am ready for you,' and pulled her hand out of her pocket. She was holding a small black Revolver."
> Owen said he caught hold of her arm and she slung her right hand behind his neck and fired. The bullet lodged in his shoulder.
> He struggled with her, continued witness, and took the revolver from her. Later he was taken to the ambulance, and as he had passed her she said, "I am only sorry I did not blow your ---- brains out, but I'll do six months, then I'll have you."[74]

The article then goes on to record how Thomas was aware that Florence had written an article in a newspaper to humiliate him and recalled how while they were still together that Florence was still married but separated from her husband.[75]

To corroborate the events that took place on the 2nd March 1932, Suthie, a fellow firefighter who had informed Thomas of his visitor relayed a similar testimony to that of Thomas. Once he heard the shot fired, he went to investigate what had happened and found Thomas and Florence on the pavement. Thomas was attempting to swing Florence away from him. Suthie, who then took hold of Florence, recalled how she

[71] 'Shooting Sensation: Fireman In Hospital: Woman Arrested'*, Rand Daily Mail,* 3 March 1932, 10.
[72] Note that throughout the articles, they use Thomas' last name to refer to him.
[73] 'Fireman Shot In Shoulder: Charge Against A Woman', *Rand Daily Mail*, 18 March 1932, 13.
[74] 'Fireman Shot In Shoulder: Charge Against A Woman', *Rand Daily Mail*, 18 March 1932, 13.
[75] This is referring to the article in the LSD and that parts of it is reproduced in the Appendix.

had said, “I am sorry I had not blown his ---- brains.”[76] Suthie then saw Thomas examining the pistol. After all the commotion Suthie and another fireman, Hoey took Owen and Florence to the watch-room. The report then concluded by stating that Florence had bought the pistol from a man named W.E. Clack who implied that she wanted the weapon to defend herself. The case was then adjourned until the 30th March 1932. The next article published on the 6th of April 1932 provides an even shorter report on Florence’s trial. This report essentially informs readers about how Florence was admitted for trial on the 5th of April, as she had attempted to murder her ex-partner.[77]

The final article titled ‘Shot Fireman in the Back: Woman Fined £25: Jury Recommend Mercy,’ was published on 28 May 1932. This article relays the verdict and sentencing which is discussed in Chapter Three. As seen in this article and in the title, Florence was found guilty by the jury of assault with intent to do grievous bodily harm, under strong provocation. One difference that should be noted here is that in the court records analysed in the previous chapter the charge was worded a bit differently as she was charged with assault with intent to murder.[78] Despite this discrepancy, the article does confirm the sentencing of six months imprisonment or the option of paying a fine of £25. Although the article does mention a few more details such as Owen marrying another woman and commenting on her alcohol consumption before the shooting, it does not go into detail as to why Florence attempted to murder him. As seen in the previous chapter, Florence was angry due to his affair with another woman, which led her to write the article which was published in a local periodical, in an attempt to humiliate him.[79] The main difference in these articles compared to the criminal court records was that the *Rand Daily Mail* was writing more from the perspective of the victim while the court narratives are, of course, focused on establishing Florence’s motive to murder Thomas.

While the reporting on Florence is slim, when the newspaper did report on this case, it was primarily to provide updates on Thomas, who was seen as the main news story. This is apparent in the headlines of the news stories as most of them often included

[76] ‘Fireman Shot In Shoulder: Charge Against A Woman’, *Rand Daily Mail*, 18 March 1932, 13.

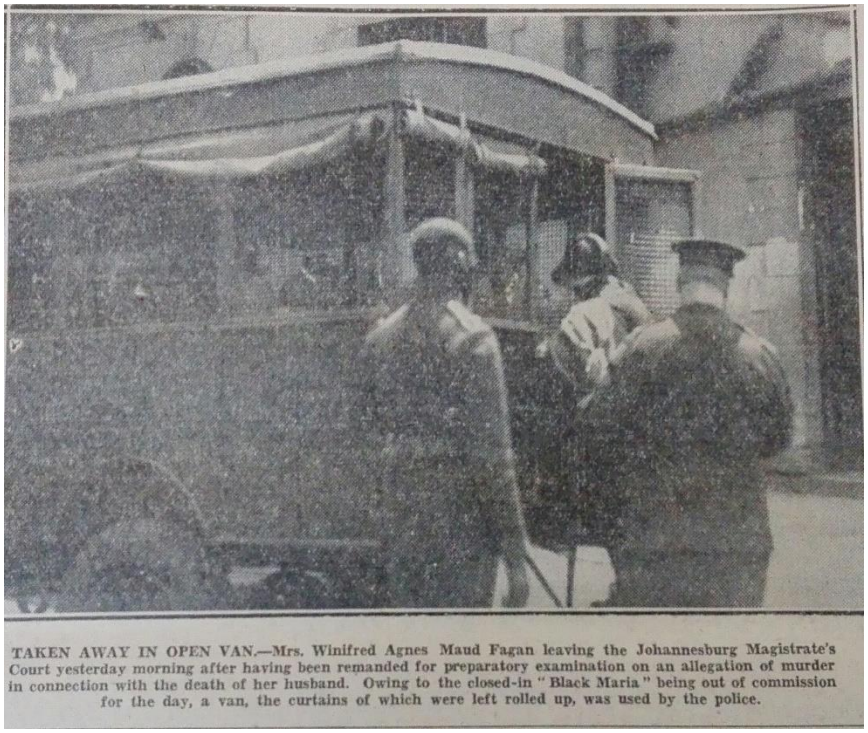
[77] *Shooting By Woman Alleged: For Trial On Attempted Murder Charge*. *Rand Daily Mail*, 6 April 1932, 15.

[78] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.

[79] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.

Thomas' position as a fireman. This is particularly interesting to note in relation to Rachel's case of murdering her husband who was a respectable police constable, as it portrays how the newspapers wanted to report crimes that included victims who held respectable positions within society.[80]

Murder or Suicide?-Winifred Agnes Maud Fagan



TAKEN AWAY IN OPEN VAN.—Mrs. Winifred Agnes Maud Fagan leaving the Johannesburg Magistrate's Court yesterday morning after having been remanded for preparatory examination on an allegation of murder in connection with the death of her husband. Owing to the closed-in "Black Maria" being out of commission for the day, a van, the curtains of which were left rolled up, was used by the police.

Image 3: Mrs Winifred Agnes Maud Fagan leaving the Johannesburg Magistrate's Court.[81]

On the 6th of October 1932, Mrs Winifred Agnes Maud Fagan supposedly murdered her husband, Mr Horace Fagan. Winifred appeared before Judge Solomon at the Rand Criminal Sessions on the 14th December 1932.[82] The *Rand Daily Mail* recorded that

[80] 'Revolver Tests in Yard at High Courts: Shots Fired At Trousers Of Dead Policeman: Taljaard Trial: Accused's Wife Tearful Story Of Reef Tragedy'. *Rand Daily Mail*, 22 May 1930, 8; and Fireman Shot In Shoulder: Charge against A Woman', *Rand Daily Mail*, 18 March 1932, 13.

[81] 'Mrs. Fagan In Court: Shooting Of Husband Alleged'. *Rand Daily Mail*, 12 October 1932, 10.

[82] TAB, WLD], 555/1932, Rex v. Winifred Agnes Maud Fagan, 14 December 1932.

Mr A.V. Dickinson represented the Crown as prosecutor and Mr H.J. Hansom as Winifred's defence attorney.[83]

According to the *Rand Daily Mail*, Horace, a reduction worker,[84] was found with a bullet wound in his right temple. He died five hours after being admitted to the General Hospital. One of the first witness accounts in the preparatory examination, recorded in the *Rand Daily Mail* was by District Surgeon Dr Pieters, who was called to the house to examine Horace. Dr Pieters recalled how Horace "was lying in bed covered in blood." He also recalled how there were a "number of people in the room," one of them being Winifred.[85]



Image 4: An image of the deceased's gunshot wound.[86]

Dr Pieters believed that Horace had been injured for approximately two hours before he arrived. While attending to Horace, Dr Pieters spoke to Winifred but noticed that

[83] 'Evidence In The Fagan Case: Revolver Expert In The Box: "Fired From 3 To 6 Inches', *Rand Daily Mail*, 12 November 1932, 11; and 'Husband Found Shot Dead: Mrs. Fagan On Murder Charge: The Crown Case: Revolver In Tank.' *Rand Daily Mail*, 15 December 1932, 14.

[84] By reading the newspaper articles the position of a reduction worker referred to a person who worked various temporary jobs.

[85] 'Widow Before Court: Sequel To Death Of Husband: Turffontein Shooting: Story Of Missing Revolver'. *Rand Daily Mail*, 26 October 1932, 3.

[86] TAB, WLD, 555/1932, Rex v. Winifred Agnes Maud Fagan, 14 December 1932.

she was “crying and in a state of hysteria.”[87] Despite her manner, Dr Pieters asked her whether she knew anything about how Horace had gotten injured and also asked whether she knew where the revolver was that injured Horace. Winifred replied by stating that she was unaware of what occurred, as she had been working in the backyard. It was only later when she entered their home, that she heard a noise. She went to go and investigate and found Horace lying in bed covered in blood. She then told Dr Pieters that she had not seen a revolver.[88] She was later arrested in connection with the shooting. She was sent to Marshall Square.[89]



Image 5: The bloody bed that Dr Pieters described in his witness account.[90]

Dr Pieters then went on to discuss how he saw Winifred at Marshall Square two days later on the 8th of October. It was during this interaction that Dr Pieters recalled how Winifred confessed to hiding the revolver, first in the “bed in the back room and afterwards in a tank.” Although he informed her that he would not be able to keep their conversation a secret from the court, Winifred further explained that she decided to hide the revolver as she believed that her husband had “committed suicide and that

[87] ‘Widow Before Court: Sequel To Death Of Husband: Turffontein Shooting: Story Of Missing Revolver’. *Rand Daily Mail*, 26 October 1932, 3.

[88] ‘Evidence In The Fagan Case: Revolver Expert In The Box: “Fired From 3 To 6 Inches’, *Rand Daily Mail*, 12 November 1932, 11.

[89] ‘Widow Before Court: Sequel To Death Of Husband: Turffontein Shooting: Story Of Missing Revolver’. *Rand Daily Mail*, 26 October 1932, 3.

[90] TAB, WLD, 555/1932, Rex v. Winifred Agnes Maud Fagan, 14 December 1932.

as suicide he would not be buried in consecrated ground. She dreaded this idea and for this reason, had disposed of the firearm."[91] The police found it later in the water tank behind the house.[92]

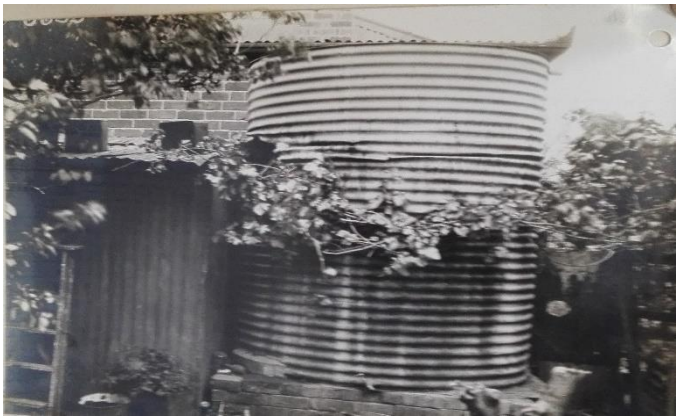


Image 6: The water tank where Winifred hid the revolver.[93]

There were a substantial number of witnesses questioned during the trial, but the two witnesses that delivered the most revealing testimonies, were Winifred's landlady, Mrs Stewart and her sister-in-law, Martha Fagan. Living in the same house as the Fagans, Mrs Stewart recalled how she had informed Winifred about a revolver she had in her possession. She did not recall ever telling Mr Fagan about it. After the shooting, detectives undertook a search of the house. During this search, Winifred was still in denial about the revolver. Mrs Stewart later discovered that her revolver was missing and suspected that Winifred knew where it was since she had already informed her about the existence of the weapon. Although Mrs Stewart grew suspicious of Winifred, she stated that the couple had quarrelled in the past but she did not recall them ever having any physical altercations.[94]

[91] 'Widow Before Court: Sequel To Death Of Husband: Turffontein Shooting: Story Of Missing Revolver'. *Rand Daily Mail*, 26 October 1932, 3; and 'Alleged Murder Of Husband: Mrs.Maud Fagan For Trial: Story of Finding a Revolver'. *Rand Daily Mail*, 19 November 1932, 11.

[92] 'Fagan Shooting Tragedy: Inspection in Loco By The Court'. *Rand Daily Mail*, 19 December 1932, 3.

[93] TAB, WLD, 555/1932, Rex v. Winifred Agnes Maud Fagan, 14 December 1932.

[94] 'Husband Found Shot Dead: Mrs. Fagan On Murder Charge: The Crown Case: Revolver In Tank'. *Rand Daily Mail*, 15 December 1932, 14.

The next witness, who was recorded as being the first witness in the trial by the *Rand Daily Mail*, was Martha Fagan. Although she was not there when the crime occurred, Martha shared her opinion on her brother's marriage to Winifred. She discussed how her brother had a short-temper and how he had on occasion abused his wife. Martha recalled one incident where her brother had told her that he had given Winifred a hiding. Martha then went to check on Winifred and saw how her brother had injured her sister-in-law. Winifred, who had shown her the marks all over her body told Martha that Horace had injured her with his belt. [95] To substantiate this abuse, Winifred's mother, Elizabeth Maud O'Brien, also shared her testimony in court where she stated that there were times where her daughter would return to her home after Winifred was thrashed by her husband. There was also the inference that Horace had abused her while she was pregnant.[96]

This account is particularly interesting to note as it raises the issue of abuse, which could have been a strong motive for why Winifred murdered her husband. However, since there was not enough evidence to prosecute Winifred for the murder of her husband, as the court was fighting with the idea of suicide, Winifred was discharged of the crime of murder.[97] This is apparent in the article titled 'Mrs Fagan Not Guilty: Her Story of Unhappiness: Unanimous Verdict: Jury Retires For 10 Minutes.' In the conclusion of the article the *Rand Daily Mail* reported on the Judge's closing remarks, "Thus ended what the judge described as one of the "most difficult cases in the history of the court."[98]

Although the trial ended on the basis of reasonable doubt, Winifred was granted some mercy throughout the trial. As recorded in one of the *Rand Daily Mail* articles, Winifred, who was arrested and sent to Marshall Square at that time was allowed to attend her husband's funeral. Despite the fact that she was charged with murdering her husband, the court granted her some leniency by giving her the freedom to leave prison and

[95] 'Husband Found Shot Dead: Mrs. Fagan On Murder Charge: The Crown Case: Revolver In Tank'. *Rand Daily Mail*, 15 December 1932, 14.

[96] 'Mrs Fagan On Husband Murder Charge: Reconstruction Of Tragedy: Bedroom Scene: Accused's Mother Gives Evidence, *Rand Daily Mail*, 16 December 1932, 4.

[97] TAB, WLD, 555/1932, Rex v. Winifred Agnes Maud Fagan, 14 December 1932.

[98] 'Mrs Fagan Not Guilty: Her Story Of Unhappiness: Unanimous Verdict: Jury Retires For 10 Minutes', *Rand Daily Mail*, 20 December 1932, 4.

spend time in public with her friends and family to mourn the death of her husband.[99] As described in the majority of these articles, the court and the public viewed Winifred as a fragile woman, as there were many instances recorded of her either crying or being hysterical throughout the trial. The prosecutor even went so far as to argue on the first day of trial that "We must sympathise with one another in that we must try a woman."[100]

This illustrates how even in the initial trial, the court already sympathised with Winifred, not on the grounds of understanding her loss, but one based on the fact that she was a woman. Analysing the impact of two Victorian newspapers in the years Anne Baltz Rodrick argued that there were "rudimentary levels of class, race, or gender consciousness" which was "frequently embedded in a jury verdict.[101]" This consciousness, in turn, was depicted through newspaper articles. One example of this consciousness or a lack thereof in Winifred's reportage and throughout this and the previous chapters was the common theme of hysteria. Most of the women discussed throughout this study were not only viewed by the press as hysterical but also in the court records. As seen in Badassy's examination of 'puerperal insanity' and the mental well-being of the women accused of infanticide or murder, she argues that women were often portrayed as hysterical based on their genetic make-up. She strengthens this by reiterating a quote from Carol Smart,

> ... the nineteenth century gave rise to quite distinct, understandings' of women's unstable and unruly reproductive functions. The whole metaphor of women's bodies became one of instability of womb and mind. The criminal trial, moreover, became a forum for the ... consolidating of such constructions of the feminine.[102]

Although this quote referred to the nineteenth, it is significant as the way in which these women's mental health was viewed throughout the court and newspaper articles continued into the twentieth century. This is seen in most of the cases analysed in this study. The way in which these women were represented as hysterical and emotional

[99] 'From Cells To Cemetery: Detained Wife at Funeral: Poignant Scenes: The Turffontein Shooting'. *Rand Daily Mail*, 10 October 1932, 8.

[100] 'Husband Found Shot Dead: Mrs. Fagan On Murder Charge: The Crown Case: Revolver In Tank'. *Rand Daily Mail*, 15 December 1932, 14.

[101] Anne Baltz Rodrick. "Only a Newspaper Metaphor": Crime Reports, Class Conflict, and Social Criticism in Two Victorian Newspapers. *Victorian Periodicals Review* (1996, 29.1:3).

[102] Badassy. *'A Severed Umbilicus: Infanticide and the Concealment of Birth in Natal',* 254.

played a role in how the jury would reach their verdict. It essentially helped these women to evade imprisonment or the death sentence.[103]

The infamous murderess- Daisy De Melker



Image 7: Daisy Louisa De Melker, 1886-1932.[104]

As seen in the above sections, there have been a considerable number of mariticide cases in South Africa not just during the time period covered in this dissertation but over the course of the twentieth century and perhaps the most notorious case has

[103] Badassy. *'A Severed Umbilicus: Infanticide and the Concealment of Birth in Natal',* 255.

[104] 'Mrs. De Melker's Trial Opens: Alleged Murder Of Two Husbands and Son: Dead Men's Estates: Crown Evidence From Rhodesia'. *Rand Daily Mail*, 18 October 1932, 9-10.

been that of Daisy de Melker. De Melker was South Africa's infamous murderess who was convicted of poisoning two of her husbands and her son with strychnine on the 11th of January 1923, the 6th of November 1927 and the 5th of March 1932 respectively.[105] The earliest report made by the *Rand Daily Mail* on Daisy's case was dated on Thursday the 21st April 1932. It was in this report that the press informed the public that Daisy was arrested the previous day after the bodies of her two deceased husbands and son were exhumed.[106]

De Melker, who was a professional nurse, married her first husband, William Cowle in 1909. Their marriage lasted only fourteen years as Cowle died under unnatural circumstances. Due to Cowle's untimely death in 1923, Daisy soon married her second husband, Robert Sproat in 1926. Although Sproat and Daisy were married for four years, Sproat also died under suspicious circumstances. Like Daisy's first husband, Sproat died of a cerebral haemorrhage in 1927, which in turn raised concerns about the circumstances surrounding both of Daisy's husbands' deaths. This was highlighted in a *Rand Daily Mail* report, where they recorded Robert Sproat's brother, William Sproat's, witness account. He recalled his visit to the accused and his brother a few days before his brother's passing. He remembered that while his brother was near death, Daisy insisted that he should discuss Robert's will with his brother. Daisy knew that her husband had previously left all of his possessions and investments to his mother, but asked her brother-in-law to ask him to change the will. Although William was wary of this request, he obliged but suggested that he only arrange it after he returned from Pretoria. Unhappy with this response, Daisy urged William to re-arrange the will in her presence on that same day. Despite his concerns about his brother's health, he still decided to help Daisy. Thus, while Robert was on his deathbed, he signed a will leaving all of his possessions to his wife. After the signing of the will, William recalled how Daisy had stored the new will in her dress and destroyed the old version of will which left everything to Sproat's mother, in the presence of both brothers.[107] Although William found it odd, the court and the *Rand Daily Mail* argued that it was due to Daisy's greed that she had no shame in destroying the original will.

[105] 'Mrs. De Melker's Trial Opens: Alleged Murder Of Two Husbands and Son: Dead Men's Estates: Crown Evidence From Rhodesia'. *Rand Daily Mail*, 18 October 1932, 9-10.

[106] 'Death Of Two Former Husbands and Son: Woman Arrested On East Rand: Bodies Exhumed On Friday Last'. *Rand Daily Mail*, 21 April 1932, 7.

[107] 'Mrs. De Melker's Two Former Husbands: Deaths Described In Court: Story Of A Will: Sick Man Signs in Bed'. *Rand Daily Mail*, 5 July 1932, 9.

The *Rand Daily Mail* hinted that her greed started after her first engagement when she was betrothed to a man in Rhodesia. Once he had passed away, he had left her a substantial amount of money. Her marriage to Cowle left her with an inheritance of just over £550 and an additional £1245 after the closing of his estate. Through her marriage to Sproat, she inherited a total of £4174. Daisy later inherited a £100 policy after her son, Rhodes, passed away. It is evident that Daisy had grown accustomed to a wealthy way of life. She continued this lifestyle when she married famous Springbok Rugby player Mr Sydney De Melker.[108]

It was only in 1932 when Daisy's son died that the authorities suspected Daisy of murdering the three aforementioned men. It was believed that Daisy had grown accustomed to a certain lifestyle. Inheriting money from her past husbands allowed her to live a comfortable lifestyle and gave her the opportunity for her and her son Rhodes Cecil Cowle to travel the world. It was thought that, due to their money and lavish lifestyle, Daisy spoilt her son too much. According to Rob Turrel's work on Daisy's case, since Rhodes was spoilt it was believed that he had soon grown to resent his mother and started abusing her. He thought that she owed him more than he was receiving and used violence as an outlet for his frustration.[109] Despite this argument, which Turrell based mainly on the extensive records housed at the National Archives in Pretoria, the *Rand Daily Mail* reported that he had grown to resent his mother because she did not allow him to bring friends home. The *Rand Daily Mail* even reproduced one witness account who recalled how Rhode's had abused his mother. Francis Graham Maclachlan, nicknamed "Ginger", was the son of one of the witnesses who offered her account of events during the preparatory examination. Francis recalled how he had stayed at the De Melker's home. Although he was a family friend, he did not have a close relationship with Rhodes but he did provide a chilling account of how Rhodes abused his mother.[110] He stated that:

> One morning when I woke up I heard his mother shouting, 'Ginger, Ginger, come quick. I went to accused's bedroom and found Rhodes with his hands on her throat pushing her against the bedpost. I pulled him off and he raised his voice and told me to leave him alone. I told

[108] 'Death Of Two Former Husbands and Son: Woman Arrested On East Rand: Bodies Exhumed On Friday Last'. *Rand Daily Mail*, 21 April 1932, 7.

[109] Robert Turrell. *White Mercy: A Study of the Death Penalty in South Africa*, Praeger 2004, 211.

[110] 'Deaths of Two Former Husbands: Prosecutor's Statement in De Melker Case: Evidence To Be Led Next Month'. *Rand Daily Mail*, 29 June 1932, 11.

> him he should be ashamed of himself, and Mrs De Melker said, 'It always happened after Mr De Melker had left for work.[111]

To strengthen his argument, Francis gave another account of Rhodes' abusive behaviour:

> …a day or two later I found Mrs. De Melker on the floor and Rhodes standing over her. She was crying bitterly, and said he was starting his nonsense again. Sometimes Rhodes confided to me and said he was unhappy because he could not have his own friends at home.[112]

The authorities believed that since Daisy could not defend herself or change the way in which she took care of her son, her only option was to murder him as he became too demanding. Thus, Daisy decided to poison her son. Daisy was accused of poisoning her two husbands and son with strychnine. Although she pleaded not guilty for all three charges, she was sentenced to death on 25 November 1932 and executed on 30 December 1932.[113]

Daisy's case is particularly interesting to note as her case was one of the most reported mariticide cases in the *Rand Daily Mail*. There were more than forty articles written about Daisy during her trial. Although there was a great audience and readership throughout the trial, Daisy's case gained international attention. Dated on the 18th of October 1932 the *Rand Daily Mail* reported how the London press wrote extensive reports on Daisy's case.[114] They stated that "The London newspapers, which are very rarely interested in sensational trials abroad, report the De Melker case prominently and at length this afternoon."[115]

Daisy's case is particularly notable as her case elucidates the existing class and race issues of that time. Due to her marriage to famous rugby Springbok player, Sydney De Melker, her case became a popular topic of discussion as she was seen to belong to a higher class than most of the women accused of mariticide or attempted murder discussed in this study. Although she worked as a nurse, her husband's position in

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[111] 'Deaths of Two Former Husbands: Prosecutor's Statement in De Melker Case: Evidence To Be Led Next Month'. *Rand Daily Mail*, 29 June 1932, 11.

[112] *Deaths of Two Former Husbands: Prosecutor's Statement in De Melker Case: Evidence To Be Led Next Month*. *Rand Daily Mail*, 29 June 1932, 11.

[113] Robert Turrell. *White Mercy: A Study of the Death Penalty in South Africa*, Praeger 2004, 211.

[114] *London And De Melker Case: Long Reports In Press*. *Rand Daily Mail*, 18 October 1932, 9.

[115] *London And De Melker Case: Long Reports In Press*. *Rand Daily Mail*, 18 October 1932, 9.

society made her a respectable woman within her community. Even during the preparatory examination for her case, there were many members of the public, mainly women, who would come to observe the depositions of witnesses. The increased interest in this case also illustrated the racial inequality when it came to how women of colour were reported on. Their mariticide articles, which usually consisted of a paragraph would only be recorded to a maximum of two articles. There were no witness accounts or medical reports recorded in their articles, but instead a summary of what they had done and the terms of their imprisonment. It is, therefore, crucial to explore the reports written on the case of Christina Marry in the *Rand Daily Mail*.

"I am only a young girl, and I did not mean to kill him"- Christina Marry

Although Christina Marry's case is yet another familiar one, it is interesting to note how her case was covered in the *Rand Daily Mail*. The solitary article on Christina's case is significant as the content is considerably substantial compared to the ways in which the *Rand Daily Mail* reported on cases involved African women. Although the article's title "Stabbed Husband During Quarrel: Native Woman Sent To Prison For Homicide", identifies the accused as 'native', the article did provide a comprehensive record of the court hearing.[116] It even provides a more personal account of what happened during the trial as there were limited archival sources pertaining to her case. The *Rand Daily Mail* begins the article by quoting one of Christina's statements to the court, "I am only a young girl, and I did not mean to kill him."[117]

The *Rand Daily Mail* first stated how Christina murdered her husband with a kitchen knife, then goes on to record the statements made in court:

> His lordship: Where did you get the table knife?
> Accused: It was lying on the stoep.
> Did you go to pick it up? - No. My husband assaulted me on the stoep.
> What did he have in his hands? - He was hitting me with a stick at the time.
> How many times did you stab him? - Only once. It was a light stab.
> …Accused: I ask you to forgive me.

[116] 'Stabbed Husband During Quarrel: Native Woman Sent To Prison For Homicide'. *Rand Daily Mail*, 23 March 1935.

[117] 'Stabbed Husband During Quarrel: Native Woman Sent To Prison For Homicide'. *Rand Daily Mail*, 23 March 1935.

> His lordship: Were you a man, I would order you to be whipped, but as I cannot do that, I must give you a fairly substantial sentence. Sentence of two and a half years' hard labour was passed.[118]

Although Christina's case was afforded some semblance of interest, her case was only mentioned once in the *Rand Daily Mail*. Like many women of colour who had murdered their spouses, Christina's article is a primary example of how the *Rand Daily Mail* still did not feign as much interest in mariticide cases that were related to women of colour.[119] What is evident with regards to Christina's case is the similarity between the court records and the limited articles written on her trial. [120] This relationship between the article and the court records depicts the overall lack of interest when it came to women of colour. Essentially, the scant records and articles written about these women aimed to make certain groups who were seen as inferior invisible within society.[121]

Conclusion

Following the court trials of selected cases of mariticide and attempted murder that were tried before the magisterial and supreme courts of the Transvaal, this chapter focused on cases that were reported in the *Rand Daily Mail*, specifically during the years 1921-1935. This chapter explored seven cases in which women were punished and remanded through South Africa's criminal justice system. It ascertains whether or not the courts extended a helping hand to women they thought were going astray and needed to be saved. Additionally, this chapter considered whether the state provided greater clemency to white women as opposed to women of colour as reported through the *Rand Daily Mail* reports.

This chapter also attempted to explore the effectiveness of newspaper reportage of mariticide and attempted murder cases during the early twentieth century and has also illustrated racial and class inequalities of that time. By reading through the newspaper

[118] 'Stabbed Husband During Quarrel: Native Woman Sent To Prison For Homicide'. *Rand Daily Mail*, 23 March 1935.

[119] 'Stabbed Husband During Quarrel: Native Woman Sent To Prison For Homicide'. *Rand Daily Mail*, 23 March 1935.

[120] TAB, WLD, 145/1935, Rex v. Christina Marry and Paulina Moema, 22 March 1935.

[121] Moira Peelo, et al. 'Newspaper Reportage', 274.

articles it was evident that white women who were considered to be of a higher class were given lengthier coverage compared to women of colour. This emphasised how the press disregarded certain groups of people that they deemed inferior. They in turn made them invisible to the public and ultimately made their voices unheard.

The effects of newspaper reportage greatly impacted public opinion as catchy headlines enticed their readership to become more involved with the crimes reported on in the *Rand Daily Mail*. Some readers were swayed into attending the actual trial so that they could get first-hand accounts of the case. The need to be constantly updated about the events of the trial depicts the power of the *Rand Daily Mail* as they spurred their readership to become educated about the current crimes within their communities. This inevitably aided the *Rand Daily Mail* to increase their readership and rating.

Despite the power of the press, it was evident in one particular article that the *Rand Daily Mail* did have some weaknesses when reporting these murder cases. Since they wanted to print their articles as quickly as possible some details tended to be inaccurate which could cause some readers to question the reliability of these news columns. By keeping this in mind, this chapter therefore also aimed to critically analyse the various reports on these mariticide and attempted murder cases as many biases of racism, gender inequality and mental health became apparent through a careful reading of the newspaper articles. Despite the fact that many of the women discussed here died over a century ago, and regardless of the fact that many women were not treated properly based on race and class inequality, the stories of the women revealed in this chapter will live on in perpetuity through the *Rand Daily Mail*, and that is ultimately the power of the press.

CONCLUSION

Mariticide, attempted murder and assault with intent to murder committed by women were considered to be rare cases of capital crime in early twentieth century Transvaal. By exploring the court and media narratives used in this study, this thesis aimed to illustrate the relevance of these women's histories within the socio-legal context of the early years of the Union. By examining how the legal system tried these female perpetrators, the motives behind why these women committed these crimes, their agency in the domestic spaces and how they were perceived by society through media reportage, this study attempted to show how all these factors played a vital role in depicting how the female criminal subject was constituted. This thesis was divided into four chapters to provide greater insight into how each of these factors impacted the women offenders.

By exploring the history of the South African legal system after unification, this first chapter examined the development of the 1917 Criminal Procedure and Evidence Act and how it impacted the way in which women perpetrators were tried in the courts. It was through this chapter that this study discussed how certain parts of the 1917 Criminal Procedure and Evidence Act was still rooted in colonial practices of law, which was based mainly on English law. Although this act produced a new schema for convicting and punishing people who disregarded the law, it also entrenched ideas of gender, class and race stereotypes which mirrored that of the British imperial world.

One aspect of the 1917 Criminal Procedure and Evidence Act that played a crucial role in reducing crime was the use of capital punishment. The authorities believed that the death penalty would create fear amongst some criminals and would fundamentally maintain control for those in power. Despite this harsh system of punishment the courts decided to create a balanced structure when sentencing perpetrators. By decreasing the use of capital punishment the courts provided alternative forms of mercy so that they could limit the use of hanging and whipping to only those who were guilty of the most atrocious of crimes.

The granting of mercy was complex, as perpetrators had to fall into certain categories to effect sympathy from the courts and attorneys. As seen throughout this thesis, female perpetrators were granted mercy on the grounds that they were considered to belong to the inferior gender and race. Moreover, female criminals were also granted mercy on the basis of circumstantial evidence which showed degrees of provocation or reasonable doubt. Chapter One also presented a discussion of social transformations of that time which symbolised the various social inequalities administered by a state that was still based on ideas created by their colonial predecessors.

This chapter then concluded with an investigation into the first high profile mariticide case brought to trial in the Union years, that of Dina Dorothea van der Merwe which was tried in the Supreme Court in 1921.[1] By using the case of Dina Dorothea van der Merwe, this chapter attempted to portray how the Criminal Procedure and Evidence Act No. 31 of 1917, particularly the death penalty and mercy was applied in Dina's case. Significantly, this case offers a vital contribution to women histories. By discussing how her voice was not heard in her own trial and how she was punished due to racial stereotypes of that time, Dina's case presents various avenues of how to focus on cases where women were silenced and disregarded. Dina's case is significant as it is one of the most documented examples with regards to spousal homicides in the early years of the new union of South Africa. Although questions do arise with regards to the reliability of these cases it does provide a window into past societies and politics and provides a voice to those who did not necessarily have one during this period.

The second chapter presented the court narratives of five mariticide cases that were tried before the Transvaal courts during the period 1925-1935. These cases included the cases of Agnes Mpalweni (1925), Mimie Madebe (1930), Johanna Kumalo (1935), Elina Ndjobo (1935) and Christina Marry and Paulina Moema (1935).[2] It was through the examination of these narratives that this chapter attempted to present a better

[1] National Archives Repository [hereafter SAB]. Decisions of the Executive Council (1910 - 1985) [hereafter URU], 517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

[2] National Archives Repository [hereafter TAB], Registrar of the Supreme Court of South Africa, Witwatersrand Local Division [hereafter WLD], 28/1925, Rex v. Agnes Mpalweni, 12 February 1925; SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931; TAB, WLD, 127/30, Rex v. Johanna Kumalo, 1 May 1930; TAB, WLD, 515/1935, Rex v. Elina Ndjobo, 9 October 1935, TAB, WLD, 145/1935, Rex v. Christina Marry and Paulina Moema, 22 March 1935.

understanding of the social dynamics of early twentieth century Transvaal. This chapter offered discussions on the social issues of alcohol usage, prostitution, and racial and gender stereotyping. The first issue that was explored was the development and pervasiveness of beer-brewing and how it affected the agency of women in the urban setting. As urban areas were male-dominated there were limited job opportunities for black South African women who migrated from the rural areas. This resulted in many women taking on positions as beer-brewers and prostitutes as they were able to generate an income through this. Significantly, these positions allowed women the freedom to provide for themselves and enabled them to resist state and patriarchal control. Nevertheless, the migration of women to the cities became an issue for the state as they blamed these women for social illnesses within these locations. This is evident when the Minister of Justice emphasised the fact that Mimie was a "liquor-seller and prostitute."[3]

The damaging effects of alcohol on certain female perpetrators who argued that heavy intoxication influenced their behaviour and provoked such violence was an important point of consideration in Chapter Two. As seen in the case of Agnes Mpalweni, she claimed that being intoxicated increased her emotions, which led her to a feeling of provocation.[4] As discussed throughout this thesis, the use of provocation as a defence helped the accused with receiving a lighter sentence, but unfortunately, it also helped strengthen racial stereotypes. The state believed that black South Africans were more susceptible to drinking and that it would ultimately result in them participating in unlawful and immoral activities.

As seen in both Chapter One and Two, the stereotypes that existed within this era were based on old colonial ideologies which preserved racial superiority by "Europeans" over "non-European" South Africans. Additionally, it also strengthened the idea of gender inequality. As seen in all five cases discussed in this chapter, women were granted mercy as they were seen as the "weaker sex" by the court. The court also believed that these women were simply caught in a moment of wickedness and was therefore in need of rehabilitation. Moreover, the colonial perceptions of race impacted the sentencing of these female perpetrators as "Non-Europeans" were considered to be 'uncivilised' by the legal system. This resulted in many of them being

[3] SAB, URU, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.

[4] TAB, WLD, 28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

granted leniency when they committed a crime. Consequentially, the courts believed that “non-Europeans” were incapable of knowing the difference between right or wrong as they were seen as having an ‘unenlightened’ mindset. Although the mercy granted by the court was, in fact, beneficial for both women and “non-Europeans”, this behaviour from the court intensified existing issues of race and gender inequality within society.[5]

The third chapter examined both media and court narratives of attempted murder and assault with intent to murder cases tried in the Transvaal courts in the period 1917 and 1934. These cases included Mary Adeline Gonsalves (1917), Elizabeth Marie Amies (1919), Florence Georgina Atkinson (1932) and Margereta Magdalena Rust (1934).[6] This chapter attempted to explore how the proximity and confines of the domestic space triggered feelings of animosity and disregard which antagonised many women into committing mariticide. The first section examined how some women, particularly housewives, avoided domestic responsibilities and how their partners responded to this. Living under patriarchal control in their households, women who deviated from the duties set out for them by their husbands were usually punished and reprimanded for not obeying their husbands. This was significant in this study as it depicted the gender inequality within the household which resulted in many women feeling stifled in private spaces.

Another significant argument made in this chapter was how domestic violence and infidelity became primary reasons for why women committed these crimes.[7] As seen throughout the third chapter there were various cases where the woman's husband was involved in an extramarital affair. This form of betrayal was often argued to be the foundation for provocation. Angered by their partner’s unfaithfulness, many women chose to murder, or attempted to murder their partners so that they could inflict similar feelings of heartache, anguish and suffering.

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[5] Robert Turrell. *White Mercy: A Study of the Death Penalty in South Africa*. (Praeger Publishers. 2004), 9-17.

[6] ‘Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women’s Impression of a Joke’. *Rand Daily Mail*, 20 July 1917, 6; ‘Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial’. *Rand Daily Mail*, 8 July 1919, 8; TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932; TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932; TAB, Registrar of the Supreme Court of South Africa, Transvaal Provincial Division [hereafter TPD], 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

[7] ‘Mrs. Amies Sent To Gaol: End of Painful Drama: Why the Judge Did Not Suspend Sentence’. *Rand Daily Mail*, 9 October 1919, 8.

Another main argument presented in this chapter was the only case of assault with intent to murder found for this study. As assault with intent to murder shared certain similarities with attempted murder, this section attempted to examine how female perpetrators were occasionally given different forms of mercy. As seen in the case of Florence Georgina Atkinson, who was charged with assault with intent to murder, she was given the opportunity to serve the sentence given to her by the jury or choose to pay a fine which allowed her to avoid jail time.[8]

The next section of this chapter then attempted to discuss how there were alternate forms of mercy granted by the court. As seen in the case of Margereta Magdalena Rust, who was charged with attempted murder, she was given the option to pay her bail and was later discharged.[9] Her case is necessary to discuss as it differed from the rest of the cases discussed in this chapter. Margereta's use of poison in attempting to murder her husband was the first case for this study which discussed poisoning as an alternative way of murdering one's partner.[10] It acknowledged that the use of poison showed how a great deal of intent went into the planning of committing the crime. It, therefore, depicted how some of these women's crimes were based solely on malice and premeditation.

The chapter then went on to discuss various motives used to commit these crimes. By discussing motives relating to abuse, self-defence and infidelity, this section attempted to depict the various reasons as to why these women attempted to murder their partners and also investigated how these motives warranted a lighter sentence for the accused. The last section of this chapter provided a brief discussion on the difference and similarities between mariticide and attempted murder and assault with intent to murder. It highlighted that they all share certain similarities with regards to the degree of intent and forethought expressed by the accused. The main difference that was highlighted in this chapter was the severity of the crimes that each of these women committed. An attempted murder or assault with intent to murder case was considered to be a lesser crime which often resulted in a reduced sentence.

The fourth and final chapter attempted to examine media narratives sourced from the *Rand Daily Mail* and discussed how they reported on mariticide and attempted murder

[8] TAB, WLD, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.
[9] TAB, TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.
[10] TAB TPD, 310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

cases for the period 1921 to 1935. This chapter analysed the newspaper articles on the cases of Dina Dorothea van der Merwe (1921), Agnes Mpalweni (1925), Rachel Wilhemina Taljaard (1930), Florence Georgina Atkinson (1932), Winifred Agnes Maud Fagan (1932), Daisy De Melker (1932), and Christina Marry (1935).[11] By exploring these seven cases, this chapter firstly attempted to examine the way in which these women were punished and remanded through South Africa's criminal justice system. It, therefore, determined whether or not the courts granted women leniency who they thought were deviating from the social norms and expectations that they place on women. Additionally, this chapter investigated whether the state provided greater clemency to white women than to women of colour through the *Rand Daily Mail* reports.

This chapter endeavoured to examine the efficiency of newspaper reportage of mariticide and attempted murder cases during the early twentieth century. It also paid attention to how the newspaper illustrated race and class inequalities of that time. When reading these articles it was evident that white women who were considered to be more respectable within society were afforded more detailed media coverage compared to women of colour. This form of exclusion resulted in many women of colour becoming invisible to the public and essentially disregarded their voices within the socio-legal context.

Throughout this time period, newspaper reportage played a critical role in how the public viewed female perpetrators. It was through their reports and sensational titles that their readership soon increased. The public became so involved with the happenings of the court that many decided to attend the trials, as they wanted to show public support for the women being prosecuted. This involvement of the public represented how the *Rand Daily Mail* incited their readers to engage with the current

[11] 'How Tumpowski Was Killed: Birds' Shocking Allegations: Victim Overpowered and Throat Cut'. *Rand Daily Mail*, 15 June 1921, 7; 'Native Woman Charged With Homicide: Stated Her Husband Was Unfaithful'. *Rand Daily Mail*, 13 February 1925, 11; and 'Killed Her Husband With An Axe: Native Woman Gets Death Sentence'. *Rand Daily Mail*, 14 February 1925, 13; 'Forgiveness By Husband: Taljaard Tragedy: Wife Hysterical: Now In Fort'. *Rand Daily Mail*, 11 February 1930, 7; 'Shooting Sensation: Fireman In Hospital: Woman Arrested'*, Rand Daily Mail,* 3 March 1932, 10; 'Revolver Tests in Yard At High Courts: Shots Fired At Trousers Of Dead Policeman: Taljaard Trial: Accused's Wife Tearful Story Of Reef Tragedy'. *Rand Daily Mail*, 22 May 1930, 8; and Fireman Shot In Shoulder: Charge Against A Woman', *Rand Daily Mail*, 18 March 1932, 13; 'Mrs. De Melker's Trial Opens: Alleged Murder Of Two Husbands and Son: Dead Men's Estates: Crown Evidence From Rhodesia'. *Rand Daily Mail*, 18 October 1932, 9-10; 'Stabbed Husband During Quarrel: Native Woman Sent To Prison For Homicide'. *Rand Daily Mail*, 23 March 1935.

crimes within their society. It was therefore through these reports that the *Rand Daily Mail* became more selective in the reporting of female perpetrator cases as these more scandalous cases resulted in an increase in their readership and rating.

Despite the influence of the *Rand Daily Mail* within the early twentieth-century society, it was evident that the newspaper did have some weaknesses when reporting on these murder cases. As most newspapers attempted to publish their articles as quickly as possible there were certain inconsistencies in their reportage. As seen in this chapter there were many instances of careless omissions, incorrect information as well as certain exaggerations of the trials. This chapter, therefore, also aimed to critically investigate the reports on these mariticide cases and highlighted the many irregularities when it came to crime reporting as well as the biases of racism and gender inequality that became apparent throughout this chapter.

These historical records used for this study attempted to show the various tensions in the relationships between the accused and the victim. By exploring these cases within the Transvaal during the period 1917 and 1935, this study attempted to depict the social constructs of race, class, and gender which limited both white and black women in the domestic and private spaces. These limitations and constraints "created the conditions for violence that sometimes escalated into lethal encounters".[12]

[12] Nikki Kalbing. "Race, Class, Gender, and African Women as Perpetrators of Murder in Natal, 1900–1929." *Journal of Natal and Zulu History* (2018, 21).

APPENDICES

Appendix A:

The Criminal Procedure and Evidence Act No. 31 of 1917

Chapter 9: Indictments, Summonses and Charges

C: General for all Courts

Section 135 (In indictment for murder of culpable homicide charge as to fact sufficient.)

It shall be sufficient in every indictment for murder to change that the defendant did wrongfully, unlawfully, and maliciously kill and murder the deceased, and it shall be sufficient in every indictment for culpable homicide to charge that the defendant did wrongfully and unlawfully kill the deceased.[1]

[1] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 135 of Act 31 of 1917,250.

Appendix B:

The Criminal Procedure and Evidence Act No. 31 of 1917

Chapter 9: Indictments, Summonses and Charges

C: General for all Courts

Section 139 (Persons implicated in same offence may be charged together.)

1. Any number of persons charged with committing or with procuring the commission of the same offence, although at different times, or with having, after the commission of the offence, harboured or assisted the offender, and any number of persons charged with receiving, although at different times, any property which has been obtained by means of an offence or any part of any property so obtained, may be charged with substantive offences in the same indictment, summons or charge and may be tried together, nothwithstanding that the principal offender or the person who so obtained the property is not included in the same indictment, summons or charge or is not amenable to justice.
2. A person who counsels or procures another to commit an offence, or who aids another person in committing an offence, or who after the commission of an offence harbours or assists the offender, may be charged in the same indictment, summons or charge with the principal offender and may be tried with him or separately or may be indicted and tried separately whether the principal offender has or has not been convicted, or is or is not amenable to justice.[2]

[2] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 139 of Act 31 of 1917,252.

Appendix C:

The Criminal Procedure and Evidence Act No. 31 of 1917

Chapter 13: Procedure After Commencement of Trial

A: In Superior Courts and Inferior Court

Section 217 (Separate trials.)

When two or more persons are charged in the same indictment, summons or charge, whether with the same offence or with different offences, the court may, at any time during the trial on the application of the prosecutor or of any of the accused, direct that the trial of the accused or any of them shall be held separately from the trial of the other or others of them, and for that purpose may, if the trial is by a jury and the jury has been sworn, discharge the jury from giving a verdict as to any of the accused in respect of whom such application is made, and if the trial is not by a jury, the court may abstain from giving a judgement as to any of such accused.[3]

[3] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 217 of Act 31 of 1917,298.

Appendix D:

The Criminal Procedure and Evidence Act No. 31 of 1917

Chapter 13: Procedure After Commencement of Trial

A: In Superior Courts and Inferior Court

Section 232 (Charge of assault with intent to murder or to do grievous bodily harm.)

1. Any person charged with assault with intent to murder may be found guilty of an assault with intent to do grievous bodily harm, or of a common assault, if such be the facts proved.
2. Any person charged with assault with intent to do grievous bodily harm or with an assault with any other particular intent specified in the indictment may be found guilty of common assault, if such be the facts proved.[4]

[4] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 232 of Act 31 of 1917,308.

Appendix E:

The Criminal Procedure and Evidence Act No. 31 of 1917

Chapter 13: Procedure After Commencement of Trial

A: In Superior Courts and Inferior Court

Section 234 (Person indicted for murder may be convicted of culpable homicide or assault, or when indicted for assault with any particular intent may be convicted of common assault.)

1. Any person charged with murder in regard to whom it is proved that he wrongfully caused the death of, the person whom he is charged with killing, but without intent, may be found guilty of culpable homicide.
2. Any person charged with murder or culpable homicide in regard to whom it is not proved that he caused the death of the person whom he is charged with killing may, if it is proved that he is guilty of having assaulted such deceased person, be found guilty, if charged with murder, of assault with intent to murder or of assault with intent to do grievous bodily harm , or of common assault, and, if charged with culpable homicide, may be found guilty of assault with intent to do grievous bodily harm or common assault.[5]

[5] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 234 of Act 31 of 1917,310.

Appendix F:

The Criminal Procedure and Evidence Act No. 31 of 1917

Chapter 18: Punishments

Section 339 (Sentence of Death)

The form of the sentence to be pronounced upon a person who is convicted of an offence punishable with death and sentenced to death shall be that he be returned to custody and that he be hanged by the neck until he is dead.[6]

[6] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 339 of Act 31 of 1917,370.

Appendix G:

The Criminal Procedure and Evidence Act No. 31 of 1917

Chapter 18: Punishments

Section 343 (Discretion of the court as to the amount and nature of punishment.)

1. Where any person is liable by law to a sentence of imprisonment for life or for any period, he may be imprisoned for any shorter period and where he is liable by law to be sentenced to imprisonment he may be sentenced to imprisonment with or without hard labour. A person liable by law to be sentenced to pay a fine of any lesser amount.
2. The provisions of this section shall not apply to any offence for which a minimum penalty or imprisonment without the option of a fine or imprisonment with hard labour, as distinguished from imprisonment with or without hard labour, is prescribed in the statute creating or prescribing a punishment for the offence.[7]

[7] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 343 of Act 31 of 1917,374.

Appendix H:

The Criminal Procedure and Evidence Act No. 31 of 1917

Chapter 18: Punishments

Whipping

Section 352 (Sentence of whipping by superior court)

1. When any person is liable to be sentenced by a superior court to be whipped, that punishment may be inflicted in addition to, or in substitution for, any punishment to which the offender is otherwise liable and the number of strokes to be inflicted, not exceeding fifteen, shall, subject to the provisions of any state, be in the discretion of the court. The court is required to specify in the sentence the number of strokes which are to be given.
2. In any case in which a sentence by a superior court of whipping is wholly or partially prevented on the grounds of health from being executed, the offender shall be kept in custody until that sentence is revised by the court which passed it or if that court is not sitting, by the provincial division concerned, and the court may in its discretion either remit the sentence of whipping or sentence the offender, in lieu of whipping or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for a period not exceeding twelve months. That period of imprisonment may be in addition to any other punishment to which the offender may have been sentenced for the same offence.[8]

[8] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 352 of Act 31 of 1917,380.

Appendix I:

The Criminal Procedure and Evidence Act No. 31 of 1917

Chapter 18: Punishments

Whipping

Section 354 (Female not to be sentenced to whipping)

No female shall be sentenced by any court whatever the punishment of whipping.[9]

[9] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 354 of Act 31 of 1917,382.

Appendix J:

The Criminal Procedure and Evidence Act No. 31 of 1917

Chapter 21: Pardon and Commutations

Section 377 (Governor-General may commute sentence)

1. In any case, in which the Governor-General is authorised to extend the Royal mercy conditionally to an offender under sentence of death, he may, without the consent of the offender, commute the punishment to any other punishment provided by law.
2. Any such continuation is to be signified in writing to the Minister who is required thereupon to allow the offenders the benefit of the conditional pardon and to make an order that he be punished in the manner directed by the Governor-General. Such allowance and order shall have the effect of a valid sentence passed by the court before which the offender was convicted.[10]

[10] GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 377 of Act 31 of 1917,400.

Appendix K:

The following tables provide summaries of all the cases examined in this thesis. The tables offer further information relating to the cases of Mary Adeline Gonsalves, Elizabeth Marie Amies, Dina Dorothea van der Merwe, Agnes Mpalweni, Mimie Madebe, Johanna Kumalo, Rachel Wilhemina Taljaard, Florence Georgina Atkinson, Winnifred Agnes Maud Fagan, Daisy De Melker, Margereta Magdalena Rust, Elina Ndjobo and Christina Marry. The information reproduced in the tables below were derived from archival records and newspaper reports.

Mary Adeline Gonsalves	1917
Name of accused	Mary Adeline Gonsalves
Age	Unknown
Race	"European"
Children	Unknown
Occupation	Unknown
Source	Rand Daily Mail
Year	20 July (1917)
Tried in	Roodepoort Criminal Court
Starting date of trial	19 July (1917)
Charged	Assault with intent to murder
Plea	Unknown
Date of crime	23 June (1917)
Location of crime	Outside the kitchen door in Klein Paardekraal, near Maraisburg
Victim	Manuel Gonsalves (husband), of Portuguese descent and a vegetable gardener
Years together with victim	Married for 9 years
Weapon used	Gun
Reason of assault	Husband burned her books, therefore she was provoked
Hospital where victim was admitted to	Johannesburg Hospital
Doctor tending to victim	Dr Blake

Wounds	Shot in lung, shoulder and arm
Verdict	Unknown
Sentence	Unknown
Murder based on	Unknown
Extra notes	Known for previously murdering a cat
	The accused saw the assault as a joke
	Besides this assault, the husband still wanted to reconcile with her.
	Could not find other articles on this case

Elizabeth Marie Amies	1919-1920
Name of Accused	Elizabeth Marie Amies
Age	23
Race	Unclear
Children	No
Occupation	Unknown
Source	Rand Daily Mail
Year	21 April (1919), 8 July (1919), 8 October (1919), 9 October (1919), 19 March (1920)
Tried in	Rand Criminal Sessions Court
Starting date of trial	9 July (1919)
Charged	Attempted murder (Intent to commit murder), reported later as assault with intent to murder.
Plea	Unknown
Date of crime	21 April (1919)
Location of crime	In a block of flats close to the Magistrate's Courts
Victim	John Stafford Amies (Husband)
Years together with victim	Only for a few months, they were married on 31 January 1919
Weapon used	Revolver
Reason of assault	Altercation at race course (could be related to domestic violence) because she accused her husband of associating himself with other women. Also an argument of drunkenness and use of cocaine led the court to believe that she could have been intoxicated.

Hospital where victim was admitted to	Johannesburg Hospital
Doctor tending to victim	Dr Morris Swartz
Wounds	left buttock and arm
Verdict	Guilty of Common Assault, with a recommendation to mercy
Sentence	six months hard labour
Murder based on	There was malice as she was previously charged with intent to murder
Extra notes	6 shots were fired in the apartment block, but only 3 hit the victim
	Husband believed he was to blame for his wife attempting to murder him
	She was overcome with remorse after the shots were fired and tended to his wounds and remained with him in hospital
	Tried to argue absence of self-control
	Attorney wanted her charged with common assault instead of attempted murder with a recommendation to mercy
	Although the jury charged her with common assault with a recommendation to mercy, her attorney, Mr Mullins requested that the sentence be suspended
	The judge did not suspend the sentence as he questioned the reliability of her evidence throughout the case. He instead sentenced her to 6 months hard labour.
	In another newspaper article dated a year after her sentence, it was reported that she did not want to return to her husband even though he pleaded with her through written correspondence to return to him.

Dina Dorothea van der Merwe	1921
Name of accused	Dina Dorothea van der Merwe
Age	Unknown
Race	"European"
Children	Two children, but only one known as Polly was mentioned in the court case. In the records pertaining to Dina's will there is one letter written by her other

	daughter named Mrs Martha Havenga who wanted it to be known that she was also Dina's daughter.
Occupation	Ex-farm owner
Source	Registrar of the Supreme Court of South Africa, Executive Council Archive (URU)
Year	13 June (1921)
Tried in	Supreme Court of South Africa in the Potchefstroom and Lichtenburg Circuit, Local Division
Starting date of trial	13 June (1921)
Charged	An accomplice to murder (with , Hermanus Lambertus Swarts, Hermanus Monoto, Andries Monoto and Picannin Modesi)
Plea	Not guilty
Date of crime	2 February (1918)
Location of crime	In Louis' room on the Treurfontein farm, Transvaal
Victim	Louis Tumpowksi (live-in partner)
Years together with victim	Unknown
Weapon used	knobkerrie, riem and pocket knife
Reason of assault	Wanted her farm back from Mr Tumpowski who she believed cheated her out of it
Hospital where victim was admitted to	N/A
Doctor tending to victim	N/A
Wounds	Blunt-force trauma on right side of victim's head, strangulation and slitting of throat
Verdict	Guilty
Sentence	Sentenced to the death penalty therefore she was hanged with Hermanus Lambertus Swarts at the Pretoria Central Prison in 1921
Murder based on	Implied malice, therefore the murder was premeditated
Extra notes	Her attorney requested a separate trial from accomplices
	Previous quarrels between Dina and Louis were mentioned by witnesses in trial
	Her name is changed at times in the records as Dorothea Kraft

	Main Crown witness against Dina was another accomplice Jim Burds, who was not charged with them as he had previously confessed to being an accomplice to the murder.
	Dina Dorothea van der Merwe did not get a chance to share her part of the crime

Agnes Mpalweni	1925
Name of accused	Agnes Mpalweni
Age	Unknown
Race	Native
Children	Unknown
Occupation	Unknown
Source	Registrar of the Supreme Court of South Africa, Witwatersrand Local Division (WLD)
Year	12 February (1925)
Tried in	Witwatersrand Local Division
Starting date of trial	12 February (1925)
Charged	Murder
Plea	Not guilty
Date of crime	10 November (1924)
Location of crime	Their home in the Benoni location
Victim	George (live-in partner)
Years together with victim	11 months
Weapon used	Hatchet and sharp instrument
Reason of assault	She caught him with another women on their bed
Hospital where victim was admitted to	N/A
Doctor tending to victim	Dr Fehrsen
Wounds	"...one across the jaw and neck, probably caused by a hatchet; further two deep cuts below the jaw, caused by a sharp instrument. One of these cuts was six inches long and severed the blood vessels of the windpipe; the other one was two and a half inches long. In the doctor's opinion these two cuts were not caused by a hatchet, but a sharp instrument, e.g. a

	razor. Death was caused by shock due to haemorrhage. "
Verdict	Guilty, with recommendation to mercy
Sentence	Death, but was then given life imprisonment
Murder based on	Drunkenness and provocation by defence but there was some type of intent in murdering her partner
Extra notes	Agnes Mpalweni gives readers insight into the effects of alcohol consumption during that time and how this consumption was used to gain a lighter sentence in relation to murder on the basis of drunkenness.

Mimie Madebe	1930-1931
Name of accused	Mimie Madebe
Age	Unknown, only known as middle-aged, but in a later report is known of 40 years of age
Race	Native
Children	She had children by a former husband but none by deceased. There were two young children but their names were never recorded
Occupation	Recorded as housewife but judge also makes judgemental statement where he infers that she was a liquor-seller and prostitute
Source	Registrar of the Supreme Court of South Africa, Witwatersrand Local Division (WLD)
Year	4 December (1930)
Tried in	Witwatersrand Local Division
Starting date of trial	4 December (1930)
Charged	Murder
Plea	Not Guilty
Date of crime	12 October (1930)
Location of crime	Outside the kitchen of their two-bedroom house in the Alexandra Township, just outside Johannesburg.
Victim	Lukas Makope (Husband)
Years together with victim	Four years
Weapon used	Pocket knife also suspected that razors found on Mimie when she was arrested was used to harm Lukas.
Reason of assault	Unclear due to two versions of how the crime occurred

Hospital where victim was admitted to	N/A
Doctor tending to victim	N/A
Wounds	Stabbed in the heart
Verdict	Guilty
Sentence	Death, but was instead given imprisonment with hard labour for life and the option of reviewing her case in five years.
Murder based on	"…heat of the quarrel…" Therefore there was some degree of premeditation.
Extra notes	Two versions of how Lukas died, which creates new questions of who actually murdered him. Could it have been Mimie and Thomas based on the lack of corroboration between the two versions of the story and why?
	Mimie Madebe is a prime example of how black South African women who were beer-brewers and prostitutes were viewed by society as the judge makes a very judgemental statement about her career choices.
	Court did not recognise Mimie and Lukas as a married couple but Mimie did believe that they were even if they were not married in church.
	There is one document that attempts to prove that she was a prostitute and liquor-seller dated on 5th January 1931, but this was only stated after the trial had ended.

Johanna Kumalo	1930
Name of accused	Johanna Kumalo
Age	Unknown
Race	Native
Children	Unknown
Occupation	Recorded as housewife in criminal records
Source	Registrar of the Supreme Court of South Africa, Witwatersrand Local Division (WLD)
Year	1 May (1930)
Tried in	Witwatersrand Local Division
Starting date of trial	1 May (1930)
Charged	Culpable Homicide

Plea	Guilty
Date of crime	10 February (1930)
Location of crime	At or near Kliptown Location in the district of Krugersdorp
Victim	Philemon Karabi (Husband)
Years together with victim	Unknown
Weapon used	Unknown
Reason of assault	Provocation
Hospital where victim was admitted to	N/A
Doctor tending to victim	N/A
Wounds	Unknown
Verdict	Guilty (Even though it is not stated clearly)
Sentence	Imprisonment with 12 months hard labour
Murder based on	Premeditation as judge states that: “…you did not kill your husband immediately afterwards, you waited until you could take him unawares and then killed him."
Extra notes	Lack of records pertaining to crime.
	Was given mercy due to the degree of provocation she received from the victim.
	Only four pages relating to her case.
	No record of Jury.
	Only in the Judge's remarks does the judge acknowledge that Philemon was Johanna's husband.

Rachel Wilhemina Taljaard	1930
Name of accused	Rachel Wilhemina Taljaard
Age	37
Race	European
Children	There was mention of three in one of the Rand Daily Mail reports where there were two boys and one girl. The one boy's name was Henry John Walker who was the stepson of the victim and his sister Georgina.
Occupation	Housewife
Source	Rand Daily Mail

Year	11 February (1930)
Tried in	Germiston Court
Starting date of trial	21 February (1930)
Charged	Murder
Plea	Not guilty
Date of crime	9 February (1930)
Location of crime	At their home in Primrose
Victim	Constable Hendrik Jacobus Daniel Taljaard
Years together with victim	Married in 1924 therefore approximately 6 years
Weapon used	Revolver
Reason of assault	Accidental but believed her husband was having an affair
Hospital where victim was admitted to	First at home but then sent to Johannesburg Hospital
Doctor tending to victim	Dr. C. T. Moller and Dr. D. Strachan
Wounds	Only recorded as being shot in his right side
Verdict	Guilty of culpable homicide
Sentence	Five years in prison with hard labour
Murder based on	No intention of killing him as it was accidental, but was upset with him based on his past extramarital affairs.
Extra notes	The deceased was the stepfather of Henry and Georgina, although there is not a lot recorded on how many children hey had Henry did mention that he had a younger brother
	Had quite a big crowd throughout her trial which showed that she had public support
	Public support went as far as women petitioning for an appeal for her case
	Her defence attorney wanted to argue on the grounds of her sex.

Florence Georgina Atkinson	1932
Name of accused	Florence Georgina Atkinson
Age	Unknown

Race	Unknown but was suspected that she was of "European" descent.
Children	Yes, but unclear as to how many
Occupation	Unclear but it was recorded that she was under fixed employment
Source	Registrar of the Supreme Court of South Africa, Witwatersrand Local Division
Year	27 May (1932)
Tried in	Witwatersrand Local Division
Starting date of trial	27 May (1932)
Charged	Assault to Murder
Plea	Not guilty
Date of crime	2 March (1932)
Location of crime	The Old Central Fire Station
Victim	Thomas Joseph Christian Owen
Years together with victim	Unclear but I was mentioned in the court records that they had courted on-and-off and that they had met about ten years ago.
Weapon used	Pistol
Reason of assault	To collect money that Thomas had owed her but to also argue with him about him having a baby with another woman.
Hospital where victim was admitted to	Unknown
Doctor tending to victim	Unknown
Wounds	Shot in the back/shoulder
Verdict	Not guilty
Sentence	Six months hard labour or option to instead pay a fine of £25, which she could pay off in instalments
Murder based on	Malice and premeditation as it was public knowledge that she was angry with Thomas due to her publically humiliating him in a newspaper article and then showing up at his place with a pistol. The Rand Daily Mail quoted the accused as saying that she had malice in her heart while writing the letter to the newspaper where she publicly humiliated him.
Extra notes	Her case is unique as she is the only one out of the attempted murder cases who was able to pay off her

	fine instead of going to jail for 6 months with hard labour.
	Judge sympathised with her more than the victim as he viewed her as a weak-minded women who ruined her life due to an affair
	Rand Daily Mail records the crime from Thomas Owen's perspective therefore the press pitied him more than the court did.

Winifred Agnes Maud Fagan	1932
Name of accused	Winifred Agnes Maud Fagan
Age	29
Race	European
Children	Did have but unclear as to how many, mentions her being pregnant twice
Occupation	Unknown but expected housewife
Source	Rand Daily Mail and National Archives Repository [hereafter TAB], Registrar of the Supreme Court of South Africa, Witwatersrand Local Division [hereafter WLD], 555/1932, Rex v. Winifred Agnes Maud Fagan, 14 December 1932.
Year	12 October (1932)
Tried in	Rand Criminal Sessions
Starting date of trial	14 December (1932)
Charged	Murder
Plea	Not Guilty
Date of crime	6 October (1932)
Location of crime	At their home in Donnelly Street in Turffontein
Victim	Horace Fagan (age 23)
Years together with victim	Married in 1925
Weapon used	Revolver
Reason of assault	It looked like suicide but some thought it was because she wanted to stop him from abusing her.
Hospital where victim was admitted to	Recorded as General Hospital
Doctor tending to victim	Dr Pieters

Wounds	Bullet wound to the head (specifically temple as seen in the pictures)
Verdict	Not Guilty
Sentence	Discharged of murder therefore released due to reasonable doubt
Murder based on	Unclear as they did not know if it was in fact a murder, but if it was there was the suspicion that it could have been intent because of all of the abuse inlflicted on her by Horace
Extra notes	Recorded that Horace thrashed her at times even with a belt
	Her mother and sister-in-law were aware of the abuse
	Despite the violence Winifred still tried to protect her husband even after he died as she hid the revolver so that he could have a respectable funeral
	She was allowed to go to his funeral even though she was charged with his murder.
	She was seen as hysterical which essentially made her represent all other women accused of mariticide whose mental health was question and who were at times given lighter sentences based on this.

Daisy De Melker	1932
Name of accused	Daisy De Melker
Age	44
Race	European
Children	One, Cecil Rhodes Cowel (deceased)
Occupation	Was a nurse
Source	Rand Daily Mail
Year	19 May (1932)
Tried in	Germiston Court
Starting date of trial	21 April (1932)
Charged	Murder of two former husbands and son
Plea	Not Guilty
Date of crime	Unclear but was expected to have occurred in 1921, 1928 and 1932
Location of crime	Unclear but was expected to have occurred in all of the respective homes

Victim	William Cowle, Robert Sproat and Rhodes Cecil Cowle
Years together with victim	Cowle (14 years) and Sproat (4 years)
Weapon used	Poison (Strychnine)
Reason of assault	Greed as she wanted to inherit the large sums of money from her husbands and wanted to stop attempted abuse from her son
Hospital where victim was admitted to	Unclear as there were various ones involved
Doctor tending to victim	Unclear as there were various ones involved
Wounds	Unclear as they were internal
Verdict	Guilty of all three charges
Sentence	Death sentence where she was executed on 30 December 1932
Murder based on	Malice as these were all premeditated since she planned to poison them
Extra notes	Most popular mariticide case of that time period and is even recorded on the Johannesburg Red Bus Tours
	Was later married to a famous Springbok rugby player, Sydney De Melker
	Her trial gained international attention
	A small amount of information on her trial still exists in a room in the old Johannesburg Women's Gaol

Margereta Magdalena Rust	1934
Name of accused	Margereta Magdalena Rust
Age	Approximately 45 years old
Race	European
Children	Unclear how many but one named Anna Margrieta Du Plessis gave a statement in court.
Occupation	Housewife
Source	Registrar of the Supreme Court of South Africa, Witwatersrand Local Division (WLD)
Year	5 September (1934)
Tried in	Carolina Circuit Local Division
Starting date of trial	5 September (1934)

Charged	Attempted Murder
Plea	Not guilty
Date of crime	14 February (1934)
Location of crime	At their home in Weltevreden, in the district of Carolina
Victim	John Bernard Rust
Years together with victim	Married in 1922, therefore approximately 12 years together.
Weapon used	Poison (Arsenic)
Reason of assault	Unclear but there were hints at domestic violence, based on a statement made by Margereta's daughter and a statement made by the victim that they were unhappily married.
Hospital where victim was admitted to	Although it is unclear if it was a hospital that the victim visited he did state that he went to see the Dr in Belfast
Doctor tending to victim	Dr Faure
Wounds	Internal
Verdict	Not guilty
Sentence	Discharged
Murder based on	As Margereta had mixed the poison into the victim's coffee there was a degree of premeditation.
Extra notes	Despite the record that there was a verdict of not guilty there are no records in this archival source that explains why. There was a doctor’s report that proved that she was in fact guilty of attempted murder based on his medical examination of the victim's symptoms.
	Margereta's case is different to the ones mentioned in the attempted murder chapter as she was the only one in this chapter to use poison instead of a sharp or blunt object to attempt to murder her husband.

Elina Ndjobo	1935
Name of accused	Elina Ndjobo
Age	Unknown
Race	Native
Children	Unknown
Occupation	Unknown

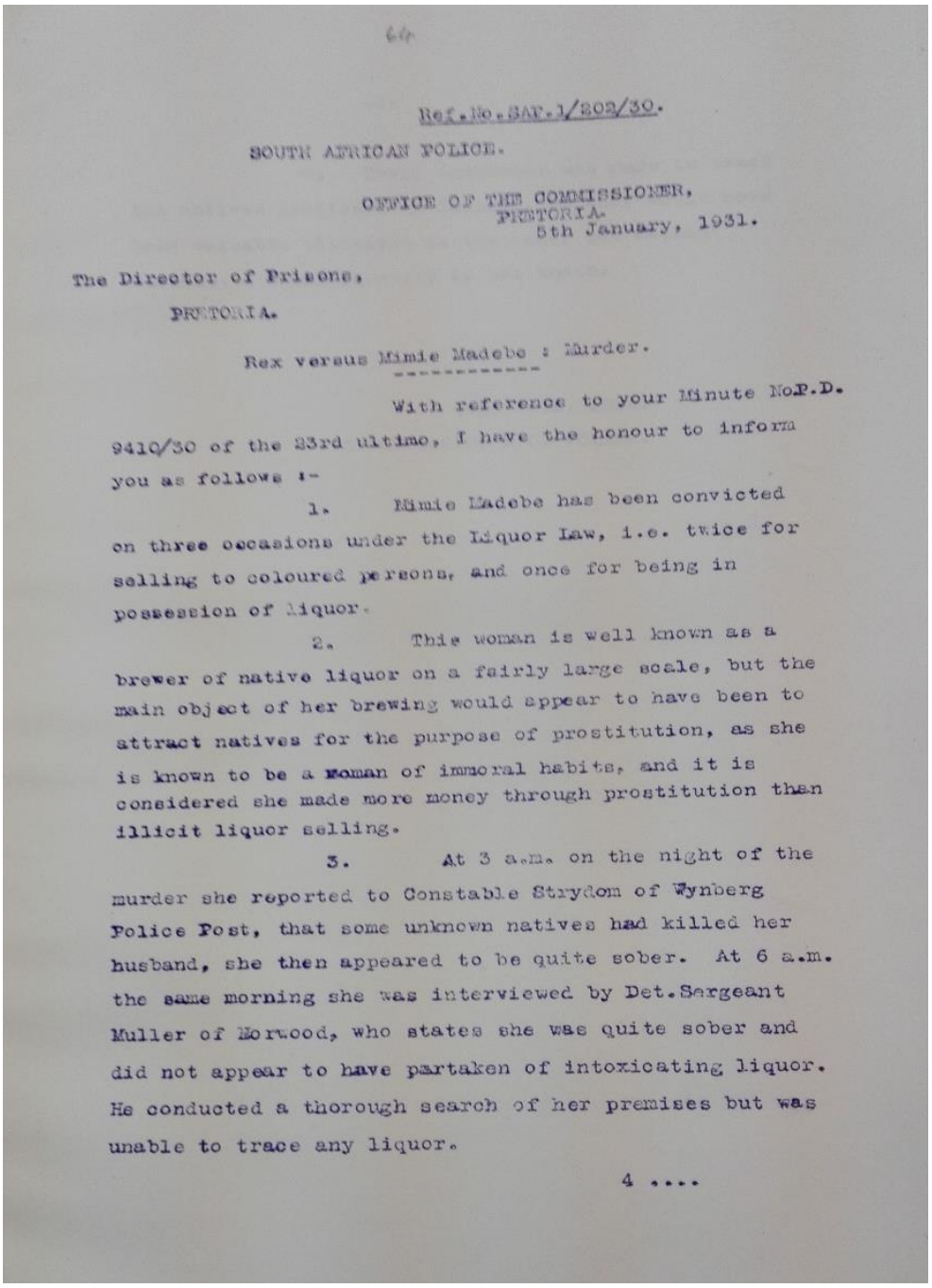
Source	Registrar of the Supreme Court of South Africa, Witwatersrand Local Division (WLD)
Year	9 October (1935)
Tried in	Witwatersrand Local Division
Starting date of trial	9 October (1935)
Charged	Murder
Plea	Guilty of Manslaughter (Or Culpable Homicide)
Date of crime	7 July (1935)
Location of crime	At or near Newclare in the district of Johannesburg
Victim	Gingwena (husband)
Years together with victim	Unknown
Weapon used	Knife
Reason of assault	Anger and provocation
Hospital where victim was admitted to	N/A
Doctor tending to victim	N/A
Wounds	Unknown
Verdict	Guilty of Manslaughter (Or Culpable Homicide)
Sentence	Three years imprisonment but Elina was released on 6 February (1938)
Murder based on	Premeditation as the murder was considered by the judge to be a determined one.
Extra notes	Only six pages relating to her case

Case of Christina Marry	1935
Name of accused	Christina Marry
Age	Unknown
Race	Native
Children	Unknown
Occupation	Unknown
Source	Registrar of the Supreme Court of South Africa, Witwatersrand Local Division (WLD)
Year	22 March (1935)

Tried in	Witwatersrand Local Division
Starting date of trial	22 March (1935)
Charged	Culpable Homicide (but had an accomplice, Paulina Moema)
Plea	Not Guilty
Date of crime	9 January (1935)
Location of crime	At or near Krugersdorp in the district of Krugersdorp
Victim	Myburgh
Years together with victim	Unknown
Weapon used	Kitchen Knife
Reason of assault	Unclear, but provocation for the accomplice (Paulina Moema), but newspaper article stated that her husband hit her with a stick.
Hospital where victim was admitted to	N/A
Doctor tending to victim	N/A
Wounds	Abdomen
Verdict	Guilty of culpable homicide for Christina and common assault for Paulina
Sentence	Two-and-a-half years imprisonment with hard labour for Christina and six months imprisonment with hard labour for Paulina
Murder based on	Premeditation
Extra notes	Although this case contains six records of the trial it does state that Myburgh died on 11 January (1935) due to the mortal wound
	The quote given by the judge to Christina: "Were you a man I would have ordered you to be whipped; as I cannot do that I must give you a fairly substantial sentence", hints at the gender stereotypes of that time as women were never allowed to be whipped.
	Difference between Christina and Paulina was that the former had no prior convictions, while the latter had three prior convictions of theft and two for assault with intent to do grievous bodily harm.
	In the assault she used a piece of iron against Myburgh's head.

Appendix L:

Image 8: Document written by the Director of the Prison arguing that Mimie Madebe was a known liquor-seller and prostitute, 5th January 1931. [11]



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Ref.No.SAP.1/803/30.

SOUTH AFRICAN POLICE.

OFFICE OF THE COMMISSIONER,
PRETORIA.
5th January, 1931.

The Director of Prisons,
PRETORIA.

Rex versus Mimie Madebe : Murder.

With reference to your Minute No.P.D. 9410/30 of the 23rd ultimo, I have the honour to inform you as follows :-

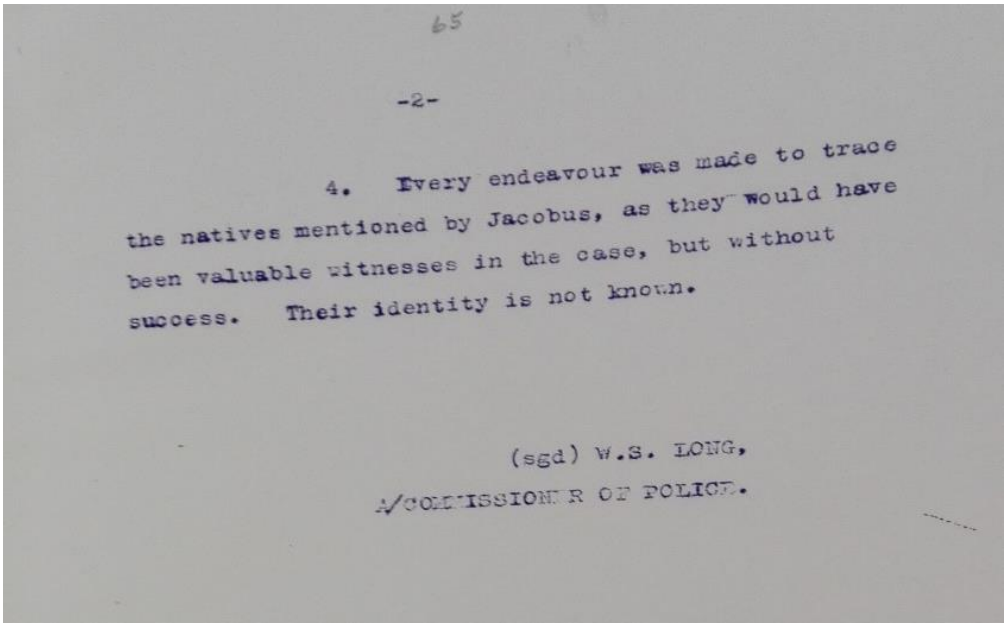
1. Mimie Madebe has been convicted on three occasions under the Liquor Law, i.e. twice for selling to coloured persons, and once for being in possession of liquor.

2. This woman is well known as a brewer of native liquor on a fairly large scale, but the main object of her brewing would appear to have been to attract natives for the purpose of prostitution, as she is known to be a woman of immoral habits, and it is considered she made more money through prostitution than illicit liquor selling.

3. At 3 a.m. on the night of the murder she reported to Constable Strydom of Wynberg Police Post, that some unknown natives had killed her husband, she then appeared to be quite sober. At 6 a.m. the same morning she was interviewed by Det.Sergeant Muller of Norwood, who states she was quite sober and did not appear to have partaken of intoxicating liquor. He conducted a thorough search of her premises but was unable to trace any liquor.

4 ....

[11] National Archives Repository, Registrar of the Supreme Court of South Africa, Executive Council Archive, 1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.



65

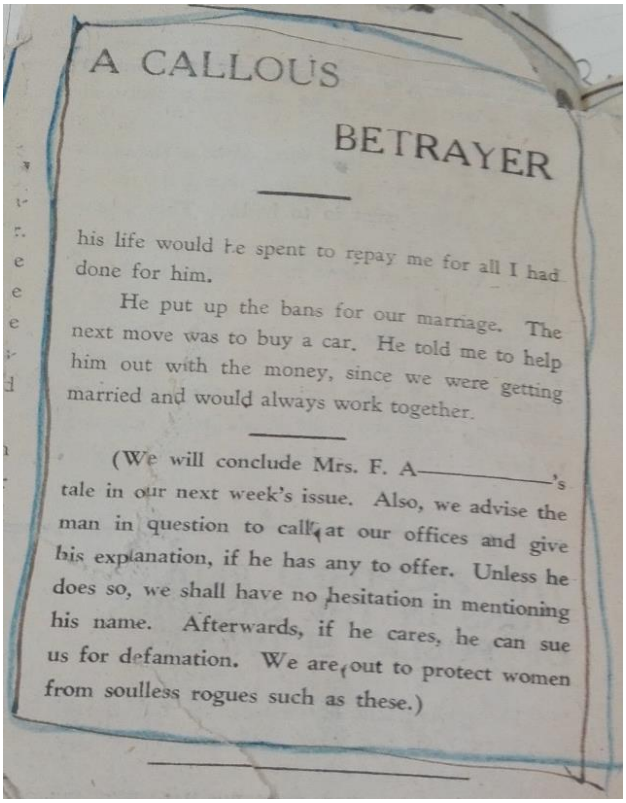
-2-

4. Every endeavour was made to trace the natives mentioned by Jacobus, as they would have been valuable witnesses in the case, but without success. Their identity is not known.

(sgd) W.S. LONG,
A/COMMISSIONER OF POLICE.

Appendix M:

Image 9: The concluding remarks on the last page of the three-page article published in The New LSD periodical where Florence Georgina Atkinson publically humiliated Thomas Joseph Christian Owen, Date unknown.[12]



A CALLOUS BETRAYER

his life would be spent to repay me for all I had done for him.

He put up the bans for our marriage. The next move was to buy a car. He told me to help him out with the money, since we were getting married and would always work together.

(We will conclude Mrs. F. A———'s tale in our next week's issue. Also, we advise the man in question to call at our offices and give his explanation, if he has any to offer. Unless he does so, we shall have no hesitation in mentioning his name. Afterwards, if he cares, he can sue us for defamation. We are out to protect women from soulless rogues such as these.)

[12] National Archives Repository, Registrar of the Supreme Court of South Africa, Witwatersrand Local Division, 253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.

BIBLIOGRAPHY

Primary Sources:

Official Unpublished Primary Sources:

National Archives Repository

Decisions of the Executive Council (1910 - 1985)

517A, 1937, Rex v. Dina Dorothea van der Merwe, 13 June 1921.

1177, 1/12, Rex v. Mimie Madebe, 16 January 1931.

1326, 3062, Rex v. Daisy De Melker, 24 December 1932.

Registrar of the Supreme Court of South Africa, Witwatersrand Local Division

28/1925, Rex v. Agnes Mpalweni, 12 February 1925.

127/30, Rex v. Johanna Kumalo, 1 May 1930.

160/1930, Rex v. Rachel Wilhelmina Taljaard, 21 May 1930.

253/1932, Rex v. Florence Georgina Atkinson, 27 May 1932.

555/1932, Rex v. Winifred Agnes Maud Fagan, 14 December 1932.

145/1935, Rex v. Christina Marry and Paulina Moema, 22 March 1935.

515/1935, Rex v. Elina Ndjobo, 9 October 1935.

Registrar of the Supreme Court of South Africa, Transvaal Provincial Division

310/1934, Rex v. Margereta Magdalena Rust, 5 September 1934.

Official Published Primary Sources:

Union Gazette Extraordinary, 19 July 1917, Act No 31, 1917.

GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 135 of Act 31 of 1917,250.

GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 139 of Act 31 of 1917,252.

GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 217 of Act 31 of 1917,298.

GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 232 of Act 31 of 1917,308.

GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 234 of Act 31 of 1917,310.

GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 339 of Act 31 of 1917,370.

GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 343 of Act 31 of 1917,374.

GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 352 of Act 31 of 1917,380.

GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 354 of Act 31 of 1917,382.

GOVT, 4, PER K, 57, Statutes of the Union of South Africa, 1917, Section 377 of Act 31 of 1917,400.

Newspapers:

‘Wife Shoots Her Husband: Domestic Trouble at Roodepoort: Women’s Impression of a Joke’. *Rand Daily Mail*, 20 July 1917, 6.

‘Amies Shooting Case: Husband Said He was Much To Blame: Wife Committed for Trial’. *Rand Daily Mail*, 8 July 1919, 8.

‘Domestic Drama: Wife Charged With Shooting Her Husband: “A Jealous Disposition”’. *Rand Daily Mail*, 4 October 1919, 10.

‘Wife Shoots Her Husband: Remarkable Trial At The Sessions: A Blood-Stained Blouse: Judge Defers Sentence’. *Rand Daily Mail*, 8 October 1919, 8.

‘Mrs. Amies Sent To Gaol: End of Painful Drama: Why the Judge Did Not Suspend Sentence’. *Rand Daily Mail*, 9 October 1919, 8.

‘Amies Shooting Case: Husband Suing For Restitution: Wife Won’t Return’. *Rand Daily Mail*, 19 March 1920, 2.

‘Veld Mystery Recalled: Woman Charged With Murder: Sensational Trial At Potchefstroom’. *Rand Daily Mail,* 14 June 1921, 5.

‘How Tumpowski Was Killed: Birds’ Shocking Allegations: Victim Overpowered and Throat Cut’. *Rand Daily Mail,* 15 June 1921, 7.

‘Death Sentence Passed On A Woman: Judge Holds Out No Reprieve: Dramatic Scene in Tumpowski Trial: “Innocent Before God and Man”’. *Rand Daily Mail*, 16 June 1921, 5.

‘The Tumpowski Murder: Will Sentence On White Woman Be Confirmed?’, *Rand Daily Mail,* 30 July 1921, 8.

‘Woman To Pay The Penalty: No Reprieve of Tumpowski’s Murderers: Sentence Confirmed’*, Rand Daily Mail,* 10 August 1921, 6.

‘The Tumpowski Murder: Appeal To the Prince for the Female Convict’*, Rand Daily Mail,* 16 August 1921, 6.

‘Native Woman Charged With Homicide: Stated Her Husband Was Unfaithful’. *Rand Daily Mail*, 13 February 1925, 11.

‘Killed Her Husband With An Axe: Native Woman Gets Death Sentence’. *Rand Daily Mail*, 14 February 1925, 13.

‘Forgiveness By Husband: Taljaard Tragedy: Wife Hysterical: Now In Fort’*. Rand Daily Mail,* 11 February 1930, 7.

‘Early Morning Tragedy: Taljaard Shooting Case: Wife In Court: Morbid Curiosity Of Crowd’. *Rand Daily Mail*, 22 February 1930, 11.

‘Wife’s Sobbed Denial: The Germiston Shooting: Mrs Taljaard Sent for Trial’*, Rand Daily Mail,* 25 February 1930, 10.

‘Revolver Tests in Yard at High Courts: Shots Fired at Trousers of Dead Policeman: Taljaard Trial: Accused’s Wife Tearful Story Of Reef Tragedy’. *Rand Daily Mail*, 22 May 1930, 8.

‘Five Years for Mrs Taljaard: Culpable Homicide Verdict: Final Scenes: Moving Appeal by Defence Counsel’. *Rand Daily Mail*, 23 May 1930, 8.

‘Mrs Taljaard’s Sentence: Women’s Civic Society Move for Remission’. *Rand Daily Mail*, 11 June 1930, 11.

‘Mrs Taljaard’s Sentence: Women’s Civic Society to Approach Minister’. *Rand Daily Mail*, 13 June 1930, 11.

‘Appeal against Mrs Taljaard’s Sentence: Move by Women’s Civic Society’. *Rand Daily Mail*, 17 June 1930, 4.

‘Shooting Sensation: Fireman In Hospital: Woman Arrested’*, Rand Daily Mail,* 3 March 1932, 10.

‘Fireman Shot In Shoulder: Charge against A Woman’, *Rand Daily Mail*, 18 March 1932, 13.

‘Shooting by Woman Alleged: For Trial On Attempted Murder Charge’. *Rand Daily Mail*, 6 April 1932, 15.

‘Death of Two Former Husbands and Son: Woman Arrested On East Rand: Bodies Exhumed On Friday Last’. *Rand Daily Mail*, 21 April 1932, 7.

‘Deaths of Two Former Husbands: Prosecutor’s Statement in De Melker Case: Evidence to Be Led Next Month’. *Rand Daily Mail*, 29 June 1932, 11.

‘Mrs. De Melker’s Two Former Husbands: Deaths Described in Court: Story of A Will: Sick Man Signs in Bed’. *Rand Daily Mail*, 5 July 1932, 9.

‘From Cells to Cemetery: Detained Wife at Funeral: Poignant Scenes: The Turffontein Shooting’. *Rand Daily Mail*, 10 October 1932, 8.

‘Mrs. Fagan In Court: Shooting Of Husband Alleged’*. Rand Daily Mail,* 12 October 1932, 10.

‘Mrs. De Melker’s Trial Opens: Alleged Murder of Two Husbands and Son: Dead Men’s Estates: Crown Evidence from Rhodesia’. *Rand Daily Mail*, 18 October 1932, 9-10.

‘London and De Melker Case: Long Reports in Press’. *Rand Daily Mail*, 18 October 1932, 9.

‘Widow Before Court: Sequel To Death Of Husband: Turffontein Shooting: Story Of Missing Revolver’. *Rand Daily Mail*, 26 October 1932, 3.

‘Evidence In The Fagan Case: Revolver Expert In The Box: “Fired From 3 To 6 Inches’, *Rand Daily Mail*, 12 November 1932, 11.

‘Alleged Murder Of Husband: Mrs.Maud Fagan For Trial: Story of Finding a Revolver’. *Rand Daily Mail*, 19 November 1932, 11.

‘Husband Found Shot Dead: Mrs. Fagan On Murder Charge: The Crown Case: Revolver In Tank.’ *Rand Daily Mail*, 15 December 1932, 14.

‘Mrs Fagan on Husband Murder Charge: Reconstruction of Tragedy: Bedroom Scene: Accused’s Mother Gives Evidence, *Rand Daily Mail*, 16 December 1932, 4.

‘Fagan Shooting Tragedy: Inspection in Loco by the Court’. *Rand Daily Mail*, 19 December 1932, 3.

‘Mrs Fagan Not Guilty: Her Story Of Unhappiness: Unanimous Verdict: Jury Retires For 10 Minutes’, *Rand Daily Mail*, 20 December 1932, 4.

‘Stabbed Husband During Quarrel: Native Woman Sent To Prison For Homicide’. *Rand Daily Mail*, 23 March 1935.

Mervyn Rees. ‘Marshal Square is sentenced: 70-year police H.Q. to vanish’. *Rand Daily Mail,* 10 March 1967, 5.

Secondary Sources:

Theses and Dissertations:

Badassy, Prinisha. *“…and my blood became hot!” Crimes of Passion, Crimes of Reason: An analysis of the crimes against Masters and Mistresses by their Indian Domestic Servants, Natal, 1880-1920*. MA Diss. University of KwaZulu-Natal, 2004.

Badassy, Prinisha. *“A Severed Umbilicus: Infanticide and the Concealment of Birth in Natal, 1860-1935”*. PhD Diss. University of KwaZulu-Natal, 2011.

La Hausse, Paul. 1984. *The Struggle for the City: Alcohol, the Ematsheni and Popular Culture in Durban, 1902-1936*. Diss. University of Cape Town, 1984.

Eales, Katherine. “Gender Politics and the Administration of Women in Johannesburg, 1903-1939”, MA Wits 1991.

Radebe, Nomshado Maria. *"Thieving Blacks": gangs and crime in Soweto as reported in white English newspapers during the 1940's and 1950's*. Diss. University of Johannesburg, 2007.

Robinson, Cynthia A. *The power behind the press: English newspapers in the Transvaal, 1870-1899*. Diss. University of British Columbia, 1989.

Papers:

Eales, Katherine. "Patriarchs, passes and privilege: Johannesburg's African middle classes and the question of night passes for African women, 1920-1931." Paper presented at the Wits History Workshop1987.

Hassim, Shireen. 'Where have all the women gone? Gender and politics in South African debates. Conference Paper, University of Natal, 1991.

Van Onselen, Charles. 'Randlords and Rotgut 1886-1903: An Essay on the Role of Alcohol in the Development of European Imperialism and Southern African Capitalism, with Special Reference to Black Mineworkers in the Transvaal Republic,' *History Workshop*. Editorial Collective, History Workshop, Ruskin College, 1976.

Books:

Beinart, William. Dubow, Saul. eds. *Segregation and apartheid in twentieth-century South Africa*. Psychology Press, 1995.

Bekker, Peet, Geldenhuys, Tertius, Joubert, JJ. Swanepoel, JP, Terblanche, SS. & van der Merwe, Steph E. *Seventh Edition Criminal Procedure Handbook*. Juta & Co. Ltd., 2005.

Bonner, Phil. *'"Desirable or undesirable Basotho women?" Liquor, prostitution and the migration of Basotho women to the Rand, 1920-1945' in C. Walker, Women and Gender in Southern Africa to 1945*. David Philip Publishers, 1990.

Bozzoli, Belinda. Women of Phokeng: Consciousness, Life Strategy, and Migrancy in South Africa, 1900-1983. Boydell & Brewer Ltd., 1991.

Budlender, Debbie. *Women and men in South Africa: Five years on*. Statistics South Africa, 2002.

Burchell, Jonathan & Milton, John. *Principles of Criminal Law: Second Edition*. Juta & Co. Ltd., 2002.

Burman, Sandra., Preston-Whyte, Eleanor. *Questionable issue: illegitimacy in South Africa Contemporary South African debates*. Oxford University Press, 1992.

Buss, David. *The Murderer Next Door: Why the Mind Is Designed to Kill*. Penguin Press 2005.

Chanock, Martin. *The Making of South African Legal Culture 1902-1936: Fear, Favour and Prejudice.* Cambridge University Press, 2001.

Delius, Peter. *A lion amongst the cattle: Reconstruction and Resistance in the Northern Transvaal*. Heinemann, 1996.

Gasa, Nomboniso. *Women in South African History: They Remove Boulders and Cross Rivers*. HSRC Press, 2007.

Hamilton, Carolyn. , Harris, Verne and Graeme Reid, Graeme. *Refiguring the Archive* Springer Netherlands, 2002.

Kihato,Caroline Wanjiku. *Migrant Women of Johannesburg: Life in an In-Between City*. Wits University Press, 2013.

Manfred, Nathan. *The South African Commonwealth*. The Specialty Press of South Africa ltd, 1919.

Molyneux, Maxine. Women's Movements in International Perspective: Latin America and Beyond. Palgrave Macmillan, 2001.

Penn, Nigel. *Rogues, Rebels and Runaways: Eighteenth Century Cape Characters* . David Philip Publishers, 1999.

Pistorius, Micki. *Fatal Females: Women who kill.* Penguin UK, 2012.

South Africa. Independent Complaints Directorate. Proactive Research Unit. *Femicide: A Case Study on Members of the South African Police Service.* Independent Complaints Directorate, 2009.

Stoler, Ann. *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense*. Princeton University Press, 2009.

Switzer, Les (ed.) *South Africa"s Alternative Press: Voices of Protest and Resistance, 1880s-1960s*. Cambridge University Press, 1997.

Turrell, Robert. *White Mercy: A Study of the Death Penalty in South Africa*. Praeger, 2004.

Van Onselen, Charles. *New Babylon, New Nineveh: Everyday Life on the Witwatersrand 1886-1914* .Jonathan Ball Publishers, 2001.

Walker, Cheryl. *Women and Resistance in South Africa*. Onyx Press, 1982.

Walker, Cheryl. ed., *Women and Gender in Southern Africa to 1945*. David Philip, James Currey, 1990.

Published Articles:

Ashworth, Andrew. "The doctrine of provocation." *The Cambridge Law Journal* 35.2, 1976, 292-320.

Baumgartner, Joseph. “Newspapers As Historical Source”. *Philippine Quarterly of Culture & Society*, 9.3, 1981, 256-258.

Chanock, Martin. “Criminological Science and the Criminal Law on the Colonial Periphery: Perception, Fantasy, and Realities in South Africa, 1900-1930”. *Law & Social Inquiry*, 20.4, 1995, 911-939.

Chanock, Martin. “Writing South African Legal History". *The Journal of African History*, 30.2, 1989, 265-288.

Cobley, Alan Gregor. "Liquor and Leadership: Temperance, Drunkenness and the African Petty Bourgeoisie in South Africa." *South African Historical Journal*, 31.1, 1994, 128-148.

Crawford, George B. “Murder, Insanity and the Efficacy of Woman's Role: The Gwendolyn Hoyt Case”. *Florida Historical Society*, 89.1, 2010, 51-80.

Chisholm, Linda. "Crime, class and nationalism: The criminology of Jacob de Villiers Roos, 1869–1918." *Social dynamics*, 1987, 46-59.

Ginzburg, Carlo. ‘Checking the Evidence: The Judge and the Historian.’ *Critical Inquiry*, 18.1, 1991, 79-92.

Hynd, Stacey. "“The extreme penalty of the law”: mercy and the death penalty as aspects of state power in colonial Nyasaland, c. 1903–47." *Journal of Eastern African Studies,* 4.3, 2010, 542-559.

Hynd, Stacey. "Murder and Mercy: Capital Punishment in Colonial Kenya, ca. 1909—1956." *The International Journal of African Historical Studies,* 45.1, 2012, 81-101.

James, Deborah. "Urban life and the struggle for autonomous culture in some Transvaal communities." *African Studies*, 51.1, 1992, 1-7.

Jochelson, Karen. "Women, migrancy and morality: a problem of perspective." *Journal of Southern African Studies*, 21.2, 1995, 323-332.

Hesselink, Anni, and Pearl Dastile. ‘A criminological assessment on South African women who murdered their intimate male partners,’ *Journal of Psychology in Africa*, 25:4, 2005, 335-344.

Kalbing, Nikki. “Race, Class, Gender, and African Women as Perpetrators of Murder in Natal, 1900–1929.” *Journal of Natal and Zulu History*, 2018, 1-21.

King, Peter. “Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth- and Early-Nineteenth-Century London”. *Continuity and Change*, 22.1, 2007, 73-112.

Lee, Cynthia. “Murder, He Wrote”. *Harvard Law Review*, 117.2, 2003, 711-718.

Martens, Jeremy C. "Settler Homes, Manhood and Houseboys': An Analysis of Natal's Rape Scare of 1886." *Journal of Southern African Studies,* 28.2, 2002, 379-400.

Peelo, Moira., Francis, Brian., Soothill, Keith., Pearson, Jayn. and Ackerley, Elizabeth. “Newspaper Reportage and the Public Construction of Homicide”. *The British Journal of Criminology*, 44.2, 2004, 256-275.

Peté, Stephen, and Devenish, Annie. "Flogging, fear and food: punishment and race in Colonial Natal." *Journal of Southern African Studies* 31.1, 2005, 3-21.

Phillips, Laura and James, Deborah. “Labour, lodging and linkages: migrant women's experience in South Africa”. *African Studies*, 73.3, 2014, 410-431.

Rodrick, Anne Baltz. "Only a Newspaper Metaphor": Crime Reports, Class Conflict, and Social Criticism in Two Victorian Newspapers. *Victorian Periodicals Review*, 29.1, 1996, 1-18.

Seedat, Mohamed., Van Niekerk, Ashley., Jewkes, Rachel., Suffla, Shahnaaz. and Kopano Ratele. “Violence and injuries in South Africa: prioritising an agenda for prevention”. *ScienceDirect*, 374.9694, 2009, 1011-1022.

Shore, Heather. ‘’‘Undiscovered Country”: Towards a History of the ‘Criminal Underworld’’. *Crimes and Misdemeanours*, 1.1, 2007, 41-68.

Snell, Esther. “Discourses of criminality in the eighteenth-century press: the presentation of crime in The Kentish Post, 1717–1768”. *Continuity and Change,* 22.1, 2007, 13-47.

Steedman, Carolyn. ‘Something She Called a Fever: Michelet, Derrida, and Dust.’ *The American Historical Review*, 106.4, 2001, 1159-1180.

Sultana, Albeda. ‘Patriarchy and Women’s Subordination: A Theoretical Analysis,’ *The Arts Faculty Journal*. 4, 2010-2011, 1-18.

Turrell, Robert. “It's a Mystery: the Royal Prerogative of Mercy in England, Canada and South Africa.” *Crime, Histoire & Sociétés / Crime, History & Societies*, 4.1, 2000, 1159-1180.

Van Onselen, Charles. "Crime and Total Institutions in the Making of Modern South Africa: The Life of 'Nongoloza' Mathebula, 1867-1948." *History Workshop*. Editorial Collective, History Workshop, 19, 1985, 62-81.

Vetten, Lisa. “Intimate Femicide”. *Agenda: Empowering Women for Gender Equity Reproductive Rights*, 27, 1995, 78-80.

Wesley, Jennifer. K. “Considering the context of women’s violence: Gender, lived experiences, and cumulative victimization”. *Feminist Criminology*, 1:4, 2006, 303-328.

Zimudzi, Tapiwa B. “African Women, Violent Crime and the Criminal Law in Colonial Zimbabwe, 1900-1952”. *Journal of Southern African Studies*, 30.3, 2004, 499-517.

Online Sources:

Knight, Robin. 12 June 2000. The Daily Courage. http://content.time.com/time/world/article/0,8599,2056304,00.html [Accessed On 13 May 2018]

Krouse, Matthew., “Driving Ms Daisy.” The M&G Online. Accessed May 19, 2018. https://mg.co.za/article/2006-07-12-driving-ms-daisy/

Mathews, Shanaaz.; Abrahams, Naeemah.; Jewkes, Rachel.; Martin, Lorna J.; Lombard, Carl. and Vetten, Lisa. Intimate femicide suicide in South Africa: a cross-sectional study. (30 May 2008) https://www.scielosp.org/scielo.php?pid=S0042-96862008000700015&script=sci_arttext&tlng=es (Accessed on 14 May 2018)

Millin, Sarah G., *Three Men Die*. Chatto & Windus, 1934; Basson, Annie. *Daisy de Melker*. Drama. Accessed May 19, 2018. http://www.imdb.com/title/tt0106652/