

Prinisha Badassy

University of the Witwatersrand, South Africa

**A Tissue of Lies: Crimes of Unlawful Carnal
Knowledge and Indecent Assault by Indian Domestic
Servants, Colonial Natal**



*Do not cite. Work in progress.

- Introduction -

It was in 1843 that the Republic of Natalia became a Colony of what was the largest Empire in the world and between the years 1849 and 1851 there was a tremendous influx of more than five thousand British settlers arriving in Natal. Emigration was fuelled by brighter prospects and the growing economic and social problems in England and the rest of Europe. Industrial depression, poor harvests and the potato blight spurred many individuals to take up Government grants in the form of very generous plots of land in the Colony. Besides posts as Government officials, or traders and artisans many had come as farmers and agriculturalists with the help of the Joseph Byrne Emigration and Colonization Company and the Christian Emigration and Colonization Society. But by the 1850s, as many historians of this chapter of British imperialism have shown, slavery had been abolished in the British Empire and in this British colony, an acute labour shortage was in evidence (as in many other colonial plantation and farming sites, as Walter Rodney and Marina Carter have shown).¹ In Natal, small numbers of Africans living south of the Tugela worked for wages, but Zulu men and women living in the region under the rule of the Zulu royal house were able to refuse the sale of their labour through to the conclusion of the Anglo Zulu war of 1879. In the interim, the British authorities and their agents in India and the far East looked to other

¹ For further discussion on Natal, see Surendra Bhana and Joy Brain. *Setting Down Roots: Indian migrants in South Africa, 1860-1911*. (Johannesburg: University of the Witwatersrand Press, 1990); Surendra Bhana and Bridglal Pachai. (eds) *A Documentary History of Indian South Africans*. (Cape Town: David Philip, 1984); Surendra Bhana. (ed) *Essays on Indentured Indians in Natal*. (Leeds: Peepal Tree Press, 1990); Andrew Duminy and Bill Guest. *Natal and Zululand, From Earliest Times to 1910*; Bill Freund. *Insiders and Outsiders: The Indian Working Class of Durban, 1910-1990*. (Pietermaritzburg: University of Natal Press, 1995); C. G. Henning. *The Indentured Indian in Natal, 1860-1917*. (New Delhi: Promilla, 1993); and for discussion with regards to other parts of the Empire see Marina Carter. *Voices from Indenture: Experiences of the Indian Immigrants in the British Empire*. (London, New York: Leicester University Press, 1996) and Walter Rodney. *A History of the Guyanese Working People, 1881-1905*. (Baltimore: The John Hopkins University Press, 1981).

colonial sites for their labour needs. Their aim was to staff the rapidly developing sugar, tea and coffee industry along the south Indian Ocean coastal plain, and Indian labourers, called ‘coolies’ by the Imperial officials and merchants of the day, were key to answering this shortage.

A system of indentured labour – drawing on client and indebted hierarchies already tried in India and several other British colonies – was thus implemented and consequently became a means through which British capitalist expansion was perpetuated in this region. By 1911, the records and official government census for Natal show that there were approximately 152 184 indentured Indians in Natal. Besides being employed on sugar farms and in various other agricultural and industrial settings as indentured workers, Natal also saw a wave of immigration by non-contracted Indians who followed their brethren to the colonies in the pursuit of the opportunity of free business and enterprise. And as the Colony developed there was a greater need for Indians who came as ‘Special Servants.’ These were defined by specialised jobs such as waiters, clerks, interpreters, teachers, constables, messengers, and drivers, etc. One of the other sectors of employment that indentured and non-indentured Indians took up positions was that of domestic servitude.²

² There were six definitions or groups of Indians in Natal, “Indentured Indian”- One who had been introduced, under the provisions of the various Acts dealing with Indian Immigration, by the Immigration Trust Board, “Re-indentured Indian” – One whose time had expired since the operation of Law 17, 1895 and had thereof elected to re-indenture himself under the provisions of that Act, “Free Indian”- this being one who had completed his indenture prior to the coming into operation of Law 17, 1895, and who was therefore not liable to the payment of £3 license, and had forfeited his right to a return passage, but may have regained same by indenturing under Law 42, 1905. “Time Expired Indian” – One whose indenture had expired subsequent to the operation of Law 17, 1895, “Colonial Born Indian” – The child born in Natal, of the “Free Indian,” or of a “Time Expired Indian” who elected to pay £3 license and remain in the Colony without re-indenture under Law 17, 95, or, of an Indian who arrived in the Colony at his own expense, as an ordinary Colonist, and independently of the Indian Immigration Trust Board. The latter description is that of a “Free Immigrant” or Passenger Indian. See Y.S. Meer. *et al. Documents Of Indentured Labourers, 1852-1917.* (Durban: Institute of Black Research, 1980), 636.

While there are many studies focusing on indenture and indentured labourers in Natal, this vast and intensive body of work regarding Indians in South Africa lacks personal history, individual narratives and experiences. Subsequently, this paper is an attempt at bringing to the fore the lives and life stories of individuals who were not necessarily silenced or forgotten but rather lingered in the background. This study is primarily a close examination of the crime of rape and indecent assault committed by Indian domestic servants against their mistresses and the children for whom they cared in the colony of Natal between the years 1880 and 1920 as a particular avenue to understanding the relationship they shared with their white masters and mistresses in the colonial home. The paper will also interrogate the home and the domestic space as the cocoon for the metamorphosis of these relationships between Indian domestic servants and their masters and mistresses, settler anxieties about African male servants in the colony, as well as domestic servitude in general and in relation to the mechanics of indenture. This study aims to fill the gap caused by the lack of an in-depth study of Indian domestic servants, their social identity, and their part in the broad spectrum of life under indenture. In evaluating their relationship with their masters and mistresses, their accounts can often be heard echoing in histories of other regions of the world, because the master/mistress-servant dialectic has occupied a crucial place in the histories of most world societies. This study is the story of ordinary men and women, who were sometimes both the villains and the victims in the story of colonial domestic life in Natal. These women and men were not merely crushed by the past, they lived through it, and they created it, and for this reason, their stories resonate in the present.

The relationship between 'brown men' and White women has been an area of interest for many colonial and post-colonial writers. An analysis of the gendered nature of the context of colonial life and labour and the particular

forms of patriarchy that took root in the colony will show how these structures powerfully shaped the social context in which these relationships were formed. As an index of colonial and social hierarchical tensions, rape and acts of indecent assault between men of colour and White women/children can be seen as a metaphor for these power imbalances. They are also more importantly, usually an act of violence by men against women. In colonial Natal, this further displaced the power imbalance and complicated the master/mistress-servant relationship. In this context, it is very difficult to 'read' evidence as proof of guilt or innocence. The following court case reproduced here to some detail is illustrative of the often seemingly rehearsed nature of testimonies and the theatrical elements which emerge as a result. Underlying all this is the centrality of sexual power and tensions, which were so prevalent in this colonial society.

- Rex vs Mudali -

Wednesday, 4th Sept. 1907.

In the Supreme Court of the Colony of Natal,

Before Mr Justice Broome,

Rex

Vs

MASILAMEY MUDALI,

an Indian charged with the Crime of indecent assault,

Plea: Not guilty.

Mr Bigby for the Crown,

Prisoner undefended.

Thursday, 10th Sept. 1907,

Before Mr Justice Beaumont and a jury.

NELLIE MAUD AMELIA WATTS, called and sworn: -
(Examined by Mr Bigby)

Q. You live with your husband at Balgowan.

A. Yes

Q. The accused is your indentured coolie.

A. Yes

Q. Do you remember the 18th June?

A. Yes.

Q. Your daughter Gladys came into the house about what in the afternoon.

A. Between 4 and 5.

Q. What did she do?

A. She sat on the sofa and buried her face on the cushion.

Q. What did you say to her?

A. I asked her what was the matter and she would not speak.

Then she told me her clothes were wet.

Q. What clothes were they?

A. Her drawers.

Q. Did you change her clothes?

A. I simply gave her a clean pair and told her to change them herself.

Q. What became of the pair she took off?

A. I went in afterwards and found them lying on the floor partly wet.

Q. What is her age?

A. She was six in January.

Q. Did you notice what her clothes were with?

A. Semen.

Q. You kept that pair of drawers and gave them to Dr. Lawrence?

A. Yes.

Q. Did she tell them what happened to her?

A. Not for a long time after. I had often threatened to beat her if she followed the boys about.

(By the Court)

Q. What do you mean by some time after?

A. When I went in the evening to put her to bed.

Q. What did she say?

A. She told me she followed the boy to the coolies quarters, and he told her to undo her clothes, and she told him to go away and pushed him on the chest.

(resuming.)

Q. Did she say what he had done to her?

A. Yes, she said he tried to put something in her.

Q. Have you every noticed anything before with regard to the accused.

A. No, I have always found him a good boy and truthful.

(By the Court)

Q. Did she say which boy it was?

A. Yes, she told me his name directly afterwards.

Q. Did you send for him?

A. My husband went out to him.

DOORSAMY, an Indian constable, called and sworn: -

(Examined by Mr Bigby)

Q. You are an Indian constable at Nottingham Road?

A. Yes.

Q. Do you remember arresting the accused?

A. Yes.

Q. What did you say to him?

A. I told him if he were to speak they would write it down.

(By the Court)

Q. Did you tell him that he was charged with?

A. I did.

Q. What did you tell him he was charged with?

A. I told him I heard that he did something to a white girl.

(Examined by Mr Bigby)

Q. Did Trooper Nicol speak to him subsequently?

A. Yes, and after I took the accused to the Camp.

Q. Did you interpret for Trooper Nicol?

A. Yes.

Q. Before you began to interpret for Trooper Nicol what was the first thing you said to him. What did Trooper Nicol tell you to interpret first?

A. He asked me to interpret these words “Whatever you say it will be taken down in writing and it may go against you or in your favour at the trial.”

Q. What did he say after that caution had been administered to him?

A. He said “ I was cleaning my master’s boot in the kitchen. My master’s daughter came into the kitchen and called me. The girl at this time was sitting on a sack of mealies. She lifted up her dress and said in the Kaffir language “Kumula buluka, genisa pakati.” I said to the girl she must clear away from the kitchen, that she was too small a girl to use such an expression and I would not do such a thing to a child like that, and if I were caught I should be killed by the girl’s parents. Then the girl said “Do it, I won’t say anything about it.” She lifted up her dress

and called me again to do it. I went up to her and put my penis on her drawers. About eight o'clock that same night my master and a friend of his tied me up and beat me severely, and brought me to the station and locked me up."

Prisoner's statement read and put in.

Mrs. WATTS recalled.
(Examined By the Court)

Q. Can you tell me what is the date of this boy's indenture?

A. I believe he started with us on the 1st April, I am not sure.

Q. He hadn't been very long with you, then.

A. A little over two months.

Q. Did he come out from India to you?

A. No, he served his time at a farm.

Q. How long has he been in the neighbourhood, or in Natal?

A. A little over five years.

CASE FOR PROSECUTION CLOSED

THE ACCUSED MASILAMEY MUDALI elected to give his own evidence on oath, and was duly sworn.

Statement: I was under the influence of ganga. I don't know what took place and what I said. I don't remember anything. I don't know what I have said to the Indian policeman I know I was severely thrashed by my employer. I was tied up before I was assaulted. That is all I know. I was taken to the police station about two in the morning.

(By the Jury)

Q. Are you married?

A. No.

Q. Have you ever known children to ask you to do such a thing before this?

A. No.

Verdict: Unanimous verdict of Guilty. Sentence: Two years' imprisonment with hard labour, and 20 lashes.³

³ Pietermaritzburg Archives Repository [hereafter PAR], Registrar, Supreme Court [hereafter RSC], 1/1/98/28/1907, Supreme Court

Criminal Cases. Rex Versus Masilamey Mudali. Charged with
Indecent Assault, 1907.

4 PAR, RSC, 1/1/98/28/1907, Supreme Court Criminal Cases. Rex versus Masilamey
Mudali. Charged with Indecent Assault, 1907.

Dr Alan Lawrence, a Medical Officer at the Sanatorium, Nottingham Road just outside Pietermaritzburg was called by Mrs Watts the day after the incident to her home in Balgowan to examine her daughter, Gladys Maud. She also requested him to examine the clothes she had worn the previous day to ascertain whether there were ‘any marks of violence on the girl’ and whether there were any ‘stains of blood or semen on her pair of drawers.’ Dr Lawrence confirmed that “all the parts were intact,” meaning that there was no physical evidence to show that she had been ‘interfered’ with, but that there was “one clot” on her drawers which showed that there had been emission of semen.

However, when Frederick Nicol, a trooper in the Natal Police and stationed at Nottingham Road was called to the stand, his rendition of the statement made by Mudali to him the morning after he was arrested, was slightly different:

Last Monday I was cleaning my master’s boots in the kitchen. My master’s daughter came in and sat down in front of me on a sack and pulled up her clothes. She said in kitchen kaffir that I was to open my trousers and put my person into her. I took out my person and put it into her undergarment and emitted my semen on her garments. Then I came back to the kitchen. The girl told me to say nothing to her parents about it, or they would be angry. When I was sleeping in my hut that night my master and his friend came in and thrashed me and tied me up with a rope. My master then took me to the station and sent for the police.⁴

What is peculiar about this court case is that Thomas Watts, the father to the girl, was never called to stand, and he did not make a deposition regarding the case, despite the fact that he was responsible for assaulting Mudali. However, between August and September of that year, several letters were passed between himself, the Protector as well as the Deputy Protector with regards to a complaint made by one of his Indian servants, Hargayan, from

which it is possible to gauge his views and attitude towards Indians generally.⁵ In his deposition on the 27th of August, Hargayan complained to the Protector that on the 3rd of August at around 7 o'clock in the evening, his master "struck" him "several blows on both sides of his body without any reason" and that he wished to be transferred because he could not "bear the illtreatment any longer."⁶

In his reply to the Protector about the complaint, Watts begged for Hargayan's return (for his own 'personal satisfaction'), insisting that the assault was in fact an accident. It clearly points to the attitude that the majority of settlers in the Colony held: that these Indians were mere chattel belonging to the Empire, helots and commercial assets that needed to be worked to their fullest capacity.⁷ His letter read:

On the evening that he complains of, I was taking some letters to the post, I stepped out of a lighted room and knocked against this boy coming up the stairs. He gave me a fright and I warded him off with the side of my arm. He then called out "it's me Hargayan boss," I never touched the boy again. This happened on the 12th of July and the boy left here on the 4th of August. I am sorry that the boy refuses to come back but seeing that he has no real grounds of complaint, I must insist on his being sent back. If Indians are allowed to dictate their own terms and allowed to go where they please in the way this Indian has done, it will be goodbye to Indian labour. It is perfectly evident that the

⁵ See, PAR, Indian Immigration Department [hereafter II], 1/154/I2116/1907, Indian Hargayan No. 105023's Complaint of Assault - Indentured to TJ Watts of Balgowan, 1907; PAR, II, 1/153/I1795/1907, TJ Watts, Balgowan Writes about Indian Harigayan's complaint, 1907.

⁶ PAR, II, 1/154/I2116/1907, Indian Hargayan No. 105023's Complaint of Assault - Indentured to TJ Watts of Balgowan, 1907.

⁷ H.S.L. Polak. *The Indians in South Africa, Helots within the Empire and How They Are Treated.* (Madras: G.A. Natesan and Co., 1909), 6.

boys are encouraged in this sort of thing and the inconvenience and expense that we are put to over them is not in any way considered. I have been amongst Indians and handled them for 20 years and I have never come across one yet that could speak the truth and tell the same story twice.⁸

- Rex vs Duba -

Mrs Florence Sophia Grantham and Walter Lewis Grantham who was a Civil Engineer⁹ lived at 167 Burger Street in Pietermaritzburg with their two boys Walter Valentine Louis and Charles Edward. At 3 o'clock on the morning of December 10th 1903, Verbena Holliday, a boarder with the Granthams, was startled by a noise she heard in the passageway. She had initially thought it was a cat after hearing a hissing noise, but when she turned on the light, she saw Duba, Mrs Grantham's Indian male cook standing in the doorway. Verbena Holliday was 26 years old and a music teacher in the borough of Pietermaritzburg.¹⁰ She had one sister, Lizzie Holliday and five brothers, John, Ernest, Frank, Ralph, and Rupert Holliday.¹¹ Duba, who had been with the Granthams for three years at the time, was charged with wrongfully and unlawfully entering the bedroom of Verbena Holliday with the intent "to wit, or commit some crime of the unknown."¹² It was only on the 2nd of May 1904

⁸ PAR, II, 1/154/I2116/1907, Indian Hargayan No. 105023's Complaint of Assault - Indentured to TJ Watts of Balgowan, 1907.

⁹ PAR, Master of the Supreme Court. Estates [hereafter MSCE], 5906/192, Grantham, Walter Lewis. (S SP Grantham, Florence Sophia), 1921.

¹⁰ PAR, MSCE, 41/199, Holliday, Verbena, 1911.

¹¹ Both Frank and Rupert seemed to have been admitted to the Mental Hospital in Pietermaritzburg. PAR, MSCE, 9590/1924, Holliday, Frank. (Not Date of Death Date Admitted to Mental Institution), 1924; and PAR, MSCE, 2383/1918, Holliday, Rupert. (Spouse Olive) Not Deceased received into Mental Hospital, Pietermaritzburg as a patient, 1918-1924.

that the case was brought to trial and in the evidence that was lead there were traces of inconsistencies and contradictions.

At the court case, Duba elected to give his own evidence and was represented by Mr Cecil Yonge. Gustave Aristide de Roquefeuil Labistour together with Mr Vaughan-Williams represented the crown. Jack Smith, a detective in the Police force and a surveyor was the first witness called to the stand. He was responsible for preparing a plan of the Grantham's home. The architect of the house was integral to this case, because of the disparities that arose out of different versions of the story. The location of Ms Holliday's room in relation to the dining area, passageway and Mrs Grantham's room, as well as the positioning of the electric light switches and bed in Ms Holliday's room were crucial in understanding what exactly happened the morning of the 10th.¹³ Along the hallway, Ms Holliday's room was directly opposite the dining room and Mrs Grantham's room was further down the passage and at the front end of the house.¹⁴ On the night in question, Ms Holliday decided to leave the door to her room slightly ajar, because it had been intensely hot the night before. When asked about what had happened after she heard the hissing noise and something at her feet, she said:

I am naturally nervous and got up immediately and turned on the light. Then I saw Duba standing at the side of my bed near the foot. I immediately called out for Mrs Grantham. Duba did not say anything

12 PAR, RSC, 1/1/79/15/1904, Supreme Court Criminal Cases. Rex Versus Duba. Charged With Wrongfully Entering A Bedroom With Unlawful Intent, 1904.

13 PAR, RSC, 1/1/79/15/1904, Supreme Court Criminal Cases. Rex Versus Duba. Charged With Wrongfully Entering A Bedroom With Unlawful Intent, 1904.

14 For more on the architecture and floor planning of colonial bungalows and country houses and their relationship to the employment of servants, see William J Glover. "A Feeling of Absence from Old England:" The Colonial Bungalow,' in *Home Cultures*, 1:1, 2004, 61-82; and Jill Franklin. 'Troops of Servants: Labour and Planning in the Country House, 1840-1914,' in *Victorian Studies*, 19, December 1975, 211-239.

but gave a swift glance around at the door. He was standing between me and the door. He did not say anything but made something between a groan and a hiss, and then simply bolted from the room. I went into Mrs Grantham's room and related what had occurred.¹⁵

Mrs Grantham then went out to the back veranda and called for Duba several times. Miss Holliday noted that when Duba did finally come back to the house, he was dressed in the same manner as when he was standing at her doorway; in his shirt, trousers and turban. Mrs Grantham then asked Duba what had happened and to return his duplicate key to the house, which he possessed so that he could come into the house early in the morning to clean up and set the breakfast. Duba was also responsible for making the morning coffee, which he used to place on a table in the passageway. On three occasions Duba had taken the coffee into Ms Holliday's room but Mrs Grantham had reprimanded him about it, and since then had not done it again.

According to Duba, he had "never entered" Ms Holliday's room that morning, and had only gone into the house at four o'clock, which he sometimes did "when there was a great deal to do."¹⁶ When asked if he could offer any reason as to why Ms Holliday would bring such a charge of unlawful intent against him, Duba expressed:

I cannot state anything further than this, -- that on one occasion I was rather late in giving Miss Holliday her one o'clock tea, and she was vexed with me for being late and asked me how it was. I said the kettle was not boiling, and on account of the delay, she was angry with me.

¹⁵ PAR, RSC, 1/1/79/15/1904, Supreme Court Criminal Cases. Rex Versus Duba. Charged With Wrongfully Entering A Bedroom With Unlawful Intent, 1904.

¹⁶ PAR, RSC, 1/1/79/15/1904, Supreme Court Criminal Cases. Rex Versus Duba. Charged With Wrongfully Entering A Bedroom With Unlawful Intent, 1904.

Whether it is on account of that, that she has brought this case, I do not know.¹⁷

Duba's work continued as per normal for the next couple of days until Tuesday the 15th of December, the day after Ms Holliday had left the Grantham's to go live with her brothers. At around 9.45pm on the Tuesday evening, Sooka, the nephew of Duba, was returning home from a hotel in Longmarket Street, in Pietermaritzburg, and found his uncle covered in blood, lying on his bed unable to speak.¹⁸ At about eight o'clock that evening, Ralph, Ernest and Frank had entered the Grantham's premises with the sole purpose of injuring and beating Duba. At this point, Mrs Grantham was in the dining room with her son, Louis and Mr Bradford, a boarder, when they heard a shriek. They immediately went into the yard, but could not see very clearly, and Bradford returned to the house to get a candle. During this time, Mrs Grantham recognised the voices as being those of the Holliday brothers. She recognised Frank and Ernest but could not distinguish if the third was Ralph or Rupert. When Bradford returned with the candle, she saw Duba lying on the floor but could not see what they were striking him with. Bradford then spoke to the men and tried to persuade them to stop beating the 'coolie,' but it was only after Bradford had sent young Louis for the police that they let Duba be. All four men then returned to the veranda, where Mrs Grantham was standing and the brothers told her that they had assaulted Duba because he had entered their sister's bedroom. After the brothers had left, and Duba and his nephew had spoken to the Constable, Mrs Grantham sent for Dr Woods. When Dr Woods arrived, Duba was lying in the 'coolie hut' and was dazed but conscious. On examining him, he found that Duba was suffering from a scalp wound on the

¹⁷ PAR, RSC, 1/1/79/15/1904, Supreme Court Criminal Cases. Rex Versus Duba. Charged With Wrongfully Entering A Bedroom With Unlawful Intent, 1904.

¹⁸ PAR, Attorney General's Office [hereafter AGO], II/1/3/CPM380/1903, Magistrate City: Rex on Complaint of Duba Versus R, E, and F Holliday Charge:- Assault With Intent To Do Serious Bodily Harm, Deposition of Sooka, 1903.

back of his head and that this may have been caused by some blunt instrument, and had him sent immediately to Grey's Hospital.

In a letter to de Roquefeuil Labistour, Mr Vaughan-Williams informed the Attorney General, about the details of the case.

The motive for the assault appears to have been that the three accused imagined that the Coolie whom they assaulted entered their sister's room on one night sometime previously. There appears to be no proof of this. The assault is a most serious one and if Bradford had not appeared on the scene as he did it is most probable that the Coolie would have been killed. The Doctor reported the next morning that his condition might at any time become critical. But there appears to be no absolute proof that the Coolie was the man who entered Miss Holliday's room.¹⁹

Miss Holliday's testimony in court appears to have been poorly constructed and the inconsistencies and contradictions discredited her version of the events of that morning. On his discharge from the hospital, Duba immediately laid a complaint with the Resident Magistrate on the 23rd December 1903, and it appears that it was only as a result of this charge that Ms Holliday accused Duba with unlawful entrance into her bedroom. The first point of divergence in Ms Holliday's testimony related to the actual time of the incident. She stated it was at around twenty minutes to three, but "that may not have been quite right."²⁰ Also, when asked if she was still in the lodgings of the Grantham's she told the court, "No, I left her about 9 days after this occurred. I left her because

¹⁹ PAR, AGO, II/1/3/CPM380/1903, Magistrate City: Rex on Complaint of Duba Versus R, E, and F Holliday Charge:- Assault With Intent To Do Serious Bodily Harm, Letter from Vaughan-Williams to the Attorney General, 1903.

²⁰ PAR, RSC, 1/1/79/15/1904, Supreme Court Criminal Cases. Rex Versus Duba. Charged With Wrongfully Entering A Bedroom With Unlawful Intent, Testimony of Ms Verbena Holliday, 1904.

I was too nervous to stay in the house. I did not like being in the same house with a man like Duba. I left the day previous to the day the boy had been thrashed.”²¹ When asked why her brothers had assaulted Duba and why there was such a long delay in reporting the case, she replied:

Mrs Grantham did not wish me to speak about the affair. She said, of course, I should leave as soon as I could, although she would have liked me to stay to the end of the month. She did not want it known that such a thing had occurred. He was a valuable boy to her. In deference to her wishes, I told her I would try and stay on to the end of the month, but I found that was quite impossible. I came away about 9 days afterwards. This was on account of my nervous state. I could not sleep. When I came away I told my people and my brothers what had occurred and next evening they went.²²

However, when Mrs Grantham was asked why the matter was kept quiet for such a long time, she asserted that it was Ms Holliday who did not want to bring it to court and that she, in fact, did not mind at all.

I advised her to take it up. I said, “Do take it up.” I did not tell her to do otherwise. I left the matter to Miss Holliday to do as she liked. Duba was an indentured servant. I did not think it was incumbent on me to bring the matter to the notice of the authorities. Miss Holliday said she did not like to become public. I did not say I would not like to make the matter public. I did not say I would not like the matter dragged into court. I think now I ought to have reported it but I left it to Miss Holliday who is not a child.²³

²¹ PAR, RSC, 1/1/79/15/1904, Supreme Court Criminal Cases. Rex Versus Duba. Charged With Wrongfully Entering A Bedroom With Unlawful Intent, 1904.

²² PAR, RSC, 1/1/79/15/1904, Supreme Court Criminal Cases. Rex Versus Duba. Charged With Wrongfully Entering A Bedroom With Unlawful Intent, 1904.

She also contradicted herself in her claim that she had stayed with Mrs Grantham until Monday the 14th, and not left the Grantham's 9 days after, as she had stated twice during the trial. Despite all the evidence, in particular, the medical reports, and the possibility that Duba may have just been walking past the bedroom, or that he may not have been in the house at all, he received fifteen months imprisonment. Of the Holliday brothers, only Ernest was found guilty, and his punishment for almost beating a man to death was a fine of £10, or if he preferred a week's imprisonment.

Jock McCulloch, Jeremy Martens and J Riekert, along with many other historians have written about the 'black peril,' rape scares, and the emphasis on White virtue as well as the moral panics that pervaded many British colonial societies from the 1880s up until the 1930s.²⁴ *The Black Peril Mania* as outlined and analysed by McCulloch in *Colonial Zimbabwe* brings to the fore the fixation of White men's paranoia and obsession with both White female and

23 PAR, AGO, II/1/3/CPM380/1903, Magistrate City: Rex on Complaint of Duba Versus R, E, and F Holliday Charge:- Assault With Intent To Do Serious Bodily Harm, Deposition of Florence Sophia Grantham, 1903.

24 See for instance, Jock McCulloch. *Black Peril, White Virtue: Sexual Crime in Southern Rhodesia, 1902-1935*. (Bloomington and Indianapolis: Indiana University Press, 2000); Norman Etherington. 'Natal's Black rape scare of the 1870s,' in *Journal of Southern African Studies*, 15, 1988, 36-53; Jeremy C. Martens. "'Foul Deeds of Unparalleled Atrocity": Colonial Legislation and Natal's 19th Century Rape Scares.' Paper presented at the Department of Historical Studies, University of Natal, Durban: History and African Studies Seminar, 11th August 1999; J. Riekert. 'Race, Sex and the Law in Colonial Natal,' in *Journal of Natal and Zulu History*, 6, 1983, 82-97; Jeremy C. Martens. 'Settler Homes, Manhood and 'Houseboys': an Analysis of Natal's Rape Scare of 1886,' in *Journal of Southern African Studies*, 28:2, June 2002, 379-400; Robert Morrell. 'Of Boys and Men: Masculinity and Gender in Southern African Studies,' in *Journal of Southern African Studies*, 24:4, December 1998, 605-631; Pamela Scully. Rape, Race and Colonial Culture: The Sexual Politics of Identity in the Nineteenth Century Cape Colony, South Africa,' in the *American Historical Review*, 100:2, April, 1995; J. Pape. 'Black and White: The "Perils of Sex" in Colonial Zimbabwe,' *Journal of Southern African Studies*, 16:4, December 1990, 699-720. Charles van Onselen. 'The Witches of Suburbia: Domestic Service on the Witwatersrand, 1890-1914,' in *Studies on the Social and Economic History of the Witwatersrand, 1886-1914, Vol. II*. (Johannesburg: Ravan Press, 1982).

African male sexuality. McCulloch argues that much of the legislation that was passed was in fact borne out of this black peril, and most significantly that these acts and laws were not aimed specifically at Black men but rather at perturbing and controlling the supposed sexual impulses of White women.

At the turn of the century, many victims of rape in the metropole did not expose their ordeals nor did they prosecute their offenders. British society did not view rape as serious an offence as many of the colonies did, as Pamela Scully, Ann Stoler and McCulloch have shown for the Cape, British India and present-day Zimbabwe.²⁵ By McCulloch's account of southern Rhodesia, there were more than two hundred Black men found guilty on the charge of sexual assault during the period 1902 and 1935, of which twenty were executed and the others imprisoned. However, McCulloch advocates that many of those convicted "were at worst guilty of petty theft or common assault," and that none of them received what he thought to be a fair trial.²⁶ Similarly, in Natal, neither Duba nor Mudali had any supporting witnesses in their court cases. Moreover, just as McCulloch shows for the Rhodesian context, "few charged with such crimes gave evidence in their defence. They were tried in a foreign language under a belittling nickname and spent most of their trial silent and probably uncomprehending at the ritual being played out."²⁷ McCulloch, Scully, Martens and Jo Beall assert that in settler societies anxieties about race, gender and sexuality were inevitable and that as a result, this led to an exaggerated construction of the sexuality of both the colonised and colonising male and female.²⁸ Such was the paranoia in southern Rhodesia that in 1903,

²⁵ Of interest to this is Susan Newton-King's paper on same-sex rape and cases of sodomy in the Cape during the control of the Dutch East India Company. 'For the love of Adam: two sodomy trials at the Cape of Good Hope.' Paper presented on the 14th of May 2003 at the Department of Historical Studies, University of Natal, Durban: History and African Studies Seminar.

²⁶ McCulloch. *Black Peril, White Virtue: Sexual Crime in Southern Rhodesia*, 185.

²⁷ McCulloch. *Black Peril, White Virtue: Sexual Crime in Southern Rhodesia*, 27.

the colonial legislature passed a Black-peril law making attempted rape punishable by death, because, as McCulloch contends, the Black-peril assaults “were perceived not just as an attack upon the body of a woman but as an attack upon the white community itself.” 29

In Natal, as Robert Morrell has shown, White men projected their own sense of masculinity firstly against White females, and then men of colour, and would therefore diligently uphold and protect their status as the guardians of a supposedly moral and ‘civilised’ British society. These rape cases, as McCulloch highlights, speak volumes on the pervasive fears of these settler men and were, in fact, more about controlling and regulating the sexuality of White women, than about the sexuality of African men. According to McCulloch, the 1903 law was the only one that directly related to offenders; other legislation focussed on White women and legally forbade White women from having consensual sexual intercourse with Black men.³⁰ For instance, the Immorality and Indecency Suppression Ordinance stated that any White woman who “by words, writing, signs, or suggestion enticed a native to have illicit sex” would be imprisoned for two years.³¹

Martens’ doctoral thesis on the attempts of White Natalians to regulate the behaviour of Black labourers in the Colony, traces the development of laws and legislation that relate to rape and sexual assaults after the 1886 rape scare, in relation to Natal’s vagrant laws that were passed in 1869, that were used to curtail the movement of urban Black men and thereby reduce the number of rape and sexual assault incidents against White women.³² At the opening of

28 See also D. J. Beall. ‘Class, Race and Gender; the political economy of woman in Colonial Natal.’ Thesis (MA-History) – University of Natal, Durban, 1982;

29 McCulloch. *Black Peril, White Virtue: Sexual Crime in Southern Rhodesia*, 4.

30 McCulloch. *Black Peril, White Virtue: Sexual Crime in Southern Rhodesia*, 5.

31 McCulloch. *Black Peril, White Virtue: Sexual Crime in Southern Rhodesia*, 5.

the Legislative Council in 1869, it was proposed that “[w]hereas assaults on women and female children in this colony are of frequent occurrence, and it is expedient to make the punishment for such crimes more notorious and deterring.”³³ The virtue and honour of White women had to be enforced because the sexual proclivities of Black and Indian men were dangerous and could not be trusted. The sexuality of White male settlers was not viewed with the same concern by the colonial authorities; it was only female sexuality which was perceived as a problem in the face of the sexual danger posed by the colonial other. But as McCulloch clearly shows from his use of the Attorney General files, and the number of rape cases for the years 1883 to 1886, this period was nothing more than a public display of anxieties over settler masculinity and the preservation of White Rule. As Stoler has argued:

the rhetoric of sexual assault and the measures used to prevent it had virtually no correlation with actual incidences of rape of European women by men of colour. Just the contrary: there was often no *ex post facto* evidence, nor any at the time that rapes were committed or that rape attempts were made ... This is not to suggest that sexual assaults never occurred, but that their incidence had little to do with the fluctuations in anxiety about them.³⁴

The “concern over protection of White women intensified during real and perceived crises of control,” and in Natal, as Martens’ and Norman Etherington’s studies show, shortages of labour, the suspension of Indian

32 Jeremy C. Martens. “‘So Destructive of Domestic Security and Comfort’: Settler Domesticity, Race and the Regulation of African Behaviour in the Colony of Natal, 1843-1893. Thesis (PhD-History) – Queen’s University, Kingston, 2001.

33 Jeremy C. Martens. ‘Polygamy, Sexual Danger, and the Creation of Vagrancy Legislation in Colonial Natal,’ in *The Journal of Imperial and Commonwealth History*, 31:3, September 2003, 28.

34 A. L. Stoler. ‘Carnal Knowledge and Imperial Power: Gender, Race and Mortality in Colonial Asia,’ in Di Leonardo, M. (ed.) *Gender at the Crossroads of Knowledge: Feminist Anthropology in the Postmodern Era*. (Berkeley: University of California Press, 1991), 68.

Immigration and the gradually worsening economic depression were important factors in heightening social tensions in this regard.³⁵

By March 1887, after many hours of debating at the Natal Legislative Council, Law 27 of 1887 was passed which regulated and defended the punishments for the crimes of Rape and Assault with intent to commit rape and of indecent assault.³⁶ In his proposal to the Natal Legislative Council, Mr John Robinson, who was the editor of *The Natal Mercury* at the time, argued that:

I do not think that any member of this House needs to be convinced of the fact that as a community we labour under a form of social terrorism which has no counterfeit in any other Colony under the British Crown. From time to time in this Colony, we have been, and we are being, horrified by instances of assault upon protected children, which cause the blood of the community to curdle, and cause every heart to boil with indignation and horror that such things are possible in a British community claiming to be civilised... What is the condition of life here? Here is a country in which a man cannot leave his home unprotected by any male occupant without an amount of anxiety, and apprehension that I would not like to describe, a country in which you cannot allow your women and young children to go out even in the broad street in the glare of daylight without masculine protection, a country in which females live in a state of constant terrorism.³⁷

This law made rape a capital offence and assault with intent to rape punishable by transportation for a minimum of fifteen years and a maximum of

³⁵ Stoler. 'Carnal Knowledge and Imperial Power,' 68.

³⁶ PAR, Natal Colonial Publications [hereafter NCP], 5/2/15, Law 27 of 1887, Punishments for the Crimes of Rape and Assault with intent to commit rape and of Indecent Assault.

³⁷ J. Riekert. 'Race, Sex and the Law in Colonial Natal,' in *Journal of Natal and Zulu History*, 6, 1983, 85-86.

the prisoner's natural life, or a minimum of ten years' imprisonment with hard labour, public flogging and solitary confinement. Prisoners who were found guilty of indecent assault were imprisoned for a maximum of two years with hard labour and thirty-six lashes. But by 1889, as the fear characteristic of the Rape Scare subsided, transportation as punishment for assault with intent to rape was abolished and according to Act 22 of 1898, the death sentence for prisoners found guilty of rape became optional.³⁸ Act 37 of 1899, "For the better protection of Women and Children," extended Law 27 to include girls under the age of fourteen.

Any person unlawfully carnally knowing a girl under the age of fourteen years shall be guilty of the crime of Rape, and any person attempting to unlawfully carnally know a girl under the age of fourteen years shall be guilty of the crime of Assault with Intent to Commit Rape. In either of such cases the consent of the girl shall be immaterial and of no avail to an accused person.³⁹

It is Section Four of this Act however, that is most intriguing.

It shall not be lawful for any person to publish in writing or in print or the like any of the evidence or proceedings in a court of law, whether at the trial of preparatory examination, in any case of rape, incest, seduction, stupration, or indecent assault, or indecency, or to so publish any précis or other account of any such proceedings or evidence in any such case, except by leave of the Judge or Magistrate, signified in writing by the Registrar or Clerk of the Court: Provided that this section shall not be deemed to prevent a publication of the fact of the trial and the issue thereof. Any person contravening this section shall be liable to a fine not exceeding Fifty Pounds Sterling.⁴⁰

³⁸ See PAR, NCP, 5/3/6, Act 22 of 1898, and Riekert. 'Race, Sex and the Law in Colonial Natal,' 86-87.

³⁹ PAR, NCP, 5/3/7, Act 37 of 1899, For the Better Protection of Women and Children, 128-129.

This may be part of the reason why from 1900 onwards, newspapers appear to comment very little on rape cases, as opposed to cases of murder and poisoning. As in Natal, most of the Black-peril cases were against Black male domestic servants, yet McCulloch advances an argument that couples these Black peril cases and moral panics with the labour shortage present at the time, and the sense of powerlessness feared by White men. “Black Peril,” he concludes, “was a rich metaphor. It symbolized the erosion of white male authority over women, it was an emblem of racial pollution, and it suggested that cities were unsafe.”⁴¹ However, McCulloch fails to highlight the domestic space as a sphere of intimate and personal contact between the domestic servant and her/his mistress. This failure means that we are presented with a one-dimensional picture of interactions between servants and masters/mistresses which is devoid of human moments of interaction and affection.

But this Black Peril did not necessarily exclude Indian men, bearing in mind that Indian men came to the Colony with their own burdens of being stereotyped as the ravenous Oriental.⁴² After all, the 1857 Mutiny had taken

40 PAR, NCP, 5/3/7, Act 37 of 1899, For the Better Protection of Women and Children, 129.

41 McCulloch. *Black Peril, White Virtue: Sexual Crime in Southern Rhodesia*, 83.

42 See specifically, Nancy L. Paxton. *Writing Under the Raj: Gender, Race and Rape in the British Colonial Imagination, 1830-1947*. (New Brunswick, New Jersey, London: Rutgers University Press, 1999), 9; but also Erika Rappaport. “‘The Bombay Debt’: Letter Writing, Domestic Economies and Family Conflict in Colonial India,” in *Gender and History*, **16**:2, August 2004, 233-260, Jenny Sharpe. ‘The Unspeakable Limits of Rape: Colonial Violence and Counter-Insurgency,’ in *Genders*, **10**, Spring 1991, 25-46, Ann L. Stoler. ‘Making Empire Respectable: The Politics of Race and Sexual Morality on 20th Century Colonial Cultures,’ in *American Ethnologist*, **16**:4, November 1989, 634-660 and Mrinalini Sinha. ‘Giving Masculinity a History: Some Contributions from the Historiography of Colonial India,’ in *Gender and History*, **11**:3, November 1999, 445-460; Mrinalini Sinha. *Colonial Masculinity: The ‘Manly Englishman’ and the ‘Effeminate Bengali’ in the Late Nineteenth Century*. (Manchester and New York: Manchester University Press, 1995); and Nancy L.

place only a few years prior to the immigration of the first batch of Indians to Natal. In her analysis of colonial violence and counter-insurgency, one of the points that Jenny Sharpe raises is that discontinuous histories of conquest, slavery, and imperialism have not only led to the elaboration of ideas of the uncivilised ‘other’ but have also subjectified women and ‘made them rapable.’⁴³ Narratives of the Mutiny, both personal and public, were not about the subalterns and the sepoy, but rather were filled with gruesome accounts of assaults on women and children, but as Sharpe reiterates, “these tales of terror,” have “little or no historical basis,” and “the sexual nightmare of rape and mutilation remained fixed within the British imagination throughout the nineteenth century, forming an historical memory of 1857 as the savage attack of brown-skinned fiends on defenseless women and children.”⁴⁴

The abundance of court records dealing with rape at the Pietermaritzburg and Durban Archives is indicative of the significance of these crimes in this region. Ideologies of race, sexuality, masculinity and femininity have produced and shaped particular types of colonial narratives, vis-à-vis India, the Caribbean, much of Africa as well as the Americas, not only about the colonial settler but of the slave, the indentured and the servant. These ideologies have been borne out of uncomfortable situations of intense moments of confrontation between the master and the servant. The confluence of sexuality, gender and race, on Natal’s colonial stage, highlighted and revealed very explicit and entrenched notions of the colonial master and mistress and the colonial ‘other.’

- Rex vs Mtonga -

Paxton. ‘Mobilising Chivalry: Rape in British Novels about the Indian Uprising of 1857,’ in *Victorian Studies*, 36:1, Fall 1992, 5-30.

43 Sharpe. ‘The Unspeakable Limits of Rape,’ 30.

44 Sharpe. ‘The Unspeakable Limits of Rape,’ 31,37.

In looking at the case of Mtonga, an African male domestic servant in the home of the Dempsters who lived in Richmond, Julian Riekert traces a similar set of events to Duba's case. On Christmas Day in 1906, at around eight o'clock in the evening, Mrs Dempster put her daughter, who was four years old, to bed. Mtonga had worked for the Dempsters for about ten months without giving them any serious problems. On the night in question, the little girl was clothed in a flannelette nightgown and was covered with a sheet, a blanket and "a coverlet."⁴⁵ After tucking her daughter into bed, Mrs Dempster left her in the charge of Qebeni, "a native girl," who also worked in the house and continued to the dining room where she joined Mr Pare, an old family friend and Miss Dempster, her husband's sister. Ten to fifteen minutes later, Mrs Dempster returned to her bedroom and found Mtonga holding up what Mrs Dempster claimed was a towel and what he asserted was a child's shirt.⁴⁶ Mrs Dempster also found that Qebeni was no longer in the room and that on entering the room, there was an overwhelming smell, "which she described as a 'horrible odour,'" and maintained was the distinct smell of seminal fluid.⁴⁷ Realising instantly that a criminal assault had been committed to the girl, she ordered Mtonga to leave the room and on shutting the door, proceeded to inspect the girl and her cot without anybody else being present. "She found the child fast asleep but lying on its face and not on its side as she had left it, and she says that the bedclothes were disarranged as if the coverings of the child had been removed and thereafter laid upon the child again."⁴⁸ Moreover, the

45 PAR, Government House [GH], 1185, Report of Puisne Judge J C Dove Wilson to Governor, 26.3.07, as cited in Riekert. 'Race, Sex and the Law in Colonial Natal,' 90.

46 PAR, GH, 1185, Report of Puisne Judge J C Dove Wilson to Governor, 26.3.07, as cited in Riekert. 'Race, Sex and the Law in Colonial Natal,' 90.

47 PAR, GH, 1185, Report of Puisne Judge J C Dove Wilson to Governor, 26.3.07, as cited in Riekert. 'Race, Sex and the Law in Colonial Natal,' 90.

48 PAR, GH, 1185, Report of Puisne Judge J C Dove Wilson to Governor, 26.3.07, as cited in Riekert. 'Race, Sex and the Law in Colonial Natal,' 89.

blankets and bed sheets were not tucked in and the cot had been moved from its original position. When Mrs Dempster removed the child's clothing, she found that the girl's nightdress was drawn up to her shoulders and wet stains that clearly smelled and looked like seminal fluid.

It was only after the inspection that Mrs Dempster called Qebeni and her "kitchen boy," Manunu to scrutinize the wet stains in the presence of Mtonga. Manunu had been working for the Dempsters for a period of ten years and when he appeared in court, he stated that the stains in his opinion "were simply a result of a urinary discharge."⁴⁹ When Mr Dempster arrived twenty minutes later, he confirmed that the liquid was, in fact, seminal discharge and that the skin on the little girl's inner thighs was red. After his examination of the cot and child, Mr Dempster apparently "seized his sjambok and went in search of [Mtonga]," but without any success.⁵⁰

According to Mtonga, the morning after the incident, on the 26th of December, he returned to the house and Mr Pare had called him into his room to brush his boots. After he picked up the boots, Mr Pare got out of bed and locked the bedroom door. A short while after, there was a knock on the door, and when Mr Pare opened the door, Mr Dempster came in with a sjambok, a rope and two reins. They then caught a hold of Mtonga and without any resistance, Mtonga said to Mr Dempster that instead of tying him with the rope, he should rather take him to Court. Instead, Mr Dempster and Mr Pare led Mtonga to the cellar, booting and striking him on the way there. They tied Mtonga to the posts and gagged him with a piece of cloth to prevent him from calling out for help. Mr Dempster then nailed the door shut and said to Mtonga

⁴⁹ PAR, GH, 1185, Report of Puisne Judge J C Dove Wilson to Governor, 26.3.07, as cited in Riekert. 'Race, Sex and the Law in Colonial Natal,' 89.

⁵⁰ PAR, GH, 1185, Report of Puisne Judge J C Dove Wilson to Governor, 26.3.07, as cited in Riekert. 'Race, Sex and the Law in Colonial Natal,' 90.

that he was off to have his breakfast and “would return to castrate him.”⁵¹ At around 9 o’clock later that morning, Mr Dempster returned with Mr Pare, Mr Campbell, Mr Mackenzie and Mr Morgan. They took Mtonga off the posts and led him to the bathroom, where they made him lie on the ground and forced a sack over his head. In his deposition Mtonga related in graphic detail to Puisne Judge J C Dove Wilson, what Mr Dempster and his friends did to him.

One sat on my chest pressed me, while others separated my legs; they then cut my testicles off. Before they cut them they first tied them with a string tight, that I felt I was in a fair way of being killed today. I was also burnt with a hot iron as one would do to a horse after castrating it, and also put sheep dip, they dressed me with my trousers and they seated me up again, and they took the sack off from my head and loosened the rope as they taken off the sack from my head I saw my testicles on the floor, Mr Pare covered them with the sack, Mr Dempster caught hold of my right arm and lifted me up, I could hardly stand so Mr Pare assisted him caught hold of my left arm, they took me out Mr Guy Mackenzie told me to run to my home to Epateni, that if I don’t run I will die on the way, as I went out at the gate I turned my face I saw Mrs Dempster standing under the verandah looking at me, laughing with others.⁵²

The Dempsters laid charges of indecent assault against Mtonga, and at the request of the Attorney General, sent the bed linen to the Government Analyst, Dr W Watkins Pitchford, for forensic examination as had happened in the case of Watts and Mudali. In his report, Pitchford confirmed that the stains had not been caused by seminal fluid because the size of the stains was so large but had not stiffened the linen; there were no distinct odours present and there were no signs of albumen and spermatozoa.⁵³ More importantly, he also added that he

⁵¹ PAR, AGO, 1/1/313, as cited in Riekert. ‘Race, Sex and the Law in Colonial Natal,’ 91.

⁵² PAR, AGO, 1/1/313, as cited in Riekert. ‘Race, Sex and the Law in Colonial Natal,’ 91.

had found the “larval form of a parasitic worm, *oxyuris vermicularis*, which he had known, if present in large quantities, to cause restlessness and involuntary urination in children.”⁵⁴

Both Qebeni and Manunu had been called in to give evidence. The Resident Magistrate at Richmond found Qebeni’s deposition wholly unreliable, but he found Manunu’s to be sound and in favour of Mtonga. Manunu stated that he also examined the linen and found that the stain on the sheet was urine. Mtonga was tried on the 4th of March 1907, and despite the overwhelming evidence which clearly pointed to Mtonga’s innocence, the jury found him guilty, eight to one and he was sentenced to two years’ imprisonment with hard labour.⁵⁵ Mtonga then submitted a petition to the Governor, Sir Henry McCullum, in which he appealed for “a pardon or a remission of sentence.”⁵⁶ McCullum requested a report from the presiding judge and fervently stated that this was an “imprudent miscarriage of justice.”⁵⁷ He went on to say, “I do not know by what process of reasoning – if any – they arrive at it, but I am inclined to suspect that they were influenced, at any rate to some extent, by a feeling that a verdict in favour of accused might have an adverse affect to the persons are to be tried for castrating him.”⁵⁸ As Peter Spiller has shown, in his study on the District and Supreme Courts of the Colony of Natal, juries were extremely racially biased and were most often uninterested in cases where the accused were Indian or Black and most importantly, they resented the fact that their time was taken up by sitting in on these cases, especially since verdicts were predetermined by the powerful influence of settler racism.⁵⁹

By 1828, the Cape Colony authorities had adopted a trial by jury system as a general move towards adopting an English system of Law. When Natal was annexed in 1844, this system was adopted despite the fact that English settlers

53 PAR, RSC, 1/1/94/7/1907, Supreme Court Criminal Cases. Rex Versus Mtonga. Charged With Indecent Assault, 1907.

54 PAR, RSC, 1/1/94/7/1907, Supreme Court Criminal Cases. Rex Versus Mtonga. Charged With Indecent Assault, 1907, as cited in Riekert. ‘Race, Sex and the Law in Colonial Natal,’ 92.

55 PAR, RSC, 1/1/94/7/1907, Supreme Court Criminal Cases. Rex Versus Mtonga. Charged With Indecent Assault, 1907.

56 PAR, GH, 1185, Petition to Sir Henry McCullum, 14.3.07, as cited in Riekert. ‘Race, Sex and the Law in Colonial Natal,’ 92.

57 PAR, GH, 1185, Petition to Sir Henry McCullum, 14.3.07, as cited in Riekert. ‘Race, Sex and the Law in Colonial Natal,’ 92.

58 PAR, GH, 1185, Petition to Sir Henry McCullum, 14.3.07, as cited in J. Riekert. ‘Race, Sex and the Law in Colonial Natal,’ 92-93.

59 Peter R. Spiller. ‘The Jury System in Colonial Natal, 1846-1910,’ in *Journal of Natal and Zulu History*, 11, 1986, 1-11; and P. R. Spiller, *A History of the District and Supreme Courts of Natal, 1846-1910*. (Durban: Butterworths, 1986).

constituted only a small percentage of the population. To be able to serve as a Juror, one had to be male, between the ages of twenty-one and sixty years and possess or rent immovable property of a certain value. While government and legal officials, advocates, attorneys and doctors were excluded, Law 10 of 1871 and Law 14 of 1883 also barred African and Indian men from serving on juries. The consequences of which meant that Indian and African men and women were tried by White men who “did not understand “questions of Native language, customs, motives and feelings.””⁶⁰ Furthermore, as Riekert argues, White juries “sometimes did not address their minds properly even to cases where their verdict carried the death sentence.”⁶¹ In December of 1869, the *Natal Mercury* published an article in which a local Magistrate offered a very scornful description of jurymen in the Colony. The article read:

These individuals hold the plough, wield the hammer or the hatchet, or carry on some other useful and respectful occupation for six days in the week. Their muscular systems are in constant exercise, but their brains are rarely called on for any great exertion. They are not accustomed to read beyond the Bible and an occasional newspaper. They are still less in the habit of thinking.⁶²

Verdicts handed down by juries were dependent upon and influenced by a number of factors: the address by the judge in summing-up, newspaper reports, public opinion and sentiment, the characteristics of both the accused, the complainant, and most importantly the racial and gender categories of individuals concerned with the case. Racially biased juries operating within the small White Natal community where public sentiment against Indians and Africans was ubiquitous, often resulted in prejudiced and wrongful verdicts of guilty.⁶³

Mtonga was released from gaol on the 11th of April 1907 and in May 1907, Dempster Pare, MacKenzie, Campbell and Morgan stood accused of assault with intent to cause grievous bodily harm. Manunu and some of the other house servants had given evidence on Mtonga’s side, but the only witness on the side of the defence was Qebeni whose evidence was so unreliable that she had to be removed as a hostile witness. Two hours into the court case, the jury was unable to reach a verdict and was discharged. The following day a new trial began and the witnesses were the same as the day before, but Morgan, one

60 This was a statement made by Mr Justice Henry Connor, a puisne judge from 1858 to 1874 and Chief Justice of Natal from 1874 to 1890, in an article in the *Times of Natal*, as cited in Spiller. ‘The Jury System in Colonial Natal,’ 2.

61 Spiller. ‘The Jury System in Colonial Natal,’ 2.

62 *Natal Mercury*, 2 December 1869.

63 Spiller. ‘The Jury System in Colonial Natal,’ 4.

of the accused, chose to speak. He stated that no assault had taken place in his presence, and he didn't know of any that had happened on the day in question. On the 8th of May, the jury reached a verdict of not guilty much to McCullum's puzzlement. During the month of July in 1907, Mtonga had instructed his attorneys to claim a settlement for the sum of £600 from the five accused, which he only received part of in September that year.⁶⁴

Here is another example of the iniquitous operation of the Natal legal system; despite the evidence presented in court, including important medical forensic information, Mtonga was found guilty, while the men responsible for his castration were cleared of all charges. In *The White Women's Protection Ordinance*, Amirah Inglis characterises this type of injustice as being a reflection of the "sexual self-doubts of the colonial male."⁶⁵ A pertinent point that Riekert makes regarding this case, is that he suspects some of the fears of the White settler community may have been further intensified by the Bambatha Rebellion in 1906, which began with the murder of two White policemen in the Richmond area.⁶⁶ These instances of colonial miscarriages of justice reflect the desire of White colonialists to maintain power through the enforcement of the boundaries between the master and servant, the coloniser and the colonised.

- Rex vs Venakaya -

Hendry Millar, A. McLaughlin, J Weddell, F G Anley, M Geshan, R York Worthington, J B Ashby, W Balfour and T Jeffs were the jury impanelled for the case of Rex vs Venakaya.⁶⁷ Venakaya, a 32-year-old Indian male domestic servant, was charged with the crime of Rape as well as contravening Section 16 of Act 31 of 1903 against Ms Stella Mary Mack, aged eighteen and a half. The case was first brought to trial on the 12th of June 1918, but the first jury was unable to make a decision and was subsequently discharged. Then, on Tuesday the 25th, the trial was resumed before the honourable Justice Carter. Venakaya pleaded not guilty to the crime of rape but guilty to the contravention, which forbade illicit sexual intercourse between a White woman and a Coloured person.⁶⁸

64 Riekert. 'Race, Sex and the Law in Colonial Natal,' 95.

65 Riekert. 'Race, Sex and the Law in Colonial Natal,' 95.

66 Riekert. 'Race, Sex and the Law in Colonial Natal,' 95.

67 Please note that there are different variations on the spelling of his name. I am using the version that is used in the official government records.

68 According to Law No. 15 of 1869, the word 'Coloured,' incorporated "Hottentot, Coolie, Bushman, Lascar, or any of the people commonly called Kafirs." See PAR, NCP, 5/2/4, Law 15 of 1869, "For the Punishment of idle and disorderly persons, and vagrants, within the Colony of Natal."

On the 31st December 1917, at Otto's Bluff, Pietermaritzburg, Ms Mack and Venakaya were the only two at home. Both versions of their stories are similar, but the verdict that followed does not seem to make sense considering the sequence of events. Ms Mack stated:

I was cooking dinner. An Indian named Vankiah who works for us came into the kitchen, put something down he was carrying and seized hold of me. I struggled with him for some time, but he over powered me and raped me. I screamed for assistance but there was no one in the house. My brother being in Pietermaritzburg and my father away at work. I did not inform my brother until the 25 February 1918, as I was afraid and ashamed of what had happened. This morning Dr Walker of PMBurg informed me that I am pregnant. I charge Vankiah with rape.⁶⁹

Venakaya declared:

I wish to confess. One day three months ago, the mother of Stella Mack came away to town. Stella and I were the only persons left in the home. The passenger train came and the girl Stella told me to go and get the Post. I returned with the Post to the house. When I got back to the house the girl Stella was cutting meat in the kitchen. I gave her the Post, when she was turning to go into another room. I caught hold of her on both arms, (indicates on interpreter the manner from in front) I knocked her down and committed the crime of Rape. She struggled and I held her down to the ground. Then after the deed was done the girl said "I am going to report the matter to my mother." I was very frightened, I continued working for my mistress up to the time I was arrested and nothing was heard of it till I was arrested, I have nothing more to say.⁷⁰

From the records available at the Pietermaritzburg Archives, it is difficult to determine what came of the child and why it was that Venkaya was found guilty of the contravening Section 16 of Act 31 of 1903, and not rape or why Ms Mack was not held responsible for her part in the affair, despite the fact that the Act clearly stated "any white women or such coloured person contravening the provisions of this section shall be liable, on conviction, to be imprisoned with hard labour for a period not exceeding two years."⁷¹ Little is known about

69 PAR, RSC, 1/1/123/11/1918, Supreme Court Criminal Case. Rex Versus Venakaya. Charged With Rape, 1918.

70 PAR, RSC, 1/1/123/11/1918, Supreme Court Criminal Case. Rex Versus Venakaya. Charged With Rape, 1918.

71 See PAR, NCP, 5/3/11, Act 31 of 1903, "To amend the Law relating to Brothels and Immorality."

the aftermath of the court case, except that Venakaya had to serve two months imprisonment with hard labour and that Ms Mack eventually moved to the Transvaal and married a certain Harry Hadden.⁷² From the evidence presented though, it is clear that the only reason Ms Mack charged the house servant with rape, was as a result of her pregnancy since it would have been a heinous act of immorality for a White girl to have conjugal sexual intercourse with a man of colour in colonial Natal.

- Conclusion -

From the cases presented here, it emerges that crimes of rape and indecent assault, in comparison to other capital offences such as physical assault, murder, poisoning, and arson for that matter, allowed for a far greater degree of hearsay. As shown here, there were a variety of reasons why these domestic servants were found guilty of committing these crimes of indecent assault against their mistresses and the children of the families they cared for. From the court cases of Mudali, Duda, Mtonga and Venakaya, it is strikingly evident that it is very difficult to ascertain, with any great certainty, what transpired in the intimate interactions between mistresses and their male servants over a century ago. The highly sensationalised sexual proclivities of Indian and African men would have no doubt played a role in the decisions made by most jurors when arriving at verdicts as well as the jurors' popular understanding of the living arrangements of most Indian and African men in the Colony. In the cases selected here, all men were single and living in quarters with other African and Indian male labourers, and the jurors may have assumed that they were sexually frustrated as a result. The insidious power imbalances between the master, mistress and servant and the paranoia associated with the safety of White women and girls are perhaps contributing factors to the reasons why these men were found guilty of committing these forbidden acts of carnal knowledge. One can only assume that it was out of the desire and anxieties of settler men to control all facets of the sexuality of White women that situations such as these are borne.

Servants were essential to the construction of gender and race identities; the employment of domestics both reinforced and legitimated bourgeois notions of femininity and class superiority.⁷³ Masters and mistresses defined themselves in

⁷² PAR, RSC, 1/1/123/11/1918, Supreme Court Criminal Case. *Rex Versus Venakaya. Charged With Rape*, 1918 and TAB, MHG, 7188/66, Hadden, Stella Mary. *Born Mack*, 1966, *Surviving Spouse Harry Hadden*.

⁷³ See N. Chaudhuri and M. Strobel, *Western Women and Imperialism: Complicity and Resistance*, (Bloomington: Indiana University Press, 1992); Jacklyn Cock, *Maids and Madams: A Study in the Politics of Exploitation. Johannesburg: Ravan Press, 1984*; K. T. Hansen, *Distant Companions: Servants and Employers in Zambia, 1900-1985*, (Ithaca and London: Cornell University Press, 1989); Ann L. Stoler, *Race and the Education of Desire:*

relation to their servants, flaunting their individual intellectual and moral sophistication in contrast to their supposed uneducated and uncivilised 'menials.' Within a colonial situation where a dominant and subject people exists, the convergence of the binary categories of gender and race becomes the point of focus where notions of manliness, racial membership, sexual morality and fear of losing control are anthropomorphized and disseminated.⁷⁴ It is with this in mind that settler men fervently defined and defended the boundaries of their identity as a natural ruling race, class and sex.

This story of these servants and their masters and mistresses are but micro-histories, and sometimes it is only through these seemingly licentious social contexts that we can gain access to social histories of the more intimate aspects of colonial indenture. The architecture of social life that these court cases, letters and complaints help reconstruct is one that includes individuals that would otherwise be silenced and left out of the grand narrative of the history of this region and other parts of the empire. By analysing the lived experience of Indian domestic servants this paper has highlighted such issues as the problematic of indenture in Natal, the gendered nature of the life of indentured workers and the contrasts and comparisons with British settler life and isiZulu speaking men and women, as well as the familial, sexual and social spheres of domestic servants, have been some of the broader themes underlying this analysis. Combing through personal testimonies, depositions, court cases and complaints submitted to the Protector, offers only glimpses into what servants and masters and mistresses thought about their lives and their situations, which significantly shaped their experience of empire. In the end, though, it is a story of ordinary men and women whose lives, cultures, individualities and histories intersected with each other and the domestic and colonial nexus.

Foucault's History of Sexuality and the Colonial Order of Things, (Durham, N.C.: Duke University Press, 1995); Nupur Chaudhuri, 'Memsahibs and their Servants in Nineteenth-century India,' in *Women's History Review*, 3:4, 1994; Ann L. Stoler, 'Carnal Knowledge and Imperial Power: Gender, Race and Mortality in Colonial Asia,' in M. Di Leonardo. (ed.) *Gender at the Crossroads of Knowledge: Feminist Anthropology in the Postmodern Era*. (Berkeley: University of California Press, 1991); Ann L. Stoler. 'Making Empire Respectable: The Politics of Race and Sexual Morality in 20th Century Colonial Cultures,' in *American Ethnologist*, 16:4, November 1989, 634-660; M. Strobel, 'Gender and Race in the Nineteenth- and Twentieth-Century British Empire,' in R. Bridenthal and C. Koonz (eds.) *Becoming Visible: Women in European History*, (Boston: Houghton Mifflin, 1977). Also of considerable relevance is Susan Newton-King's study on the Cape Eastern Frontier with a special focus on violence and race and labour relations. Susan Newton-King, *Masters And Servants on the Cape Eastern Frontier*, (Cambridge: Cambridge University Press, 1999).

⁷⁴ See Martens. 'Polygamy, Sexual Danger, and the Creation of Vagrancy Legislation in Colonial Natal,' and Etherington. 'Natal's Black Rape Scare of the 1870s.'

a tissue of lies ...
