

Sirkuleer aan Landdroste: Ja/Nee

IN THE HIGH COURT OF SOUTH AFRICA (Northern Cape Division)

CASE NUMBER:312/2001

DATE DELIVERED: 22-06-2001

In the matter between:

The State

and

Jamloti Simon Molangeni

Accused

Coram: Kgomo J et Majiedt J

REVIEW JUDGMENT

MAJIEDT J:

1. The accused was convicted of a contravention of section 5(b) of Act 140 of 1992 (dealing in dagga).
He was sentenced to a fine of R6000 or 4 years imprisonment.

2. On review of the matter, I had queried the conviction on several grounds. I do not deem it necessary to repeat the queries or the magistrate's response thereto. I need, however, to make one observation and that is it is quite disconcerting to note how

the magistrate has allowed evidence of dubious relevance and admissibility to be introduced at the trial.

3. The crux of the matter in this review concerns the admissibility of evidence which forms the only basis for the conviction of the accused. This evidence was admitted at the trial on the basis that it amounted to an admission and had been made freely and voluntarily to a peace officer (a sergeant in the SAPS).

The crisp question for decision is simply this: was the magistrate correct in his finding that the oral statement of the accused amounted to an admission only? If in fact this statement amounts to a confession, the evidence would fall foul of the provisions of section 217(1)(a) of the Criminal Procedure Act, 51 of 1977 (*“the Act”*).

4. The first witness for the State was the sergeant in question, one Willem Klaaste, who is attached to the Narcotics Division of the SAPS. He testified that on 8 June 2000 he had been on duty with Superintendent Botha on the national road between Kathu and Olifantshoek. They had stopped a Kombi and found in the trailer thereof 5 bags of dagga.

The driver of the Kombi had no knowledge of the dagga. The passengers of the Kombi were all taken to the police station at Olifantshoek and were requested to position themselves next to their own luggage. Botha enquired as to the ownership of the 5

bags in question and nobody responded. Upon a further search of the kombi, a purse containing dagga was also found.

Botha then informed the passengers that they were all under arrest and explained their rights to them. The record does not specify what rights were explained to the passengers. There was no luggage next to the accused.

The following then appears on the record: -

“I asked the accused where his bag is, he answered freely and voluntarily, no promises were made to him. Accused pointed out the bag that was found in the taxi and said these other bags he was taking to somebody in Upington.”

The above quoted extract is the subject of the enquiry as to whether we are dealing with a confession or an admission.

To continue with the facts and the evidence – on the basis of this declaration the accused was convicted. The dagga was weighed in the presence of the accused and was found to weigh 146.77 kilogram.

5. Superintendent David Botha, also attached to the Narcotics Division of the SAPS, testified next. He confirmed Klaaste’s evidence about having stopped the Kombi and having found the bags containing dagga.

At the Olifantshoek police station none of the passengers were

prepared to admit that the bags with dagga belonged to them. He found a parcel with a small quantity of dagga and dagga seeds when he had conducted a further search of the Kombi. He placed all the passengers under arrest and explained their rights to them (again one is left in the dark about what these rights were).

Botha confirmed the evidence of Klaaste as to what the accused had said, when he was asked where his luggage was.

6. In cross-examination, repeated in his evidence, the accused denied that he was aware that dagga had been found in the Kombi or that he had admitted that the dagga was his. He claimed that he did not understand Afrikaans, that a soldier had been used as an interpreter and may have interpreted incorrectly.

It is not necessary, given the conclusion which I have reached herein, to make a finding as to whether the accused's version is reasonably possibly true.

7. It is now trite law that, in considering whether an accused's statement amounts to a confession, one is required to adopt an objective approach.

See: **S v Yende** 1987(3) SA 376(A) at 372 D-E;

S v Motloba 1992(2) SACR 634 (BA) at 638f.

A confession is generally accepted to be "*an unequivocal*

acknowledgment of guilt, the equivalent of a plea of guilty before a court of law”, per de Villiers ACJ in

R v Becker 1929 AD 167 at 171.

See also: ***S v Yende***, *supra* at 372C-F.

9. In considering whether the statement amounts to a confession, regard must be had to the surrounding circumstances;

See: ***R v Duetsimi*** 1950(2) SA 674(A) at 678-679.

Such surrounding circumstances must, however, only be considered so as to place the words of the accused in its correct perspective;

See: Hiemstra: Suid-Afrikaanse Strafproses, 5th ed at 545.

10. The statement of the accused *in casu* is to be considered in conjunction with the following surrounding circumstances to place it in proper perspective:

- a) a substantial quantity of dagga had already been discovered;
- b) no one had accepted ownership of the bags in question at the time the statement had been made;
- c) as requested all passengers, except the accused, were standing next to their luggage – the accused had no luggage.

Given these circumstances, I am of the view that the statement and accompanying pointing out by the accused amounted to a confession and is inadmissible as evidence, in terms of the provisions of section 217(1)(a) of the Act.

11. I must express my appreciation for the well researched and thorough legal opinion furnished by Adv. C.G. Jansen of the Office of the Director of Public Prosecutions. It has been of considerable assistance in this matter.

12. The conviction is unsound in law and cannot stand.

The accused's conviction and sentence is set aside.

S.A. MAJIEDT
JUDGE

I agree

F.D. KGOMO
JUDGE