

**DIVISION).**  
**AFDELING).**

**APPEAL IN CRIMINAL CASE.  
APPEL IN KRIMINELE SAAKI.**

**Appellant.**

147545

**Respondent.**

**Appellant's Attorney**  
**Prokureur van Appellant**

**Respondent's Attorney**.....  
**Prokureur van Respondent**

**Appellant's Advocate**  
**Advokaat van Appellant**

**Respondent's Advocate.....**  
**Advokaat van Respondent**

Set down for hearing on:—  
Op die rol geplaas vir verhoor op:—

9.45-10.35 - CAV

In the matter between:

MAKO LEPHEANA ..... Appellant.

and

REGINA ..... Respondent.

CORAM: Centlivres, C.J., De Beer, Reynolds, Brink et  
Hall, JJ.A.

HEARD: 17th November, 1955.      Delivered:- 24-11-1955

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J U D G M E N T.

Hall, J.A. :-      The appellant was a Native Constable in the South African Police at Moguntia in the district of Harding. He was convicted by a magistrate of the crime of extortion, and sentenced to three month's imprisonment. He appealed unsuccessfully to the Natal Provincial Division which granted him leave to appeal to this Court.

The evidence showed that in January, 1954, the appellant was sent out to investigate a complaint and at the kraal of one Vokovo he arrested Mampongo, who was Vokovo's wife by native custom, on a charge of being in illegal possession of an intoxicating concoction called isityimiyana. He then told her that that brew would cost her a lot of money, but if she would pay £10. he would release her and suggested that she should endeavour to find the money.

/ She ...../2.....

She sent for Vokovo and the Appellant told him the same thing. Vokovo went away and came back with £5 which the appellant refused, saying <sup>Kak</sup> he wanted £10. Vokovo went away, came back with £10 and paid it to the appellant, who then released Mampongo. The appellant kept the money for his own use.

In the heads of argument the appellant attacked the decision of the magistrate on the facts, but <sup>his Counsel</sup> ~~he~~ very wisely abandoned that ground of appeal almost at the outset of the argument. As a further ground of appeal he contended that, because Mampongo was under arrest at the time the money was demanded and accepted, no question could arise of the appellant inspiring fear in either Mampongo or Vokovo, for both of them would have expected that the arrest would be followed by prosecution, and possibly conviction and punishment. From this it followed that illegitimate pressure, which is an element of the crime, could not have been applied by the accused. As authority for this contention ~~Counsel~~ for the appellant relied upon the judgment of Jennett, J. in Rex v. Sigonga, 1951(1) S.A. 266 (E.), in the course of which <sup>the learned judge</sup> ~~he~~ said: "It seems to me that where the pressure takes the form of threats the

'question whether or not it is illegitimate must be  
'determined by deciding whether or not the carrying out  
'of the action threatened would be lawful cf. Rex v.  
'Sharp, 1935 T.P.D. 418; Rex v. Farndon, 1937 E.D.L. 180.  
'The fact that there was a demand for money, etc., known  
'by the person demanding it not to be due, is relevant to  
'establish the element of impropriety but cannot, I think,  
'be properly used to test the legality of the pressure.

'The basis of the offence is the inspiring  
'of fear in the mind of the victim, which fear induces  
'him to comply with the demand made. If the fear is not  
'inspired unlawfully it seems to me that extortion is not  
'committed. In the present case the fear which may <sup>have induced</sup> Nofine  
'to part with 10/- was the fear that the arrest would be  
'continued and be followed by the laying of a charge against  
'her by the appellant. The fear was there whether the  
'appellant thereafter demanded money or not and it arose  
'as the result of the lawful arrest. The lawfulness of  
'its origin cannot be altered even if the appellant expressly  
'threatened to continue the arrest or to lay the charge.  
'If the arrest was continued by appellant or the charge

'laid by him, the appellant would not have acted unlawfully".

The facts required to be proved in order to establish the crime of extortion were the subject of a recent judgment by Ramsbottom, J., in R. v. N., 1955(2) S.A. 647 (T.), in which he made a careful analysis of all the relevant decisions which are to be found in the reported cases. I would <sup>just</sup> ~~first~~ say, with respect, that this judgment contains such an exhaustive survey of the authorities, and the reasons it sets out are so clear and concise, that I feel that it will not serve any useful purpose for me to endeavour to add to it. The learned Judge couches his conclusion in the following terms:-

'With great respect I am unable to agree with  
'what was said by Jennett, J., in Rex v. Sigonga in the  
'passage I have quoted. I think that it is inconsistent  
'with the decisions of the Appellate Division and the  
'authorities quoted therein. A constable who has arrested  
'a person, lawfully, has that person in his power. He  
'is in a position to threaten the greater evil of laying  
'a charge and having the arrested person prosecuted; that  
'threat would inspire fear in the mind of a guilty person.

/ 'There...../5....

'There is nothing unlawful for a constable who has arrested  
'a person to say "I shall charge you with an offence and  
'have you prosecuted and you will be punished", but it  
'is unlawful for the constable to say "I shall charge you  
'and have you prosecuted unless you pay me money". That is  
'the application of "illegitimate" or "illegal" pressure  
'to extort something that is not due".

It is sufficient for me to say that,  
again with respect, I am entirely in agreement with this  
conclusion.

A point which arose in the course of  
the argument was whether the illegitimate pressure which  
the appellant applied through his arrest of Mampongo and  
his intent to have her prosecuted operated in such a way  
as to compel her ~~reputed~~ husband, Vokovo, to pay over to  
him the sum which he demanded for her release. It is  
clear from the evidence that the appellant made it plain  
to Vokovo that, unless he paid the money, his wife would  
be prosecuted and punished, and that he would suffer the  
inconvenience of being deprived of her company. I am of  
opinion that a threat of harm to his wife made to a

/husband...../6.....

husband with the object of obtaining money from him under the circumstances of this case, is consistent with the illegitimate pressure which is an element in the proof of extortion.

For these reasons the appeal is

dismissed.

*E. J. Hall*

Concurred:

*Centlivres, C.J.*

*Reynolds, J.A.*

*de Beer, J.A.*

*Brink, J.A.*

*[Signature]*