

JUDGMENT BOTTOM COURT. 18/11/76.  
ON BAIL

87/75

O.P.A.

J. 448.

In the Supreme Court of South Africa  
In die Hooggeregshof van Suid-Afrika

( Appel ) DIVISION).  
AFDELING).

APPEAL IN CRIMINAL CASE.  
APPEL IN STRAFSAAK.

SUSAN MHLONGO

Appellant.

versus/teen

DIE STAAT

Respondent.

Appellant's Attorney John N. Nkomo Respondent's Attorney Aduna P.G. Tshuro  
Prokureur van Appellant Prokureur van Respondent

Appellant's Advocate G. A. Alexander S.C. Respondent's Advocate A.P. Roux  
Advokaat van Appellant Advokaat van Respondent

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

(WPA) Coram: Holmes, Muller et Kotzé J.J.A.

9.45 am ————— 11.00 am  
11.15 am ————— 11.45 am

S. A. N.

The Court dismisses the  
said appeal.  
(Mitgesproke per)  
Kotzé. AR  
18/11/76.

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

SUSAN MHLONGO

Appellant:

and

THE STATE

Respondent:

Coram: HOLMES, MULLER, et KOTZÉ, JJ.A.

Heard: 5 November 1976

Delivered: 18 November 1976

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J U D G M E N T

KOTZÉ, J.A. :

Two extraordinary transactions are the source of the prosecution of which this appeal is the sequel. The basic facts which constitute these transactions are not in dispute in the appeal and I shall state them as briefly as I

can,.....!./2

can't.

The first transaction occurred during the first half of October 1974. Lawrence Maghanjana and one Jacob called on J.P. Louw, a businessman, at his Johannesburg office on Wednesday 2nd October, 1974. He introduced them to his employee, Jehuda Lewit. After certain negotiations with Lawrence, Jacob, a woman named Marvellous and two abortive trips to Coronationville coloured township on the 4th and 7th October, Louw and Lewit drove to a house in Eldorado Park on Friday the 11th. Negotiations for the purchase of a quantity of cut diamonds ensued with a woman introduced to them as Rosella. It was agreed that the diamonds would be bought from Rosella for a cash sum and that the transaction would be finalised on the forthcoming Monday (the 14th). A further meeting took place on the 14th and culminated in Lewit handing R8 000 in cash to the aforementioned woman in the living-room of the house. She walked into an adjoining bedroom ostensibly to fetch

the...../3

the diamonds. Shortly after this a man in police uniform and two men in plain clothes entered the house, caused a diversion and the woman disappeared from the scene.

The second transaction took place on the 21st October 1974. Four days prior to that Paul Rananine, a client of Republic Cine Services with which R.J. Audagnotti and J.L. Hendricks were associated, approached Audagnotti at his place of employment in Johannesburg and suggested to him that he might purchase diamonds from a citizen of a foreign neighbouring country. On the following day Paul took Audagnotti and Hendricks to a house in Orlando West. They entered the sitting-room where they were introduced to a woman whose name was said to be Margaret. Samples of the diamonds were exhibited by the woman. She also produced a document which she claimed to be a diggers permit held by her and her husband in regard to their "diggings in Swaziland". She expressed her willingness to sell a quantity of diamonds at a price of R22 000-00 but

intimated...../4

intimated that she would part with the gems against payment

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of half of the purchase price on condition that she would

be paid the balance at Audagnotti's house after he had

them valued and been satisfied as to their quality. A-

greement was reached and it was arranged that the transaction

would be concluded on the 21st October. On that date,

Audagnotti and Hendricks having borrowed R10 000-00 from

one Khourie, proceeded to the house in Orlando West in separate

cars. Paul accompanied Audagnotti in his car. Margaret

was sent for. The abovementioned amount was handed to her

inside the house. She left the room and entered an adjoin-

ing room. A man in police uniform and five other men in

plain clothes entered the house and caused a diversion in

much the same way as on the 14th October in the case of the

first transaction. Paul was arrested by the man in uniform

on an alleged charge of contempt of court. Meanwhile

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Margaret disappeared from the scene. Audagnotti and Hen-

dricks commenced a search. They met Paul, the uniformed

man and a third person walking away from the police station.

An argument arose. An orange Vauxhall motor car arrived. The driver was said to be sergeant Mobutu. He took the uniformed man and Paul to the police station. They were followed by Audagnotti and Hendricks. The firstmentioned spoke to Warrant Officer Van Zyl and expressed a desire to see Paul. He did not mention the loss of the R10 000-00 or any of the circumstances surrounding the said loss. It is not necessary to describe certain events which supervened thereafter.

The above, as I have indicated, is but a brief outline of the circumstances surrounding the two transactions. A concession, properly and realistically made by Mr. Alexander on behalf of the appellant, that it is incontestable that the same woman was the culprit on each occasion renders it unnecessary to refer to a large number of further details relevant to the two transactions.

A man, Eric Mokhwiti, and the appellant appeared in the Witwatersrand Local Division before ELOFF J. in a

summary...../6

summary trial inter alia on charges of theft of R8 000-00 and R10 000-00 respectively from Lewit and from Audagnotti and Hendricks. (Mokhwiti was alleged to be the man who appeared on the scene in police uniform on the 14th and 21st October). Both were found guilty notwithstanding their pleas of not guilty. The appellant was sentenced to five years imprisonment on each count subject to a direction that the total period served should not exceed seven years in all. An appeal has not been noted by Eric Mokhwiti. The appellant now appeals against her convictions and sentences upon leave granted by the trial Judge.

The sole issue on appeal is whether the appellant is the woman who received the amounts of R8 000 and R10 000 on the 14th and 21st October, 1974 respectively. The witnesses upon whose evidence the learned Judge found affirmatively on the State's contention that the identity of the appellant was established beyond reasonable doubt are Lewit in regard to the first transaction and Audagnotti, Hendricks and Paul in regard to the second transaction. In the course of their evidence these witnesses strongly asserted...../7

asserted that the appellant was the culprit who took the money on each of the occasions to which they testified.

The State sought to reinforce the weight of these assertions by adducing evidence of an identification parade which was held at the Kliptown Police Station on the 24th October 1974 under the charge of Lt. Olivier.

The appeal brought to this Court is based on the contention that - due regard being had to shortcomings in the evidence of the witnesses mentioned above, flaws surrounding the conduct of the identification parade and the general satisfactory nature of the appellant's denial in evidence that she was the offender - proof of identity beyond reasonable doubt could not have been found.

It will be convenient to deal, in the first place, with the criticisms directed against the manner in which the identification parade was conducted and thereafter to consider the validity of the submission that there are grounds for mistrusting the evidence of identification given by



Lewit, Audagnotti, Hendricks and Paul.

The evidence of Lt. Olivier was to the following effect: There were thirteen woman on the parade as shown on a photograph, exhibit C. There were two suspects viz. the appellant and Grace Dlamini. Initially they respectively took up positions number 7 and 11. Hendricks was called in and pointed out the appellant as the female offender. The appellant changed her position to number 2. Grace retained her position. Olivier frustrated an attempt by the appellant to put on a pair of borrowed spectacles. Audagnotti was brought in and pointed out the appellant. She retained position number 2. Grace changed to position number 9. Lewit was brought in and pointed out the appellant with hesitation ("met aarseling"). The appellant changed her position to number 7. Grace changed her position to number 11. Louw was brought in and failed to identify anyone.

Mr. Alexander referred to a number of features in

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the conduct of the parade the cumulative effect of which, in his submission, rendered the parade unreliable, seriously impaired the cogency of the pointing out and detracted from the weight of the witnesses' assertions relative to the identity of the appellant. Most of the criticisms raised before us were also raised at the trial. The trial Judge considered these and came to the conclusion that "none of the objections which were raised are of such a nature that I can conclude that the value of the parade was in any sense lessened thereby". The irregularities contended for by counsel are as follows:-

1. A single door was used through which the identifying witnesses entered and left the yard where the parade was held. As a result, so it was argued, the normal safeguard that the departing witness and the succeeding witness be precluded from talking to each other, was weakened. The trial Judge dismissed this objection by pointing out that constables Mans and Theron, who respectively took the witness

to and from the parade, gave satisfactory evidence that there was no opportunity of communication and that the witnesses themselves "were positive that they did not speak to each other after they left the parade".

2. Lt. Olivier denied, during cross-examination, that there was a peep-hole in the door leading to the parade area. This, the prosecutor conceded in due course, was a mistake on Olivier's part. In the absence of any evidence that the peep-hole was misused, Mr. Alexander confined his criticism to a contention that the existence of the aperture "theoretically allows one outside to observe what is happening on the parade".

3. A conflict between Olivier and Mans remained unresolved. Olivier stated that he notified Mans by means of a knock on the interleading door to let in the witnesses whereas Mans said that Olivier passed through the door and instructed him to let in the witnesses. Counsel wisely did not elevate this relatively unimportant conflict to the

status of an irregularity but made the submission that differences of this kind "should not exist". I am of the view that this feature is one of slight significance and amounts to no more than the type of discrepancy which one often encounters between perfectly honest witnesses.

4. The appellant was the only person on the parade with a bandage around her ankle - a circumstance which, it was submitted, reduced the safeguard provided by the presence of other persons on the parade with characteristics similar to the suspect. The photograph (exhibit C) bears out the finding of the learned Judge that it was not "an extraordinary feature, such as would prompt an uncertain witness to single her out".

5. Audagnotti and Hendricks testified that at the parade, the appellant had a white substance - powder or cream - on her face. The appellant and Olivier denied this. Counsel's submission that this feature "must have made her stand out like a beacon" seems to me to be too strongly

stated...../12

stated. On the assumption that the true version is that testified to by Audagnotti and Hendricks, it seems improbable to a high degree that a striking result was achieved. It has not been suggested that Olivier's denial was a dishonest denial. At best he failed to observe the white substance and the clear inference is that the self-applied substance did not serve to draw attention to the appellant.

6. Louw, Lewit, Audagnotti and Hendricks were assembled in a room prior to the identification parade. They discussed their experiences and the person they were being called to identify. Moreover a sketch, purporting to be a sketch of the culprit, drawn shortly after the 14th October by Louw, who possesses artistic talents, was freely exhibited and seen by the other three persons. The learned trial Judge dealt with these features as follows:

"Now Louw and Lewit certainly discussed her identity, and the production of the sketch of the lady whom he had seen by Louw, which is Exhibit "N", was said to

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be a joint effort. Moreover, the drawing was shown to Audagnotti and Hendricks prior to the parade. This is unfortunate, but I do not think that anything to the detriment of Accused No 2 was occasioned thereby. I studied the face and appearance of Accused No 2 carefully during this trial, and I do not think that Exhibit "N" reflects a good resemblance of her. While it portrays negroid features, with high cheekbones and while it shows her to be - as she is - stoutish with a somewhat rounded face, her jowls are not as pronounced as it is revealed in the sketch, her lips are not as well filled and thick, her nose has not got a bulbous ridge and it is flat. I can well understand why the sketch is, as Louw himself said, wide off the mark. It requires rare skill and talent to capture on paper the likeness of a person posing for an artist or of whom he has a photograph or photographs, but rare indeed must be the artist who can produce the essential characteristics of a person whom he saw a few days ago. The mental impression which a person retains of the face of someone whom he had seen previously is not something that readily lends itself to a precise verbal description, or to a good pictorial representation. That does not mean that a person will not be able immediately to recognise someone whom he had seen, possibly even briefly, long before, even though he cannot define those things captured by his memory. In

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this case the pictorial representation was a poor one, and it escapes me how Audagnotti or Hendricks could have thought that it was good. I therefore again conclude that this feature of the case did not enure to the detriment of the parade as a test of identification.

As regards discussions between the witnesses, it was admitted by the witnesses themselves that when they were waiting to go into the parade area, they compared notes. They said that they laughed ruefully at how they had been duped; remarks such as "I shall never forget that face" were possibly made. It was suggested by counsel in cross-examination that things might have been said appertaining to specific features of the suspects. The witnesses did not recollect having done so but the possibility cannot entirely be excluded that something was said relative to the appearances of the suspects. Again, however, since Accused No 2 has very little which can be verbally described so as to give anyone an idea who to look for, or to distinguish her from anyone else on the parade, I do not think that the possibility of a discussion had any harmful result. I do believe the evidence of Lewit, Audagnotti and Hendricks when they said that they identified her on their own recollection of her."

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The considerations referred to in 1,2,3 and 5 can hardly, in the particular circumstances of this case and in

the light of the findings of the trial Judge, be regarded as sources of assistance to the identifying witnesses and do not, in my view, either singly or jointly detract from the value of their identification at the parade. The circumstances referred to in 4 and 6, more especially the latter, are more serious. (Cf. Rex v. W., 1947 (2) S.A. 708 (A.D.) at 712-3; R v. Nara Sammy, 1956 (4) S.A. 629 (T) at 630 A-G). The learned Judge considered these criticisms and I have quoted the relevant extracts from his judgment. To this may be added the observation that as Louw found it impossible to point out the appellant at the parade, the sketch could hardly have been a helpful aid to anyone. In my view the approach of the learned Judge was a correct approach and his conclusion that the objections raised are of such a nature that the value of the parade was not lessened thereby cannot validly be faulted.

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I now pass to the question of the trustworthiness and honesty of the witnesses.



In regard to Hendricks and Audagnotti the trial Judge found, with every justification, that they must have known that the proposed transaction was tainted and that their initial reaction when confronted by Warrant Officer Van Zyl was designed to suppress that fact. It was found furthermore that they concealed the purpose of the loan from Khourie and even in their sworn testimony at the trial revealed a lack of candour in regard to the transaction which they had set out to conclude. In the light of these reservations, the main contention advanced against the acceptance of the evidence of Audagnotti and Hendricks was that the trial Judge committed a grave error in declining to find as a reasonable possibility that they saw the appellant in police custody the day before the holding of the identification parade and that their identification of the appellant should accordingly have been treated as worthless. In order to appreciate this submission, which was referred to in argument as an essential issue, it is necessary to refer to the relevant...../ 17

relevant facts. It was established beyond doubt that the two witnesses were at John Vorster Square on the 23rd October for the purpose of attending an identification parade; that they were sitting in a blue Valiant car opposite the entrance to the building; that the parade could not be held on that day and it was furthermore not disputed that the appellant and Grace were together taken from John Vorster Square in police custody to Lt. Swart's adjoining car in order to be taken to Kliptown. It was put to Audagnotti and to Hendricks, during cross-examination, that the appellant alone was the source of the information that they were at John Vorster Square on the day in question. They, however, denied that they saw the appellant. I interpose to mention that when the appellant came to testify, she said that both witnesses looked at her and, furthermore that the escorting policeman executed a movement designed to attract attention to her and Grace. The movement was executed about three times and consisted of placing the hands together and then swinging them outward in a

horizontal movement. In dealing with the witnesses' presence at John Vorster Square, the trial Judge remarked that it seemed improbable in the extreme that the appellant saw them. It was contended that the learned Judge committed a grave error when, in the course of his judgment, he offered a speculative explanation which was at no stage put to the appellant:

"Accused No 2, even on her account did not seem to lack relations and helpers, any one or more of whom could have heard in some way or another of the visit of Audagnotti and Hendricks to John Vorster Square on the day in question, and who could have informed her of the fact. The same goes for the fact that Audagnotti went around in a blue Valiant motorcar."

The learned trial Judge was, in my view, not justified in disbelieving the appellant's evidence that she saw Audagnotti and Hendricks at John Vorster Square on the strength of the assumption that the knowledge of their presence was imparted to her by relations and helpers. This was,

however,...../19

however, not the sole reason for rejecting the possibility that Hendricks and Audagnotti saw her. One of the reasons why the learned Judge doubted her veracity was that she similarly testified that she saw Lewit at John Vorster Square on that occasion - an allegation which was not put to Lewit during cross-examination.

But above all, the learned Judge essentially based his reason for holding that Audagnotti and Hendricks did not see the appellant on an acceptance of their evidence. It is true, as I have pointed out, that these two witnesses were far from candid and indeed suppressors of the truth in regard to the circumstances surrounding their dull-witted conduct in dealing with the "seller of the diamonds". The learned Judge, as I have also mentioned, realised this fully and evaluated the remainder of their evidence in the light thereof and with due regard to the need to approach their evidence with caution. I quote three passages from the judgment:-

"I shall.../20

"I shall later on deal with the reliability of Audagnotti and Hendricks more fully and for reasons then to be given, I think that their conduct was in certain respects suspicious, and revealed an endeavour to mislead. I have to view their testimony with caution, but in regard to the issue now under discussion I believe that I can safely accept their word."

"I now turn to Audagnotti and Hendricks.

Here again the point was made that they must have thought that the proposed transaction was at least tainted. I think that that is probably correct, for it is unusual for a black lady from an adjoining state to sell diamonds in the manner described in evidence. Their conduct after the theft reveals a strong desire to conceal the fact that they had paid money on the deal in diamonds, and it might be charitable to them to say that they were lacking in candour when they told Warrant Officer Van Zyl that they were in search of a film. Their conduct cannot be reasoned away on the simple basis that they were embarrassed at having been tricked. It is more probable, in my view, that they wished it not to be known at once what they had come to do in the township. Even in the witness box they were not candid about it - they said it had nothing to do with the Police. And the fact that they chose not to tell Khourie, who advanced them the R10 000

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what it was for reveals a propensity to conceal facts when it suits them.

Of the two witnesses, I found Hendricks to be the franker. He appeared to be a shy person, by way of contrast to the somewhat voluble Audagnotti, and he admitted, albeit sometimes with a little prodding and a shy smile, where they had not acted properly. The circumstances require that their evidence of fact relevant to the identification parade should be properly tested and confirmed, and viewed with caution."

"I certainly disbelieve the concomitant story of the movements made by the constable, whose sole function, it would seem, was to escort the two woman to the waiting car of Lieutenant Swart. But more important, I believe the witnesses for the State who say that they had not seen her. Several factors support this view of their evidence."

A further reason given by the trial Judge for accepting the evidence of Audagnotti and Hendricks in preference to that of the appellant is the following: Grace bears a marked resemblance to the appellant. Exhibit C makes that clear. Both are stout. Both have full faces. At the identification parade both wore headcloths and blankets

round the waist. Yet neither Audagnotti nor Hendricks pointed out Grace who, it is common cause, was with the appellant at John Vorster Square.

Lastly the trial Judge found the appellant an unsatisfactory witness in material respects as the following passage from the judgment demonstrates:

"Accused No 2 gave evidence and denied that she had anything to do with the offence. In chief she created the impression that she would be unable to say what she did on any of the two dates mentioned in the indictment, but in cross-examination she gave more details of her movements. She said that since both those days are Mondays, and thus washdays, she would be at her house for the whole of the morning, and remain at her home in the afternoon to prepare food for the evening meal. She said that she was not away from house on any of those two days.

She also dealt with the evidence given by Lieut Swart who arrested her. He said when giving evidence, that he approached her and said that it was alleged that on the 14th and 21st days of October respectively she had stolen R10 000 and R10 000 and he gave her the opportunity of making a statement. She says that when she was arrested, Swart simply said that she stole

R20 000, that she is guilty, and she must make a statement. This seems to me to be unlikely, and I accept the evidence of Swart that he said what the allegations against her were, and that she refused to answer any questions whatsoever. For this she cannot really be blamed, because it was her right to say or not to say anything. Where I do think that she was positively untruthful was in regard to the episode I have discussed about her seeing Audagnotti, Lewit and Hendricks at John Vorster Square. I also said that I disbelieve her about the pointing out by Lewit. I think it would therefore be correct to say that she was in material respects not a satisfactory witness. In any event, in my judgment her denials cannot outweigh the totality of the identifying evidence against her."

To revert then to the approach of the learned Judge. Several reasons are given for accepting a version adverse to the appellant. One of those is an unacceptable one whereas the remaining reasons are, regard being had to the frequently stressed advantages enjoyed by a Court of first instance, not open to objection. The unacceptable assumption is not, in my view, to be regarded as a misdirection.



It rather falls to be clasified as "unconvincing reasoning" as contemplated by SCHREINER, J.A. in R v. Bezuidenhout, 1954 (3) S.A. 188 (A.D.) at 198 D-E. In the present case the valid reasons advanced in the judgment are both persuasive and convincing. In my view they are sufficient to justify the acceptance of the testimony of Audagnotti and Hendricks that they did not see the appellant in custody the day before the identification parade.

Dealing with Lewit's evidence, much was made of Olivier's testimony that he identified the appellant with hesitation. The submission was that such conduct could hardly inspire confidence. This criticism disregards the fact that Lewit, a highly emotional man who was greatly distressed at what he termed the loss of his "life's savings", explained his conduct by saying during cross-examination:

"Sir, when I saw this woman I thought I'm going to have a heart attack. I was trembling altogether ... I trembled the whole time ... The main point is that I identified

the woman amongst the other, doesn't matter that I touched in - matter whether I touched her in a strong way or just in a light way."

The learned Judge considered a number of criticisms which were directed at Lewit and concluded:

"Lewit gave evidence through an interpreter and it was more difficult to evaluate his demeanour. Nevertheless, apart from the criticisms I have named, I find no fault with him as a witness, and although in approaching him I propose to exercise caution, I can and do say that he struck me as being, on matters of fundamental importance, a reliable witness."

The witness Paul testified that his lodger, Peter Moloto, introduced him to the appellant who, in turn, requested him to find a purchaser for her diamonds. That, according to him, led him to call on Audagnotti. Peter, who was called as a defence witness, contradicted Paul's evidence. The finding of the learned Judge in regard to Paul is as follows:

"His story as to the introduction to accused No2 was refuted by that of Peter Moloto who was called on behalf of Accused No 2.

Peter...../26

Peter Moloto entered the witness box under a bit of a cloud, because he was serving a period of imprisonment for some crime, but even without his evidence I find that Paul's evidence, particularly having regard to his disappearance in the inexplicable circumstances referred to, renders it very probable that he was an accomplice. I shall view his evidence with extreme caution, and act upon it only to the extent that it is adequately corroborated."

A further criticism, of a general nature, has been directed against the complainants: The appellant testified that at the material time she walked with a pronounced limp as a result of a broken leg which was treated at the General Hospital. The complainants did not notice a faulty gait during the various meetings with the culprit. Indeed their evidence suggests that the person concerned moved in an agile way - at least in accomplishing her escapes. It was submitted that in the absence of rebutting evidence from the General Hospital the trial Judge should have doubted the reliability of their evidence - an argument on which no

specific...../27

specific finding has been made.

In regard to the last mentioned contention it should perhaps be remarked that criminal trials are often not presented with absolute perfection. It nevertheless remains the duty of the trial court to consider the vital question of whether guilt has been established beyond all reasonable doubt on the totality of the evidence presented to it. In the present case the sole issue was one of identification in relation to which HOLMES, J.A. said the following in S v. Mthetwa, 1972 (3) S.A. 766 (A.D.) at 768 A-C:

"Because of the fallibility of human observation, evidence of identification is approached by the Courts with some caution. It is not enough for the identifying witness to be honest: the reliability of his observation must also be tested. This depends on various factors, such as lighting, visibility, and eyesight; the proximity of the witness; his opportunity for observation, both as to the time and situation; the extent of his prior knowledge of the accused; the mobility of the scene; corroboration; suggestibility; the accused's face, voice, build, gait, and dress; the

result...../28

evidence of Paul Rananine. An identification parade was held within days of the commission of the offences and serves to add strength to the identification. The appellant's recognition of Audagnotti and Hendricks at John Vorster Square suggests prior acquaintance. The incontestability of the inference that both offences were committed by the same female person lends a measure of reciprocal corroboration to the identifying witnesses.

The concurrence of the abovementioned factors in an appeal on fact preclude a finding that the conclusion to which ELOFF, J. has come is wrong. It follows, in my view, that the appeal against the conviction must fail.

In regard to sentence it has been submitted that an effective sentence of seven years on the appellant, who was 42 years of age at the date of the trial, is disturbingly inappropriate. The learned Judge took into account that the appellant was convicted on charges of illicit liquor dealing and the unlawful possession of dagga in 1967 and

1969 respectively. In passing sentence the learned Judge  
said:

"The crime which you committed is one which has all the elements of dishonesty and trickery. It is true that the victims of the crime were persons who were out to make a quick profit and that they were not innocents but on the contrary probably persons who were prepared to enter into a deal which might well have been tainted.

But, that is not too much of a factor in your favour, for they are in the position of weaklings whom you endeavoured to seek out and use for your scheme.

It is obvious that these two crimes were carefully planned and well thought out. The schemes might well have succeeded had it not been for a few unexpected twists of fortune. As against that, a factor which I do consider in your favour is the fact that I have made an award of repayment of the money which you have stolen. But again, it might be argued that that is an obligation which you carry in any event, and I suppose a realistic view of the matter would be that it is unlikely that the complainants will recover the money which has been stolen. I say, to put it no higher, that it is at least questionable whether the judgment will not be an empty shell which will give cold

comfort...../31

comfort to the persons in whose favour it was made.

It is necessary that I should impose a sentence which will, in the interests of society, serve as a deterrent to all persons who might be minded to commit the same sort of crime, and I would be failing in my duty if I did not impose a substantial sentence."

The trial Judge considered it likely that, but for the appellant's influence, Eric Mokhwiti - a young man - would not have been associated in the crime.

Mr. Alexander stressed that the complainants are not persons of impeccable character and thereupon based the submission that the element of retribution is less compelling in the instant case than in the type of case where harm is done to an innocent person and that the sentence imposed in the Court a quo should be ameliorated.

I am prepared to assume in favour of the appellant that she should be regarded as a first offender. But regard being had to the features of the case which have been

stressed...../32

stressed by ELOFF, J. in the passage quoted above, and which  
are relevant and proper considerations, I am not persuaded  
that the sentence is disturbingly inappropriate.

The appeal is dismissed.

G.P.C. KOTZÉ 18/xi/76.  
G.P.C. KOTZÉ

HOLMES J.A. )  
MULLER J.A. )      concur