Case No. 239/93

IN THE SUPREME COURT OF SOUTH AFRICA

APPELLATE DIVISION

In the matter between:

S CLOETE Appellant

and

THE STATE Respondent

CORAM: E M GROSSKOPF, EKSTEEN, NIENABER, JJA

HEARD: 15 February 1994

DELIVERED: 17 Maart 1994

J U D G M E N T E M

GROSSKOPF, JA

The appellant, together with one Jansen ("the first accused") was charged with murder and attempted robbery in the South-Eastern Cape Local Division sitting at Port Alfred. After a trial before Sutej J and assessors they were found guilty as charged by a majority of the court. One assessor dissented, holding that the two accused should, on the murder charge, have been convicted only as accessories after the fact. The appellant was sentenced to 13 years' imprisonment on the murder charge and four years' imprisonment on the charge of attempted robbery. The two sentences were ordered to run concurrently. With the leave of the trial judge the appellant now appeals against his conviction on the murder count.

The State evidence was briefly as follows. Const Baatjies testified that on 6 December 1987 he was taken by an informant from the old Seaview road in Port Elizabeth to a point where he found the body of the deceased lying in the

bushes. To reach this point he had to walk along a footpath through the bushes leading to some small-holdings where the deceased had been living. He and his informant followed this path for about 100 metres. There he saw signs of a struggle on the ground and in the vegetation. From this point Baatjies and the informant left the footpath and had to traverse rough terrain for about another 100 metres before reaching the spot where the corpse was. There were signs that something had been dragged through the bushes along this stretch. The corpse of the deceased was lying on its stomach. The lower part of the body was naked. The deceased's hands and feet were bound with strips of blue material. A piece of the same material was tied tightly around the deceased's mouth. This blue material was clearly obtained from the deceased's overall, which he had been wearing on the day of his death. Baatjies had found further pieces of the overall while he was walking towards the spot where the body was found. Baatjies expressed the view that one person would not on his own have

been able to drag the deceased from the footpath to the point where the corpse was found.

An autopsy was performed by Dr I Lang, the Senior District Surgeon of Port Elizabeth. His main findings were that there had been bleeding into the muscles of the neck and into the muscles of the pharynx, and that the deceased had sustained a fracture of the right horn of the hyoid bone. He concluded that death had been caused by the application of a constricting force to the neck. There was, however, he considered, also a slight possibility that the cause of death was suffocation caused by the cloth tied around the deceased's mouth. Dr Lang also found a number of linear abrasions which were consistent with the deceased having been dragged along the ground before his death.

Gladys Ngabauena testified that on Friday 4 December 1987, in the morning, she saw the deceased and several other persons, including the appellant, drinking near her home. They left at about one o'clock. The appellant and

the deceased returned later and drank some more. At about 3 o'clock they left once again. At about 6 p m she visited a local shop, where she again saw the appellant and the deceased, this time accompanied by the first accused. They were walking in the direction of the deceased's home.

This concluded the State evidence against the appellant. Further evidential material was found, however, in the appellant's explanation of his plea of not guilty in terms of sec 115 of the Criminal Procedure Act, no 51 of 1977 ("the Act"), and in evidence given by the first accused. The statement in terms of sec 115 reads as follows:

"1. Ek is 'n 33 jarige Kleurlingman en Beskuldigde No 2 in bogenoemde saak.

2. Op 4 Desember 1987 om ongeveer 8 vm is ek na 'n drlnkplek (Shebeen) in Seaview, in die distrik Port Elizabeth. Daar het ek die oorledene ene Yali ontmoet. Ons het toe saam sit en drink. Ons het Sherry en bier gemeng, gedrink. Ongeveer tussen 3 en 4 nm het ek gesê ek gaan loop en oorledene het gesê hy wil saam loop. Ons was albei dronk en het geslinger.

3. Ons het saam gestap tot by 'n winkel, ongeveer 3km vanaf die laasgenoemde drinkplek. Ek en die oorledene het weer 'n paar kartonne bier

saam gedrink. Daarna het Beskuldigde 1 by ons aangesluit en saam met ons geloop. Beskuldigde 1 het nie by die winkel saam met ons gedrink nie. Hy was nugter.

4. Soos ons aangestap het, het Beskuldigde 1 my op 'n stadium teruggeroep. Hy sê toe vir my 'n Bantoeman het gesê dat oorledene bale geld het en dat hy (beskuldigde 1) horn moet beroof. Beskuldigde 1 gryp toe die oorledene en hy trek horn die bosse in. Beskuldigde 1 het die oorledene toe begin wurg totdat, soos dit vir my gelyk het, die oorledene flou was. Beskuldigde 1 haal toe 'n OKAPI-mes uit en beveel my om die oorledene se oorpak uit te trek. Hy sê as ek dit nie doen nie, gaan hy my steek. Ek was dronk en bang. Ek kon, as gevolg van my toestand, nie die oorledene se oorpak uittrek nie. Beskuldigde 1 sny toe die bene van die oorpak af. Beskuldigde 1 beveel my toe om die oorledene se bene vas te hou. Terwyl ek dit uit vrees vir Beskuldigde 1 gedoen het, het Beskuldigde 1 eers die oorledene se bene en daarna sy arms met stukke van die oorpak vasgebind. Beskuldigde 1 soek toe die oorledene deur. Ek het nie gesien of hy geld by die oorledene gekry het nie. Beskuldigde 1 het oorledene toe gewurg en hom daarna in die bosse ingesleep. Beskuldigde 1 kom toe terug en sê as ek praat sal hy my keel af sny.

5. Beskuldigde 1 het tydens die voorval wreed gelyk en ek het geglo dat hy my sou steek as ek nie gedoen het wat hy my beveel het om te doen nie."

The first accused's evidence was briefly to the following effect. On the afternoon of Friday 4 December 1987 he visited the shop to which Miss Ngabauena referred in her evidence. There he found various people, including the appellant, the deceased and Miss Ngabauena. Miss Ngabauena told the appellant that the deceased had a lot of money, and that the appellant and the first accused should rob him. The appellant conveyed this suggestion to the first accused. The two of them therefore accompanied the deceased on his way home. Some distance along the footpath they overpowered him, went through his pockets, dragged him into the bushes and tied him up. It is not necessary to consider what exact acts were, according to the first accused, performed by each of the assailants, since his evidence on these matters was contradictory and unreliable. For present purposes it suffices to say that the burden of his version was that there was a common purpose to rob the deceased and that both parties willingly cooperated in performing the acts which led

to the death of the deceased.

The appellant closed his case without giving evidence in his own defence or calling any witness.

The court a quo accepted the evidence of Baatjies, Miss Ngabauena and Dr Lang - indeed, the evidence of Dr Lang was undisputed. The first accused, the court said, "net 'n bale treurige indruk gelaat op die Hof as 'n getuie". Later, when considering the force of the case against the appellant, the court qualified its rejection of the first accused's evidence as follows: "... falsum in uno beteken nie falsum in omnibus nie en dit beteken ook nie dat 'n uiterste leuenaar kan miskien nie ook 'n bietjie waarheid êrens praat nie". In convicting the appellant the court did not, however, rely to any extent on the evidence of the first accused. The basis of its finding seems to have been that the appellant's reliance on coercion could not succeed because, on his own version as set out in his explanation of plea, he had sufficient opportunities to escape from the first accused without taking

part in the attack on the deceased.

On appeal before us counsel for the appellant contended that the following issues were raised by the appellant's explanation of plea:

6. Whether he killed the deceased;

7. Whether he formed a common intent with the first accused in the commission of the murder;

8. Whether he was under the influence of liquor at the time of the commission of the offence;

9. Whether he was threatened by the first accused to assist in the attack on the deceased and to keep quiet about it afterwards.

In respect of these issues, the argument proceeded, the onus was on the State, and had not been discharged.

It is, of course, trite law that the onus to prove the guilt of the accused rests on the State, and the incidence of the onus does not change merely because, in his explanation of plea, the accused specifically challenges an

element of the case which the State has to prove against him in order to secure his conviction. In so far as the features set out in paragraphs (a) to (d) were relevant to the appellant's guilt, the onus consequently clearly was on the State. The basic issue therefore is whether the court a quo was correct in holding that this onus had been discharged. In determining this issue an important question arises in the present case, viz, what the effect is of statements contained in the appellant's explanation of plea. To this question I now turn.

The purpose of section 115 of the Act is to enable an accused who has pleaded not guilty to specify, either by way of a statement in terms of sub-section 1 or by answering questions put in terms of sub-section 2, to what extent he admits or denies the issues raised by the plea and, generally, to indicate the basis of his offence. In terms of sub-section 2 the accused may formally admit an allegation which he does not wish to place in issue by his plea of not

guilty, and such admission is then deemed to be an admission in terms of sec 220 of the Act, i e, it is "sufficient proof" of the fact admitted. If no such formal admission is made, a statement made in the course of the explanation of plea may have evidential value as an admission in the same way as one contained in an extra-curial statement. In what follows I shall refer to admissions which have not been recorded as such in terms of sec 115(2) as informal admissions. An informal admission is of course not necessarily sufficient proof of any fact, and the accused is always at liberty to lead evidence to refute, qualify or weaken the effect of the admission. At the end of the case the court considers the evidential value of the informal admission in the light of the evidence as a whole. See S v Sesetse en 'n Ander 1981 (3) SA 353 (A) at p 375G to 376C, S v Mjoli and Another 1981 (3) SA 1233 (A) at p 1238 D to E;1243 D to F; 1247H to 1248B; S y Daniels en 'n Ander 1983 (3) SA 275 (A) at p 300E-F; S v Mabaso and Another 1990 (3) SA 185 (A) at p 2091. This aspect

of the matter presents no real problem.

Greater problems arise in assessing the effect to

be given to exculpatory parts of an explanation of plea.

This matter also was considered by this court in Sesetse's

case (supra) at p 374F, where Wessels JA said the following:

> "'n Beskuldigde kan hom nie in sy verdediging op sy verklaring beroep nie. M a w, dit dien nie as bewysmateriaal in sy guns nie, alhoewel dit moontlik in ander opsigte tog van nut kan wees by beoordeling van die bewyskrag van getuienis wat namens die Staat afgelê is".

The exact ambit of this dictum is, however, not entirely

clear. The basis of the judgment in Sesetse's case is that

statements in an explanation of plea are treated in the same

way as extra-curial statements. An accused is not entitled to

lead evidence of exculpatory extra-curial statements made by

him, except to rebut a suggestion of recent fabrication (in

the circumstances a rather theoretical exception). Where an

explanation of plea is entirely exculpatory it will be before

the court, but, if the analogy with extra-curial statements

holds good, it will have no evidential value in favour of an

accused. Statements in terms of section 115 are however, seldom entirely exculpatory. The purpose of the statement is to define the issues raised by a plea of not guilty, and, since such a plea places all elements of the charge in issue, a definition of the issues normally involves admissions on the part of the accused. In practice most explanations therefore consist of a mixture of incriminating and exculpatory statements as in the present case. Can the court then, in convicting the accused, rely on the incriminating parts while ignoring the exculpatory ones?

If the explanation of plea had been an extra-curial statement, the answer would clearly have been in the negative. In the leading case of R v Valachia and Another 1945 AD 826 at p 837 this court held

> "...the rule is that when proof of an admission made by a party is admitted, such party is entitled to have the whole statement put before the Court and the judicial officer or jury must take into consideration everything contained in the statement relating to the matter in issue.... Naturally, the fact that the statement is not made under oath, and is not subject to cross-examination, detracts very much from the weight to be given to those

> portions of the statement favourable to its author as compared with the weight which would be given to them if he had made them under oath, but he is entitled to have them taken into consideration, to be accepted or rejected according to the Court's view of their cogency."

Valachia's case has consistently been followed in this Court. See, for instance, S v Felix and Another 1980 (4) SA 604 (A) at 609H-610A; S v Khoza 1982 (3) SA 1019 (A) at 1039A-B; S v Yelani 1989 (2) SA 43 (A) at 50 A-F and S v Nduli and Others 1993(2) SACR 501 (A) at 505 f-h.

Should the same principle be applied to sec 115 statements? Although Sesetse's case, supra, was the only case I could find in which this court dealt with the effect to be given to exculpatory parts of a statement in terms of sec 115, this question has been considered in a number of decisions of lower courts. I propose adverting to some of the more important or typical ones. Many of them dealt with the responsibility of a court to explain to an unrepresented accused that a statement in terms of sec 115 is no substitute for evidence. In this context Jacobs JP said in S v Dreyer

1978 (2) SA 182 (NC) at p 184B that an accused should be told "dat sy pleitverduideliking by die aanvang van die verhoor geen bewyswaarde net nie en dat, indien hy wil hê dat die hof die inhoud van daardie verklaring enigsins in sy guns in aanmerking moet neem, hy dit onder eed as getuienis moet aanbied". That an appropriate explanation should be given to an unrepresented accused goes without saying. However, as regards the content of such an explanation, Jacobs JP provides no reasoning in support of the proposition that a statement in terms of sec 115 can have no evidential value. In S v Mkhize 1978 (2) SA 249 (N) a full bench decision of the Natal Provincial Division also held (at p 251B) that any exculpatory statement made by an accused or any exculpatory answer to questions put to him in terms of s 115 has no evidential value. See also the passage at p 251G-H. The court apparently relied inter alia on the provisions of sec 196 (3) of the Act which lays down that an accused person is not allowed to make an unsworn statement and, if he wishes to

give evidence, he can only do so on oath (at p 251B). I consider the merits of this argument later in this judgment.

A fuller discussion of the effect of an explanation of plea is to be found in S v Malebo en Andere 1979 (2) SA 636 (B). Hiemstra CJ, who delivered the judgment of the court, dissented in ringing terms from previous cases (and, in particular, S v Selane 1979 (1) SA 318 (T)) which had suggested that statements is terms of sec 115 could have no evidential value. Such statements, he held, should be dealt with on the same basis as any other statement made by an accused concerning his guilt or innocence. The effect of such a statement is summed up at p 642D- E as follows:

> "...alles wat die beskuldigde in sy pleitverduideliking sê [is] toelaatbaar ... teen horn, hoewel nie vir hom nie. Dit is die posisie in die algemene bewysreg ten opsigte van verklarings wat die beskuldigde buite die getuiebank doen. Daar is net een manier waarop hy die pleitverduideliking wel in sy guns kan gebruik, en dit is deur dit as 'n 'vroeëre gelykluidende verklaring' aan te wend waar hy beskuldig word van 'n resente versinsel. Dit sal in die praktyk waarskynlik alleen kan voorkom, waar daar 'n redelike tydsverloop was tussen die pleitverduideliking en die getuienis onder eed

waarin hy beskuldig word van 'n resente versinsel."

Although Hiemstra CJ thus assimilated the effect of a sec 115 statement to that accorded to an extra-curial statement, he made no mention of the principle laid down in S v Valachia, supra. This is the more surprising since he seems to agree (at p 640H) with the judgment in S v Mogoregi 1978 (3) 5A 13 (0) in which the following passage is found (at p 14E-H):

> "Die vraag ontstaan of 'n beskuldigde se verontskuldigende verklaring wat hy ter verduideliking van sy pleit aanbied as bewysmateriaal beskou kan word in gevalle waar hy nie getuienis onder eed aflê nie.
>
> Hierdie verklaring word nie onder eed gedoen nie en die inhoud daarvan kan dus nie as getuienis beskou word nie. Dit is egter nie die einde van die vraag nie want die felt dat dit nie die gewig van beedigde getuienis dra nie beteken nie sender meer dat dit van alle gewig ontbloot is nie. Feit bly staan dat dit 'n verklaring van beskuldigde afkomstig en met onbetwiste inhoud is wat voor die hof geplaas word en deel van die notule uitmaak. Sou 'n beskuldigde 'n verontskuldigende onbeedigde verklaring voor aanvang van sy verhoor buitegeregtelik maak dan sal die inhoud van hierdie verklaring, wanneer dit deur 'n Staatsgetuie voor die hof geplaas word, wel as deel van die bewysmateriaal oorweeg moet word (R v Valachia 1945

> AD 826). Kan dit nou gesê word dat die verontskuldigende verklaring wat die pleit vergesel van alle bewyskrag ontdaan word net omdat dit in die hof self en direk aan die regterlike beampte gemaak word? Na my mening bestaan daar geen regverdiging vir so 'n gevolgtrekking nie en moet dit in die bepaalde omstandighede ook as bewysmateriaal beskou word."

Mogoregi's case was followed in s v Hlokulu 1988 (1) SA 174 (C) at p 183C after a thorough review of the authorities by Baker J.

The final case to which more than passing reference is to be made is S v Mothlaping en 'n Ander 1988 (3) SA 757 (NC). In that case a full bench of the Northern Cape division considered the question whether an exculpatory statement made in terms of sec 115 can be used in favour of an accused who failed to testify. The parts of the court's answer which are relevant for present purposes (at p 762 B-E) read as follows:

> "(b) Die pleitverduideliking kan nie as bewysmateriaal ten gunste van die beskuldigde aangewend word nie. Voor die inwerkingtreding van die Strafproseswet 51 van 1977 kon 'n beskuldigde uit die beskuldigdebank 'n onbeedigde verklaring aflê. Hy kon nie daarop

> onder kruisverhoor geneem word nie. Dit was wel onbeedigde getuienis wat bewyswaarde gehad net. Dit het natuurlik nooit die krag van getuienis wat onder eed deur 'n beskuldigde afgele is en waarop die beskuldigde onder kruisverhoor geneem kon word, gehad nie. Tans is daar met bedoelde onbeedigde verklarings weggedoen en, as 'n beskuldigde wil getuig, moet hy dit onder eed in die getuiebank doen. (c) Die pleitverduideliking word dwarsdeur die
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> > saak ten gunste van die beskuldigde aangewend in die sin dat die verdediging wat hy daarin openbaar deur die Staat bo alle redelike twyfel ongegrond bewys moet word. Indien aan die einde van die saak daar 'n twyfel bestaan of die beskuldigde se verweer van noodweer (of 'n alibi of welke verdediging hy ookal opwerp) nie redelikerwys 'n werklikheid is nie, moet die beskuldigde die voordeel van die twyfel ontvang, want dan het die staat nie sy saak bo alle redelike twyfel bewys nie."

It will have been noted that the reason given for not accepting the exculpatory part of a sec 115 statement as evidential material, is that an accused is no longer permitted to make an unsworn statement from the dock (sec 196(3) of the Act). It will be recalled that the same point was made in Mkhize's case, supra. This seems, with respect, an entirely irrelevant consideration. Sec 196(3) reads:

> "An accused may not make an unsworn statement at

> his trial in lieu of evidence but shall, if he wishes to give evidence, do so on oath or, as the case may be, by affirmation".

A sec 115 statement is not "an unsworn statement... in lieu of evidence". It is a statement in explanation of a plea, and is expressly permitted, and, indeed, encouraged, by the Act. The only question is what effect it has. And, although the system of explaining pleas has been extended and formalised in sec 115 of the Act, it is not an entirely new procedure.

Sec 169(5) of the Criminal Procedure Act no 56 of 1955 provided:

> "Together with his plea the accused may offer an explanation of his attitude in relation to the charge, or a statement indicating the basis of his defence, and such explanation or statement shall be recorded and shall form a portion of the record of the case".

A court was required to give proper regard to an exculpatory statement in terms of sec 169(5) of the 1955 Act. See S v Van Niekerk 1972 (3) SA 711 (A) at p 723B and Mogoregi's case, supra, at p. 15D. That the prohibition on unsworn statements by sec 196(3) has no bearing on sec 115 statements, is

supported by Mogoregi's case, supra, at p 15E; Hlokulu's case at p 181C-H and authorities there quoted; Hoffmann & Zeffertt, The South African Law of Evidence, Fourth Edition, 234; and Du Toit and Others, Commentary on the Criminal Procedure Act, p 18-13.

To sum up: it is clear that the evidential value of informal admissions in sec 115 statements derives from the ordinary common law of evidence. That being so, there would appear to be no reason of principle why the rule enunciated in R v Valachia, supra, should not be applicable also to such statements. The prohibition in sec 196(3) of the Act on unsworn statements in lieu of evidence has no bearing on the matter. And I can think of no other reason why a court should be entitled to have regard to the incriminating parts of such a statement while ignoring the exculpatory ones.

There is, of course, one practical difference between an extra-curial statement and an explanation of plea. It is in general the prerogative of the State to decide

whether or not to lead evidence of an extra-curial statement by the accused. If, on balance, the statement may weaken the State case, the State may decide not to introduce it into evidence. An explanation of plea is different. There it is the accused who decides what to say, and whatever he says is recorded. In this way he may more readily place self-serving exculpatory material before the court. This objection to the according of evidential value to a statement pursuant to sec 115 was considered in S v Malebo, supra, at p 642H-643A and regarded as invalid. I agree with this conclusion but, for reasons which appear from what I have already said, not entirely with Hiemstra CJ's reasons. It seems to me that the true answer to this objection is that the legislature has, in sec 115, provided a procedure whereby material can be placed before the court. It is true that an accused may try to abuse it, but the court should ensure that such an attempt does not succeed by refusing to attach any value to statements which are purely self-serving, and, generally, by determining what

weight to accord to the statement as a whole and to its separate parts. It is in this light, I consider, that the above quoted passage from the judgment in Sesetse's case is to be understood.

Of course, even if an exculpatory statement has no evidential weight, it may still serve its primary purpose of indicating the line of defence on which the accused relies. A court would clearly have to bear the statement in mind for this purpose when evaluating the evidence before it.

In the light of the above discussion of the effect of sec 115 statements I now turn to the various issues to be decided in this case, as set out above. I propose dealing first with issue (c), i e, the question of the appellant's alleged intoxication. To some extent this is a separate issue. The others, in my view, merely form facets of the same question, namely whether the appellant acted in pursuance of a common purpose with the first accused to kill the deceased.

Evidence about the state of the appellant's intoxication at various stages of the day in question was given by Miss Ngabauena, whose evidence, it will be recalled, was accepted by the court a quo. During the morning, she said, the appellant and his friends drank, as far as she could see, only sorghum beer. When the appellant left at about 1 p m , he was "net so 'n bietjie onder die invloed van drank". During the afternoon he drank more sorghum beer, and when he left for the second time at approximately 3 p m, he was "nie baie onder die invloed van drank gewees nie". When she saw the appellant and the deceased later that afternoon at the shop they were "nog steeds onder die invloed van drank ... maar nie sterk nie want as hulle sterk onder die invloed van drank is, dan maak hulle altyd 'n lawaai of 'n geraas". This evidence was not challenged in cross-examination. In so far as the appellant's explanation of plea suggests a greater degree of intoxication, it cannot, in my view, be accepted. The exculpatory parts of an explanation of plea obviously

cannot prevail over the unchallenged evidence of a reliable witness. It seems clear, therefore, that the appellant's consumption of alcohol on the day in question could not have affected his capacity to form a common purpose with the first accused to kill the deceased, nor his ability to act in pursuance of such a common purpose.

I turn now to the issue whether the appellant acted in a common purpose with the first accused to kill the deceased. Even if no regard is had to the explanation of plea, certain facts are clear from the State case and the unchallenged evidence of the first accused. Thus it is common cause that, on the day in question, the appellant accompanied the deceased and the first accused on the path which led to the deceased's home. When they set out the appellant was not under any duress. The deceased was overpowered, dragged into the bushes, strangled and tied up (not necessarily in this order). He was left in a remote spot, unable to move or call out and seriously injured if not dead. The appellant was

present when these events happened and cooperated to some extent in causing them to occur. It seems highly unlikely that he would at no stage have been able to escape if he had wanted to. After the event he did nothing to help the deceased. During the two days which elapsed before the body was found he did not report the matter to the police. There is no suggestion that he was being guarded by the first accused during this period. From these facts the inference may fairly be drawn that the appellant was a willing partner in the attack on the deceased. As far as intent is concerned, the further inference may be drawn that the deceased's attackers had the direct intent to kill him, but even if there may be some doubt about this, they clearly realized that his death was a possible, indeed, a highly probable, result of their actions, but nevertheless persisted in them.

In these circumstances there was, in my view, a strong prima facie case against the appellant. He attempted

to answer it by reference only to the exculpatory parts of the explanation of plea. Not only was this version unsworn and untested in cross-examination (as such statements always are) but there are substantial weaknesses in it. As I have already held, the appellant seriously exaggerated the degree of his intoxication. In the context this was clearly intended to provide a partial explanation for his submission to the alleged threats of the first accused. If one accepts that he was not as drunk as he alleged, his own version did not explain why he made no attempt to escape from the scene. In the result it is difficult to accept that he was coerced into helping the first accused. Moreover he gives no acceptable explanation for his failure to provide assistance to the deceased after he was oub of the first accused's presence, or to report the matter to the police. In short, the explanation of plea was, in my view, not cogent enough to cast any doubt on the inference of guilt drawn from the evidence. There was a sufficiently strong prima facie case against the appellant,

even after regard was had to the explanation of plea, to require some answer from him. None was provided. In my view his guilt was proved beyond reasonable doubt.

In the result the appeal is dismissed.

E M GROSSKOPF, JA

EKSTEEN, JA) NIENABER, JA)
Concur