64/56

G.P.-S.117539—1954-5—5,000.

04/56.

~~U.D.J. 445.~~

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

(Appellate DIVISION).
AFDELING).

APPEAL IN CRIMINAL CASE.
APPÈL IN STRAFSAAK.

HAWA MOOSA MAYET
Appellant.

versus/teen

THE QUEEN.
Respondent.

In gaol.

Appellant's Attorney Cohen & Suijx *Respondent's Attorney* A.G.
Prokureur van Appellant (~~Def~~) *Prokureur van Respondent*

Appellant's Advocate Wm. Colter (~~Stal~~) *Respondent's Advocate* S Evans
Advokaat van Appellant *Advokaat van Respondent*

Leave granted.
Set down for hearing on ~~Monday, 29th Oct, 1956.~~
Op die rol geplaas vir verhoor op ~~Tuesday, 30th Oct, 1956.~~

(WZD)
2,5,6,7,8.

6/12/56 (9.50 – 11.55)

C.A.V.

Question of law reserved answered in favour of the Crown and the appeal is dismissed

J Robertson
a/a/Registrar
11/12/56.

Record -

IN THE SUPREME COURT OF SOUTH AFRICA

(Appellate Division)

In the matter between:-

HAWA MOOSA MAYET Appellant

and

R E G I N A Respondent

Coram:Schreiner, Steyn, de Beer, Reynolds et de Villiers JJ.A.

Heard: ~~28th October~~ 5th December, 1956. Delivered: 11 - 12 - 1956

J U D G M E N T

SCHREINER J.A. :- The appellant was tried in the Witwatersrand Local Division by GILLIE J. and two assessors on a charge of murder and, extenuating circumstances being found, was sentenced to ten years' imprisonment with compulsory labour. The learned judge reserved a question of law as to the admissibility of certain evidence and also granted leave to appeal on the conviction and sentence.

The deceased kept a shop in Kliptown, on the outskirts of Johannesburg; at the back of the shop was his dwelling where he lived with his wife (the appellant) and their three daughters. The Crown case was that the appellant engaged a coloured man named Sam Jones to procure two persons to murder the deceased for reward, and

that/.....

that two coloured men, Alex Dalton and Stefaans Ferreira, were procured by Sam Jones and carried out the murder by means of blows to the head on the night of the 21st June 1955. There was some evidence that the appellant helped to kill the deceased. The evidence was contradictory as to whether Sam Jones also took part in the killing; the trial court found that he probably did not. The three men were tried separately from the appellant and were found guilty of murder and sentenced to death. They gave evidence for the Crown against the appellant and they and the two younger daughters of the appellant and the deceased were the five principal witnesses against her. The third daughter, the eldest, was also present in the house on the night of the murder. She was at one time charged with complicity in the murder but the Crown withdrew the charge against her. She was not called as a witness by either party.

The question of law that was reserved related to the evidence of two witnesses, Edward Brown and Pieter Hoffman, who were approached by Sam Jones with a view to their carrying out the murder of the deceased for the appellant. Sam Jones spoke to them about it some time before he spoke to Dalton and Ferreira. Terms could not be satisfactorily ~~managed~~ arranged with Brown and Hoffman and they did

not/.....

not meet the appellant. It was objected that their evidence as to what Sam Jones said to them, and in particular his mention of the appellant as his principal, was not admissible in evidence against her.

When the objection was raised Sam Jones had already stated in his evidence that the appellant gave him a mandate to procure persons to murder the deceased, and that he put the propcsition first to Brown and Hoffman and then to Daltom and Ferreira. Dalton and Ferreira had also given evidence that after Sam Jones had spoken to them they interviewed the appellant with him and agreed to carry out the murder for her. None of the three witnesses, Sam Jones, Dalton and Ferreira, was a person on whose uncorroborated evidence much reliance could be placed, but when the evidence of Brown and Hoffman was tendered and objected to there was evidence on the record, which might reasonably be true, that the appellant had conspired with Sam Jones to procure for her persons who would murder the deceased for reward.

The question whether the evidence of Brown and Hoffman was admissible raises a problem that has been considered more than once by this Court. In Rex v. Levy (1929 A.D. 312) the charge was one of bribery and the

question/.....

question, dealt with by CURLEWIS J.A. at pages 323 to 328, ~~dealt with~~ related to the admissibility against the appellants of certain schedules and an endorsement on a letter. None of these documents had been made or signed by the appellants. It was held that they were admissible as being "acts done in the "course of the acting in concert and as a step in the proof "of the common purpose"(page 327). In Rex v. Miller (1939 A.D. ~~1938~~ 106) the appellants were charged with frauds upon the customs and the relevant question was whether certain documents to which the appellants were not parties were admissible against them. In the judgments of WATERMEYER J.A. and STRATFORD C.J. the difficulty is discussed of avoiding circuity of reasoning. Since what A said in B's absence cannot be evidence against B of the truth of what was said unless A was B's agent to say those things, how can one prove that A was B's agent to say them by showing what A said ? That is certainly one side of the picture. But there is another side, namely, that "on charges of conspiracy, the "acts and declarations of each conspirator in furtherance "of the common object are admissible against the rest; and "it is immaterial whether the existence of the conspiracy, "or the participation of the defendants be proved first, "though either element is nugatory without the other."

(Phipson, 9th Edition page 98). Although this principle may have originated in the English law of criminal conspiracy it applies also ~~to~~ where parties are charged with a crime and the case against them is that they acted in concert to commit it; it makes no difference whether the particular trial is of one or some or all of the conspirators. Words that are said as part of the carrying out of a purpose stand on the same footing as acts done; they differ from a mere narrative. All the evidence of acts, and of words that, being executive, are indistinguishable from acts, must be looked at in order to ascertain whether there was a conspiracy, and, if so, who were the conspirators. If all the evidence brings the court to a conviction that the existence of the conspiracy and the identity of the conspirators are proved, the law does not find an insuperable difficulty in the logical objection that some of the evidence could only be used if the eventual conclusion were established. This is in effect what was said in the judgment of the Special Court, quoted by WATERMEYER C.J. in giving the judgment of this Court in Rex v. Leibbrandt (1944 A.D. 252 at page 276). Although this Court did not expressly approve of what was said by the Special Court, I do not think that if it had doubted the correctness of the statement it would have left it without comment, since the law on the

point/.....

point was important for the decision of the case. (see, too, Regina v. Roets, 1954(3) S.A. 512 at page 520).

In the present case it was contended that there was no need for Sam Jones to mention the identity of his principal when speaking to Brown and Hoffman. But they would naturally be most interested in finding out who was going to pay them, for it is unlikely that anyone to whom such a proposal was made would rely for the payment of his reward on the financial strength or honesty of Sam Jones. Although, therefore, the attempt by the latter to obtain the services of Brown and Hoffman proved abortive, what he told them in order to get them to agree to commit the murder, including his identification of the appellant as his principal, was admissible against her, and whoever heard the conversation between Sam Jones, Brown and Hoffman, including those persons themselves, could give evidence of what Sam Jones said. The evidence of Brown and Hoffman was therefore rightly admitted.

In regard to the attack on the verdict, it is unnecessary to examine in detail the evidence on which the trial court came to the conclusion that the appellant was beyond reasonable doubt guilty. Sam Jones, Dalton and Ferreira were accomplices and their evidence was

contradictory/.....

contradictory and in a number of respects untrue. But the trial court fully appreciated that they were witnesses whose evidence had to be treated with the utmost caution and nevertheless was satisfied that in certain crucial respects it was beyond reasonable doubt the truth. Brown and Hoffman were also unsatisfactory persons but once their evidence was held to be admissible there was little reason for doubting the truth of its main features, which provided corroboration of the other three men. Then there was the evidence of the little girls, aged seven and eight respectively, whose accounts were wholly inconsistent with the evidence of the appellant and in certain respects were strongly indicative of her guilt. Obviously their evidence had to be examined with great care to see how much of it might have been suggested to them or overheard and adopted by them. The defence suggestion was that the case against the appellant might have been manufactured by the deceased's brother, one Essop Mayet, with whom the little girls resided after the death of their father and the arrest of their mother. The trial court fully realised the dangers of accepting the evidence of these children, especially in view of their residence with their uncle, a man, it seems, whose character is not unblemished. Moreover, the children's evidence, like that of the accomplices,

was open to criticism in detail. But the contentions based on these considerations were all advanced to the trial court and no reason has been shown for concluding that the court misdirected itself in any way or attached too much or too little weight to any particular factor. There are not a few considerations which lead me to the conclusion that the trial court was right in convicting the appellant, but it is unnecessary to enter upon these. It is sufficient to say that the verdict has not been shown to be wrong.

It was also argued that the sentence was excessive. In my view it was not.

The question of law reserved is answered in favour of the Crown and the appeal is dismissed.

Steyn, J.A.
de Beer, J.A.
Reynolds, J.A.
de Villiers, J.A. } Concur

10.12.56

CHARLOTTE HLONGWANE.
JUDGMENT ON OBJECTION.

CHARLOTTE HLONGWANE (called by the Counsel for the Crown).

MR. MENDELOW: My Lord, I am sorry to have to object again, but I feel that I must do so.

HIS LORDSHIP: I assume that this is the woman from whom the brandy was bought.

MR. MENDELOW: Yes, at the Vaalkamers.

(MR. MENDELOW FURTHER ADDRESSES THE COURT).

(COUNSEL FOR THE CROWN REPLIES).

JUDGMENT ON OBJECTION.

CILLIE J.: I do not intend setting out the facts again and the reasons I have given for the admissibility of evidence. In this particular objection these facts are also relevant.

When Stephanus Ferreira gave his evidence he stated that some time during the night he left the house of the accused. He went to a place which is referred to as the Vaalkamers, where he bought a bottle of brandy for £1.4.0 which had been given to him by the daughter of the accused. He is supported in this statement by Alex Dalton. The Crown now wishes to call the witness who is to say that she is the person who sold the liquor to the witness Stephanus Ferreira, and to this evidence Mr. Mendelow has objected on three grounds. The first objection is that it is irrelevant to the issue now being tried; secondly, that it was a collateral issue whether he did go out or not; and thirdly, because it is of no, or very little, evidential value, and its admission may be unfair to the accused.

He/....

He quoted certain cases, saying that evidence of that kind should be excluded.

Mr. Evans, for the Crown, has argued that this witness will state the particular time when this particular witness was at her home to buy the liquor and that that makes it relevant.

It seems to me at this stage, on the question of relevancy, there is a lot to be said for Mr. Mendelow's contention. This particular statement by Stephanus Ferreira that he had gone out, supported by Alex Dalton, has not been challenged and that being so, it becomes irrelevant who the person is he bought the liquor from. Similarly, the time when Stephanus Ferreira went out to buy the liquor has not been chanllenged, and therefore it seems at this stage of the proceedings that the evidence is not relevant and I, therefore, rule that it is now inadmissible, but if anything is challenged at a later stage the Crown may again apply for the admission of the evidence. The evidence is, therefore, ruled at this stage to be inadmissible.
