

Cross-examination: 143

There are numbers of other buildings all over Johannesburg which have had slogans painted on them. 144

It is possible that during the night in question there were other buildings painted. It is also possible that such buildings were painted in Fordsburg and in Vrededorp. 144

It is possible that slogans may have been painted by more than one party of people that night. 144/5

If in answer to my invitation the accused had gone and shown me a house or some place in Vrededorp on which they had painted slogans it may have been my duty to arrest them. This depends on whether somebody complained or not. If damage would have been done to such house or building then I would have arrested the accused. 145

T. MÖLLER, Detective Sergeant, examination-in-chief: 136

No.2 and No.4 are secretaries of the Transvaal Indian Youth Congress. They attended the meeting of the Congress of the People on the 25th/26th June 1955. 137

*Re Accused attended the meeting in Vrededorp of 25 & 26 June 1955* 137

Cross-examination: 137

The Congress was attended by a number of other people as well, i.e. Mrs. MacPherson, Father Sidebottom, and the Nationalist and United Parties had been invited to send delegates. 138

J.E. VENTER, of the Government Laboratory, examination-in-chief: 139

Evidence about comparisons made by him between certain articles found and samples of the paint on the walls.

He / ...

He adheres to his affidavit, Exhibit G. *p. 158*

Cross-examination:

*p. 156*

139

I cannot say that the material in Exhibit E (a bottle of liquid and tar found in the motor car) is exactly the same as the material in the various exhibits A to H. I can only say it is similar. That applies to the tar used as well

142.

a) Swart  
R. v. Schwesig 1937 TPD 168.

1948(1)SA  
R. v. Helheim 1081(T)

R. v. Ngoboc 1946(2)  
PH + 245(T).

R. v. Burgess  
1947(1)SA 365(M)

a) 2 statements - confession or not.  
points to

R. v. Dlamini 195(2) SA p. 197 ff.

statement not in presence of other people  
with evidence against other people.

Mog

R. v. Bolla 1917 TPD 380. b)  
R. v. Jankelson 1917 AD 556.

but since want no  
reference can be

c) effect of statement 244(2) re points out.

branch

R. v. Mankelala 1946(1) 571  
pp 583 ff.

d) relevance on evidence admissible inadmissible

R. v. Pahl 1946 AD 207.

e) effect of inadmissible evidence.

R. v. Rose

R. v. Pahl 1946 AD

f) Berlin accused not implicated

R. v. Miller 1939 AD.

DR LOWE

In the Supreme Court  
of South Africa.

Supreme Court

DIVISION.

On the 25 day of March, 1957

IN RE

Regina

Plaintiff  
Applicant

VERSUS

Saloojee & others

Defendant  
Respondent

Brief.

on appeal

COUNSEL :

Mr. Dr. Owen, & C.  
with you

Mr. L. Dixon

Fee £

Memorandum :

Attorney for J. Muller  
1145 Union Centre

In die Hooggeregshof  
van Suid Afrika.

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AFDELING.

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Op die.....dag van.....19.....

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INSAKE

*Eiser  
Applikant*

*versus*

*Verweerder  
Respondent*

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Opdrag.

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ADVOKAAT :

*Mnr.* .....

*met u*

*Mnr.* .....

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*Fooi £*.....

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Memorandum

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*Prokureur vir*.....

COURT OF REGIONAL MAGISTRATE:  
DIVISION SOUTH TRANSVAAL AT: JOHANNESBURG.  
CASE NO: 126/56.

R E G I N A

VS.

SALOJEE AND OTHERS:

MALICIOUS INJURY TO PROPERTY.

ADDITIONAL REASONS FOR JUDGMENT.

(1) As to the application for leave to amend the record as proposed the Court offers no objection, except that my judgment on Mr. Berrange's objection has been crudely recorded. I have in mind the sentence reading "It is felt under all the circumstances that there savours an element of compulsion on the part of the Police and that the evidence is not admissible". To avoid misinterpretation, what transpired should be clarified. Please see the evidence of Constable Fourie at page 102 et seq. It will be observed that after he had found the four accused together in a motor car with evidence of their having been painting somewhere, he questioned them as to their doings. Inter alia he asked them where they had been painting against buildings but could not draw them. He continues on page 105:-

"Ek het beskuldigdes weer gevra waar hulle teen die geboue geverf het. Besk. No. 4 het ek alleen geroep en hy het my meegedeel hy sal my gaan wys waar hulle teen die mure geverf het..... Nadat ek hulle gevra het, het ek hom eenkant, so voor hulle (die ander drie beskuldigdes) weggeroep en gesê: "Gaan jy my wys waar julle geverf het" en toe het hy gesê "Ja Meneer". Hy het my (toe), geneem na 45 Mainstraat."

(2) Mr. Berrange objected to this evidence as amounting to a confession to a Police Officer, but in view of the provisions of Section 245 (2) of Act 56 of 1955 later withdrew his objection in so far as the evidence related to a mere pointing.

out of the building at 45 Main Street. As the record will reveal, the Court then and there took the trouble to ascertain from the said Police Officer what was looming in the back of his mind when he asked accd. No. 4 to go and show him where they had been painting on walls - p. 105. The Constable's reply was that he did so, because the Police had been instructed by their Officer to be on the look-out for persons painting (slogans against walls, and that months previously there had been cases where there had been unlawful painting on walls.

(3) Now Constable Fourie had eventually focussed his attention on the youngest member of the party - accd. No. 4, on whom he concentrated his questioning. He had called him aside and it was felt that he had as much as commanded him to go and point out where they had been painting (on walls). This questioning of Accused No. 4 should not be read out of context with the preceding questioning of the party as a whole by Constable Fourie. In the light of all the circumstances it was felt that the action of the Constable at least savoured of an element of compulsion having been brought to bear upon accd. No. 4, hence in fairness to the Accused the Court ruled that the conversational part of what took place between Constable Fourie and accused No. 4 should be ruled out as inadmissible and that the record should stand to read merely that accused No. 4 took Constable Fourie along to 45 Main Street, merely to point out that building. Thence the evidence continued as on page 103. For a reason which the Court is at a loss to explain, its judgment on this point was inadvertently omitted from the record.

(4) Regarding the amended grounds of appeal, it would seem that the Court's approach of the evidence has been clearly conveyed in its remarks at the time of conviction as amplified in its subsequent supplementary reasons, which, it seems, do not call for further comment.

(5) With reference to the last of the amended grounds of appeal, the Court can safely say that it was common cause that

the injured parties, one and all desired and were applying for compensation in the event of convictions and that reading the record as a whole one can come to no other conclusion than that the tenor thereof is to that effect. Moreover, the Prosecutor had made it perfectly clear to the Court - he had emphatically informed the Court - that he had instructions from the Complainants to apply for compensation and, as the Court looked upon him as the mouthpiece of the Complainants there was no reason to query his authority.

J.G. DE VRIES.  
REGIONAL MAGISTRATE.

C A P E T O W N.

15th May, 1957.



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