

Judgment.

injured my back and left ribs as a result of an assault. I also cut my right forearm. The assault was by a Sergeant of the Railway Police.

His first name is Schalk. This was on the tenth floor of John Vorster Square."

Four days later he was visited by the Inspector of Detainees, Mr. Mouton, who stated -

"Dr. Aggett het gesê dat hy gesond voel en nie 'n geneesheer nodig het nie; dat die kos goed is en nie klagtes daaroor het nie; dat hy geen klagtes oor die behandeling het nie en dat hy geen ander klagtes het nie".

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This is obviously not consistent with what he had to tell Mr. Wessels.

Mr. Van Heerden testified that Dr. Aggett reported an assault on the 4th of January, 1982 to him. I quote his words -

"I immediately became concerned and asked him what had happened and he described to me that he had been taken during the course of that day to a general office on the tenth floor at John Vorster Square and that a desk had been placed across the doorway to prevent anyone coming into the office; that he had been stripped naked and had been forced to do exercises for a number of hours. These included press-ups and running on the spot until there was a pool of sweat beneath his

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body and during this time a Railway policeman who had been seconded to this investigation by the name of van Schalkwyk, I am not sure of his rank, wrapped an item of clothing around his forearm and clubbed Neil on his chest, his shoulders, his back and during in the course of one of these blows he left a scar on Neil's forearm which Neil showed me through the grill of his cell door.

Where was this scar? --- It was about midway up the right forearm and it was a linear scar of possibly two centimetres which still had blood covering it on that evening.

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When you say linear scar what do you mean by that? --- A straight line.

What else did he say? --- He said that he had been asked questions during this exercise session but that it had been primarily aimed at giving him a taste of what would happen to him if he did not give the Security Police the answers which they were looking for.

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Can you remember more or less when in January this was? --- To the best of my recollection it was the 4th of January."

The discrepancies in these two versions are so conspicuous that they do not call for comment. They are further emphasized when compared to the written statement by Dr. Aggett made on the 4th of February, 1982. It reads -

"On the 4th January, 1982, a black member of the Force called Chauke came to fetch me at the cells and took me to the tenth floor

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Judgment.

room 1012. In the room was Lieutenant Whitehead, the black policeman Chauke and a Railway Police Security Sergeant called Schalk present. I was interrogated by Lieutenant Whitehead and every time that he asked one question and I denied it he accused me of calling him a liar. Then this Schalk would assault me, he hit me with his open hand through my face and I fell against the table with my back and I could feel a stab on the back later. He also assaulted me with his fist by hitting me on the side of my temple and my chest. He also kicked me with his knee on the side of my thigh. This Schalk wore a watch which cut my right forearm and it was bleeding. Later this Schalk went to wash off the blood that was on him. While I was assaulted by him he grabbed me by the scrotum and squeezed my testicles".

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Mr. Coleman also testified about a report made to him. Apparently he refers to the same incident. According to him Dr. Aggett said the police had torn his shirt, grabbed him, pulled him and pushed him round. The names of the policemen were not mentioned.

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Mr. Smithers testified that Dr. Aggett was assaulted, ill-treated on the 25th January, 1982. This incident was not mentioned to Mr. van Heerden, nor was it mentioned in the statement made on the 4th February, 1982. In the statement, Exhibit E, Dr. Aggett stated -

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"I was kept awake since the morning, the

/ 28th

Judgment.

28th January, 1982 to the 30th January, 1982 during the night. During the night of the 29th January, 1982, Lieutenant Whitehead and another Security Sergeant whose name I don't know and another black man, also a policeman, were present when Lieutenant Whitehead blindfolded me with a towel. They made me to sit down and handcuffed me behind my back. I was shocked through the handcuffs. I don't know what they used to shock me. I was shocked a few times. I have a scratch on my left pulse (radial nerve) where I was injured whilst being handcuffed".

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Mr. van Heerden testified that Dr. Aggett told him about this incident and said inter alia he was shocked on the testicles. Once again the discrepancy is on an important piece of information. Mr. van Heerden said that Dr. Aggett was eager to see a doctor in order to have the evidence of assault on him recorded. On the other hand Mr. Mouton said Dr. Aggett did not want to see a doctor on the 22nd January, 1982. Mr. van Heerden said that Dr. Aggett told him of blood on his pair of trousers. This was not mentioned in the statement to Sergeant Blom or to any other detainee who told us that they had conversations with Dr. Aggett.

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Mr. Coleman testified that Dr. Aggett had told him that his shirt was torn during an assault and he wanted to keep this as an exhibit. This shirt was not mentioned in the statement, Exhibit E, nor was it mentioned

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Judgment.

to Mr. van Heerden. Furthermore, except for the scar on the arm, the allegations of assaults are not supported by the medical evidence.

Mr. Lerumo tried to tell us of some blood on Dr. Aggett's forehead a few days before his death. At one stage he called it a clot of blood and later a spot of blood. This was not supported by any of the other witnesses who saw Dr. Aggett during those days. The medical experts also did not find any injury which could have caused the bleeding.

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Mr. Momoniat talked about a mark or bruise on Dr. Aggett's forehead a day or two before his death. None of the other witnesses who saw Dr. Aggett during this period noticed that nor did the doctors who examined the body find any trace of it. It is also remarkable that Dr. Aggett did not mention anything about blood on the forehead, a bruise on the forehead, blood on a pair of trousers or a torn shirt in his statement he made on the 4th of February, 1982. Even if I regard the reports by Dr. Aggett on alleged assaults as information which has evidential weight, they are so contradictory in detail, so contradicted by reliable evidence, so unsupported by reliable facts, that it cannot be accepted as the truth on the balance of probabilities, even less so beyond reasonable doubt.

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Of course it is trite law that reports of this nature cannot be accepted in judicial proceedings as proof of the truth of the contents thereof. But that did not prevent me from listening to the reports and to investigate the allegations and to deal with them in my Judgment.

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Judgment.

Different versions were given on the condition of Dr. Aggett, especially during the last fourteen days of his life. The police officers did not notice any change. Some of the fellow detainees testified about a change in condition but even here we have differences worth mentioning, for instance -

Mr. Lerumo saw blood on the forehead which none of the others saw. Mr. Momoniat saw a bruise on the forehead called a mark which none of the others mentioned. Mr. Lerumo said Dr. Aggett walked with difficulty, he did demonstrate it, since the second half of January 1982, but Mr. Momoniat who saw Dr. Aggett on the 3rd and 4th February, Mr. Coleman and Mr. van Heerden who saw him during the last week of his life did not notice that.

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One gets the impression that some of these fellow-detainees heard some things about assaults and about change in condition and they wanted to say something about it but do not know the proper context or any detail, hence the inconsistencies.

I was asked to admit the evidence of fellow-detainees of Dr. Aggett in order to prove a modus operandi on the part of the Security Police which includes assaults, ill-treatment, sleep deprivation etc. I have already dealt with the quality of the evidence by these witnesses, I only want to add that some of them testified to the contrary. For instance, Dr. Floyd said although she was ordered to stand and threatened to stand long she was not otherwise assaulted in spite of the fact that she insisted that she had nothing to add to her statement. She was allowed to sit down when she informed them of her illness. She even told the Inspector

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Judgment.

of Detainees she was ordered to stand because she was cheeky. In these circumstances the reasons advanced by Warrant Officer Carr for the order to stand would seem very likely. Dr. Floyd also said that Sergeant van Schalkwyk was always cordial.

Messrs. Coleman and Smithers were not assaulted and were treated well all along. Of course the allegations of assault and ill-treatment were made by fellow detainees and they do create suspicion. But we must try to find the truth on facts, not on innuendo or slander. I am satisfied that the evidence on assaults and ill-treatment, after being properly tested and carefully considered and contradicted by impressive witnesses, is so unreliable that no prima facie proof of a modus operandi of assaults and ill-treatment on the detainees is established. 10

I have already commented on the quantity of the evidence given by Mr. Smithers. It is, though to a minor degree, supported by the evidence of Mr. Ngwenya, a witness who is not beyond criticism as already pointed out. It is true that Mr. Ngwenya was in detention when he volunteered the information as I have said. The allegations by Mr. Smithers were made publicly known. Mr. Ngwenya had through his family contact with what was going on outside. I cannot exclude the possibility that Mr. Ngwenya decided to support the allegations by Mr. Smithers and twisted the facts to achieve this. 20

The evidence given by Messrs. Smithers and Ngwenya is contradicted by witnesses such as Warrant Officer de Bruin, Lieutenant Whitehead, Major Cronwright and Warrant Officer Mashinini. The medical evidence, the experts who examined 30

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Judgment.

the body of Dr. Aggett did not find a scab on the back, a scratch on the left pulse (radial nerve), any marks on the scrotum or testicles. The scar on the right forearm was found with great difficulty and according to both experts could have been caused any time between three weeks and three months and could have been caused by anything. Dr. Botha clearly stated that he found no signs of recent assault. I cannot find beyond any reasonable doubt or on the balance of probabilities that Dr. Aggett was treated in the manner described by Mr. Smithers. I want to emphasize that when making these findings I am not unmindful of the evidence given by the expert witnesses. 10

During the course of the proceedings a number of other allegations were made, impliedly or expressly, by Counsel for the family. During the examination of the medical experts, Counsel for the family suggested that Dr. Aggett could have been strangled and brought to unconscious state and then hanged to simulate a suicidal hanging. This suggestion is absolutely without any factual basis. It is not and never was supported by any piece of evidence or information placed before us. It was introduced by way of a quotation from a book by the notorious character Gordon Winter. This demonstrates how readily allegations or insinuations could be introduced into proceedings such as the instant but when properly tested they are found to be devoid of any truth or substance. 20

It was suggested that the detainees did not receive the necessary medical attention. This was denied by the police. The evidence given by fellow-detainees such as Dr. Floyd, Messrs Coleman, Naidoo Nanabhai, Momoniat, 30

Judgment.

Njikelana, Ngwenya and Smithers contradicts such a suggestion and I am satisfied that this suggestion is not supported by the facts before us.

It was suggested that Captain Victor did not conduct a proper investigation into the circumstances of the death of Dr. Aggett. It is easy to find criticism ex post facto the investigation. It is a fact of life that we find degrees of experience and zeal in every profession. I find no reason to think that another course or another step in the investigation would have thrown more light on the matter. It was suggested that some of the policemen who interrogated Dr. Aggett was not competent to do it. It is a fact of life that we find degrees of competence in every profession. I am satisfied that this factor has no effect on the issues before us. This suggestion was coupled with the allegation that these policemen were present only to intimidate and keep Dr. Aggett awake. We have no reliable facts to substantiate this allegation.

Sergeant Agenbag and his colleagues were criticised for not visiting the cells regularly and quite rightly so. But I find no reason to believe or think that more visits to the cells would have prevented the hanging. It was suggested that the complaint by Dr. Aggett was not attended to immediately and properly. Ex post facto it appears highly advisable that a more experienced officer should have been instructed to investigate the complaint but I do not find any reason with substance to think or believe that another quality in the investigation would have changed the course of the events that followed.

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Judgment.

The complaint was made on the 18th January, 1982. Sergeant Blom approached Dr. Aggett only on the 4th February, 1982. There is no evidence to justify a finding that the delay was deliberate or in pursuance of an evil purpose but I must say that the complaint, that I think the complaint could have been attended to with more haste. However, I cannot say on the evidence before us that this delay standing alone had any effect on the course of the events that followed.

It was suggested that Dr. Aggett was kept away from the Inspector of Detainees and the Magistrate. There is substance in this suggestion. Warrant Officer McPherson denied that it was done deliberately. I accept the evidence given by Mr. Mouton on this issue. I don't know why Mr. McPherson did not make it clear to Mr. Mouton or the Magistrate that Dr. Aggett was on the tenth floor and not out of John Vorster Square. In the absence of an acceptable explanation by Mr. McPherson it is permissible to draw inferences, an inference that it was done in pursuance of a conspiracy by the interrogators is possible but such a conspiracy is denied by the witnesses whose evidence I cannot reject. An inference that Mr. McPherson was careless on what exactly he told the Inspector of Detainees and the Magistrate is also a reasonable one which I cannot exclude.

The evidence before us indicates that prior to his detention Dr. Aggett's life was apparently purposeful and directed and there was no indication that he ever had contemplated or was likely to contemplate to take his own life. An act of suicide on the 5th of February, 1982, would therefore be seen as in contrast to the life which

Judgment.

Dr. Aggett led and was engaged in prior to his detention. Numerous submissions were made and possibilities discussed on the possible and likely causes for the change in Dr. Aggett. I have already dealt with the allegations of assault, but that does not dispose of the matter.

Counsel for the family made the following submission in conclusion: "Major Cronwright and Lieutenant have admitted that they were responsible for Dr. Aggett's mental and physical well-being. On their version no acceptable explanation has been furnished as to why Dr. Aggett should have committed suicide. On the mass of direct circumstantial and similar fact evidence presented to the Court, not only is there a prima facie case but a probability that they both by numerous acts of commissions and omissions drove or induced Dr. Aggett to commit suicide. It is submitted that such a finding should be made in terms of Section 16(2)(d) of the Inquest Act."

It is true that Major Cronwright and Lieutenant Whitehead played important roles in the life of Dr. Aggett during his last days. However, it appears that Auret Dennis van Heerden also played an important role and it is necessary to have a closer look at the role played by each of them. Major Cronwright did not take any active part in the interrogation of Dr. Aggett but was in overall charge of the entire investigation of which Dr. Aggett was one of the persons being investigated and interrogated. He was regularly informed of the progress made with the interrogation. He gave approval for the interrogation during the period the 28th to the 31st January, 1982 on the assurance by Lieutenant Whitehead that

/ Dr. Aggett ...

Judgment.

Dr. Aggett was now prepared to make a full statement and open his heart. He saw Dr. Aggett from time to time and spoke to him, also on the 4th February, 1982.

Lieutenant Whitehead: Counsel for the family submitted that the personality of Lieutenant Whitehead is an important element to be considered in assessing the probabilities as to what happened to Dr. Aggett during his detention generally and in particular during the last ten days of his life. He described him as immature, ambitious and an aggressive person. This description I think is unfair and not justified before us. Perhaps resorted to to substantiate certain submissions by Counsel. Counsel characterized Dr. Aggett and concluded -

"the stage is set for a classic conflict situation".

Lieutenant Whitehead was further attacked on an assumption that the evidence given by Mr. van Heerden is accepted. I have already indicated whose evidence is believed or disbelieved and cannot be accepted. Further comments on Mr. van Heerden will follow. It also appears that Counsel for the family bases his argument for finding of culpability against Lieutenant Whitehead on the assumption that the evidence of assaults is accepted. I pause here to point out that except for the statements by Dr. Aggett there is no direct evidence of any assault against Lieutenant Whitehead.

I have already commented on the credibility of the evidence, ^{on} /alleged assaults and do not intend to repeat it. Important factors to bear in mind when Lieut. Whitehead's position is considered are the following.

"1. During the last part of January, 1982 until

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Judgment.

- the 4th February, 1982, he was in de facto control if the interrogation of Dr. Aggett.
2. He was not satisfied with the initial statement made by Dr. Aggett.
 3. He had Dr. Aggett under observation for about three years prior to the detention.
 4. He decided on more intensive interrogation and to maintain the continuity of the interrogation during the period the 28th to the 31st January, 1982. I hasten to say that this step constituted fertile earth for anybody to plant a seed of suspicion.
 5. Under the leadership of Lieutenant Whitehead Dr. Aggett was questioned until he made certain admissions and gave names of other persons to the police.
 6. He was aware of a telex prepared to request the arrest of other person.

Both these police officers had a special responsibility towards Dr. Aggett. In Minister of Police vs. Skosana, 1977(1) S.A. 31 A.D. the Honourable Viljoen A.J.A. as he then was, observed at page 40 A - B:

"On the other hand where the detainees are concerned, no policeman should allow his diligence to lag for a moment. He is the custodian of the detainees under his charge who have been deprived of their freedom of movement and whose capacity to make their own decisions and carry them out has not only been restricted but completely neutralised.

Judgment.

A comparable case is that of a prison warder in charge of prisoners. The emphasis Schreiner, J.A. places upon the duty of a prison warder to protect prisoners in his charge, in vs. Minister of Justice, 1958(1) S.A. 221 A.D. at page 224 appears to me to be mutatis mutandis a weighty consideration in the present case and generally in all cases in which the freedom of movement of the person concerned has been restricted by official interference".

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Now Mr. van Heerden -

1. He is a person mentioned in the document, Exhibit MMM in these proceedings and Exhibit B.3 in the case of The State vs. Barbara Hogan. It is well known that Miss Hogan is convicted in the Supreme Court of High Treason and of being a member of an unlawful organisation, namely the A.N.C. We were informed that this document was written by Miss Hogan and it relates to the A.N.C. Being under discipline means being a member of the A.N.C. Auret van Heerden is mentioned as a person under discipline. Dr. Aggett is also mentioned in this document but in another context. Ex facie the document, Mr. van Heerden's position seems to be superior to that of Dr. Aggett's. I do not refer to this document to convey that I believe in the truth of the information but merely to emphasize the existence thereof.
2. Mr. van Heerden admitted that he was suspected of by his associates of being a spy and/disloyalty. He had to give evidence against Miss Hogan and

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Judgment.

still has to give evidence against another of his associates and this embarrassed him. In these circumstances one can expect him to do something to save face.

3. At some stage during his detention he wrote inter alia -

"I am worried that others may be admitting too much too soon. Time will tell".

He said he was in constant contact with Dr. Aggett and discussed the personal dynamics of the interrogation of the latter. He said that shortly before his death Dr. Aggett told him "I have broken". One wonders how a man in Mr. van Heerden's position as stated above, a man who was worried that the others might be admitting too much too soon, especially when Dr. Aggett told him that he had mentioned names of others, reacted to this revelation by Dr. Aggett. Whereas Lieutenant Whitehead was persistent to get information from Dr. Aggett, Mr. van Heerden clearly wanted others to keep the information as long as possible, this is implied in his remark. I think here is another possible, to use Counsel's words, "the stage is set for a classic conflict situation."

4. Mr. van Heerden was approached and made a statement on what he knew about the circumstances of the death of Dr. Aggett. He declined to do it. Before he was called to give evidence he was advised that his information on his treatment at the hands of the Security Police is ruled inadmissible.

Judgment.

In spite of that he ignored the ruling and on more than one occasion he referred to it in clear terms, again to serve his own purpose.

5. Mr. van Heerden said that he realised on the 4th February, 1982, at about 7.30 p.m. while he was listening to the radio that Dr. Aggett was a suicidal risk. Yet he raised no alarm, for instance shouting or shaking the grill to draw attention. He did not wait for Sergeant Agenbag to tell him. When Sergeant Agenbag arrived at the cell he did not tell him of his fears. 10

Is it really possible that a man with honest and honourable motives would behave like this if he really cared? He explained that he intended to tell Major Cronwright the next morning.

Well if he decided to do that, the delay was fatal.

6. It must be pointed out that during the beginning of February, 1982 the relationship between Mr. van Heerden and the Security Police was fairly good and it is hard to believe that he did not feel free to mention the condition of Dr. Aggett, if he was in fact as he described it to the police. 20

7. I have listened to the evidence given by Mr. van Heerden. I have read the record of his evidence. It is conspicuous that he tried to furnish the factual basis for many suggestions advanced during the proceedings. I certainly do not believe every word uttered by Mr. van Heerden but it will be noticed that my aforementioned remarks are mostly based on his own utterances. 30

I have already mentioned the responsibility of the

/ police ...

Judgment.

police officers towards Dr. Aggett. Let us accept for the moment that Mr. Heerden did realise on the 4th February, 1982, at 7.30 p.m. that Dr. Aggett was a suicidal risk, did he as a friend not have the responsibility to raise alarm? He had no reason to believe that Sergeant Agenbag would not act and was his failure to act, his omission not contra boni mores In S vs. Russel, 1967(3) S.A. 739 N.P.D. a person was held criminally liable because he omitted to give timeous warning of a dangerous situation and was convicted of culpable homicide. In T.H. R.H.R. 1966 (258) at p. 259 the learned author observed -

'In die praktyk is dit ongetwyfeld baie nuttig om na 'n aantal kategorieë of 'n lysie gevalle te hê waar 'n regsplig bestaan maar regs-wetenskaplik moet gevra word: hoe het die regsplig ontstaan in die gevalle waar dit herken is? Die oplossing is dat die ongeskrewe reg in die meeste gevalle die regsplig opgelê het. Die ongeskrewe reg word gevind in die regsopvattings wat daar in 'n bepaalde gemeenskap geld. (Vergelyk de Wet & Swanepoel, 1962.) Die paar erkende kategorieë is dus nie omvattend genoeg nie en meer gevalle kan steeds erken word na gelang 'n bepaalde gemeenskap se regsopvattings ontwikkel.

In die strafreg is die toets vir die bestaan aldan nie van 'n regsplig myns insiens nie of

/ dit ...

dit redelik sou gewees het om op te tree en of die redelike man sou opgetree het nie, maar wel of iemand in die posisie van die beskuldigde volgens die gemeenskap se regssoortuigings, moes opgetree het. Met ander woorde of hy volgens gemeenskapsoortuiging verplig was om te handel. Die beswaar dat hierdie toets baie vaag is, is nie wesenlik nie aangesien ons reg ook ander vae begrippe goed gebruik, byvoorbeeld nalatigheid."

In T.H. R.H.R. 1968 (282), at p. 283 the learned author observed -

"As 'n uitgangspunt het hulle aanvaar dat daar geen algemene regsplig bestaan om gevaar van andere af te weer nie. So sê die skrywers mag 'n mens maar net genoeg jou vyand in vlak water sien verdrink al kan jy hom met min inspannings en sonder lewensgevaar red. Vervolgens behandel die skrywer 'n reeks gekke situasies waarin 'n regsplig sou ontstaan. Hulle wys egter daarop dat die erkende situasies nie 'n uitputtende reeks daarstel nie maar dat die reg lewend is en dat etiese voorskrifte deur gewoonte tot regsvoorskrifte mag ontwikkel waardeur nuwe regspligte mag ontstaan. Soos die skrywers tereg aantoon, ook in die tweede uitgawe van hul werk, Die Suid-Afrikaanse Strafreg, 1960, bladsy 61 tot 62, is die kwessie van aanspreeklikheid op grond van 'n late in

ons strafreg-spraak nie vanuit die gesigs-
 punt van die bestaan al dan nie van 'n regs-
 pligs benader nie. In die praktyk word die
 kwessie gewoonlik oor die boeg van nalatigheid
 gegooi, soos weer gebeur het in die betreklike
 onlangse uitspraak S vs. Fernandez, 1966(2) S.A.
 259 (A). Inderdaad gaan dit egter hier om 'n
 logiese voorafgaande vraag naamlik die
 bestaan van 'n regsplig soos ook betoog deur
 J.H. van Rooyen in sy bespreking van hierdie
 beslissing, 1966 T.H. R.H.R. 258. Van Rooyen
 wys daarop dat die regsplig-ondersoek dit nie
 die nalatigheidstoets (voorsienbaarheid deur die
 redelike man) is wat aangewend moet word nie maar
 dat die vraag .. dat die eintlike vraag is
 of die gemeenskap se regsoortuigings van
 die betrokke persoon optrede eis al dan nie.
 Dit is die juiste benadering solank 'n mens in
 gedagte hou dat die Hof in sy beoordeling van
 'n besondere geval onder meer ook die redelikheid
 van so 'n eis in aanmerking moet neem in die lig
 van al die omstandighede".

I revert to the position of the two policemen, the
 two police officers. Dr. Aggett was at John Vorster
 Square since the 11th December, 1981 and it is common
 cause amongst all the parties that up to the 25th January,
 1982 he showed no signs of depression, nothing to hint at
 the possibility of suicide. There was no suggestion
 that the condition of his detention up to then held any
 danger to his life. At the instance of Lieutenant Whitehead
 and with the approval of Major Cronwright, Dr. Aggett was

Judgment.

kept and interrogated on the tenth floor from the 28th January, 1982 until 3.30 a.m. on the 31st January, 1982. On the evidence before us I cannot find without any reasonable doubt or on the preponderance of probabilities that this was not done with his consent and collaborations. I cannot find that he was deprived of sleep or ill-treated in any unlawful manner. During this period of interrogation Dr. Aggett made certain admissions and involved other persons. An important question for consideration in this context was there any visible change in the physical and mental condition of Dr. Aggett. Co-detainees has testified that there was such a change. I have already dealt with the contradictions in their descriptions of the nature of the change. On the other hand the police witnesses, including those who had no part in the activities of the Security Police, testified that there was no visible change. Brigadier Muller whom I regard as an honest and reliable witness in every respect saw Dr. Aggett on the day before he died and spoke to him. He did not notice any change. We heard the evidence of how he acted when he learnt of the depression by another detainee and have no doubt that he would have done the same in the case of Dr. Aggett if he had any reason to believe that Dr. Aggett was in danger, if he had noticed any change in the condition of Dr. Aggett. In the days following this period of interrogation Dr. Aggett was compiling a statement in a rational manner. On the 4th February, 1982, he made a statement to Sergeant Blom in a rational manner. Besides the above factors supporting the police version Prof. Vorster and Prof. Plomp mentioned the possibility that Dr. Aggett might have manipulated

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Judgment.

his outward appearance depending in whose company he was. In these circumstances I cannot find beyond any reasonable doubt or on the preponderance of probabilities that the police officers were aware of a change in the condition of Dr. Aggett or that there was any indication that he might take his life.

The present case is clearly distinguishable from the case of the Minister of Police vs. Skosana, supra, where the policemen concerned were aware of the condition of the prisoner. See at page 43 A - B.

I cannot find beyond any reasonable doubt or on the preponderance of probabilities that in the circumstances the police officers ought reasonably to have foreseen that Dr. Aggett might take his life or that any unlawful and negligent act or omission constituted a cause of Dr. Aggett's death.

In the case of Mr. van Heerden one might be inclined to say that there was a duty on him to raise alarm on the night of the 4th February, 1982 but of course a moral duty will not suffice in legal proceedings. In S.A.L.J. 1975, 361 at p.364 the learned author Boberg observed -

"It follows that we have to grapple with a notion of something stronger than positive morality. That the community is to be credited with the capacity to distinguish between what it regards as morally right and what it considers should be legally prescribed. But the apparent difficulty in this concept fades when it is realised it is but a vehicle for the expression of

Judgment.

the Court's own view. The real merit of the approach is its recognition of the fact that a policy decision has to be made in these cases. The Court will decide in the light of all the circumstances whether the defendant ought to have acted and will give expression to its feeling by attributing it to convictions of the society which it serves."

I am not prepared to say that in the light of all the circumstances there was a legal duty on Mr. van Heerden to act. Neither can I find that it is proved beyond reasonable doubt or on the balance of probabilities that Dr. Aggett's life would have been saved if Mr. van Heerden had acted.

It is accepted by Counsel for the family and by Counsel for the Minister for Law and Order, The South African Police and others, that Dr. Aggett committed suicide. I am satisfied that this is proved beyond any reasonable doubt. Much effort was directed to try to find the reason or reasons for the apparently dramatic change of Dr. Aggett's suicidal status within more or less a month of further detention. I have already dealt with the possibilities ingrained in the allegations of assault, sleep deprivation and others forms of ill-treatment and concluded that nothing of that kind is proved.

We heard the evidence of the psychologist, Prof. Vorster and the psychiatrist, Prof. Plomp. In seeking an answer to this question we have to rely heavily on the evidence of Prof. Plomp who was present at the Inquest for virtually the entire period and who also by virtue of his position as a psychiatrist with an interest in forensic

/ psychiatry ...

Judgment.

psychiatry was particular well versed in the problems at hand. I venture to say that the evidence given by Prof. Plomp at this enquiry deserves the close and careful attention of any person who has to deal with detention under provisions of the Internal Security Act, 1982. Prof. Plomp stated that in his opinion -

- (a) that Dr. Aggett enjoyed sound physical and mental health up to the end of December, 1981;
- (b) that in general terms there are not known specific causes for suicide but many pre-disposing factors; 10
- (c) that suicide prediction is often not easy, even in the optimal clinical environment;
- (d) that the suicide act may be precipitated by a variety of apparently insignificant factors, the proverbial last straw when added to receptive state of mind;
- (e) that on each occasion the active commitment to suicide is often short-lived; 20
- (f) during times of deep trouble and depending on the psyche of the individual he may feel hopeless, helpless, in turmoil, frustrated, desperate, panicking, exhausted, worthless, enraged, lonely and excited and he may reach levels consistent with suicidal behaviour.

From the available evidence the position of Dr. Aggett.. the position Dr. Aggett found himself in is conducive to and could understandably have given rise to all the subjective feelings enumerated above. Evidence was also

30

/ given ...

Judgment.

given by Prof. Plomp that even in the wellintegrated individuals such a crisis situation would unleash strong suicidal tendencies. To compound the danger of suicide during detention Prof. Plomp made particular reference to the high incidents amongst awaiting-trial prisoners as being due largely to uncertainty with regard to the future. The position of Dr. Aggett and indeed all the detainees, in his opinion, can to a certain extent be equated with that of the awaiting-trial prisoner. Both Prof. Vorster and Prof. Plomp identified a number of factors in detention that could give rise to a suicidal frame of mind. Both conceded that since they had not had consultations with Dr. Aggett during life the opinion expressed was not as accurate as they could otherwise have been. 10

I have come to the conclusion that the following factors played an important role in the decision by Dr. Aggett to take his own life:

- (a) He was a man who was devoted to a cause who worked with a number of close associates to achieve his goals. 20
- (b) During the period of detention he had to disclose particulars of his activities and more important the names of his associates.
- (c) These disclosures must have brought about a feeling of uncertainty about his future and the realisation that steps could be taken against his associates. The possibility of a sense of guilt towards his associates, a sense of betrayal of his friends and associates, is large 30

/ (d) ...

(d) He had to face some of his associates and to admit the disclosures, an anticipation or feeling of rejection by them cannot be excluded. Unfortunately it was during this crucial period that he had to be informed inter alia that a friend could not afford to provide him with a portable radio in the cell.

In terms of Section 16(2) of the Inquest Act, No. 58 of 1959 I record the following findings:-

10

- (a) The identity of the deceased person, Neil Hudson Aggett.
- (b) Cause of death: Suicidal hanging.
- (c) Date of death: 5th February, 1982.
- (d) The death was not brought about by any act or omission involving or amounting to an offence on the part of any person.

I want to announce that the learned Assessor concurs the findings upon the identity of the deceased person, the cause of death and the date of death. The question as to whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person is a question of law and decided by me alone.

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PRESIDING OFFICER

I, the undersigned, hereby certify that the foregoing is a true and correct transcript of the original evidence in this case, mechanically recorded.

IN THE INQUEST OF DR. NEIL AGGETT

LK Swart

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