

kon ondergaan het om hom tot selfmoord te dryf.
 Dit is waarom ek toe mnr. Bizos my gevra het
 oor die persoon wat al sy geld op die aandele
 mark verloor, dat dit nie altyd die enigste faktor
 hoef te wees nie, hierdie ooglopende een wat voor
 mens staan nie maar ook ander dinge wat terselfder-
 tyd simptomies daarmee ook op hande is. Om hierdie
 dinge te ondersteun dink ek ook daaraan dat hier
 geweldig konflik in hierdie saak duidelik geword
 het van twee sienings, van twee kante. Hoe die 10
 polisie hom waargeneem het, hoe sy mede-aangehoudenes
 hom waargeneem het. Ter ondersteuning van hierdie
 skuldgevoelens en so aan wat by Dr. Aggett bestaan
 het kan ek moontlik 'n verklaring aanbied hoekom
 dit so voorkom vir mense asof hier so 'n uiteenlopende
 relaas is oor sy voorkoms. As Dr. Aggett werklik so
 'n skuldgevoel het hieroor en hy het vertwyfeling
 gehad oor hoe hy ontvang sou word in sy groep,
 daarby bedoel ek sy vriende en medewerkers, dan het
 ons ook reeds die voorstel gehoor van die regs- 20
 verteenwoordigers van die familie dat hy sou wou
 ongedaan maak wat in die verslag staan, die
 kriptiese aanhalings of gebruik van woorde soos
 byvoorbeeld "communistic" en die invoeg van die
 sinnetjie "I am also an idealist". As Dr. Aggett
 so intelligent was om van hierdie metodes gebruik
 te maak, dink ek dit voorsienbaar dat dit voorsien
 is dat hy indien die doel daarvan was om later
 gronde te hê om op te staan en te sê dit was onder
 dwang dat hy hierdie verklarings gemaak het ook 30
 verder sou moes gaan en dit sou vir hom moeilik wees

Judgment.

om aan sy vriende of sy groep te verklaar hoe hy kon beweer dat hy ernstig onder druk was sonder dat hy ooit 'n klagte van enige aanranding gemaak het. Dus of daar 'n aanranding op hom plaasgevind het of nie het hy byna nie 'n opsie gehad ter ondersteuning van sy latere bewerings, indien hy sou geleef het moet hy dan 'n verklaring maak dat hy aangerand is. Anders sou mense hom nie glo nie dat hy onder daardie druk was nie.

Dan is daar 'n derde voorbeeld hiervan en daar kom 10
ons by die verskillende indrukke wat hy op verskillende mense gemaak het. As hy hierdie kriptiese metodes gebruik het in sy verklaring en hy het 'n vals of korrekte verklaring gemaak van die druk wat op hom uitgeoefen word, uitermate druk soos aanranding, dan is daar nog een manier waarop sy vriende oortuig sou moes word en dit is deur sy medegevangenes, medeaangehoudenes. As hy sou vrygelaat word en hy het net sover gegaan as wat ons nou van gepraat het, maar hulle sou kon rapporteer aan sy groep dat hy 20
deurgaans in sy aanhouding opgeruimd, vrolik en gesond en gebalanseerd voorgekom het dan sou hy nie kon sê dat hy ernstig onder druk gely het nie.

Hy sou dus moes ook sy medeaangehoudenes oortuig dat hy onder druk verkeer. En dit is 'n moontlike verklaring waarom hy dan enige spanning en depressie wat moontlik by hom teenwoordig was, as mag ek so 'n lelike woord gebruik, aandik, dat/op maniere moet loop, 'n houding inslaan en eintlik wat ek van gepraat het as simulاسie toe mnr. Bizos my onder- 30
vra het, dat hy dit vir daardie mense kon

Judgment.

vertoon terwyl wanneer hy in die geselskap van die polisie is, die mense wat hom ondervra, het hy nie nodig om hierdie front op te sit nie en kon hy normaalweg optree. Daar is ook 'n verwysing gewees na 'n episode waar hy in die teenwoordigheid van 'n polisie-man gesien is deur een van die mede-aangehoudenes en dat hy ook toe so depressief voorgekom het. En dit dan ook met wat ek nou net gesê het, die feit daar is dat hier was .. al was die polisie-man by hom was hy nou geobserveer deur een van sy medeaangehoudenes en hy kon nie nou, as dit sy doel was om hulle te mislei, nie te depressief en so aan voorgekom het nie. Hy moes dus in daardie omstandighede in die teenwoordigheid van die polisie ook so voorgekom het. Ek dink dit is al wat ek kan sê, wat ek daarvoor wou sê.

Goed, Professor, nou net dit, in verband met die sneller kwessie, wat u nou aan die Hof verduidelik het, as 'n mens nou sou postuleer dat daar in werklikheid nie aanranding was nie, sou die insident met die teleks nog steeds genoegsaam kon gewees het om as so 'n sneller te dien? --- Ek dink so ja, want hier het ek weereens van die onderstelling uitgegaan dat hy inligting gegee het en dat hierdie teleks insident werklik plaasgevind het, dan kon ek my byna nie anders indink as dat Dr. Aggett vanweë sy verraad wat hy gepleeg het ernstige bedenkinge moes gehad het oor sy toekoms (1) soos ek gesê het ten opsigte van die Veiligheidspolisie en een van sy groep, die klein groepie by wie hy aanvaar was. Daar moes by hom 'n mate van skuldgevoelens

/ hieroor ...

Judgment.

hieroor gewees het en hierdie mate van onsekerheid oor sy toekoms. Eintlik het hy nie veel van 'n toekoms gehad nie om na uit te sien nie, onder hierdie omstandighede nie.

Ja, as ons nou sou postuleer dat daar wel een of ander aard van aanranding was, die detail waarvan die hof, as die Hof so 'n bevinding sou maak, die Hof so 'n besluit sou neem, as ons sou postuleer daar was een of ander vorm van aanranding min of meer soos geskets, sê nou maar deur die oorledene in sy verklaring of soos oorgedra aan mnr. van Heerden, as ons dit sou neem as iets wat wel plaasgevind het in sy lewe en ons het ook daarnaas die insident waaromtrent u getuig het, die kwessie van die teleks en wat daarmee saamgaan, sou die teleks insident selfs waar daar ook sprake van 'n aanranding was, as 'n onafhanklike oorsaak kon dien vir die besluit om selfmoord te pleeg? Met ander woorde as ek my net mag duidelik maak, die aanranding het plaasgevind, maar dit is nie iets wat noodwendig sou uitloop op selfmoord of nie werklik relevant is by die uiteindelijke besluit wat kon ontstaan het met die sneller insident wat u beskryf het aan die Hof. Kan dit so wees? --- Edelaagbare, ek dink die sneller insident wat die gevolg is van die verklaringe wat hy gemaak het of die inligting wat hy gegee het kan totaal afsonderlik staan van die aanranding. Dit kon net so goed funksioneer om hom tot selfmoord te bring alleenstaande, soos wat daar gesuggereer word die aanranding insident sou kon gedoen het."

Judgment.

Prof. L.J. West, an expert from the United States of America mentioned in an affidavit which was submitted as Exhibit SSS, the factors which might be seen as contributing significantly to the possibility that Dr. Aggett committed suicide. He observed inter alia -

Physicians are more at risk for suicide than persons matched for age in the population at large. The risk of suicide amongst prisoners in the United States is so high that there have recently been a number of law suits in connection with them." 10

Dr. Woolf, a qualified Neurologist and Psychiatrist in an affidavit admitted as Exhibit RRR disclosed that he compiled a report on Dr. Aggett and concluded -

"At the time of his arrest he was healthy physically and mentally and in considering death by suicide in detention the following must be taken into account: The greater hazard of suicide occurring in prison than when at large."

He quoted the following from a work: 20

"The records of suicide among male prisoners in England between 1958 and 1971 emphasize the difference between the prison population and the population at large".

Now it is clear the sum of the evidence relating to the circumstances of the death of Dr. Aggett is not disputed by any of the interested parties while on other aspects of the matter there are mutually destructive versions. It is therefore necessary to analyse and evaluate the evidence in depth before any finding can be made. 30

Judgment.

The evidence given by Captain Strauss, Warrant Officer Prince, Major Mahoney relating to the arrest and the detention of Dr. Aggett at the beginning of the period of his detention and the documents and books found in the house occupied by him and by Mr. Lodge on the nature of the documents and the books, is not contradicted during the proceedings. The oral evidence was given in a satisfactory manner and I find no inherent improbabilities reflecting adversely on the evidence. I am not unmindful of the fact that Dr. Floyd claimed some of the books as belonging to her. In spite of this I am satisfied that the evidence relating to the arrest and the initial detention and to the fact that a great quantity of books and documents found in the house were possessed by Dr. Aggett is reliable and is accepted. 10

The evidence as deposed to by Lieutenants Delpont and van Niekerk relating to the detention in Pretoria is not disputed or contradicted and it is accepted.

The evidence given and deposed to in the affidavits by Sergeant Agenbag, Constable Martin, Warrant Officer Marais, Constable Enslin, Constable Sehlolo, Colonel Oosthuizen and Warrant Officer Lamprechts relating to the events on the night of the death of Dr. Aggett, especially to the fact that nobody from outside, including a member of the Security Branch of the South African Police had access to the cell in which he was detained, is not contradicted or disputed. I find no inherent improbabilities reflecting adversely on this evidence. It was given in a satisfactory manner. I accept this evidence as reliable. 20

It is true that when some of the witnesses, of these witnesses testified certain specific points such as 30

/ the ...

Judgment.

the failure of regular visits to the cells were made and further evidence contradicted the evidence of some of the abovementioned witnesses on the condition of Dr. Aggett prior to his death was given. I will deal with these matters later in my Judgment.

The evidence given and deposed to in affidavits by Lieutenant Colonel Scholtz, Captain Struwig, Brigadier Swanepoel, Warrant Officer Pretorius, Constable Ntsoane, Mr. Lloyd, Constable Zeelie relating to finding, the handling and removal of the body, the cloth, Exhibit 1, the articles in the cell, is not disputed or contradicted and it is accepted without further comment. 10

The evidence given by Dr. Kemp, Dr. Botha, Prof. Schepers and Prof. Laubscher relating to the cause of death is mutually corroborative. It was given in a satisfactory manner by professional men of whom I am satisfied that each one of them is properly qualified to express the opinions he did. It is supported by other reliable evidence on the history of the case with which I shall deal later in my Judgment. I accept this evidence. 20

The evidence as deposed to in affidavits by Warrant Officer Mostert, Mr. Freiman, Mr. Burger, Constable Smit, Warrant Officer Visser, Miss Gill relating to the handling and examination of certain specimens and identification of the body, is not disputed or contradicted and is accepted without further comment.

The most important question for decision is what happened to Aggett at John Vorster Square Police Station since his arrival on the 11th December, 1981 until the night of his death, the 4th February, 1982? On this issue 30 we have two conflicting versions. There are the allegations

of assaults and extreme ill-treatment with the inevitable consequences on Dr. Aggett and opposite to that there is evidence to the contrary.

When considering whether the one version can be accepted to the exclusion of the other, it is incumbent on us to bear certain well established principles and approaches applicable in judicial proceedings in mind. In S vs. Nolte, 1965(2) PH H.195, the learned Judge of Appeal observed -

"Waar die gestelde vraag bloot afhang van die vraag of die Staatsgetuienis met uitsluiting van diê van die aangeklaagdes aanvaar moet word aldan nie, kan die Staatsaangevoerde getuienis nie in isolasie opgeweeg word nie maar moet saam met die getuienis van die aangeklaagdes opgeweeg word".

10

These observations are mutatis mutandis applicable to the instant matter. In S vs. Snyman, 1968(2) S.A. 589 A.D. at p.589 H, the Honourable Holmes J.A. observed:

"I would add that in general there are indications of a judicial moving away from former concepts of piece-meal processes of adjudication. The Magistrate was entitled to adjudicate as he did upon the totality of the facts."

20

Although the evidence must be considered as a whole, before the final conclusion is reached it is necessary when considering the merits of demerits of each of these persons as witness to analyse the evidence of each one in particular. I will deal with the evidence of the witnesses who talked about or suggested assaults and ill-treatment first.

30

Elizabeth Catherine Floyd. We cannot ignore the

Judgment.

fact that she had a very close relationship with Dr. Aggett and this is coupled with a degree of antagonism towards some members of the Security Police. This creates the situation wherein the possibility of bias looms large. She gave a detailed description of some of her experiences on the tenth floor but on some aspects she was not so sure, for instance, when she said to Lieutenant Whitehead, what she said to Lieutenant Whitehead, when he treated her as a liar, when questioned why she did not complain about Prince shouting at her.

10

During examination by Counsel for the South African Police and others she was asked -

"Do you want to tell us that you thought standing was out of the ordinary but telling stories about people jumping out of windows killing themselves was standard on the tenth floor".

She replied: "It fitted in with what was happening on the 10th floor".

Now Dr. Floyd did not tell us on what she based this assertion. One wonders whether this is not merely an intimation that when it suits her she is prepared to condemn or innuendo without factual support.

20

Dr. Floyd was fairly consistent with the particulars of her assertions but was not entirely without criticism.

For instance she told Mr. Mouton, the Inspector of Detainees, that she was ordered to stand and after an hour "I said to him I was suffering from arthritis. He allowed me to sit down". In evidence she said she thinks that she was standing for about half an hour to three-quarters of an hour. Another strange feature in her evidence

30

Judgment.

is that while Dr. Wolf in his affidavit admitted as Exhibit RRR, when referring to Dr. Floyd's relationship with Dr. Aggett, he said: "they separated for a while. She was resentful of affairs he had with other women. They became reconciled and were close until the time of his arrest." Dr. Floyd denied that Dr. Aggett had such affairs.

Keith Coleman, he was a friend who had something to say about a torn shirt. It was obvious that Mr. Coleman had some difficulty to explain how he got to know about the shirt. What was told to him, what impression he got; about the details he was uncertain. He tried to explain that he had a conversation with Dr. Aggett about the assaults during the exercise-session. But later he said he could not remember when it was. More than once Mr. Coleman blamed the effects of solitary confinement for his inability to explain certain situations. Yet certain things he does remember clearly, somewhat selective indeed.

Pramanathan Naidoo. Mr. Naidoo had no difficulty to reply to questions directly and without hesitation. However, it is necessary to bear in mind that he is a person serving a sentence for the type of offence eluded to in evidence, a person with strong feelings against the Security Police, not necessarily because of any treatment received while in detention. The possibility of a bias can therefore not be excluded. It must also be borne in mind that Mr. Naidoo has made other statements regarding his treatment which have been recorded. On the 18th December, 1981, at Vereeniging, he told Mr. Mouton, the Inspector of Detainees:

"Treatment is good here. No complaints".

On the 1st February, 1982 he told Mr. Mouton -

"Treatment: I have no complaints".

On the 25th February, 1982, he told Mr. Mouton -

"Treatment is good here. The Security Police have not been good to me when I was detained the first week but I do not want to talk about it".

Now it must be noted that Mr. Naidoo said that the treatment was good at Vereeniging. That does not accord with his evidence. (ii) that "the Security Police have not been good to me when I was detained the first week, (that was at John Vorster Square.) That also does not accord with his evidence. Mr. Naidoo explained that he did not complain to Mr. Mouton because he was afraid of the Security Police, yet when he made the confession on the 10th December, 1981, when asked:

"Was any force or influence used by any person to compel you to make a statement and if so by whom and when he replied:

'I would prefer not to answer that question'."

It was later admitted that he implied ill-treatment in this reply. On the 25th February, 1982, Mr. Naidoo more clearly implied ill-treatment. This does not substantiate his claim of being afraid. And even more important he confined his "not being good to me" to the first week. Mr. Naidoo's claim of being afraid is clearly not supported by the facts or his own conduct.

The South African Law on Evidence, Hoffmann and Zeffertt Third Edition, the learned authors observed -

"At common law a Witness's previous statements

10

20

30

Judgment.

cannot be evidence relevant to the issue because the hearsay rule prevents them from being used to prove the truth of their contents. They may, however, be used relevant to the witness' credibility because in the absence of an explanation the fact that he had previously made a statement inconsistent with his present testimony must weaken his credit, whichever ^{version} is more likely to be true."

Mr. Naidoo visited the District Surgeon on two occasions but he never complained about an assault. 10

Ismael Momoniat. He made three important points in his evidence:

1. The important encounter with Dr. Aggett was on the 3rd February, 1982. This was watered down when he conceded that it could have been the 4th.

2. That Dr. Aggett did not respond when greeted and appeared to be oblivious from anything around him, just staring blankly. 20

This was also watered down and he conceded that it could have been because Dr. Aggett might have been lost in thought at the time and did not hear him.

3. The bruise he saw on Dr. Agget's forehead. This I shall deal later with in my Judgment.

Shirash Nanabhai. It is remarkable that Mr. Nanabhai did not complain about his treatment at the hands of the Security Police to the Station Commander where he was well-treated and he cannot give any reason why not. 30

/ He ...

Judgment.

He made a few mistakes for instance when he had discussed the complaint with Major Cronwright and at what time he was taken back to Norwood Police Station on the particular day. Mr. Nanabhai admitted that he told Sergeant Blom that he could not identify the persons who fetched him from Norwood on the 8th and 9th of January, 1982. He conceded that it could have been Sergeant van Schalkwyk and Mr. Marx. However, he told us that van Schalkwyk was present when he was assaulted. It is difficult to understand how he is able to identify Sergeant 10 van Schalkwyk as being present at the assault but he is unable to identify him as one of the persons who fetched him. The evidence given by Mr. Nanabhai is to some extent supported by the evidence given by Dr. Jacobson. However, Mr. Nanabhai talked about four different circular areas. Mr. Jacobson found only two. Dr. Jacobson is clearly not in a position to tell us with any certainty what could have caused the marks. The doctor expressed the possibility that the marks could have been inflicted before Mr. Nanabhai was detained. 20 The other observations on Mr. Nanabhai was obviously influenced by the reactions of the patient and thus not reliable as objective observations would have been.

When considering the quality of the evidence given by Mr. Nanabhai, we cannot ignore the fact that Mr. Nanabhai and Mr. Naidoo were convicted for the same offence; that Mr. Naidoo in the confession introduced into the proceedings by Counsel for the family, on the 10th December, 1981 implicated Mr. Nanabhai; that Mr. 30 Naidoo, through his wife, who visited him in detention

Judgment.

and had contact with people outside; that Mr. Nanabhai was only arrested on the 5th January, 1982. In these circumstances we cannot rule out the possibility that Mr. Nanabhai expected the police and was well prepared when they arrived and perhaps equipped with the two marks on his arms.

Mr. Mouton interviewed Mr. Nanabhai on several occasions, on the 26th January, 1982 he reported:

"Treatment: No complaints".

On the 15th February, 1982, he reported -

"The treatment is good here, I have no complaints. The Security Police also treated me well".

On the 4th March, 1982 he reported -

"No complaints with regard to treatment".

Now it is obvious that those reports are not reconcilable with the evidence given by Mr. Nanabhai.

Norman Jacobson, he gave his evidence in a satisfactory manner and further comment is not necessary.

Thabo Lerumo. This young man was obviously not at ease in the witness stand. He frequently rubbed his chin, mouth slightly opened when he listened to questions. He looked hither and thither for no reason. He had some difficulty to explain some of the detail in his evidence. He was hesitant when one would expect no difficulty to understand the question. He was adamant that he met Dr. Aggett in the cells during November, 1981, which is obviously wrong.

Sisa Njikelana. He was hesitant in most of his replies but it is difficult to say whether this can be ascribed to difficulty to express himself or to uncertainty

10

20

30

Judgment.

of what he had to say. On occasion he did not reply to a question. He was not consistent in his allegations of assault on him. He was interviewed by the Inspector of Detainees but did not complain of feared repercussions, it is difficult to understand why he had to say "the Security Police treated me well so far". He saw the doctor on numerous occasions, but he did not report ill-treatment to him.

Gabriel Jabulane Ngwenya. He was inclined to respond to many of the questions asked by Counsel for the Police and others with a degree of arrogance. He was deliberately vague when questioned about details. His explanation that this is because of the effects of detention is unconvincing, especially in view of the fact that he is so selective on what to remember and what to forget. His description of the condition of Dr. Aggett is unconvincing. He made a few obvious mistakes when he talked about Visser from Thabazimbi. He described de Bruin as a blond. He talked about the 22nd instead of the 25th. That was explained of course. Mr. Ngwenya did not impress as a reliable witness. It can be mentioned that on the 17th February, 1982, Mr. Ngwenya told the Inspector of Detainees -

"The treatment is good. I have no complaints.

Since the 17th November, 1981, the Security Police have not done anything to me".

On the 11th December, 1981 he did mention that he was beaten up, this was on the 17th November. It is clear that his evidence is not consistent with what he told the Inspector on the 17th of February. His explanation for the inconsistency is very unconvincing, almost ridiculous. His report to the Inspector clearly demonstrates that he

/ had ...

Judgment.

had no reservation about complaining.

Auret Dennis van Heerden. Judging on the manner which Mr. van Heerden replied to questions he appeared to be in full control of himself and knew what he wanted to say. I intend to say more about him and his evidence when the nature of the evidence and the probabilities and improbabilities are considered.

Messrs. Wessels and van der Merwe, the facts deposed to by the Magistrates, are accepted as reliable.

Aletta Gertruida Blom. It was obvious that she had some difficulty to answer some of the questions asked by Counsel for the family. She had some difficulty to explain why she did not record in her affidavit that Dr. Aggett did not want to see a doctor. However, her evidence on what happened and what was said when she obtained a statement is not contradicted and is not inherently improbable and is accepted.

Abraham Johannes Mouton, the Inspector of Detainees, gave his evidence in a satisfactory manner.

Morris Peter Smithers. He gave his evidence in a satisfactory manner. However, there is a number of negative features in his evidence which we cannot ignore. When it was pointed out to him that he was not prepared to take the oath in Court, yet the statement, Exhibit FF, was on oath, he explained that the Commissioner of Oaths, who happened to be a policeman, did not tell him that he was swearing to God. Apparently Mr. Smithers forgot that he began his statement, his affidavit which was compiled with the assistance of an attorney with the words, "I, the undersigned, Maurice Peter Smithers, do hereby make an oath and say" This does not tally with

10

20

30

Judgment.

his explanation.

Mr. Smithers suggested that he had to watch the treatment to Dr. Aggett perhaps to intimidate him. But on his own he had completed his statement by the 4th of January, 1982, and had a fairly good relationship with the Security Police at the time of the incident. His explanation is not supported by the probabilities. It appears that some things that was presented as assumptions in evidence was in fact presented as statements of fact in the note, Exhibit EE.1 sent out. For instance in the note he stated -

10

"he was hit either with a belt or a rolled-up newspaper."

When he described this incident in evidence he said -

"Immediately as soon as he had finished adjusting I heard a cracking noise which sounded like flesh being hit and he bent down at the same time as this noise happened."

Did you see anything? --- I could see him moving his arm. I could not actually see what, Dr. Aggett was down on the ground so I could not actually see precisely what was going on.

20

Could you demonstrate the movement of the arm that you saw? --- Well, he was standing more or less at this angle to me. I was sitting over there and he is somewhere like that down. I was not able to see what was in his hand. But clearly there was a sound of flesh being hit."

30

Now if Mr. Smithers was not able to see what was in the

/ hand ...

Judgment.

hand of this person why did he say in the note it was a belt or a rolled up newspaper. In his note he stated -

"the hitting with the newspaper went on all the time".

When he described this incident in evidence he said -

"What brings you under the impression that this was a rolled up newspaper? --- Well, it appeared, it was white, it appeared to be cylindrical. It appeared, it had to my impression at that stage it had the appearance of a newspaper. It could have been something else. It could have been, I don't think it could have been a ruler. It didn't seem like a ruler, it seemed something slightly more solid than a ruler. It wasn't a baton because a baton is brown and this thing wasn't brown. It was merely a surmise on my part."

10

In his affidavit, Exhibit EE, he talked about an object which looked like it could have been a rolled up newspaper. If Mr. Smithers was not sure what it was, why did he make a positive statement in his note that it was rolled up newspaper? In the note he stated -

20

"It is clear that he was completely naked because he obviously drew up his underpants and then his trousers".

In evidence he said -

"The action I could see was of him drawing some form of clothing onto the lower part of his body. I assumed that that was his pair of trousers. However, he did it a second time and I therefore assumed from that that he must

30

Judgment.

expected have been naked, he must have drawn up
 as a pair of underpants at first and then
 in his a pair of trousers".

In the note he stated that he was sweating profusely. In
 evidence -

"Could you see through the frosted glass
 that he was sweating profusely? --- Well,
 let me say that when I wrote this note I
 had no legal advice and I was going by what
 I was observing, so the reason I wrote that
 was because I saw him wiping his forehead
 very often which seems to indicate to me
 that he was sweating profusely. It was an
 assumption that I made. I am not sure if I
 actually wrote that in my affidavit because ..
 What do you mean that at that stage you had
 no legal advice? --- Well, I made a certain
 assumption in this note saying that he was
 doing push-ups which I couldn't actually
 see, saying that he was sweating profusely
 which I couldn't actually directly see.

That is That was because they were assumptions that
 as a state I made. When I made the affidavit I obviously
 could not say those things because I couldn't
 on a for affirm definitely that they happened and
 Mr. said that is why in the affidavit I state that he
 was doing exercises, not necessarily push-
 ups".

Once again if he could not actually see what happened
 why did he make the positive statement in his note if
 he was interested to convey the truth? After all, he

/ expected ...

Judgment.

expected people to accept the information in the note as a true statement of fact and to act on it.

In his note he stated -

"Once he nearly fell over a chair".

In the evidence -

"Now you say in your affidavit that he

fell over or stumbled over a piece of

furniture? --- That is correct.

What was that? --- Well, it was difficult

for me to see because it was below the 10

level of the glass but it seemed from the

location it could probably be a chair and

it actually clattered as he knocked against

it and I think he knocked it against the

wooden partition. It appeared to be a

chair.

Is that why you without qualification

stated in your note that he nearly fell

over a chair? --- Correct.

But you didn't know that it was a chair, 20

what it was? --- Correct."

That is another example of an assumption being presented as a statement of fact.

When it was pointed out to him that his evidence on a certain aspect was not consistent with his affidavit, Mr. Smithers explained, he said -

"Well, that is an inconsistency, it is actually

incorrect then when this was drawn we made a

mistake because it actually started on the day

that I went back". 30

Well, one wonders why Mr. Smithers said we made a mistake,

/ after ...

Judgment.

after all he made the statement. Mr. Smithers told us that Dr. Aggett was being interrogated while treated in the fashion he described but he could not hear what was said, he only heard murmurs. One wonders how it is possible to hear the words "who told you to stop, ten more, ten more". Mr. Smithers did take the trouble to write down what he had witnessed but it is obvious that the note handed in was written after the death of Dr. Aggett.

We cannot ignore the fact that the contents of the note became publicly known before Mr. Smithers was called to give evidence. He was therefore in a position that he had to give evidence and also to justify the note he sent out. It is remarkable that Dr. Aggett did not mention this incident to anybody, in spite of the fact that we had a number of reports by him relating to his treatment. At the time of the post mortem no bruise or marks which could have been caused by blows with a belt was found. Another peculiarity in the case of Mr. Smithers is that on the affidavit made by him, Exhibit EE, his first name is spelt Maurice. On the note, Exhibit EE.1 the name is spelt, as it appears, Morice. It is remarkable that the name also appears on the document written by Miss Barbara Hogan, Exhibit MMM also referred to as B.3 and on this document it is also spelt Morice Smithers. Counsel for the family pointed out repeatedly that Miss Hogan could not even spell the name of Neil Aggett correctly. Of course there is a hint of corroboration by Mr. Ngwenya, I have dealt with his evidence.

That brings me to the evidence given by the police officers. For the sake of brevity I will not deal with

/ each ...

Judgment.

each witness individually, but in some cases it cannot be avoided.

Jabulane Petrus Dladla. He tried to remember clearly that Lieutenant Makhoro was in his office on the 25th January, 1982 but when questioned about other events he was uncertain. It seemed that his memory is not very reliable on the issue before us. On his evidence alone I cannot make a positive finding, but where there is corroboration it cannot be ignored. These remarks are mutatis mutandis applicable to the evidence given by Constable Makhetha and Lieutenant Makhoro. 10

George Mashinini who testified about the same event made a better impression than the other three officers. His recollection of what happened seems to me more reliable. It must be borne in mind that the evidence of these four witnesses, the four police officers cannot be considered in isolation. It is corroborated by the evidence of officers such as de Bruin, Woensdrecht, Whitehead, Cronwright and others.

Martin Johan Naude. He played an important role in the interrogation of Dr. Aggett. He was cross-examined thoroughly but answered all the questions in a satisfactory manner. 20

The police officers Captain van Rensburg, Warrant Officer de Bruin, Warrant Officer Carr, Warrant Officer Lucas, Major Visser, Captain Swanepoel, Warrant Officer Deetlefs, Lieutenant Woensdrecht, Warrant Officer Maphophe, Constable Chauke, Sergeant van Schalkwyk, Warrant Officer Smith, Lieutenant Venter, Lieutenant Pitout were all with the exclusion of Captain Jansen van Rensburg thoroughly cross-examined. Each one of them replied to the questions in a 30

/ satisfactory

Judgment.

satisfactory manner. Each one was consistent in what he had to say. There is mutual corroboration when some of them testified on the same events. The discrepancies are few and not on material aspects.

Brigadier Muller impressed as an honest and a reliable witness. Arthur Benoni Cronwright, he was subjected to a long, thorough and merciless cross-examination by Counsel for the family. He was able to reply to all the questions and was consistent on all the material aspects in his evidence. On some occasions he was inclined to give rather lengthy explanations instead of short and direct replies but this was not of such a nature that it detracted from the quality of his evidence. Of course he was the police officer in charge of the investigation and to some extent the interrogation and carried the responsibility to see that Dr. Aggett was well-treated at all times during his detention. His evidence is to be treated with caution. 10

Stephen Peter Whitehead. He played an important role in the interrogation, especially during the last week of Dr. Aggett's life. He is suspected of assaults on and ill-treatment of Dr. Aggett. His evidence is treated with caution. The visit to the house of Mr. and Mrs. Aggett and his actions there reflect adversely on some of his actions but as already pointed out his evidence cannot be considered in isolation neither can a portion of his evidence be considered in isolation. He was cross-examined thoroughly, mercilessly and at length by Counsel for the family. In spite of that he was consistent on the material aspects in his evidence. He was able to give reasonable explanations for his actions with the reservation I expressed of the visit to the house. Much of the cross- 20 30

/ examination ...

Judgment.

examination was more accusative than inquisitive but the Lieutenant was able to handle it. Strong corroboration for the evidence given by Lieutenant Whitehead is to be found in the evidence by other police officers who testified on the same issues.

Carl Jacobus Adriaan Victor, the police officer who investigated the circumstances of the death gave his evidence in a satisfactory manner. He was criticised by the Counsel for the family on his methods of investigation, his failure to investigate certain areas. Some of this criticism may be justified but that does not affect him as a reliable witness. In fairness to Captain Victor one must bear in mind that the ex post facto considerations on a situation may yield something different from those when in action. 10

Walter McPherson. He was criticised with some justification by Counsel for the family. His evidence on why Dr. Aggett was not seen by the Inspector of Detainees and the Magistrate on their visits is not convincing and was contradicted by the Inspector of Detainees, Mr. Mouton. 20 However, the most of his evidence on the material aspects is corroborated by other witnesses and cannot be ignored or rejected.

Yvette Breytenbach. She was not criticised by any of the interested parties. She impressed as an honest and reliable witness. Her evidence is in harmony with the evidence of other witnesses relating to the condition of Dr. Aggett at the time of the visit.

Dr. West. Dr. West is an eminent American physician and psychiatrist who is fully qualified by virtue of his learning and experience to give expert evidence on the 30

Collection Number: AD2021

SOUTH AFRICAN INSTITUTE OF RACE RELATIONS, Security trials 1958-1982

PUBLISHER:

Publisher:- Historical Papers, University of the Witwatersrand

Location:- Johannesburg

©2012

LEGAL NOTICES:

Copyright Notice: All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

Disclaimer and Terms of Use: Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. While these digital records are true facsimiles of the collection records and the information contained herein is obtained from sources believed to be accurate and reliable, Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.

This document is part of a private collection deposited with Historical Papers at The University of the Witwatersrand.