56/96

Case no: 416/94

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

CHENGA REDDY : First Appellant

ANNAMALLIE CHETTY : Second Appellant

KRISHNASAMY MOONSAMY : Third Appellant

AND

THE STATE : Respondent

Coram: **SMALBERGER, HOWIE JJA et ZULMAN**

AJA

Date of Hearing: 7 May 1996

Date of Judgment: 28 May 1996

JUDGMENT

ZULMAN, AJA:

The three appellants were convicted in the Regional Court, Durban of having contravened section 2(a) of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 in that they dealt in methaqualone contained in 217 623 Mandrax tablets. Each appellant was sentenced to 15 years imprisonment of which 5 years was suspended upon condition that they were not convicted of contravening section 2(a) of Act 41 of 1971 committed during the period of suspension, and that each appellant paid to the Clerk of the Court, Durban, before 30 June 1993, an amount of R50 000 for equal distribution between two rehabilitation centres for drug addicts in Durban, Newlands Park Centre and Lulama Treatment Centre.

The appellants appealed to the Natal Provincial Division against their convictions and sentences. Their appeal was dismissed. Thereafter

a successful application was made for leave to appeal to this court. Due to an oversight on the part of counsel for the appellants leave was not sought specifically in regard to an appeal against sentence. However, in a subsequent application such leave was granted.

In this court the first and second appellants were represented by Mr Horwitz SC. The third appellant was represented by Mr Fasser. The respondent was represented by Ms Mina.

Shortly prior to the hearing of this appeal the appellants gave notice of an application which they proposed to move at the hearing of the appeal. In the application leave was sought, in the event of the appellants' appeals against the conviction not being upheld, that the matter be remitted to the Regional Court for further cross-examination of the state witnesses on an issue identified in an affidavit deposed to by the first appellant. However, during the course of argument before us,

counsel for the appellants indicated that if this court did not intend to place any reliance upon the evidence given by a certain Detective Sergeant Talbot, the application would not be pursued.

Heads of argument on behalf of the first and second appellants dated 15 May 1995 were prepared by Mr A W Mostert, SC, ("the main heads of argument"). However, subsequent to the preparation of those heads of argument, Mr Mostert died. Mr Horwitz was then instructed to appear on behalf of the appellants. He prepared a set of supplementary heads of argument on behalf of the first and second appellants ("the supplementary heads of argument"). The attitude taken by Mr Fasser was to adopt the arguments advanced on behalf of the first and second appellants.

In the main heads of argument emphasis was placed upon the proposition that in the absence of proof of a common purpose between

the three appellants their convictions could not be sustained. Whilst not abandoning this contention, Mr Horwitz, in the supplementary heads of argument, emphasised the argument that the inference of guilt drawn by the magistrate from the circumstantial evidence led was not the only reasonable inference to be drawn which was consistent with the proved facts.

The evidence implicating the appellants in the commission of the offence, including that of the witness Talbot, which I will consider presently, was circumstantial. The magistrate rejected the evidence of Talbot but nevertheless drew the inference that the three appellants, acting with a common purpose, had imported the Mandrax in question and had full knowledge thereof. It accordingly becomes necessary to examine the accepted evidence in some detail in order to determine whether the inference which the court **a quo** drew from it was consistent

with all the proved or common cause facts.

The following material facts were either common cause or were not disputed by the appellants at their trial:-

1. The appellants are Hindu businessmen who from time to time travelled to Madras in India on behalf of Hindu Temples in South Africa to place orders from the Madras Indian Trust for religious artefacts.

2. The artefacts are all donated to the Hindu community in South Africa.

3. In December 1991 the three appellants visited Madras with the aforementioned purpose.

4. Because of the then relationship between India and South Africa, the artefacts ordered were not sent directly to South

Africa. They were instead packed in crates and shipped to Singapore in a container containing other crates consigned to a Mr Rajah, an agent of the appellants of long standing. When Mr Rajah received the container in Singapore he removed the crates intended for South Africa without unpacking them and packed them in another container. He sent this container to the appellants in Durban.

5. In February 1992 all three appellants, having successfully ordered the artefacts in question on their December 1991 visit to Madras, returned to Madras. This was seemingly not to order other goods, but, according to the first appellant, to see if the religious artefacts, which included objects known as kavadis which are carried at certain religious festivals, were ready and to ask that they be sent before Easter.

6. Arrangements were made by the appellants' with a shipping agent (Freight Five Shipping Services) to clear the goods when they arrived at Durban Harbour. After returning to South Africa all three appellants made enquiries of the shipping agent regarding the arrival of the consignment.

7. The consignment was addressed to the South African Hindu Maha Sabha, 42 Maud Lane, Durban. The address on the invoice from the shipping agent being "c/o Mr C Reddy, 41 Bardia Avenue, Reservoir Hills." (Mr C Reddy is the first appellant). All three appellants went to the secretary of the Maha Sabha to obtain a letter addressed to the Controller of Customs and Excise which stated among other things:-

> "All the above goods are free donation to the temple. Please note the stone idols are carved from black granite stone. It is not ornamental stone, not polished therefore please grant us under rebate of duty and also note these are repeated shipments. We suggest you give us release of goods without incurring extra charges when goods are

detained for examination.
Your kind gesture in waiving the duties is highly welcomed and commended."

8. The police, as a result of information obtained by them, opened the container when it arrived in Durban at the premises of Freight Five Shipping Services. In order to do this it was necessary to break a seal on the container after the police had checked that the number on the seal corresponded with the number on the consignment documentation. A bolt cutter was used for this purpose. The container contained twenty seven crates, eight of which had carefully constructed false bottoms. In five of the eight crates, a total of 217 623 Mandrax tablets was found. These tablets form the basis of the charge against the appellants. The eight crates also contained kavadis in the top portion. The tablets, which were contained in two hundred and

twenty two plastic packets, were not simply placed in or amongst the kavadis, but were carefully concealed in the false bottoms of five of the certain crates. These false bottoms were lined with black plastic sheeting. Four of these crates contained fifty packets of tablets each and the other one had twenty two packets in it. According to the State's case, the eight crates with false bottoms were of identical size and construction. On the appellants' version, which the magistrate accepted, the kavadis were contained in ten crates, but this finding does not have a bearing on the manner in which the tablets were hidden. The bulk of the tablets were removed by the police and only a small quantity returned to each of the five crates which had contained the tablets . The rest of the crates were apparently

left intact with the religious artefacts in them undisturbed. The crates were then closed. A transmitting device was inserted into one of the crates and the crates were secretly marked. The container was then re-sealed with a new seal. It was later moved to the premises of a company known as Thrutainers.

9. On 6 May 1992 when the container arrived in Durban, the three appellants went to the office of Freight Five Shipping Services and made payment for the charges relating to the consignment. They were then informed that the container had been sent to Thrutainers for unpacking. They were, of course, ignorant of the fact that the police had previously intercepted the consignment.

10. The appellants arranged for a truck to take delivery of the

items ordered and proceeded to the premises of Thrutainers.

11. All three appellants were present when the container was unpacked. Certain of the crates and a carton were then loaded onto the truck which the appellants had arranged for.

12. The loaded truck accompanied by the appellants in two other vehicles unbeknown by them also followed by the police, proceeded to the second appellant's farm at Frasers.

13. At the farm the crates were off-loaded and the unpacking of the crates commenced with all the appellants being present. The police kept the scene under observation. When the transmitting device which the police had inserted relayed the sound of breaking planks the police moved in. This was premature because unpacking of the artefacts had only just commenced.

14. The police informed the appellants that they were suspected of smuggling Mandrax. The first appellant indicated that the crates contained religious artefacts which had been imported and that the appellants did not know anything about Mandrax or any other drugs. The second and third appellants were present at the time and acquiesced in what the first appellant said to the police. The police in the person of a Major Meyer who was in charge of the investigation and a Detective Sergeant Brittion then made a pretence of a brief search of eight of the crates containing kavadis. The appellants were told that the information that the police had been given concerning the smuggling seemed not to be true. The police then left.

15. Sergeant Talbot was posted at a vantage point where he had

a full view of the appellants and the crates. He relayed messages to Meyer over a radio. It was then realised that the transmitting device in the crate had apparently been detected by the appellants.

16 The police then returned. They found that at least two of the crates had been dismantled. One false bottom lay on a pile of planks while the second one, which contained the Mandrax tablets placed in it by the police, was still closed and lying aside from the others. According to Meyer, whose evidence was not disputed in this regard, the following is a more detailed account of what occurred:-

"..... ons het toe weer eens op die perseel toegeslaan. Die hekke was gesluit gewees, so ons moes bo-oor die hekke klim. Van die lede het oor die muur geklim. Ek het weer eens om die huis gehardloop en die beskuldigdes by the kratte aangetref. Beskuldigde nommer drie het hierdie apparaat in sy hande gehad en hulle was al drie besig om hierdie apparaat te bespreek. Ek kon hoor dat hulle sê 'What is this? It's got batteries' . Ek het die beskuldigdes toe genader. Beskuldigde drie wou die apparaat laat val. Ek het

hom toe versoek om dit nie te doen nie aangesien die apparaat baie geld kos. Ek het hulle ingelig omtrent die erns van die saak op daardie stadium. Ek was nog besig om hulle te waarsku volgens Regtersreëls toe die ander lede by my aangesluit het. Konstabel Talbot het uit die bos uitgestap en in ons rigting gekom. Ek het gesien hoe daar drie van die kratte in hierdie garage onder konstruksie was, en dat twee van die kratte toe reeds uitmekaar gebreek was. Die hout was op 'n hoop gegooi so 'n entjie van die kratte af en Konstabel Talbot het aan my 'n rapport gemaak dat die bodems van die kratte ook daar gegooi was. Ek het toe gesien dat daar een bodem - op die volledige kompartement op die hoop hout gelê het en die ander kompartement 'n entjie daarvandaan. Ek het voortgegaan met die ondervraging van die verdagtes en hulle gevra of hulle Mandrax ken. Hulle het almal ontkennend geantwoord. Ek het toe opdrag gegee dat die voertuie gehaal moet word, aangesien die kamera in die voertuie was en ek foto's van die toneel wou neem. Sersant Brittion het na die hoop gebreekte hout gegaan en die bodem afgesleep, die bodem begin ondersoek. Ek het versoek dat hy wag tot die kamera kom sodat ons alles kan fotografeer soos dit was. Konstabel Talbot het teruggekeer met die kamera en Sersant Pursell het begin om foto's te neem soos ek aan hom uitgewys het. Kort hierna het Konstabel Talbot 'n rapport aan my gemaak dat die beskuldigdes die twee bodems wat apart was, geïnspekteer het..... Ek het die beskuldigdes gevra daarna hulle het egter ontken dat die bodems enige betekenis vir hulle gehad het."

Sergeant Brittion described the scene as follows:-

"I've noticed there was two - there's a pile of wood which of these crates that was dismantled with a base on top of it and a separate base was lying on one side. I then went to lift up the base on the pile of wood and the major requested me not to move it from its original form, so I took the base and put it back the way I had found it. The major indicated that he wanted photos to be taken. The camera was then in one of the vehicles, Your Worship, where - I'm not too sure

whether it's Constable Talbot or Sergeant Pursell, went to go and collect the camera, but Sergeant Pursell then took various photos."

Sergeant Pursell said this about the crates that he saw on the farm:-

"So, if I understand you correctly, Sergeant, that at the time - stage that you got there none of the bases or only one of the bases of the boxes had been opened? --- Ja, that I could observe, clearly opened and that were broken, Your Worship, I didn't do a close inspection of the other - the other bases were still attached to the other box except that one, Your Worship, photograph number 9, the bottom. If I could just see that photograph number 9 again. Which is the one that you say appeared to have been opened? --- The one on the left, higher. This one? --- That is correct, Your Worship. Is that the way in which you found it? --- No, Your Worship, I said it was found on top of the other wood - dismantled wood - that's where they found this one. And when you - at that stage was it in the same condition as you have photographed it? --- Yes, just turned upside down there, Your Worship. When I returned with the camera that one was removed from that pile, Your Worship. I'm afraid I cannot see where it's opened --- Your Worship, it's not opened like dismantled like all the others but if you were there you could see it have been opened. Had the false bottom been removed? --- Yes, Your Worship, part of the planks were removed, Your Worship, they weren't dismantled. Was the black plastic still inside? --- Not in that one, Your Worship, I don't think there was a black bag in that one. Could one see inside the false bottom? --- Not that I can recall, I don't think you could see, Your Worship."

The appellants did not challenge any of this evidence.

17. After the police left on the first occasion the appellants went

for lunch and returned between one and a half to two hours later.

18. On their own admission it was only the appellants who were involved in the consignment of religious artefacts and they were always together when arranging, collecting and distributing the artefacts.

19. It was not disputed that the wood from the crates including the bases in which the Mandrax tablets were found would have been used as firewood by farm labourers.

There is a dispute as to whether ten crates were removed from the premises of Thrutainers, as the appellants' maintained, or only eight crates, as the police maintained. As previously mentioned, the magistrate accepted the appellants' version in this regard. In my view nothing turns upon this difference since it is common cause that it was only in five of

the crates which were taken to the farm that Mandrax tablets were found.

Whether one describes the compartments in the crates which contained the Mandrax as "secret compartments" or whether one describes them as simply closed bottoms of particular crates also does not seem to me to be of any real consequence.

Much is made in the appellants' main heads of argument as to the unsatisfactory nature of the evidence of Talbot. On the face of it he was an eye witness to the breaking up of the crates by the appellants and allegedly saw the appellants handling the crates and the false bottoms. In cross-examination he gave a full and precise account of what he relayed to Major Meyer leaving out any reference to this most important event. The magistrate rejected the evidence of Talbot. In his judgment in the Natal Provincial Division dismissing the appellants' appeal, McLaren J, expressed the view that the magistrate should not have rejected Talbot's

evidence. I believe that the magistrate was correct in rejecting Talbot's evidence. There is considerable force in the numerous and detailed criticisms directed towards Talbot's evidence in the appellants' main heads of argument which need not be repeated. It is plain to me from a consideration of Talbot's evidence that he was evasive, vague, and contradictory. Counsel for the respondent, despite the arguments contained in the respondent's heads of argument, did not press this court to accept Talbot's evidence. One should also not lose sight of the fact that the magistrate had the advantage of seeing and observing the witness and forming an impression of him, an advantage not possessed by the Natal Provincial Division or this court. I accordingly have no hesitation in placing no reliance upon Talbot's evidence. That being so, the application for remittal falls away.

I now return to a further consideration of the evidence which I

have set out above, bearing in mind the denials of guilty knowledge by the appellants, and in the light of the two fundamental questions which arise in this appeal. These are, firstly the question of whether the circumstantial evidence justifies a finding of guilt on the part of all three appellants, and secondly, whether the State successfully discharged the onus resting upon it of proving a common purpose amongst the appellants in regard to the importation of the Mandrax.

In assessing circumstantial evidence one needs to be careful not to approach such evidence upon a piece-meal basis and to subject each individual piece of evidence to a consideration of whether it excludes the reasonable possibility that the explanation given by an accused is true. The evidence needs to be considered in its totality. It is only then that one can apply the oft quoted dictum in Rex v Blom 1939 AD 188 at 202-203 where reference is made to two cardinal rules of logic which

cannot be ignored. These are firstly, that the inference sought to be drawn must be consistent with all the proved facts and secondly, the proved facts should be such "that they exclude every reasonable inference from them save the one sought to be drawn". The matter is well put in the following remarks of Davis AJA in R v De Villiers 1944 AD 493 at 508/509:-

> "The Court must not take each circumstance separately and give the accused the benefit of any reasonable doubt as to the inference to be drawn from each one so taken. It must carefully weigh the cumulative effect of all of them together, and it is only after it has done so that the accused is entitled to the benefit of any reasonable doubt which it may have as to whether the inference of guilt is the only inference which can reasonably be drawn. To put the matter in another way; the Crown must satisfy the Court, not that each separate fact is inconsistent with the innocence of the accused, but that the evidence as a whole is beyond reasonable doubt inconsistent with such innocence."

Best on Evidence (Tenth Edition) section 297 page 261, puts the matter thus:-

> "The elements, or links, which compose a chain of presumptive proof, are certain moral and physical coincidences, which individually indicate the principal fact; and the probative force of the whole depends on the

> *number, weight, independence, and consistency* of those elementary circumstances.
>
> A number of circumstances, each individually very slight, may so tally with and confirm each other as to leave no room for doubt of the fact which they tend to establish. ..... Not to speak of greater numbers, even two articles of circumstantial evidence, though each taken by itself weigh but as a feather, join them together, you will find them pressing on a delinquent with the weight of a mill-stone ..... Thus, on an indictment for uttering a bank-note, knowing it to be counterfeit, proof that the accused uttered a counterfeit note amounts to nothing or next to nothing; any person might innocently have a counterfeit note in his possession, and offer it in payment. But suppose further proof to be adduced that, shortly before the transaction in question, he had in another place, and to another person, offered in payment another counterfeit note of the same manufacture, the presumption of guilty knowledge becomes strong. ..."

Lord Coleridge, in Rex v Dickman (New Castle Summer Assizes, 1910 - referred to in Wills on Circumstantial Evidence (Seventh Edition) at pages 46 and 452-60) made the following observations concerning the proper approach to circumstantial evidence:-

> "It is perfectly true that this is a case of circumstantial evidence and circumstantial evidence alone. Now circumstantial evidence varies infinitely in its strength in proportion to the character, the variety, the cogency, the independence, one of another, of the circumstances. I think one might describe it as a network of facts cast around the accused man. That network may be a mere gossamer thread, as light and as unsubstantial as the air itself. It may vanish at a touch. It may be that, strong as it is in part, it leaves

> great gaps and rents through which the accused is entitled to pass in safety. It may be so close, so stringent, so coherent in its texture, that no efforts on the part of the accused can break through. It may come to nothing - on the other hand it may be absolutely convincing ... The law does not demand that you should act upon certainties alone ... In our lives, in our acts, in our thoughts we do not deal with certainties; we ought to act upon just and reasonable convictions founded upon just and reasonable grounds .... The law asks for no more and the law demands no less"

If one applies these well known principles to the evidence which I have set out above, one is driven to the conclusion that the denials of the appellants of any involvement in the Mandrax tablets is false and falls to be rejected. More particularly the cumulative effect of all of the following facts, form, to use Wills's metaphor, a network so coherent in its texture that the appellants cannot break through it:-

1. No reasonable explanation has been put forward as to why the Mandrax tablets were contained in a consignment addressed to the first appellant. The suggestion that some person or persons unknown to the appellants, would wish to

falsely implicate the appellants in a crime of the magnitude in question is unacceptable as being mere conjecture and fanciful in the circumstances of this case.

Subsequent to argument before us being completed, counsel for the appellants referred us to the case of S v Chesane 1975(3) SA 172(T) at 173G-174C in support of the proposition that it is not mere speculation or conjecture to concede the existence of the possibility that the drugs found their way into the crates other than with the knowledge of the appellants. The case deals with the evidence of a single witness who was part of a police trap and the evidence of an accused who admitted to being in possession of a "meagre" quantity of dagga which she carried in her undergarments. The case is therefore distinguishable upon its

facts from the present case. The remarks of the learned judge (McEwan J) in the passage to which we were referred, must be seen in the context of the particular facts of the case which the court was concerned with. It is also noteworthy that the learned judge also referred, with approval, to the remarks of De Waal JP in R v Herbert 1929 TPD 630 at 636 and Rumpff JA in S v Glegg 1973(1) SA 34(A) at 38H to the effect that in considering the effect of evidence, one need not be concerned with "remote and fantastic possibilities" and that it is not incumbent upon the State to eliminate every conceivable possibility that may depend upon "pure speculation". The fact that a number of inferences can be drawn from a certain fact, taken in isolation, does not mean that in every case the State, in

order to discharge the onus which rests upon it, is "obliged to indulge in conjecture and find an answer to every possible inference which ingenuity may suggest any more than the Court is called on to seek speculative explanations for conduct which on the face of it is incriminating." (per Diemont JA in S v Sauls and Others 1981(3) SA 172(A) at 182 G-H) (See also S v Rama 1966(2) SA 395(A) at 401A-C approving the remarks of Malan JA in a minority judgment in R v Mlambo 1957(4) SA 727(A) at 738 A-B)

2. Even if one were to accept that the person who gave the information to the police concerning the consignment was to be rewarded for such information it seems to me that it is highly improbable and unlikely that such a person would have placed so large a quantity of Mandrax tablets in the

crates in question. Whilst it is correct that there is no evidence as to what the value of the Mandrax tablets was in India, there is clear evidence, which was not disputed, that the retail selling price of the tablets in South Africa at the relevant time was of the order of approximately R5 000 000,00. Even allowing for the fact that their value in India might have been considerably less, I cannot conceive that the 217 623 Mandrax tablets had an insignificant value in India.

3. The suggestion that the Mandrax tablets were consigned to the first appellant in error also seems also to me to be fanciful. This is particularly so if regard is had to the fact that the individual crates were not opened in Singapore but were simply removed intact from the container in which

they were sent from India to Singapore and placed in another container which was securely sealed. Furthermore one would also expect a consignor of a potentially valuable cargo of drugs to exercise particular care in regard to their consignment.

4. If indeed the Mandrax tablets were intended for a person or persons other than the appellants in South Africa it is difficult to understand why no one other than the appellants expressed interest in the consignment when it arrived in South Africa. Furthermore it is difficult to conceive how such third party or parties would have been in a position to remove the tablets from the crates, without the concurrence or knowledge of the appellants, after the crates had been unpacked by the appellants for the purpose of only

removing the religious artefacts from them.

5. Although the appellants had successfully placed an order for the religious artefacts in question in December 1991 it is strange that barely two months thereafter all three of them returned to India to enquire about the shipment in question. They did not suggest in their evidence why they went to India so shortly after the trip in December 1991 if it was not for this sole purpose. Their interest in making the trip supports the proposition that they were much concerned with a very valuable consignment which had not yet arrived. After all, the religious artefacts had already been donated to the Hindu Temples.

6. A matter of some importance in drawing an inference of guilt which was drawn by the magistrate relates to the

selection process which took place when the eight crates, on the police version, or the ten crates on the appellants' version, were taken from the premises of Thrutainers. In this regard the evidence of Mr Adam Ismail is relevant. Ismail was a storeman in the employ of Thrutainers and was called to give evidence by counsel for the first and second appellants during the course of their case. According to Ismail's evidence in chief, on the day in question ten crates were unpacked from the container first "and loaded straight on to the vehicle that was there to collect the goods". In cross examination by the prosecutrix, Ismail explained the loading process in more detail. According to him he was supervising the loading of the items onto the truck and was told which items to take by the third appellant. At the time

that the second appellant was checking the contents of the consignment the other two appellants were standing close by the container. In examination by counsel, who appeared for the third appellant in the court **a quo,** Ismail said the following:-

"Is it correct, that the crates that were loaded onto this truck, were taken from the container and directly placed on the truck? -- ... (inaudible) is correct.

And nobody picked out particular containers, or particular crates from the container and said, take this one and leave that one, or whatever the case might be? --- These ten crates were the same size and it was like the other ones - that seventeen that was left there. It was heavy to handle.

So the first ten crates were all of similar sizes, is that correct? They were just taken straight out of the container and put onto the back of the flatbed? Is that correct? --- Straight onto the truck, that's correct.

And this truck, is it correct that it was a flatbed truck, such as is normally used for conveying containers? --- Flatbed. Correct.

It has no sides or flaps on the side? --- No sides, no.

And once the ten crates and the carton had been placed there, was it possible to put anymore crates on? --- No."

The aforementioned evidence was put in a leading way, and must be approached with some caution. This is so

especially in the light of what the witness had said previously concerning the selection of the particular crates in question by the third appellant with the obvious concurrence and knowledge of this first and second appellants who were in the immediate vicinity. The magistrate found Ismail to be a truthful and disinterested witness. What is of importance, however, is that all the crates containing false bottoms were removed to the farm.

If the so called "selection" at the premises of Thrutainers were the only factual circumstance connecting the appellants' to the crime one might be inclined to give the appellants the benefit of the doubt. It is not.

7. The way in which the crates were unpacked at the farm of the second appellant and the fact that an empty false bottom

was placed on a pile of planks whilst the one with Mandrax in it was placed aside on its own tells heavily against the appellants' version of innocence.

8. I agree with the following comments of McLaren J rejecting the argument to the effect that the fact that the appellants left the crates in the care of labourers while they went for lunch is irreconcilable with knowledge of the tablets:-

> "The fact that the appellants left the farm to go for lunch may have been precipitated by the first visit of the police. There was no real risk in leaving the crates on the premises of the farm house. Not one of the crates or bases disappeared during the absence of the appellants. It was, in my view, unlikely that any one of the crates or bases would disappear. The secret compartments were, after all, secret in the sense that they were concealed in the false bottoms. Even if one assumes that some of the crates were dismantled during the appellants' absence from the farm, I am of the view that the risk of detection of the secret compartments by the labourers was small. If the appellants knew of the secret compartments they would probably have derived some courage from the fact that they had just fooled the police - or so they thought."

9. Finally, the evidence shows that by the time of the second

police raid the kavadis had been removed from all the crates and stacked together. Despite that, and at another part of the yard, the ostensibly empty crates were being dismantled one by one in the immediate presence of appellants who were clearly maintaining a close interest in the process, an interest they failed to explain. There was no reason for such interest unless there was, to their knowledge, something else yet to be extracted from the crates, which extraction could only be achieved by breaking down the crates entirely. the irresistible inference is they knew, or expected, that there was Mandrax in the false bottoms.

In my view the magistrate was accordingly correct in concluding that the only reasonable inference that is consistent with the totality of all the proved facts and which excludes any

other reasonable inference, is that the appellants imported the Mandrax tablets and had full knowledge thereof and that the evidence of the appellants' that they had no knowledge of the Mandrax was false beyond a reasonable doubt.

As to the argument concerning the proof of a common purpose, I believe that the State established such common purpose beyond reasonable doubt. The facts which I have described above demonstrate the close involvement of all three appellants in every aspect of the importation of the consignment in question and the subsequent handling of the crates and more particularly the unpacking of them at the farm. I do not believe that it is reasonable to infer that only one of the appellants could, on the facts disclosed, have been guilty of importing the Mandrax tablets without the knowledge of the other two appellants. In my view the magistrate is plainly correct in his reasons, which were

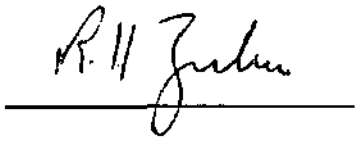
given subsequent to the noting of an appeal against his judgment and when the point was first raised, to the effect that it is improbable that if only one or two of the appellants were involved that they would create the risks inherent in the operation for the innocent appellant and callously cause him to go through the trauma of arrest, incarceration, trial and sentence. It is also difficult to imagine, if only one of the appellants were involved in the importation, how he would obtain possession of the contents of the bases of the crates without the other appellants being aware thereof.

The sentence imposed upon the appellants is undoubtedly severe. This is particularly so if regard is had to the age of the appellants and the fact that they are all first offenders. However, sight cannot be lost of the fact that an enormous quantity of the prohibited substance is involved. Such a quantity of drugs can undoubtedly cause misery and harm to

countless numbers of people. The scale of the operation and the retail value of the consignment, approximately R5 000 000,00, is of enormous proportion. It was suggested in argument that there was a duty upon the magistrate to call for further information concerning the personal circumstances of the appellants before they were sentenced and that his failure to do so constituted a misdirection. In the particular circumstances of this matter I do not believe that there was any such duty. This is so if regard is had to the fact that appellants one and two were defended by senior counsel whilst appellant number three was also defended by counsel. The inference may fairly be drawn that if there were indeed peculiar personal circumstances which might have had a bearing on the question of sentence, other than the age of the appellants and the fact that they were first offenders, both of which factors were taken into account by the magistrate in his judgment, these factors would have been drawn

to the attention of the court. The magistrate exercised the discretion vested in him in regard to the question of sentence. In my view he was not guilty of any misdirection. I also do not consider the sentence, to be startlingly inappropriate or to induce a sense of shock.

The appeals of the appellants both against their convictions and sentences are dismissed.



R H ZULMAN AJA

JUDGE OF APPEAL

SMALBERGER JA

CONCUR

HOWIE JA