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RAPPORTEERBAAR
Case No 47/93
/wlb

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

PRAVEEN RAMDAS — Appellant

and

THE STATE — Respondent

CORAM: HARMS JA, NICHOLAS et OLIVIER AJA

DATE OF HEARING: 22 March 1994

DATE OF JUDGMENT: 20 May 1994

J U D G M E N T

OLIVIER AJA/.....

OLIVIER AJA:

This appeal concerns the requisites for a conviction on a charge under section 319(3) of the Criminal Procedure Act, 56 of 1955, ("the Act") which relates to the making two conflicting statements on oath.

Appellant was convicted in the Pietermaritzburg magistrate's court on a charge of contravening the said section. He was sentenced to twelve months imprisonment. His appeal was dismissed by the Natal Provincial Division (Galgut et Hurt JJ) and leave to appeal to this Court was granted.

The background facts are fairly simple. In 1988 the appellant was a detective warrant officer in the South African Police. On the evening of 21 April of that year while on duty he was requested by one Majid Khan, whom he knew well, to accompany him to a trim park. There was blood on Khan's shirt, and he made a report to the

appellant to the effect that he had been attacked by a number of assailants at the trim park. Appellant accompanied Khan to the trim park. It was already quite dark when they arrived there but the appellant stopped his vehicle in such a position that the lights of his vehicle could shine onto the scene. In the course of the investigations conducted partly by the appellant and subsequently by him and other detectives, three bodies were found in the trim park. Khan was subsequently charged with the murder of the three men.

Thereafter the investigating officer, Detective Sergeant Mottai, requested the appellant to make a statement as to what he had seen on the occasion of his visit to the park in the company of Khan. The statement was reduced to writing and, it is alleged by the State, was made on oath by the appellant with Detective Sergeant Mottai acting as commissioner of oaths. I shall refer to this statement as the first statement.

At the trial of Khan the appellant was called as a witness for the defence. Arising out of the evidence given by him at that trial, the appellant was charged with contravening section 319(3) of the Act. The two alledgedly conflicting statements which form the substance of the indictment according to the charge sheet are the first statement of April 21, 1988 and his evidence, under oath, in the trial of Khan on June 27, 1990. The crux of the indictment as set out in the body of the charge sheet is that the appellant alleged in the first statement that he had seen only one knife at the scene of the crime, whereas in his evidence at the trial of Khan he stated that three knives had been found at the scene of the crime.

The charge sheet as amended on appeal incorporated the first statement in Column A and the relevant evidence in Column B. Column A and Column B read as follows:

"COLUMN A

'3.

At about 20H35 that evening I had just knocked off duty and was leaving the Police yard with my private transport.

At the gate I was approached by A/M Majid Khan who was alone.

4.

He reported to me that he was nearly robbed by four Black males and that they had attacked him. He also stated that he had a fight with them.

He asked me to accompany him to the Trim park in Northdale where he was nearly robbed.

5.

I immediately placed myself on duty and accompanied him to the Trim park by official vehicle.

6.

On my arrival at the Trim park I noticed that the place was dark.

He pointed out the spot where the four Blacks attempted to rob him. With my van lights switched on I looked around to see if the culprits were still in the

COLUMN B

'I also noticed not far from the second body that there was a knife and not far from the knife was a pair of nanchaku sticks.'

and later

'Away from the accused's car somewhere in the front, about a couple of metres from there was another knife that was made of a pipe, pipe handle knife. The reason why I say it was a pipe it was round and silver. It had some black sort of spots on it.'

and again later,

'We then go to the body of- the first body under the tree and when it was turned over to be photographed we seen the knife, it was an orange coloured knife.'

and again later in reply to the question as to how many knives he saw at the scene of the crime, he stated,

'Three knives I've seen.'"

area.

7.

I noticed a Black male lying underneath a tree about ten paces from where Majid Khan was attacked.
I checked on this Black and found that he was lying on his right side and there appeared to be a stab wound on his neck.
He appeared to be dead.

8.

I immediately contacted radio control and informed them of my findings and requested the Detectives and the Duty Officer to be called out.

9.

At that stage some members of the reserve force had come in and they looked around and discovered the second body, a few meters away from the first one.

10.

When a torch was flashed at the first body I then noticed a long kitchen knife lying next to the deceased's right hand.
The knife was blood stained.

11.

The Detectives and the Duty Officer arrived a short

while later and took charge of the scene.

12.

Later that night I again saw Majid Khan at the charge office and noticed that his clothing had spots of blood on them. His shoes and the bottom of the Karate pants were also blood stained.

13.

I know and understand the contents of this statement. I have no objection in taking the prescribed oath. I consider the prescribed oath to be binding on my conscience.'"

Section 319(3) of the Act reads as follows:

> *"If a person has made any statement on oath whether orally or in writing, and he thereafter on another oath makes another statement as aforesaid, which is in conflict with such firstmentioned statement, he shall be guilty of an offence and may, on a charge alleging that he made the two conflicting statements, and upon proof of those two statements and without proof as to which of the said statements was false, be convicted of such offence and punished with the penalties prescribed by law for the crime of perjury, unless it is proved that when he made each statement he believed it to be true."*

In the Afrikaans version of section 319 (3) the words "two conflicting statements" are rendered as "twee teenstrydige verklarings" and the words "in conflict" as "in stryd".

The crisp question is this: When can it be said that two statements are in conflict ("in stryd is") and that there are conflicting statements ("twee teenstrydige verklarings")? The **Concise Oxford Dictionary** (8th ed 1990) s.v. conflict gives the following meanings of the verb conflict: to clash, to be incompatible. It also indicates that the adjective conflicting means the same or nearly the same as the word contradictory. The **Verklarende Handwoordeboek van die Afrikaanse Taal** (7th ed, 1988) gives as synonym for teenstrydig the following: strydig met, wat mekaar teenspreek.

In the case of Handel v R 1933 SWA 40, 1933(2) PH K75, Van den Heever J (as he then was) stated that the word

conflict (in the context of legislative enactments) connotes a situation in which one version says one thing and the other the opposite. He stated that where the two versions are reconcilable they must be reconciled. It is only when they are not capable of reconciliation, i.e. when they are mutually destructive, that a conflict arises between them. I consider this to be an appropriate test to determine the question of whether statements are in conflict. See also Rex v Sneezum 1943 EDL 295 at 298 where the test used was whether the two statements were palpably inconsistent, a test which is similar to the one used in Handel v R **supra.**

The crucial question then is whether the two statements on which the charge is based can be said to be in conflict. First, as regards the charge sheet, it is clear that the statement set out in Column A deals with the first body only and the knife found near that body whereas the statement in Column B deals with two bodies and the

position of three knives. What the statement in Column A has to say of the first body and the knife does not conflict with the statement made in Column B (and what it says in terms of the first body and knife). It is clear that the statement contained in Column B is more complete and contains more facts than the statement in Column A, but that is not a conflict. The two statements can be reconciled in the sense that the first one deals with only a part of the events or facts whereas the later statement deals with more facts and perceptions. But they are not mutually exclusive and they are therefore not in conflict. Before it can be said that the two statements are in conflict where one is more complete than the other, the State must prove beyond reasonable doubt that it is a necessary implication that, on a proper construction of the incomplete statement, it excluded all reference to further facts relating to the incident under discussion. This is an objective question, and the answer must, in the present case, be in the negative. In the absence of a clear denial

that there were more knives than the one found near the first body, or a clear statement that only one knife was found at the scene of the crime, or a clear indication that the statement was intended to be a full and complete version of events and observations, it cannot fairly be said that the first statement is in conflict with the evidence set out in Column B.

In my view the State failed to prove beyond reasonable doubt a conflict between the appellant's first statement and his evidence in Court.

The appeal succeeds and the conviction and sentence are set aside.

P J J OLIVIER
Acting Judge of Appeal

HARMS, JA)
) AGREE
NICHOLAS, AJA)