

I N T H E H I G H C O U R T O F L E S O T H O

In the Appeal of

1. MALEFANE KHETLA
2. TEBALO NTELELE

v

REX

J U D G M E N T

Delivered by the Hon. the Chief Justice Mr. Justice  
T.S. Cotran on the 19th day of April 1984

-----

Malefane Khetla and Tebalo Ntelele were convicted by a magistrate of the first class at the Subordinate Court of Butha Buthe of dealing in dagga (26 bags weighing 488 kg) contrary to Section 3(a) of the Dangerous Medicines Act 1973. Each was sentenced to eighteen months imprisonment.

Both appealed to the High Court against conviction and sentence and were released on bail pending appeal.

Khetla did not appear at the hearing.

Ntelele appeared to prosecute his appeal and was represented by Mr. Khauoe.

The facts were simple. A police posse under the command of W/O Nyesemane stopped a closed van at a road block. It was driven by a person who pleaded guilty to dealing in dagga. We are not now concerned with him. The two appellants were seated next to the driver. The bags were inside the locked canopy of the van.

There was no direct evidence whatsoever that the two appellants had any knowledge of what the closed van contained.

/There was

There was no circumstantial evidence to indicate guilty knowledge either. Both behaved quite normally, were utterly surprised when the van was opened by the driver to reveal the 26 bags, and both said to Sgt. Mofolo (P.W.1), a member of the posse that they were passengers going to Butha Buthe (p.3) The time when the police stopped the vehicle was about 4 p m., i.e. during day light, when people go about the normal business.

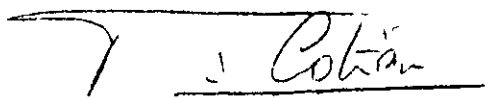
It seems to me that the appellants had no case to answer. The magistrate however held that there was a case. The appellants elected to remain silent. But in this case the silence could not have "strengthened" the case for the Crown. A case will be "strengthened" if there is some evidence. If there is none the accused is exercising no more than his legal right to say nothing.

The appeal must accordingly be allowed.

At the commencement of the hearing I did order the arrest of the appellant Khetla who did not prosecute his appeal. However, I must now countermand this order because his position is precisely the same as the appellant Ntelele who was successful. The appellant Ntelele will have his appeal fees refunded. Khetla will

forfeit his fees and the bail deposit will <sup>not</sup> be estreated to the *appal* crown as the appellant Khetla had now given a *good* excuse *for not appearing*

Crown Counsel incidentally did not support the conviction.

  
CHIEF JUSTICE  
19th April 1984

For Appellant      Mr. Khauoe  
For Crown            Miss Moruthoane