

SOUTH AFRICA / JUDGMENT

Mchunu and Another v S (AR39/2022)

[2024] ZAKZPHC 92; 2025 (1) SACR 257 (KZP) (11 October 2024)

[2024] ZAKZPHC 92

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Steyn, Vahed, Singh

CASE / FILE NUMBER

AR39/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

DIVISION, PIETERMARITZBURG

CASE

NO: AR39/2022

In

the matter between:

THABANI
CYPRIAN MCHUNU
FIRST
APPELLANT
PRETTY
KHANYISILE KHUZWAYO
SECOND
APPELLANT
and
THE
STATE
RESPONDENT
ORDER
On

appeal from: KwaZulu-Natal Division of
the High Court, Durban (Henriques J sitting as court of first

instance):

The
convictions of the first and second appellants and the sentences
imposed pursuant to the convictions are set aside.

JUDGMENT

STEYN J (VAHED J and SINGH AJ concurring):

Introduction

- [1] Pivotal to this appeal is the admissibility of extra-curial statements (“the statements”) made by the two appellants to Captains Lockem and Titus, two commissioned officers of the South African Police Services. We are called upon to determine whether the court a quo was misdirected in its findings on the admissibility of the statements. It is common cause that the statements constituted confessions and that the State, in the main, relied on them to implicate the appellants in the crimes with which they were charged.
- [2] The appellants were accused 2 and 3 respectively during the trial. They were convicted on two counts: one of robbery with aggravating circumstances and one of murder. They were each sentenced to 15 years’ imprisonment on count 1 and to life imprisonment on count 2.
- [3] Leave to appeal against the convictions and sentences was granted by the court a quo on 2 December 2016. The hearing of the appeal was delayed due to a defective record which took some time to be reconstructed.
- [4] When the appeal was heard, the following grounds of appeal were raised by the appellants:
- (a) That the statements were made to the Cato Manor Serious Violent Crime Unit and that the court a quo failed to critically evaluate this fact in determining the admissibility of the statements;
 - (b) That in assessing the statements, the court a quo ought to have approached the evidence in the trial-within-a-trial more cautiously;
 - (c) That the evidence of the State witness, Mr Mdletshe, ought to have established the probability that the appellants were assaulted. His evidence is indicative of how the members of the said unit dealt with persons in their custody. Mr Mdletshe’s evidence strengthened the version of the appellants that they were assaulted whilst in custody;
 - (d) That the court a quo erred in overemphasising the poor quality of the evidence adduced by the appellants during the trial-within-a-trial;
 - (e) That the statements of both the appellants ought to have been ruled inadmissible by the court a quo as the requirements of s 217 of the Criminal Procedure Act 51 of 1977 (‘the Act’) had not been met; and
 - (f) In relation to the sentences, it was contended, inter alia, that the court a quo underemphasised the personal circumstances of the two appellants.

First appellant

[5] It was submitted on behalf of the first appellant that he had made a statement to Captain Lockem, but that what was overlooked by the court a quo was that Captain Lockem had been briefed by the investigating officer, Warrant Officer Ganess, about the case before he took the statement of the first appellant. Captain Lockem was a member of the very same unit. Counsel for the first appellant submitted that it was undesirable for Captain Lockem to have taken the statement. Reliance was placed on *S v Gcam-Gcam*[1] as well as on the dissenting judgment of Kruger J in *S v Nzama* and another.[2] It was submitted that Captain Lockem ought to have referred the first appellant to a magistrate immediately upon realising that the first appellant wanted to make a confession. It was further submitted that the court a quo ought to have found that there was a thread of assaults being committed by the unit running through this matter, and that the first

appellant ought to have been taken to a district surgeon before and after the statement had been made. Importantly, so it was argued,

there were no safeguards in place to guard against a wrongful conviction. The State failed to discharge the onus resting upon it to show that the requirements of s 217 of the Act had been met, in particular that the first appellant made the statement freely and voluntarily.[3]

[6] It was further submitted that the first appellant's failure to testify on the merits in the main trial and his election to remain silent added nothing to the State's case. His convictions ought to be set aside. In relation to the question of sentence, the first appellant submitted that the court a quo ought to have found that he was a good candidate for rehabilitation and ought not to have imposed the prescribed sentences.

Second appellant

[7] On behalf of the second appellant, it was submitted that the court a quo misdirected itself in ruling the statement of the second appellant as being admissible. The second appellant had been assaulted after her arrest, and Inspector Magwaza, from the same unit, ought not to have acted as interpreter when her statement was taken, as he had also acted as an interpreter for Captain Eva when he took the statement of another accused. The second appellant made similar submissions as the first appellant regarding the State witness, Mr Mdletshe. It was submitted that any evidence given by him was illegally obtained and in breach of s 35 of the Constitution,[4] given that he had also been assaulted at the time of his arrest. In respect of the convictions, it was submitted that apart from the confession and the evidence of Mr Mdletshe, there was no evidence to prove her guilt. In relation to the sentences imposed, the second appellant submitted that her personal circumstances were substantial and compelling and the court a quo ought to have departed from the prescribed minimum sentences.

Respondent

- [8] The respondent, in its written heads of argument, submitted that the convictions and sentences of both appellants were in order and that the court a quo had not misdirected itself on the facts or the law. When the appeal was argued Ms Xulu, appearing on behalf of the respondent, conceded that the statements were taken under duress and that the evidence of Mr Mdletshe ought to have been critically evaluated. It was conceded that the court a quo failed to do so. In fact, so it was argued, no safeguards existed in accepting the evidence of Captains Lockem and Titus and rejecting the versions of the appellants.

Facts

- [9] I turn now to summarise the salient facts of the case:

- (a) In 2009, the SAPS Joint Operations Centre ('the JOC'), situate at Boscombe Terrace, Durban was robbed. Two men, one being armed, entered the JOC and robbed Sergeant Thusi ('the deceased') and Constable Dlamini of 15 pistols, two Nokia cell phones, and a set of keys. After accused 1, Mr Petros Sithole, was arrested, an identification parade was held and conducted by Officer Van der Looy, where the deceased identified accused 1. Constable Dlamini could not identify anyone at the parade. The prosecution alleged that after the identification, the appellants, together with Ms June Rose Dlamini (Ms June Dlamini), decided to kill the deceased and in the early hours of the morning of 8 May 2009 they, together with Ms June Dlamini, went to the home of the deceased. It was further alleged that the second appellant and Ms June Dlamini waited outside the home whilst accused 1 and the first appellant entered the deceased's home and fired several shots at him. He succumbed to his injuries.
- (b) The State contended that the first and second appellants, together with accused 1 and 4, and Ms June Dlamini killed the deceased. The second appellant and Ms June Dlamini were arrested on 8 May 2009, ie. the day of the murder of the deceased.
- (c) After her arrest Ms June Dlamini surrendered the firearm which was used in the murder of the deceased.
- (d) Constable Dlamini was an eyewitness to the robbery and testified during the trial. The evidence of Mr Mdletshe (who is the first appellant's cousin) was that he met the second appellant and Ms June Dlamini at his home in February 2009. Both women were dressed in police uniform and they, together with the first appellant, had six firearms in their possession. His evidence was that the second appellant took two of those firearms, whilst a person known to him as Mbali took three firearms. Mr Mdletshe was taken in for questioning by the police in the early hours of the morning. He initially, during cross-examination, denied being assaulted by the investigating officer and the officers of the Cato Manor Organised Crime Unit but later admitted that he suffered injuries to his knees and wrists and a ruptured eardrum. When confronted with the injuries he suffered, he implicated the officers of the Unit, who had detained him for questioning.

- (e) A trial-within-a-trial was held to determine the admissibility of the statements. The challenge to the admissibility of the statement made by the first appellant was that he made it under extreme duress and had been assaulted by the investigating officer and Inspector Thabethe. It was contended that he also signed a document which had already been completed.
- (f) The second appellant challenged the admissibility of her statement on the basis that she too had been severely assaulted in the presence of the investigating officer, Warrant Officer Ganess. She alleged that she was made to sit on the floor handcuffed while being suffocated. She was forced to sign the statement.
- (g) Inspector Makhanya confirmed during the trial-within-a-trial that it is customary for suspects and arrested persons to be photographed before and after they had made a statement to a commissioned officer. He, in addition, confirmed that it is also practice for the police to take them to be examined by a doctor before and after the statement is taken. He confirmed that the second appellant was not taken to a doctor for any examination, nor were any photos taken of her before or after she had made a statement to Captain Titus.

The law

[10] The locus classicus in dealing with the admissibility of statements of accused persons remain *R v Barlin*.^[5] What the court stated about the conduct of the police in obtaining a statement in a fair manner is still relevant today. The learned Chief Justice held:

‘Whether the statement of an accused person to a police officer can be used against him at the trial depends upon whether it is shown to have been freely and voluntarily made, and that is a point to be decided by the trial Judge upon the facts of each case. The absence or presence of a prior caution; the fact that the statement was elicited by questions, and the nature of those questions; the stage at which the statement was made, whether before or after arrest, all these are circumstances to be taken into account

by the Judge in arriving at a conclusion. The rule rests upon a satisfactory basis for it is founded on principle... A police

officer who has charged or arrested an accused person, or who has him in his custody, occupies in regard to that person a very special position of authority - one which may in itself strongly affect a weak or ignorant man. If the Judge, bearing that fact in mind, considering the conduct of the officer, and weighing all the circumstances, is not satisfied that the element of duress or undue inducement was absent, he will exclude the statement. He will reject a relevant and important piece of evidence, but he will do so by the application of a well-recognised judicial principle. Whereas if he were to reject it because on general grounds he disapproved of the conduct of the police officer and desired to prevent such conduct in future, then he would be sacrificing legal principle to administrative reform... For though a police

officer should be unhampered in the prosecution of enquiries while investigating a crime, it is not desirable that he should question

those whom he has definitely decided to arrest or has arrested. The right of interrogation at that stage is apt to be abused, and

questions are likely to be put, not to investigate the offence, but to manufacture evidence against the person whom it has been decided to charge. The promulgation and enforcement of such regulations, however, is a matter for administrative authority. They cannot be laid down by the courts as rules of law. Our duty in the case of any departure from the standard of conduct desirable to be observed by police officers is to weigh that

departure in connection with all the facts of the case in arriving at a decision as to the voluntariness of the statement thus

obtained.’[6] (My emphasis.)

[11] In my view the rights to remain silent and to be legally represented are important pre-trial rights to be adhered to when a confession is made. I will return to these rights when I deal with the manner in which the two police officers informed the appellants of their constitutional rights, but for now wish to endorse the ratio in *S v Melani and others*[7] regarding legal representation at the pre-trial stage:

‘The right to consult with a legal practitioner during the pre-trial procedure and especially the right to be informed of this right, is closely connected to the presumption of innocence, the right of silence and the proscription of compelled confessions (and admissions for that matter) which ‘have for 150 years or more been recognised as basic principles of our law, although all of them have to a greater or lesser degree been eroded by statute and in some cases by judicial decision’ (in the words of Kentridge AJ in *Zuma’s case*). In a very real sense these are necessary procedural provisions to give effect and protection to the right to remain silent and the right to be protected against self-incrimination. The failure to recognise the importance of informing an accused of his right to consult with a legal adviser during the pre-trial stage has the effect of depriving persons, especially the uneducated, the unsophisticated and the poor, of the protection of their right to remain silent and not to incriminate themselves. This offends not only the concept of substantive fairness which now informs the right to a fair trial in this country but also the right to equality before the law. Lack of education, ignorance and poverty will probably result in the underprivileged sections of the community having to bear the brunt of not recognising the right to be informed of the right to consultation with a lawyer.’

(My emphasis.)

[12] I align myself with the minority judgment of Kruger J in *S v Nzama and another*,[8] especially when he said:

[32] The assistance by fellow police officers in assisting to take a confession, particularly one from the same unit as the investigating officer, has been repeatedly criticised - *S v Latha and Another* 1994 (1) SACR 447 (A); *S v Mafuya and Others* (1) 1992 (2) SACR 370 (W); and *S v Khoza en Andere* 1984 (1) SA 57 (A). That approach is all the more applicable in casu. Captain Hodgett (often in the presence of Inspector Mhlongo) took both accused's confessions in a single room, whilst both sat together, and this was done shortly after their arrest, and after both the accused had been taken on an almost four-hour journey, where the accused contended that they were assaulted. Neither the investigating officer nor Captain Hodgett who were assisted, offered to take the accused to the magistrate for the recording of such confessions, notwithstanding accused 2 having specifically requested to be taken to one.

[33] The court a quo accepted that the overall onus rested on the State to prove the admissibility of the confessions beyond a reasonable doubt. That apart, and arising from the accused's attack on the confessions on constitutional grounds, the court a quo, relying on the dicta in *S v Mathebula and Another* 1997 (1) SACR 10 (W) (1997 (1) BCLR 123), held that the onus rested on the accused to show that their constitutional rights actually existed and were indeed infringed. No finding was, however, made on whether this onus was discharged or not, inasmuch as the court found that their constitutional rights were not infringed, and that they were indeed appropriately advised of their rights. The eventual decision to admit the confessions appears to have been reasoned largely on the weighing of the testimony heard in the trial-within-a-trial, and on the

credibility of the witnesses.'

[13] In the present matter the confessions are the sole evidence implicating the appellants. Our courts have repeatedly called for a cautious assessment by the presiding judge when that is the case.[9]

[14] The court a quo relied on the evidence of Mr Mdletshe. However a critical analysis of his evidence ought to have resulted in a finding that he had been severely assaulted by the officers from the Unit, and that he was in a state of fear when he tendered the information. This is evident from his cross-examination when he was asked about being fearful. His response was, '...if you go to the police station and you are with police officers at night, there is no way you cannot be afraid...'. The circumstances surrounding the obtainment of his statement strengthen the view that the statement was part of the fruit of the poisoned tree. [10]

[15] The court a quo ought to have cautiously considered the manner in which the police obtained information from Mr Mdletshe. Mr Mdletshe could only have been a suspect and he ought to have been informed of his right to remain silent. No ordinary witness would be brought to the police station in the early hours of the morning and be interrogated in those circumstances. I have serious misgivings of the timing of Mr Mdletshe's questioning. The Supreme Court of Appeal in *Komane v S*, [11] referring to *S v Sebejan*, [12] held that an accused's right under s 35(1) of the Constitution, i.e. not to be compelled to make a

confession or admission applies ‘from the inception of the criminal process’.

[16] In *S v Magwaza*, [13] the Supreme Court of Appeal echoed the importance of a fair criminal process. Ponnann JA stated the following:

[17] It is clear that the rights in question exist from the inception of the criminal process, that is, from arrest, until its culmination (up to and during the trial itself). In the case of the appellant’s co-accused, accused 1, the state produced what was described as a standard constitutional-rights warning form, to which was appended his signature as proof that he had indeed been warned. Not so in respect of the appellant. Neither Mbatha nor Govender was a model of clarity as to exactly what was conveyed to the appellant. But, even were it to be accepted that the cumulative effect of their evidence is that there was a warning of sorts, it appears to have been woefully inadequate. For, whilst there is some reference in the evidence of Govender and Mbatha to the rights to silence and legal representation, there is no indication that the appellant was warned of the consequence of not remaining silent (the logical corollary of the right to silence) or of his entitlement to the services of a legal representative at state expense. There was some suggestion in argument from the bar in this court that such deficiencies as there were came to be cured by the rather detailed warning by Capt Eva. But what is readily apparent from the document introduced into evidence is that, by the time the appellant had been warned by Capt Eva, he had already confessed to the robbery. It is important to appreciate that a constitutional right is not to be regarded as satisfied simply by some incantation which a detainee may not understand. The purpose of making a suspect aware of his rights is so that he may make a decision whether to exercise them, and plainly he cannot do that if he does not understand what those rights are (*R v Cullen* (1993) 1 LRC 610 (NZCA) at 613G – I). It must therefore follow that the failure to properly inform a detainee of his constitutional rights renders them illusory. What must govern is the substance of what the suspect can reasonably be supposed to have understood, rather than the formalism of the precise words used (*R v Evans*

(1991) 4 CRR (4th) paras 144, 160 and 162).

[18] If it is accepted, as I think it must be, that the appellant was not properly warned of his constitutional rights, then it must follow that there was a high degree of prejudice to him because of the close causal connection between the violation and the conscriptive evidence. For, plainly, the rights infringement resulted in the creation of evidence which otherwise would not have existed. And as it was put in *R v Ross* supra at 379 –

‘the use of any evidence that could not have been obtained but for the participation of the accused in the construction of the evidence for the purposes of the trial would tend to render the trial process unfair’.[14] (My emphasis.)

[17] I turn now to the relevant exhibits placed before the court a quo. It is those that contain the confessions and deal with how the officers informed the appellants of their rights. Exhibit “V”

was the confession form that was completed for the first appellant. It reads as follows:

‘I have been informed and understand that:

3.1 I have the right to remain silent.

3.2 The consequences of making a statement are that anything I say may be taken down in writing and may be used as evidence in court.

3.3 I have the right to consult with a legal practitioner of my choice.

3.4 I have the right to be provided with the services of a legal practitioner by the State, where substantial injustice would otherwise result.

3.5 I have the right to try to arrange to consult with a legal practitioner to assist me to decide what to do.

3.6 I have the right to institute bail proceedings.

3.7 This is a serious matter and I must be careful with what I choose and what I say.’[15]

[18] It is clear from the content of the document that the first appellant was not given an opportunity to consider each of the said rights, nor given a chance to respond to each warning. In fact, no room is left for any answer on the form. Instead, it is noted that he was informed and that he understood. What then follows is simply a range of answers. In my view, given the ramifications of any statement made at the pre-trial stage, the appellant, at the very least, ought to have been given an opportunity to answer each question.

[19] The form allows for a list of possible answers. A careful analysis of the options show that there is no separate option to elect and choose a legal practitioner:

‘After being warned as I have acknowledged above, I elect to:

4.1 Remain silent.

4.2 Remain silent now and consult with a legal practitioner.

4.3 Make a statement which will be taken down in writing below.

4.4 Answer questions which will be taken down in writing below.’[16]

The officer marked 4.3 but none of the other options. It is not clear to me what is meant by option 4.2. If this option was intended to deal with the accused’s right to choose and exercise his right to a legal practitioner, it makes a mockery of the right.

[20] I now turn to the evidence of the officer who completed the form, ie. Captain Lockem. He stated the following in his evidence:

‘Well, I explained his rights first and that was done at 13h08. I then asked him what happened, spoke to him in English, and then he just told me the story what happened, he told me his story, and then I started to write it down.’[17] (My emphasis.)

In cross-examination, the following was asked:

‘Question: Was there particular questions that you put to the accused in terms of eliciting information from him?

Answer: When I first interviewed him?

Question: Yes.

Answer: I would say, “Where did you go,” or certain things like that but not when I was writing. I don’t think I put questions to him when I was writing it down.’[18]

It is evident from Captain Lockem’s viva voce evidence that he had put questions to the first appellant to commence the process. However, no questions were written down by him, nor did he write down the answer to each of his questions. The confession form should reflect the entire procedure followed and what was said. Whatever was said should be contemporaneously noted. If the questions put are not noted, it is not possible for the court to determine whether any undue influence was exerted over the accused.

[21] What is more disturbing from Captain Lockem’s evidence is that he knew about the facts of the case prior to the first appellant making the confession. In cross-examination, he was asked:

‘Question: Prior to accused 2 being handed to you by Inspector Ganess, were you aware of the background of this matter?

Answer: I knew that there was a robbery at Boscombe Terrace or that firearms were taken and I knew that a witness in that matter was killed in Inanda, yes.’[19]

[22] Once more, the impression was created by Captain Lockem that he had no idea that the statement might, in actual fact, amount to a confession. According to him, he merely went to the office to assist the investigating officer and was then requested to take down a warning statement. Not only is the version tendered by Captain Lockem highly improbable, but there is also no explanation as to why he did not stop in taking down the statement when he realised that it amounted to a confession and realised that the proper procedures were not in place.

[23] I now turn to the statement of the second appellant as per Exhibit “W”. It is evident from the document completed by Captain Titus that he, at least, identified himself and explained to the second appellant that he is not part of the investigating team. Ex facie the document, the second appellant was informed that if she had been assaulted by the police, then she could declare by whom and

under what circumstances. Reference is made to the various rights that had been explained to her. At para 10.2 of the form, it is then noted: ‘Do you wish to exercise either of the rights,’ and her answer is ‘No’. What then follows on the form is information regarding a minor, which was apparently answered by the appellant, who is a major. The answers were then deleted. No explanation was given as to why it was completed in the first place. At least the form used by Captain Titus had more options. This form again provides a question about any assault, which he

then asked her, and she responded in the negative. She was also asked whether she had previously made a statement of a similar nature. She answered again in the negative. Despite her answer, she was asked why she wished to repeat the earlier statement.

[24] Importantly, given the fact that the confession was challenged as not being made freely and voluntarily, the court a quo ought to have looked for safeguards, eg. the medical examination before and after these confessions.

[25] I am mindful that Judges' Rules are regarded as administrative directives to be observed by the police. They are, however, not without effect. A breach of these Rules may influence the court as to whether an incriminating statement (in this instance a confession) had been made freely and voluntarily.[20]

[26] In the absence of any photographs taken of the appellants and not being medically examined, it is not possible to determine whether the kind of clothing worn by them would have obscured any visible injuries. Usually, a medical report would either have supported the allegations of any assault or refuted it. In casu, no such examinations ever took place. No explanation was given as to why the appellants were not taken to a medical doctor both before and after their confessions.

[27] I have considered the conduct of the commissioned officers most anxiously, especially having regard to the current state of crime in our country, but absent the voluntariness of these confessions that were tendered to the police, they ought to have been excluded as being inadmissible evidence before the court. The court a quo nevertheless ruled that the statements were admissible. In my view, Captains Lockem and Titus paid lip service to the constitutional

rights of the first and second appellants. Had Mr Mdletshe's evidence been critically evaluated, the court a quo would not have arrived at the conclusion it did when it held:

'The evidence of the State witnesses in the trial-within-a-trial was credible and there were no inherent improbabilities in their version. It was for these reasons that the confession was ruled admissible.'[21]

[28] Lastly, it deserves mention that it is regrettable and unfortunate that the amendment to s 217(1)(a) has not as yet come into operation, because if it had, it would have impacted upon the conduct of the officers investigating this

case.[22] The amendment, in all likelihood, would have resulted in a procedure that aids and supports due process by not allowing police officials, albeit commissioned officers, to take any confessions.

[29] In my view, given the finding that the confessions were not admissible evidence, there is no evidence to sustain the convictions of both appellants. Consequently, I need not deal with the challenges to the sentences imposed.

[30] Accordingly, the appellants' appeals against their convictions and sentences succeed. In the result, the following order is issued:

STEYN J

VAHED J

SINGH AJ

CASE INFORMATION

Date of Hearing: 2 August 2024

Date Delivered: 11 October 2024

Appearances

Counsel for the First Appellant: Ms D Barnard (Heads of Argument prepared by Mr L Barnard)
Cell: 084 596 2016 Counsel for the Second Appellant : Mr T P Pillay Instructed by: Durban Justice
Centre Cell: 082 925 2689 Counsel for the Respondent: Ms G E Xulu Instructed by: Deputy Director
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[1] S v Gcam-Gcam [2015] ZASCA 42; 2015 (2) SACR 501 (SCA) para 49.

[2] S v Nzama and another 2009

(2) SACR 326 (KZP) para 32.

[3] Section 217(1) of the Act reads: '(1) Evidence of any confession made by any person in relation to the commission of any offence shall, if such confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto, be admissible in evidence against such person at criminal proceedings relating to such offence...' (My emphasis).

[4] The Constitution of the Republic of South Africa, 1996 (hereinafter 'Constitution').

[5] R v Barlin 1926 AD 459.

[6] Ibid at 465-466.

[7] S v Melani and others 1996 (1) SACR 335 (E) at 347e-h.

[8] S v Nzama and another 2009

(2) SACR 326 (KZP).

[9] See S v Zulu and another 1998 (1) SACR 7 (SCA) at 13d-e; S v Radebe and another 1968

(4) SA 410 (A) at 414D-E.

- [10] See s 35(5) of the Constitution which reads: ‘Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.’
- [11] *Komane v S* [2022] ZASCA 55 para 29.
- [12] *S v Sebejan and others* 1997 (1) SACR 626 (W) at 633f-g where Satchwell J stated: ‘The crux of the distinction between the arrested person and the suspect is that the latter does not know without equivocation or ambiguity or at all that she is at risk of being charged.’
- [13] *S v Magwaza* [2015] ZASCA 36; 2016 (1) SACR 53 (SCA).
- [14] *Ibid* paras 17-18.
- [15] Volume 7 at 512, lines 3-13.
- [16] Volume 7 at 512, lines 18-22.
- [17] Volume 3 at 181, lines 5-9.
- [18] Volume 3 at 181, lines 13-17.
- [19] Volume 3 at 188, lines 13-16.
- [20] *S v Sampson and another* 1989 (3) SA 239 (A).
- [21] See record at 605, lines 9-11.
- [22] See s 217(1)(a) of the Act and the amendment to it by s 11 of the Criminal Procedure Amendment Act 86 of 1996.

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