

IN THE COURT OF APPEAL OF BOTSWANA

Criminal Appeal No. 35 of 1984
High Court Review Case No. 279 of 1984
Gaborone Cr. Case No. 378 of 1984

In the matter of:

GORDON TOKWE

Appellant

vs

THE STATE

Appellant in person, unrepresented
Mr. S. A. Afful for the State

J U D G M E N T

CORAM: Maisels, JP
Baron, JA
Murray, JA

MAISELS, JP.

Prior to the matters giving rise to this appeal the appellant was a Sub Inspector in the Botswana Police Force. He was charged before the Magistrate's Court with contravening of section 99(a) of the Penal Code. This section deals with the offence of official corruption. The allegation against the appellant was, that he being employed by the Botswana Police Force during the period January 1982 to March 1984, whilst he was charged with the responsibility of handling security matters, he corruptly received P200 as a

monthly remuneration from a member of a Foreign Embassy in Gaborone. This was alleged to be an inducement to supply regular security information to the said member of the Foreign Embassy.

The matter came to light in the following way. The appellant said that he realised he was under surveillance by fellow Police Officers. Consequently the appellant decided to approach his Superiors to cross-check. He reported this matter to his immediate Superior Officer informing him of his suspicions. The appellant explained to them that he realised he was being followed. It subsequently transpired that the appellant confessed to the offence he was later charged with. This confession was made to several senior police officers.

The appellant was swiftly brought to trial before a Senior Magistrate sitting at Gaborone. The Magistrate decided to hold the trial in camera. This was an error on his part. It is clear from the record that the facts leading to his plea of guilty were fully explained to the learned Magistrate and the appellant stated that those facts were correct before the learned Magistrate entered a conviction. In addition he made a statement in mitigation, admitting the offence and saying "I regret what I have done. I knew it was wrong." What was wrong was passing information and receiving payment therefor.

The learned Magistrate sentenced the appellant to 18 months' imprisonment.

The matter came on review before Mr. Justice Hannah, who came to the conclusion, correctly in my opinion, that there was an irregularity in the case being held in camera. The learned Judge pointed out in his judgment that the appellant had pleaded guilty and admitted the facts given to the Magistrate were correct, and in his statement in mitigation said that he was guilty to the charge. The decision of the learned Judge that the conviction, notwithstanding the irregularity of the hearing being held in camera, should nonetheless stand was clearly correct. The appellant did not contest the result of these review proceedings, whereby his conviction before the Magistrate and sentence of 18 months' imprisonment was confirmed. It appears to this Court that what was said by Mr. Justice Hannah in relation to trials in camera was entirely apposite and it is not proposed to repeat those observations herein.

Thereafter the appellant instituted further review proceedings to review, as I understand it the proceedings in the High Court as well as proceedings in the Magistrate Court. The basis upon which these proceedings were brought in law is not clear.

The appellant filed an affidavit on his own behalf. Therein, to support the further review application, for the first time, the appellant suggested he was not guilty of the offence charged. The appellant reiterated the point that the proceedings should not have been held in camera. This matter had been disposed/by the judgment of /of Mr. Justice Hannah. Although, as I have said earlier, the hearing should not have been held in camera the appellant was not in any way prejudiced thereby. A second point was raised for the first time in these so-called further review proceedings that the appellant pleaded guilty and admitted the correctness of the facts placed before the learned Magistrate under duress from his superior officers. It seems difficult to see any merit in this contention having regard to what the appellant said before the Magistrate. The appellant is an experienced Police Officer and is not a person without education. He is an independent minded person of intelligence and I find it impossible to believe he would have pleaded guilty and admitted to corruptly receiving payments and to ask for mercy simply because he was put under the duress. The appellant further complained for the first time in these proceedings that he did not understand the charge. It is impossible to accept this. The appellant's former position

believes such a contention being credible. Finally the appellant made a fresh allegation as to the accuracy of the record of the Magistrate's Court. There is no question as far as I can see but that the Magistrate correctly recorded what took place. I find the proceedings in the Magistrate's Court convince me of the appellant's guilt.

However, this further attempt at having the matter reviewed came before the Chief Justice. The Chief Justice dismissed that application and, as I understand it, this is an appeal against that decision. There is no ground upon which the suggestion that the proceedings before the Chief Justice or before Mr. Justice Hannah or before the Magistrate were in any sufficiently substantial manner irregular, can be sustained or that the appellant was in any way prejudiced by the technical irregularity of the hearing in camera. It seems to me quite clear that the appellant confessed what he had done, that was to corruptly accept money in the manner alleged in the Charge Sheet.

The appellant has complained to this Court that the sentence of 18 months was too severe and induces a sense of shock in him. In the opinion of this Court it is correct that a sense of shock in the Appellant should be induced, but that is not the test. The test is whether the sentence imposed

induces a sense of shock in a Court of Appeal or Court of Review. Mr. Justice Hannah did not consider that the sentence should be reduced further, nor do I. This is a bad case of corruption and that there is no ground upon which this Court, even if it were satisfied that it had jurisdiction to do so, would interfere with the sentence imposed by the Magistrate, which was clearly a proper one in the ambit of his discretion.

It should be stressed that this Court is not dealing with the matter as an appeal from the High Court confirming the decision of the Magistrate but, as I understand it, the present is an appeal against the Judgment of the Chief Justice refusing further to review the matter. There are no grounds upon which an Appeal against his judgment can succeed. It was clearly correct.

It follows, therefore, that the Appeal must, in my opinion, be dismissed.

I. A. Maisels

I. A. MAISELS
Judge President

L. S. Baron

I agree

L. S. BARON
Judge of Appeal

Nigel Murray

I agree

N. MURRAY
Judge of Appeal