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A Curated Conspectus of the Life, Love, Law, Literature and Laughter of Albie Sachs

THE MANAMELA CASE – VIDEO TRANSCRIPT

CHAPTER: REVERSE ONUS VS THE PRESUMPTION OF INNOCENCE

THANDI MATTHEWS

You dealt with the issue of presumption of innocence again in the later case of Manamela, where the issue there was the notion of reverse onus in a statute dealing with the acquisition of stolen goods and whether that was compatible with the right to a fair trial, the right to silence and the presumption of innocence. Could you speak to us a bit about that case?

JUSTICE ALBIE SACHS

Alright, let me explain then, to ordinary people, who don't know what a reverse onus is. Normally the onus is on the prosecution, to prove beyond a reasonable doubt that the accused is not innocent. The reverse onus is when the law says, *if certain facts operate, we assume that you're guilty unless you can show that you're not guilty.* And this is very strong. People found in possession of stolen goods, you don't know where they got them, you don't know if they stole them themselves, if they got it from somebody else. But they're in possession of stolen goods. Something untoward has happened. So, the law put an onus on anybody found in possession of, I think recently stolen goods, to show that they had acquired the goods lawfully at an auction, a sale, a public sale, whatever it might be.

And that came up for Manamela. It was challenged. And two of my colleagues said, *'That was a reasonable presumption, given the difficulty of proving whether the person actually stole or received, it didn't matter all that much, but your starting point is very powerful, that you're guilty of something.'*

And I and two others writing for the Court, we rejected that. If at the end of the day, the court is not sure whether you acquired the goods honestly or not, you must get the benefit of the doubt, underlining that fundamental principle.

CHAPTER: APPLYING LIMITATION ANALYSIS

But the Manamela Case I think became important because, until then, when we started off, the lawyers and advocates were completely at sea about how to apply limitation analysis. You have a right, the right can be limited by a law of general application, acceptable in an open and democratic society. Very, very vague phrasing, and the lawyers just couldn't start properly.

And in the Harksen Case, where Justice Goldstone laid down the steps that you had to follow -- you have to show what the law is, what its reach is, you have to show the purpose being served by the law. Next you deal with the measure to limit the law. And then you have to show that the measure is reasonable, it's not disproportionate, it's reasonable in the circumstances - like one, two, three, four, five.

And now the lawyers become super obedient. One, two, three, four, five. And they were missing out on the fact that these are global - it's not separate points, like a normal checklist. Overwhelmingly on the one side, or all on the one side, the law, the interest served by the law, why you have the law, its need for society. On the other side globally the limitation of the law, all the different factors involved, the mechanisms used, the penalties involved, the difficulties of proof, whatever it might be. And if it's reasonable in those circumstances to have that limitation, then it's constitutionally compliant.

On the facts of the case, my colleagues, I think it was Edwin Cameron and Kate O'Regan, who are not seen as pro-prosecution people, they felt *'No come on, you know, they're found in possession of stolen goods and it's absolutely fair to start with that presumption, and you have to prove your innocence.'* And we said, *'No.'*

So, I like to feel the most important aspect of that case was encouraging litigants to look globally at the question of reasonable limitations to protected rights.

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