

ACCUSED NO 2 (OUPA JOHN HLOMOKA)

The indictment as amplified by further particulars alleges that accused No 2 was chairman of AZAPO Vaal which resolved to fight against the elections for Black local authorities. He co-operated in the creation of the VCA and participated in its launch. He associated with the conspiracy by reason of the agreement of co-operation between the UDF and AZAPO and campaigned actively with the VCA in the Vaal Triangle for the destruction of the local authority. He actively associated with the aim of the UDF by actively participating in UDF campaigns in the Vaal. A speech of his was read at a memorial service for Steve Biko, that AZAPO's aim was total take-over, there would be no Whites in South Africa. In canvassing for members of AZAPO he explained its aims and played a tape of a Radio Freedom broadcast. At the meeting of 19 August 1984 he identified with the inciting speech of accused No 16. On 3 September 1984 he led the masses in the march and looked on while councillor Ceasar Motjeane and Phineas Mathibe were murdered and Motjeane's house set alight. These are the allegations against accused No 2.

When evaluating the evidence against accused No 2 regard should be had to our finding on the nature and policies of AZAPO to which he subscribed. We have found that AZAPO is committed to the revolutionary overthrow of the South African government and the

existing social order in South Africa and the creation of a Marxist worker Republic. The contents of documents found in his possession and his position as chairman of the AZAPO Vaal branch lead to the inevitable conclusion that accused No 2 was fully aware of the revolutionary policy of AZAPO.

It is common cause that AZAPO and accused No 2 campaigned against the Black local authority elections in 1983.

There is no evidence that accused No 2 co-operated in the creation of the VCA or that he participated in its launch.

We have found that the agreement of co-operation between the VCA and Vaal AZAPO was not proved and there is no evidence that accused No 2 campaigned actively with the VCA for the destruction of the Black local authority or actively participated in UDF campaigns in the Vaal.

The state led no evidence about the Biko memorial service and accused No 2 denied that a speech of his was read. He testified that the speech had been that of Jabu Shabalala.

It was common cause that accused No 2 played a tape of an interview of Lybon Mabasa to the witness ic.8. The dispute was whether it had been an interview on Radio Freedom as the witness ic.8

said. The tape before court (exh 25) is of an interview by Mabasa and Cooper of AZAPO with Capital Radio. We accept the evidence of ~~Moses Hanna and Mabasa~~ in this respect. Mabasa said he gave no interview with Radio Freedom. Accused No 2 says that exh 25 is a tape similar to the one he played to the witness ic.8. Accused No 2 and Mabasa were not trustworthy witnesses but neither was the witness ic.8 beyond reproach. We make no finding in this respect.

It will be noticed that the indictment is silent on accused No 2's participation in the meeting in St Cyprians Church Sharpeville on 26 August 1984. We have found that the evidence of sergeant Koaho and the witness ic.9 on the contents of the speeches at the meeting of 19 August 1984 is substantially correct. It is common cause that accused No 2 identified with accused No 16's speech (which he gives a different content). Accused No 2 said at the end of his speech, which was relatively short, that there was nothing more for him to say as accused No 16 had said practically all that he, accused No 2, had intended to say. This was after accused No 2 had called for a boycott of the businesses of councillors.

As in the case of accused No 1, a measure of uncertainty is present. Accused No 16, the main speaker, had covered a wide field. Did accused No 2 necessarily convey to the audience that he supported the call that the councillors should be killed if they refused to resign? Did he intend to convey that? It seems not to have been so

understood by sergeant Koaho and major Steyn. Furthermore at the meeting of 26 August 1984 accused No 2 stated that the boycott did not mean that they hated councillors or that there must be a fight. They were not fighting councillors.

This raises a doubt whether his reference to what accused No 16 had said on 19 August 1984 was intended to endorse the call for murder.

There is also the evidence of the witness ic.8 that accused No 2 was not a man who was in favour of violence.

Despite the policy of AZAPO we find that there is some doubt whether accused No 2 endorsed accused No 16's call for violence or was so understood by the audience. He will be given the benefit of the doubt.

The evidence of the witness ic.8 is that at the meeting of 2 September 1984 accused No 2 called for support for the stay-away and the march to Houtkop and a rent boycott and shouted "Mabafe" with reference to the councillors. We have found that this was not proved.

The evidence that accused No 2 and others on 3 September 1984 led the protest march comes from the witness ic.8. He also testified about accused No 2's presence at the house of councillor César Motjeane. It is common cause that accused No 2 participated in the march. ~~His position therein and presence at Motjeane's are in~~ dispute. The witness ic.8 stands uncorroborated on these points. We find that the state has not proved this aspect of its case.

It has not been proved that accused No 2 had any organisational function on this march. He must for the purposes of this judgment be dealt with as an ordinary participant. It cannot be said that all participants had in mind that violence would follow or intended to cause a riot by this march. Many would have joined to voice their protest without thought of the legality or a possible violent confrontation with the police. Accused No 2 joined from the direction of zone 3. We have found him to be an untruthful witness and cannot rely on what he says his knowledge of the prevalent violence in Sebokeng was. As his route to the Roman Catholic Church Small Farms was devoid of signs of violence it may be that he was unaware that the protesters would be marching into a whirlwind. With some hesitation we give him the benefit of the doubt.

Accused No 2 is found not guilty and discharged.

## **DELMAS TREASON TRIAL 1985-1989**

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