

prove everyone else wrong.

In the cross-examination of Maseti it was suggested that he, the accused, instituted an action against Maseti in the Bantu Commissioner's Court, yet when giving evidence this proved to be wrong. It was exactly the opposite. He also suggested that Kalipa took sides with Maseti in their troubles. Yet he told the Court that Kalipa was more a peacemaker. When the first insinuation is pointed out to him he suggested Kalipa may be honest in front of him but say something else behind his back. He had no grounds for such an insinuation.

He was adamant that accused No. 3 was away from home for five to six years, from 1959 or 1960 until 1964. This is not correct. Mrs. Allen's evidence shows that that is wrong. He alleged that accused No. 3 was away from home for a long period. Asked how long he maintained five or six years, from 1959 or 1960. Accused No. 3's grandmother disproved that.

Accused No. 1 did not say that she was away attimes, he tried to confirm her allegation - accused No. 3's allegation that was put in cross-examination, that she was not in Port Elizabeth for seven years. Accused No. 3 never gave evidence to that effect. It is shown to be false. Why then try to shield accused No. 3? Why give false evidence? The Court has no hesitation in rejecting his evidence.

The Court would just mention it is also his allegation that accused No. 5 ... accused No. 1 alleged that accused No. 5 had left Port Elizabeth in 1959 or 1960. The evidence of Albertina disproves that.

Accused No. 2 also elected to give evidence. Now a more evasive, gullible and naive witness the Court has seldom come across. His was a denial of everything, and certainly of intimate knowledge in any way of the African National Congress.

He/.....

He denied knowing any of the accused, his co-accused and the State witnesses except Kalipa. Kalipa he maintained owed him five rand and that since nine years ago. To the Court's mind it bordered on the ridiculous to suggest that because of this debt and the sudden subsequent meeting last year Kalipa now seeks vengeance and incriminates him in this way. Kalipa did not appear vindictive and what is more, the other State witnesses who also incriminate him had no motive or none was suggested on their part.

To return to his evidence - a less plausible story of his evidence to trace Kalipa for the five rand is hard to imagine and I doubt if there is any truth in it. He contradicted himself in cross-examination, especially as regards this tracing and whether he made any inquiries and as to whom he made the inquiries at about Kalipa. He was far from frank with the Court. He was evasive and anticipated questions. His explanation as to how strangers would know his clan name was far from convincing. He admits to some knowledge of the African National Congress..Not that it is suggested in any way that that is an offence. He was detained during the State of Emergency. He didn't know why he was detained. When it is asked what he and other detainees discussed in the cells as to why they had been detained and what they were there for he replies: "the usual matters that are discussed amongst idle men".

When he is asked where one Mhlaba is now, one whom he knew during the State of Emergency, he says he doesn't know. When asked if he still read the newspapers, almost anticipating the trend of the questions to come he adds: "Only when I can do I read the newspapers. You see the very nature of my work... I do not have a chance to read the whole thing". When asked what he read about the African National Congress he was equally evasive with his reply: "nothing I can remember because I am a person who had nothing to do with the A.N.C."

Why not a simple : "I didn't read about it" or I did read this or that? His replies about his reference book, influx control and being oppressed etc. are equally evasive and unconvincing. The Court does not believe him at all.

Dealing with the respective counts against the accused - firstly count 1, being members of an unlawful organisation, the African National Congress, it is not disputed in any way that the African National Congress is unlawful. The State alleges that during the period 8th April, 1960 to 31st March, 1964 the accused were members or continued to be members or office-bearers of this unlawful organisation.

The Defence does not dispute the meetings are related by the co-members. They do not dispute that they were held, nor for that matter do they dispute that subs were in fact paid and pamphlets were distributed. What the Defence does dispute and maintain is that the accused did not participate at all. In other words all these things may well have been done and the goings on may have taken place but the accused did not participate.

The meetings referred to by the co-members are May, 1960, one in June, 1961 and one in June, 1962. These four witnesses gave details of where they were held, what was said, by whom, and what took place. A comparison of their evidence discloses numerous points of corroboration, Where the meetings were held, approximately when it was held, who the Chief Steward was, who the speakers were, the subjects discussed etc. Who was present and who wasn't present. The Court finds that such meetings were in fact held. The point is whether the accused were present. Acceptable evidence to the Court is that accused Nos. 2 and 4 were not there at the first meeting. Accused 4 was not there at the second. The State witnesses state that all were present at the third.

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There was another meeting related to which the accused they alleged attended, that was the one just prior to the murder of the District Commandant of Police.

Now, it is easy for co-members to tell<sup>of</sup>/this for they themselves were there. They can give details of exactly what happened, what was said, where it was held, when it was and so on. It is easy for them to do so because they were actually present. What is easier for them to do that and then have the accused named. In all such trials as these there is always the risk of false incrimination, and it is that that the Court must look to and ensure that the accused are not being falsely incriminated. The Court must be satisfied that the State witnesses have spoken the truth. And it must also be satisfied that the accused have not been falsely incriminated. This risk that they may be falsely incriminated can be reduced or almost done away with if there is in the first instance evidence incriminating the accused directly with the offence or if there is no rebuttal by any of the accused of what the witness is saying. Or even if the accused gives evidence, if his evidence is found to be false then this risk of false incrimination is also reduced. Or even if it is shown, where the accused gives evidence, that he is not<sup>a</sup>/lying witness, then if the Court is satisfied that the merits of the witness as such are beyond question better than the demerits of the accused as a witness "that false incrimination risk" is also reduced.

I have already intimated the Court is satisfied that the State witnesses as regards these meetings have spoken the truth, especially the evidence of Joseph Duba and Febana.

Accused No. 1 gave evidence but the Court has already intimated that the Court finds his evidence to be false. To put it blankly, the Court finds he is a lying witness,  
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in many respects.

There was evidence called on his behalf - a fire officer, but that evidence only shows that he was on duty from 10. p.m. to 6 a.m. The meetings were held at 7 p.m. The accused could easily have attended the meetings and then gone on duty at 10 p.m. In any event, he was not on duty in May, 1960. The Court is satisfied that he was at these meetings.

Accused No.2 - his evidence is a denial of everything said. But, as already intimated, the Court found that he as a witness was so poor that the Court has no hesitation in saying that the merits of the witnesses Duba, Febana and Kalipa on this aspect far outweigh the demerits of the accused as a witness. The Court is satisfied that the accused also attended these meetings after 1961.

Accused No. 3 gave no evidence to rebut the allegations of the State witness. Her allegations in cross-examination have been shown to be false. What is more, the first suggestion to Duba in cross-examination was that accused No. 3 owed Duba's wife money which caused trouble. If this is so, how does one reconcile that with her next allegation to the other State witnesses that she was never in Port Elizabeth for seven years prior to last year?

In any event, there is her grandmother's evidence which rebuts the allegation she has made that she was away from Port Elizabeth for seven continuous years prior to 1964. The Court is satisfied that she too attended these meetings as alleged by the State witnesses.

Accused No. 4 gave no evidence to rebut these allegations. Her employer was called, but her evidence only tends to confirm what the State witnesses say - she was there after 1961. The Court has no hesitation in accepting the State witnesses' evidence in regard to her and is satisfied

that/.....

that she attended as they allege, the third meeting of the African National Congress.

Accused No. 5 - he gave no evidence. His allegation in cross-examination, as supported by accused No. 1, is that he was not in New Brighton after 1960 - it is not true. The evidence of Albertina tends to disprove that. In any event, the accused himself elected not to give evidence. The Court is satisfied that he too attended these meetings.

Accused No. 6 gave no evidence, although there were various insinuations in cross-examination, but none were confirmed or even attested to. One refers to the Ward Committee meetings that he alleged or insinuated in cross-examination were held on Mondays; that was found to be false. Bobby's evidence shows that.

Where an accused commits himself to questions or statements and then fails to give evidence it does effect upon his failure to give an explanation. The Court is satisfied that he too attended these meetings.

Similarly as regards accused Nos. 7 and 8. There is no evidence to rebut the allegations of the State witnesses. The Court is satisfied that there is no risk of false incrimination as far as they are concerned. The Court is satisfied that they attended these meetings as alleged by the State.

The Court is satisfied that the accused all did in fact attend these meetings as stated. The State is entitled to rely on the presumption created by Section 12 (i) of Act 44 of 1950, where it says inter alia:- "Where it is proved that he, accused, attended any meetings of that organisation or its advocate - advised, defended or encouraged the promotion of its purposes, or distributed or assisted in the distribution or cause to be distributed any periodical etc. he shall be presumed, until the contrary is proved to be or to have been a member or active supporter

As the case may be, of that organisation".

In this case the Court is satisfied that the State has proved that the accused did attend these meetings of a banned and unlawful organisation, that is the African National Congress. Having satisfied the Court as far as that is concerned, the provisions of Section 12(i) apply, the presumption that they are members, and the accused have not rebutted it; accordingly:

ALL THE ACCUSED ARE FOUND GUILTY ON COUNT 1.

As regards Count 2 - the subscriptions. There is the evidence of the State witnesses that subscriptions were in fact paid by members at these meetings on Monday nights. In one particular instance, the first meeting, particulars are given. It is not suggested by the Defence that subscriptions were not in fact paid, just that the accused had nothing to do with it because they were not members.

The State witnesses have given details of the amount to be paid, who it was paid to and where it was paid. And the receipts issued. It was suggested by counsel for the Defence that it was strange that while they could remember various other items they did not remember pertinently or could not relate pertinently to any particular occasion other than the first meeting that they saw the accused themselves pay. But, the fact that they .. or the suggestion by the Defence was more to this effect that they, although they remembered paying subs. they didn't remember other details. But isn't the reason why they remember paying the subscriptions so easily because they as members had themselves to pay the subs? It was something they themselves did at each and every meeting.

In any event, the Court is satisfied that subscriptions were paid as they relate. And, as far as the accused are concerned, accused Nos. 3 to 8, they have not denied these allegations by the State in any shape or form, and accused

Nos. 1 and 2, their testimonies have been found to be false. The Court is satisfied that they did pay subscriptions.

ALL THE ACCUSED ARE FOUND GUILTY ON COUNT 2.

Similarly as regards count 3. The Court is satisfied that the accused 1, 2, 6, 7 and 8 held meetings in their houses. The State witnesses alleged that they did and accused 6, 7 and 8 have not denied it. As regards Accused 1 and 2.. as already pointed out, their evidence is rejected.

ACCUSED NOS. 1, 2, 6, 7, and 8 ARE THUS FOUND GUILTY ON COUNT 3.

ACCUSED NOS. 3, 4 and 5 ARE FOUND NOT GUILTY.

A close scrutiny of the evidence of the State witnesses regarding count 4, the pamphlets which were distributed leaves something to be desired. While the Court has no doubt that pamphlets were distributed - Gladile's evidence proves they were - were they, the pamphlets, before the Court? The ones distributed by the State witnesses? Duba does not and neither does Kalipa. All these witnesses allege all the accused assisted in the distribution of these pamphlets ..African National Congress pamphlets.

Exhibits A,B AND C. were certainly issued by the African National Congress, but a detailed examination of what each of the State witnesses say regards these pamphlets reveal discrepancies, such as, as to whether they were called to distribute them or whether they were told at meetings about them. And told at the meetings when the distribution was to be. Duba and Febana say they were left messages. Maseti said they were told at meetings. Kalipa says both or either. These witnesses' respective descriptions of where they met are far from unifrom. Particulars as to where they met, who was inside or outside the house etc. On the other hand certain aspects do correspond. The room,

the/.....



the lighting, where the pamphlets were stored, in the yard etc., in those respects they do. All the witnesses are somewhat vague as to the meet up of all the distributors after the distribution, except as regards the last occasion which was near some cemetery.

While the Court found the evidence of Duba and Febana fully acceptable, theirs, in regard to the pamphlets, does contradict Kalipa and Maseti's. The Court does not say that they are untruthful but their evidence is confusing. They all allege all the accused were present. But consider the circumstances - there was very little light and they are relating incidents now some years old. Can they really remember such details?

It was shown that accused No. 1 was on night duty at this time, or about this time. Here is another difficulty - when exactly - when was it? No specific dates are given for the distribution of these pamphlets. It may be argued that accused No. 1 could have known when the pamphlets were to be distributed and so arranged for someone to do his shift, for pamphlets were distributed after 11 p.m., that is the State evidence.

Duba and febana allege they were not told at meetings when pamphlets were to be distributed, they were only given messages to call for them that night. If such be the case, Accused No. 1 could hardly have arranged his release from a shift on the spur of the moment; He may have, if what Maseti and Kalipa say is correct; that they were told at meetings when the pamphlets were to be distributed. Then Accused No. 1 could have arranged for a relief. He had the time to do so. But that is mere conjecture, and argument. It is not for the Court ...or should I say it is for the State to prove beyond a reasonable doubt what actually did take place.

Granted, as regards accused No. 1, he was not on

late duty during May, 1963 and could well then have participated as the State witnesses allege.

Considering all the evidence on this count the Court does not feel the State has proved the allegations beyond a reasonable doubt and, of course, all the accused are afforded the benefit of such doubt.

ALL THE ACCUSED ARE ACQUITTED ON COUNT 4.

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ACCUSED 1 to 8 HAVE NO PREVIOUS CONVICTIONS.

MR. MARTIN ADDRESSES THE COURT IN MITIGATION OF SENTENCE.

S E N T E N C E .

BY THE COURT:

Mr. Interpreter, tell the accused that the offences with which they are charged are serious ones. The law as regards the members, the maximum sentence is one of ten years. There is a minimum sentence imposed by the legislator indicating how serious the legislator considers these sort of offences. This type of offence is not something new, it has been going on for years now. It is the Court's duty to ensure that the legislator's intention is carried out.

The Court has taken into consideration the fact that they have no previous convictions, and the Court has also taken into consideration the fact that some of them have been in custody for some months.

In all the circumstances, as far as count 1 is concerned, : Accused 1, 2, 3, 4, and 5 are sentenced to: THIRTY MONTHS IMPRISONMENT. Accused No. 6, who has been in custody for a lesser period, to THIRTY-ONE (31) MONTHS. IMPRISONMENT. And accused nos. 7 and 8, who have only recently been arrested, on the 12th May, are sentenced to: THIRTY-SIX (36) MONTHS IMPRISONMENT.

As regards Count 2: All the Accused are sentenced to

Twenty-four.....

Evidence?

TWENTY-FOUR (24) MONTHS IMPRISONMENT.

As regard count 3: Accused 1, 2, 6, 7 and 8 are sentenced to :- TWENTY-FOUR (24) MONTHS IMPRISONMENT.

Accused 3, 4, and 5 - DISCHARGED ON COUNT 3.

Count 4 - ALL ACCUSED HAVE BEEN FOUND NOT GUILTY AND DISCHARGED.

The Court agrees with counsel for Defence that counts 2 and 3 are similar activities and almost part and parcel of being members. Or should I say that as such they do not necessarily or would not necessarily flow from being members, but in the particular circumstances of this case once they became members they were practically obliged to commit the offences as regards counts 2 and 3. Well, therefore, as regards the sentence on count 3, it will run concurrently with the sentence on count 2.

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L.P. FRANCIS ESQ.

REGIONAL MAGISTRATE.

(ADDO REGIONAL COURT)

CASE NO. RC 7/65.

DATE: 3-6-1965.

C E R T I F I C A T E.

I, the undersigned, hereby declare the foregoing to be a true and correct transcription of the original evidence recorded mechanically in the case of :-

THE STATE VERSUS.:

1. Paulus Seti.
2. Ruben Mfecana.
3. Lydia Lungile.
4. Sylvia Cele.
5. Philip Qona.
6. Alfred Halahoy.
7. James Xinwa.
8. Grace Maquncu.

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**SOUTH AFRICAN INSTITUTE OF RACE RELATIONS, Security trials Court  
Records 1958-1978**

**PUBLISHER:**

*Publisher:-* Historical Papers, University of the Witwatersrand

*Location:-* Johannesburg

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