

HEADS.

A. S. K. PITMAN.

VOL. TWO(2)

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SAINA Security Trials

Sachs Cooper, pp 169 - 311

COUNT TWO

1.

The essential elements of the charge are set out below :-

- (a) During the period 15/9/1974 to the 25/9/1974 at Durban and Turfloop and elsewhere,
- (b) the Accused,
- (c) in concert and in common purpose with certain others who are listed,
- (d) with intent to endanger the maintenance of law and order,
- (e) organised and/or arranged Pro Frelimo Rallies.

The acts of organising and arranging the rallies had the results, or were likely to have had any of the following results,

to /

to wit :

- (i) to hamper or to deter any persons from assisting in the maintenance of law and order;
- (ii) to cause or encourage an insurrection or forceable resistance to the Government;
- (iii) to further or encourage the achievement of any political aim, including the bringing about of any social or economic change, by violence or forceable means;
- (iv) to cause serious bodily injury or to endanger the safety of any person;
- (v) to cause, encourage or further feelings of hostility between the White and other inhabitants of the Republic; and
- (vi) /

- (vi) to embarrass the administration of the affairs of the State.

Further Particulars :

The necessary intention to endanger the maintenance of law and order is inferred from

- (i) the acts themselves; and
- (ii) the fact that the purpose of the rallies was :
 - (a) to celebrate the success and advertise the efficacy of a violent revolutionary struggle;
 - (b) to embarrass the State and to seek confrontation with the authorities and the police; and
 - (c) to arouse violent emotional reaction amongst the various population groups.

2.

In order to delineate the issues in this Count it needs to be pointed out that it is common cause that :

- (a) part of a rally was held at Turfloop;
and
- (b) people gathered outside Curries Fountain, Durban, but were dispersed and no rally was held;
- (c) the Minister of Justice had banned meetings of SASO and BPC by the 25th September, 1974; and
- (d) the organization and/or arrangement of the Durban rally was under the banner of SASO and BPC.

3.

The issues which have to be decided are :

- A. (i) whether there was an intention to endanger the maintenance of

law /

law and order;

- (ii) whether each Accused was involved in the organization and/or arrangement of a rally; OR

B. Whether the organization and/or arrangement of the rallies had, or was likely to have had, any of the results set out in paragraph 1(i) to (vi) above.

It is submitted that the State carries the onus of proving each of the positive assertions contained in this paragraph above, beyond a reasonable doubt, save that it is required only to prove on a balance of probabilities that an act, which it has proved, was likely to have had any of the results set out in B above.

In /

In the event of the State discharging this latter onus, the defence is required to show beyond a reasonable doubt that the Accused did not intend such results.

4.

The contention of the State is that the intention to endanger the maintenance of law and order is a matter which the Court will have to infer.

Among other things it is to be inferred from the fact, the State maintains, that the purpose of the rallies was :

- (i) to celebrate the recent success and to advertise the efficacy of a violent revolutionary struggle;
- (ii) to embarrass the State and to seek confrontation with the authorities and with the police;
- (iii) to arouse violent emotional reaction among the various population groups.

5.

This three-fold purpose is neither expressed nor admitted so that the State has to ask that it also be inferred. So, again, there is a chain of inferences that the State has to prove, and the State has to show that this complete chain is the only reasonable inference from the facts.

Re 1 above :

Now in the first place it does not follow at all from "gatherings" to celebrate the conclusion of activities, that one is supporting the activities themselves that were concluded.

Example :

(a) The American Day of Independence on the 4th July.

This is not celebrating or extolling armed rebellion.

(b) Blood River on the 16th December.

This is not extolling or celebrating the shooting of Africans.

(c) /

(c) Armistice Day on the 11th November.

This is not extolling or celebrating trench warfare or the use of gas in warfare.

(d) V.J. Day

This is not extolling or celebrating the dropping of atomic bombs.

Secondly, there is evidence that Frelimo did not win a revolutionary war but were given autonomy by negotiation. There is no evidence on the Record to gainsay this.

p. 6249

Re 2 above :

i.e. embarrassing the State and seeking confrontation with the authorities.

There is no evidence of why this should be so. The State was friendly with the Frelimo Government in Mozambique, as it still is, and there was no need to be

embarrassed /

embarrassed. There was nothing inherently invitative of confrontation. The Court will therefore have to consider whether the evidence establishes that Accused continued the rally in defiance of the Government's ban, but in the absence of this there is nothing that inherently or implicitly seeks confrontation with the State in a Pro-Frelimo rally. The continuation of a rally in defiance of a Government's ban, in addition, is not per se terroristic. The State will have to show facts, in the event of proving the continuation in defiance of the ban which make it terroristic.

Re 3 above :

The holding of such a rally does not have as a purpose the arousing of violent emotional reaction among the various population groups, any more than the celebration of Blood River does. (As PROFESSOR VAN DER MERWE of Potchefstroom

Theological College said last week - if the Afrikaners celebrate Blood River then Blacks can celebrate Sharpeville).

The evidence to the effect that one person said he was going to petition the Minister of Justice to prevent such a rally, is flimsy, hearsay and does not prove the arousing of violent emotional reaction among the population groups.

The actions of the people at Curries Fountain were jovial. There is no evidence of violent reaction by anybody upon the holding of the rally.

The video-tape does not support the State's contention, at p.14, that the crowd was hostile and threatening nor do the photographs.

6.

GENERAL SUBMISSIONS :

- (a) Turfloop Rally : was not defiance of a ban. It was an SRC Rally and, in addition, trouble would not have occurred without police intervention. The evidence by the State that it was an SRC and not a SASO rally was overwhelming.

LEDWABA, p.193/29; 196/1; 196/30;
198/30; 199/25; 203/25; 232/14;
233/19; 234/20; 274/2; 276;
277; 314; 334; 338; 346;

KEKANE, 1465/10; 1467/24; 1501/1;

NB: No attempt made in re-examination to suggest that the Rally was not an SRC one.

Exhibit C, p.58/33; p.62/30.

- (b) Durban Rally : it was not intended to go on and there was no trouble at all except for police dogs attacking the crowd quite unnecessarily.

TURFLOOP /

TURFLOOP RALLY :

7.

The State contends that :

- (a) the rally was not intended to be a peaceful celebration;
- (b) the purpose of the rally was to advertise the efficacy of a violent revolutionary struggle and to encourage emulation of such methods;
- (c) the purpose of the rally was to embarrass the State and to seek confrontation with the authorities and the police and to arouse violent emotional reaction;
- (d) the rally defied, illegally, the Minister of Justice's ban on SASO rallies;
- (e) that the rally created a violent emotional reaction among the students who, unprovoked, attacked the police;

(f) /

(f) it was the subversive placards which caused students to become so hostile that they attacked and injured White lecturers;

(g) that it was the Accused who were responsible for placards, which the State contends were subversive.

8.

The evidence does not support any of these contentions. In many cases the State evidence itself is contrary to, and gives the lie to, these contentions. It is an untenable version. I would like to interpose here to say that I find the the attitude of the State in this case difficult to understand. It relies on State Witnesses who totally oppose the State's own contentions.

STATE CASE :

9.

(a) PROFESSOR P.C.D. OLIVER :

The attitude of the students that morning was completely normal.

There was no violence. This was after all had seen the placards.

p. 32

(b) CONSTABLE VAN DER MERWE :

(i) MAJOR ERASMUS gave the students 15 minutes to leave the hall.

They left the hall in good order.

p. 79

(ii) His version of unprovoked stone throwing was manifestly self-contradictory and untruthful.

It was put to him that the police had set the dogs upon the students. His repeated response was he "did not see the dogs being used at any stage" (p.77/8) and "I did not at any stage see the dogs being used to

chase the students away"
(p.82/31), but when he was
told that at the SNYMAN
COMMISSION he had given
conflicting evidence to the
effect that he had seen the
dogs used to chase the
students he decided to turn
a somersault and say he had
seen the dogs being used to
chase the students.

p. 84

(iii) He conceded that the place
from which he maintains the
students first threw stones
was not the sort of place
where stones lie - so much so,
that he immediately wondered
where they had got the stones
from. He elaborated on that
saying that it was probable
that the students had had the
stones in their pockets in the

hall /

hall.

p. 114

I submit that VAN DER MERWE's evidence was poor and untruthful.

On his version he could not account for any reason for the stone throwing. He said the men students sat and stood on the wall for about five to ten minutes. The stone throwing suddenly broke out. "I can't say what caused it".

p.116/9

This is unlikely in the extreme for students who had obeyed and left the hall in good order, who had split up on the soccer fields, sat on the stands for five to ten minutes and given no inkling at all up to then of aggression.

(c) /

(c) LEDWABA :

- (i) No. 7 Accused was the newly elected SRC President. When he was elected he suggested that the SRC should hold a rally to rejoice with the new transitional Government of Mozambique. p.193/20
- (ii) The SRC purchased paper for placards. p.198/21
- (iii) No. 7 came with a Rand Daily Mail and said that the rally was banned. We consulted legal people who said that we could go on. p.199

SUBMIT : This State evidence does not suggest a defiance continuation. They took the trouble to find out their legal rights.

(iv) /

(iv) At lunch on the 25th No. 7 announced that the Rector had said the SRC rally was not affected by the ban and could continue but that students should not miss classes.

p.203

(v) No. 7 gave a speech on the historical background in Mozambique. No. 6 spoke and said freedom needs ones own involvement but he said he was not advocating the method used by Frelimo.

p.205

SUBMIT : Neither of these sounds defiant, agitational or wanting to advertise the efficacy of armed struggle, and this is the evidence of a State witness.

(vi) /

(vi) On the field No.7 told the students to disperse and "there was a good response".

p.209

Female students went to the northern side and males students to the south, where their hostels were.

(vii) No. 7 told the students that the SRC did not want a demonstration, merely placards to accord with the rally.

p.239

I want to make the point here that the attitude of the State in regard to this point indicated that whenever it got into the difficulty of this sort of evidence from its own witnesses simply submitted that clearly the evidence was nonsense because what No. 7 intended was the opposite -

namely /

namely he wanted confrontation.

(viii) The students went on with
their classes that afternoon. p.246

(ix) I did not hear the instructions
over the loudspeaker by the
MAJOR on the soccer field. p.258

(x) I think the assaults on the
staff were primarily due to the
police intervention. p.268

SUBMIT : This is evidence from
a State witness inconsistent
with the State's contentions.

(xi) On the 22nd September, 1974 the
SRC took a formal decision to
hold the rally. p.277
(i.e. before the banning).

It should be remembered that this

witness /

witness was held in detention,
incommunicado, until the time
he had completed his evidence.

(d) H.W.M. NAUDE :

The meeting was not in progress on
the field.

p.1063

(e) S. KEKANE :

(i) We were attacked by the police
and we retaliated.

p.1448

The State contention in its
Heads of Argument is that no
one said that stones were thrown
only after the police attacked
the students. That is quite
incorrect. Here is a State
witness who says so.

(ii) We were told in the diningroom
that the Rector had given
permission that the rally could

be /

be held on the Wednesday.

p.1466

(iii) On the field I did not hear
the MAJOR speak through the
loudspeaker.

p.1470

(iv) The students were merely
sitting on the steps.

p.1477

10.

All the above is State evidence. It is
evidence which comes from witnesses whom
the State relied upon a great many times
in its argument.

Now what is the position of the State?
Is it accepting the evidence of its
witnesses above? If it is not, how does it
rely on these witnesses? Is it taking bits
and pieces from the witnesses when it suits
them and rejecting the balance of the
evidence?

The /

The State is very unclear as to what its attitude is in regard to its own witnesses.

LOOKING AT DEFENCE EVIDENCE ON THIS RALLY :

11.

- (a) BIKO pointed out that at the Executive Meeting of SASO in Port Elizabeth decisions were taken to make a practise of celebrating certain events such as Suffer Day, Sharpeville Day and Compassion Day.

p.4355

The point I want to make is that the practise of "event" celebration in sympathy with or insolidarity with, others, was an established activity in the Black student community and nothing sinister should be attributed to it.

- (b) No.6 :

(i) At a SASO Local Committee

Meeting /

Meeting LEDWABA said that the SRC had decided upon a Viva Frelimo Rally.

p.5597

This evidence squares with the State witness LEDWABA.

- (ii) Re the placards : Among 1500 students you will find at least 80 who are irresponsible, but one just ignores them.

This is a sensible attitude which the State might, with profit, have adopted.

p.5602

There were a great many placards but the State did not choose a representative number - only the worst.

p.5605

- (iii) Posters like "Take the Gun" : which the State contends are likely to influence students,

affected /

affected the students so little that they simply went to lectures in the normal way. Even PROFESSOR OLIVER agreed that students were completely normal that morning (p.32).

p.5610

Compare this State evidence with the excessive suggestions by the State that the placards demonstrate a "violent emotional reaction" and were "inflammatory".

On the contrary, all the evidence, that is for the State and the defence, is that there was no reaction at all, but in fact complete normality.

In fact this poster, as No. 6 points out, is critical of SASO for its failure to take action. It says, in effect,

"You /

"you are for dialogue.

MACHEL did it with a gun".

p.5612

- (iv) No. 6 gave his evidence of the Rally and its dispersal by the Police. The rally was over when they went to the soccer field. p.5614
- (v) His telephone conversation at p.56 of Exhibit C makes it clear that it was an SRC rally. (pp.58, 61, 82 and 84). p.5629.
- (vi) On the 18th they had said that the SRC was holding the meeting but the SRC decision was postponed to the 21st. p.5678
- (vii) NB: The State continues to put the patently false proposition that in Frelimo the Blacks had a victory over Whites. In fact, of course, Frelimo is a multi-

racial /

racial organization.

p.5680

(c) No. 7:

(i) After I was elected the President the SRC decided to have a Viva Frelimo Rally.

p.5863

We agreed to discuss it formally on the 21st but in fact it was the 22nd before we did.

p.5866

(ii) On Saturday the 22nd I announced in the hall that the SRC was holding a rally.

p.5869

(iii) On the 22nd the SRC invited BASA.

p.5872

SUBMIT : There can be no doubt that this is truthful.

(iv) When I awoke on the 25th I saw posters.

p.5874

The students did not respond to

the /

the posters. p.5877

- (v) At 12.15p.m. the Rector said
he wanted to see the SRC. p.5882

SUBMIT : That the SRC clearly
organized the rally.

- (vi) I persuaded men and women
students to leave the sports
field. p.5888

- (vii) I told MAJOR ERASMUS that if
the police left I would ensure
the rally would not go on. p.5891

Can the State seriously contend,
in the light of all this
evidence, that No. 7 and his
colleagues wanted confron-
tation, the embarrassment of
the State and the arousalment
of violent emotional reaction?

(viii) /

- (viii) The State puts to No. 7 that he was putting up posters at Turfloop between 1 and 2a.m. on the 25th.

p.5938

I have been unable to find any such evidence, nor does the State give the source of that suggestion. That question is, in the absence of evidence to that effect or an indication of its source, an improper question.

- (ix) The State puts to No. 7 that the holding of the rally embarrassed the Government but No. 7, it is submitted, is quite correct when he replies that the Government itself wished to welcome Frelimo as the Government in Mozambique.

p.5991

- (x) I did not want a demonstration.

p.6010

(xi) /

- (xi) The State puts to No. 7 that he said to students he did not want a confrontation because he did want one.

p.6029

The State is trying very hard. It is trying to create success out of adversity. It is grasping at non-existent straws.

- (xii) The State put to No. 7 that he tried to separate the men and the women students so that the area could be cleared for the men to attack the police.

p.6031

Quite apart from being a rather ludicrous suggestion it is an improper suggestion in the absence of divulging the source of such a statement.

(xiii) /

- (xiii) The State put to No. 7 that
the placards inflamed. p.6038

The State evidence is to the
contrary, as I have pointed
out before.

(d) G. NKONDO :

- (i) On Wednesday I and MR.
MOTSHOLOGANE walked around
looking at the posters. There
were some offensive ones ("now
and then irresponsible students
do this") but there was
general amusement. p.6847

- (ii) Confirms that when MAJOR
ERASMUS spoke on the megaphone
the megaphone made a noise. p.6848

- (iii) The students moved to the
soccer field in an orderly
fashion. At the field they
sang and moved into two groups. p.6850

SUBMIT :

This evidence is opposed to seeking confrontation, to wishing to arouse the emotions or wishing to embarrass the State.

(iv) The Police batton-charged, and used dogs and teargas. p.6854

(v) I saw no stones thrown before the batton charge. p.6856

(I was under a tree at the south-western corner of the cinema hall - the building). p.6850

This again is State evidence.

(vi) No. 7 came to the police and said he would calm the students if the police left. p.6858

SUBMIT : That this is what happened. There is little doubt

that /

that there would have been no trouble at all if the police had not interfered.

Rector BOSHOFF came up and agreed absolutely with this submission by saying to No. 7, "If you do your bit I'll do mine", referring to the fact that he would get the police away if No. 7 took charge of the students.

p.6861

(vii) The posters caused mirth.

p.6970

(e) LYON MABASA :

(i) No. 7 announced a week before the rally that the SRC was going to organize a rally on the 25th September, 1974.

p.7092

(ii) Saw many posters about 70 to 80 - more than the State produced in evidence.

p.7097

(iii) /

- (iii) The mood of the students was not affected that day. p.7097

Compare this repeated observation from defence and State witnesses with the State's unfounded contention (insofar as the evidence is concerned) that the posters "inflamed", "created violent emotional reactions".

- (iv) Gives a picture of the rally in the hall which is quite innocuous. It was not an "abnormal" students meeting as the State puts it. p.7098

- (v) The MAJOR's megaphone cracked and whistled. The students filed out peacefully. p.7099

(vi) /

(vi) The police charged with dogs.

p.7101

(vii) I saw dogs bite a student. The students got angry and started throwing stones.

p.7105

SUBMIT : This is another witness who makes it clear that stones were thrown after students had been bitten by dogs.

(viii) There were many other mild posters like "Viva Frelimo".

p.7126

SUBMIT : In other words the posters before the Court are not representative.

(ix) It became a violent confrontation at Turfloop when ISMAEL

MKHABELA was clubbed by the police and the dogs bit students.

p.7151

SUBMIT : The witness again makes it clear that the cause of the confrontation was the police batton-charge and the use of the dogs.

(x) No. 7 when he announced the rally said there was to be no demonstration and no marches.

p.7154

12.

I submit that the evidence before this Court does not support the State contentions. On the contrary, the evidence shows that there was to be a peaceful, legal rally but the police determinedly caused a confrontation after the rally was over.

DURBAN RALLY :

13.

The State contends that :-

- (a) The rally was not intended to be a peaceful celebration;
- (b) the purpose of the rally was to advertise the efficacy of a violent revolutionary struggle and to encourage emulation of such methods;
- (c) the purpose of the rally was to embarrass the State and to seek confrontation with the authorities and the police and to arouse violent emotional reaction;
- (d) the crowd was hostile and aggressive;
- (e) Accused No. 2 and the crowd tried

to /

to force its way into the gate to hold the rally in the stadium and was only prevented from doing this by police, with dogs, rushing at the crowd from inside the stadium.

14.

The evidence does not support these contentions. The State evidence is highly untruthworthy and cannot be accepted.

15.

(a) The State's case rests fundamentally on four legs :-

- (i) HARRI SINGH;
- (ii) the telephone tapes;
- (iii) the Police evidence; and
- (iv) the video tape.

(b) In regard to :

- (i) HARRI SINGH : He was an untruthful, glib accomplice

who /

who contradicted himself and was prepared to lie himself out of trouble whenever it seemed necessary to do so.

- (ii) The telephone tapes appear to oppose, as much as they support, the State version. The one tape we have of a conversation after the rally, containing a description of the rally by the arch-villain, (on the State case) is no support for the version of the State.
- (iii) The Police evidence is very suspicious and unsatisfactory and is, I submit, clearly not true.
- (iv) The video-tape is totally against the State version.

(c) /

- (c) The documents from neutral sources, namely the photographs from photographers and the newspapers, are against the State version.

16.

STATE CASE :

(a) BAWA :

- (i) Q. "I would like you to sketch the scene at Curries Fountain" --- ... "there was just generally a lot of singing and shouting".
I didn't hear the announcement but I heard him using the megaphone. I don't know what he said.

"After that the dogs were used to disperse the crowd".

p. 185

This is a State witness upon whom the State relies heavily and yet his version is entirely contrary

to /

to the police version. The police version is that the dogs were only used to prevent the people from getting into the stadium when they were trying to do so. The Police version is that the people were doing Zulu war steps and advancing in horn-shaped formation towards the gate. The Police version is further, that the crowd was hostile and aggressive.

SUBMIT : BAWA's evidence is quite clearly the truth and the State is caught on it, in conflict with the Police witnesses.

- (ii) No. 1 Accused said on the Tuesday night, the 24th

September, /

September, 1976, that he was not looking for confrontation with the authorities.

p.487 and 48

(iii) In addition, there was a feeling at the SASO offices that afternoon that there should be no confrontation.

p.489

SUBMIT : Both of these portions of evidence from a State witness directly contradict what / State alleges^{the} in the Indictment. Is the State rejecting BAWA or relying on him? The Heads of Argument by the State indicate that it is relying on BAWA. The State cannot ask the Court to rely heavily on witnesses who are in conflict with its own version.

(b) /

(b) HARRI SINGH :

(i) He, HARRI SINGH, and No. 5
opposed confrontation but; p. 867

(ii) No. 1 and No. 2 said
irrespective of unnecessary
bloodshed the rally would go
on; p. 868

(iii) No. 1 and No. 2 said,
"If there was to be a confron-
tation we carry on with it". p.873

This version is indirect con-
flict with BAWA who said No. 1
and the others were against
confrontation.

But in any event there is one
incident on that afternoon which
completely gives the lie to H.
SINGH's version;

(iv) /

(iv) H.SINGH contends at pp.878 and 879 that the REV. MAYATHULA had lost his temper because the Accused had intended to hold the rally in defiance of the Banning Order.

No. 2 then appeased MAYATHULA by telling him, in express terms, "I am not going to address the rally".

They go in the car together and when No. 2 returns to the car, in a hurry, he says "I did not have time to address the rally".

Questioned about MAYATHULA's reaction to this announcement, H. SINGH says : Oh! nothing, we drove back to the SASO offices. The only things we talked about were the police dogs and that there were lots of people there. The REV. MAYATHULA said nothing.

SUBMIT : This evidence is totally unacceptable and untrue. It is only explicable on the basis that the defence version is true that No. 2 was going, on his own, to disperse the crowd and NOT to address the rally.

- (v) The above bits of evidence refer to the precise issue of confrontation on the day of the rally but in view the State's heavy reliance on MR. H.SINGH in this Count, it is necessary to refer to his evidence in some detail to illustrate what a poor witness he was and in support of the submission that no reliance at all can be placed on his evidence.

17.

A.

He exhibits all the worst qualities in the witness. He goes out of his way, right from the very first issue in his evidence-in-chief, to choose certain matters and to be extremely definite and emphatic about them, only to be shown a short while later to be emphatically and definitely wrong on those very same matters - on his own evidence!

1. He went to the May, 1972 meeting at the Alan Taylor Residence and says the Minutes, Exhibit BPC A.2, "were sent to me awhile after. THEY REFLECT WHAT HAPPENED - ESPECIALLY THE SECOND PAGE". (Furthermore, this is stated in evidence after he has looked at the Minutes in the witness box).

p. 524

2. At p.621 he has to admit that the

Minutes don't agree with his evidence:

- (a) HARRI SINGH says he was only at the meeting at all after lunch, between 2 and 5p.m., and he was not there after 5p.m. The Minutes show there was no meeting between 2 and 5.30p.m. It had adjourned at 1p.m. so that people could go to other meetings that were being held and it had recommenced at 5.30p.m.

p. 621

- (b) H.SINGH said that when he arrived there DRAKE KOKA was outlining the need for a new body and suggesting that it should fill the void of the banned organizations, PAC and ANC. Twice H.SINGH emphasised that he was sure of this. In fact the Minutes show that KOKA did not open or address the meeting. It was one KHOAPA (HARRI SINGH said he knew the difference between these two men).

p. 621

(c) /

(c) Then he says he does not dispute
the Minutes.

p. 625; 626

He is just moving away from what
been
he had/emphatic and definite about.

B.

Then about the next conference to organise
BPC, at the Edendale Lay Ecumenical Centre
in July, 1972, HARRI SINGH is quite
persistently and emphatically wrong about
most of the facts to which he deposes.
It is not as though he searches his memory.
He claims, each time, to be quite certain
of his facts and then when he is shown to
be in conflict with the written word, the
Minutes, he changes like quick-silver,
quite unabashed or embarrassed, like a
psychopathic liar.

1. I was there only one day. I think it
was Sunday.

p.637

I am now sure I was there only for one
day.

p.638

It /

It is firmly and correctly orientated
in my mind. The whole of one day. p.639

Then when he was shown that the
Minutes of Saturday reflected the
reports of Commissions which he had
said that he had heard, he changed it
to say that he was there for two days,
but "I was only at the Edendale
meeting for two days". p.669

Then after being shown the Minutes
again, which again did not square with
his evidence, he changed his evidence
once more and said he was there for
three days. p.669

2. He remembered clearly what the
Commissions were at that conference and
he remembered that they had reported to
the conference. He repeated the names
of the Commissions a number of times.
An Administration Commission, an
Internal and International Commission
and a Theology Commission. p.641

He was then shown the Minutes, Exhibit BPC B.1, and there was not one of those three Commissions at that conference at all.

This occurred after his having given detailed evidence of the reports of these various commissions, which reports are not reflected in the Minutes and are, in the main, in conflict with them.

Just to illustrate how vacuous a mind he has. At p.528-9 of the Record he is referred, by the State, to the Minutes, to the "Labour Commission", and asked to read a long portion from its report and to correct it, which he does. He does not even register that in his list of all the Commissions there he had not mentioned a Labour Commission.

Notwithstanding having had the benefit of the State drawing his attention to it, when he was asked, in cross-examination, to list all the Commissions again, he

once more listed the wrong ones and again failed to remember the "Labour Commission" from whose report he had just read.

It was extremely interesting that HARRI SINGH was asked a number of times in his evidence to list the Commissions. Each time he remembered his own list well and repeated them consistently wrongly and in conflict with the Minutes.

pp. 524; 526
528; 529
641; 644
645; 646
648 and
660

He was invited to refer to his statement a number of times but he replied that he knew his statement well. I submit that it was clear that he recited his statement like a parrot.

It is also interesting to speculate as to where he got the names of the non-existent Commissions. Defence Counsel put it to him that he had been shown,

the
by/Security Branch, Minutes BPC C.3
of a congress he had not been to
which had in fact had an Administration
and an Internal and International
Commission. It was put to him that
he was confused by these Minutes he
had been shown. HARRI SINGH denied
this reference.

p.676

C.

In fact HARRI SINGH introduced the Minutes
just referred to, Exhibit BPC C.3, into
the trial admitting that he was not
present at the 1st Annual Congress of BPC
in December, 1972, but he said

"I received a copy of the Minutes.
After Meetings Minutes of what
had happened at that particular
Meeting was sent to practically
every Branch of BPC so that members
who did not attend could gauge
what had happened at that particular
Meeting".

p.540

Again he volunteered and repeated the point
that documents he received from Head Office
he was supposed to show to his Branch
members and to others to gain their
interests in BPC.

p.542

This is in stark and direct conflict with what he maintains later was a vital and primary practise of BPC, viz. the practise of falsifying Minutes in order to hide from members what really happened at meetings.

The two versions are completely opposed to each other and only a witness of the slender calibre of MR. HARRI SINGH could fail to feel obliged to render an explanation for this conflict.

He tells, at p.694, that certain matters would not be put in the Minutes, or written down on paper, because they wanted them kept secret, and again, emphatically at p.1011, where he says this did not apply only to Minutes but also to Reports.

D.

Related to the point just made I would like to point to another extraordinary contention of MR. H. SINGH. He took overseas with him

the /

the BPC Constitution and Exhibit BPC R.1 (p.571, 577) and distributed these with people there to inform them about BPC.

Yet later in his evidence HARRI SINGH makes the mind-boggling contention that BPC R.1 was really a fraud, like the Minutes of meetings, and did not reflect the truth.

p.894

This is particularly incomprehensible when it is remembered that H.SINGH says that they, BPC, were turning to violence and military training; while it was precisely because the World Council of Churches contended that BPC had not turned to violence that they refused to donate money to BPC.

p.890

Yet MR. H.SINGH told MR. ANKARAH of the WCC not a word of this as far as he could remember.

E. /

E.

In regarding to H.SINGH's general approach to giving evidence, I submit it is clear that he grabs any incident he can and presents it in a sinister^a / light as he can against the Accused, to save his own skin with an accomplice's indemnity.

1. This was no doubt because he was asked by MAJOR STADLER to set out anything about violence.

p.613

2. Examples of the length he went to to present an unbalanced and sinister and distorted version.

(a) At p.580 he said the REV. MAYATHULA said No. 8 would be sent into the bush to take up arms.

This was put before the Court seriously without the slightest qualification, but under cross-

examination /

examination when it was put to him that the REV. MAYATHULA was not taken seriously by others when he said this, he agreed.

- (b) He says that he found that National Executive Members would not write down the important secret matters in Minutes and Reports. Asked to name one such executive member he named No. 5 Accused.

p. 695

Pressed to say what this was he gave the ridiculous illustration that it was when No. 1 suggested certain words for the Semicon programme and No. 5 thought them too strong for inclusion.

p. 696

This is transparently nonsense and an attempt to attribute something extremely sinister to No. 5, which, on cross-examination, turned out to be false.

(c) /

(c) He tried to vilify No. 5 with the story about "snakes" (poisonous and non-poisonous) at the Black Consciousness Symposium at Kajee Hall and refused to bend under cross-examination, but it is quite clear from DR. MANAS BUTHELEZI, whose evidence is infinitely to be preferred on this point, I suggest, that it was not even No. 5 who tendered the image of the snakes.

p. 566
p. 986
p. 3422

(d) In answer to the question whether on the trip back in the kombi anything was said about BPC's policy or preparations, H.SINGH said that the REV. MAYATHULA said BPC was now to move away from membership and rather now concentrate on sending people for military training.

p. 580

It was only under cross-examination

that / ...

that he conceded that this statement was REV. MAYATHULA's own view and NOT BPC policy.

p. 835

(e) HARRI SINGH made the point quite clearly that the Supreme Command, consisting of Nos. 1 and 4 and REV. MAYATHULA, was the "highest governing body in BPC".

p. 593

But under cross-examination he maintained equally clearly that the highest and most authoritative policy making organ of BPC was National Congress.

p. 635; 636

This conflicts irreconcilably.

F.

I would like in particular to point to the way H.SINGH's evidence introduced matters in conflict with the Indictment, and as this was pointed out to him, he changed his

version of BPC's activities until he ended up in the position directly opposite to the one he had started with.

1. Minutes were sent to branches so that members could see what had occurred at that meeting.

p. 540

Documents were sent to branch members and others to encourage them.

p. 542

2. I took overseas the BPC Constitution and BPC R.1 and distributed them to show them what we were about.

p. 571 et. seq.

At this stage HARRI SINGH's version is clear and his evidence is, at any rate, relevant to the Charge Sheet.

Now he introduces, as BPC policy :

3. Two plans for violence - one in the Kombi journey up to the Transvaal and one down to Natal.

p. 580

p.581

4. /

4. An elite Supreme Command as the secret governing body in BPC. p. 593

5. The Secretary-General, SIPHO BUTHELEZI's discussion about sending people out of South Africa for military training and he says p. 714
"informally WE HAD AGREED this was the method we would use". p. 729

It is pointed out to him, under cross-examination, that it is not likely this was in his Police statement because the PARTICULARS to the Indictment would have been rather different.

6. Now he starts to change and says it was NOT a decision, but merely that they were turning this over in their minds. p. 729

Further, it is pointed out to H.SINGH that his evidence is in conflict, in

many aspects, with the Minutes of the meetings which were sent to him.

7. This is no difficulty to H.SINGH, who changes here too, to a new version, -

"Minutes did not reflect what really happened",

he said.

p. 694; 1011

8. When it was pointed out to him that even Exhibit BPC R.1, which was given to people overseas for the express purpose of informing them about BPC, was a fraud he says that documents also had concealed the truth.

p. 894; 1011

9. H. SINGH, under cross-examination, now introduces new conspiracies not contained in the Indictment. He, No. 1, No. 4 and the REV. MAYATHULA planned a cell system for BAWU to indoctrinate workers for a national strike after five years to cripple the economy. This was in 1974. We

decided /

decided on this privately. We did not put it out for public consumption.

p. 664.

Policy decisions were often not divulged to rank and file members.

p. 663-667.

10. Finally, he is driven to say that the secret criminal intentions of BPC were kept from members and even from Branch Chairmen and were kept within a very small circle.

p. 1013

This is absolutely clearly a quite different version from that set out in the Indictment and the whole State case which relies on poems, magazines, articles, Constitutions, Reports, speeches and Minutes and all sorts of matter from all sorts of people, as the proof of the grand conspiracy.

HARRI SINGH had ended up in a position in conflict with his original stance and in conflict with the Indictment and

I do not know how the State is able to rely on him for one single fact.

G.

The State maintains, quite startlingly, that HARRI SINGH

"was never shaken, despite the cross-examination of three skilled Counsel".

His own evidence reveals him as a facile liar with a history of psychological disorders and psychiatric treatment.

H.

On a number of separate issues HARRI SINGH was equally dishonest and changed his evidence, to contradict himself, at will, whenever it seemed advantageous for him to do so.

1. See :

"Court : Are you very experienced in Court?
- It is the first time I have been in Court.

Counsel: Not the first time, MR. SINGH, you have been in a trial in the

Regional Court? - It is the first time I have ever talked in Court.

You made a statement from the dock? - Yes, I have. I haven't been in the witness box".

Starting with an emphatic statement that this was the first time he had been in Court he ended up by having to change his stance twice.

2. Asked in examination-in-chief what

"the attitude of BPC generally was towards Whites"

H. SINGH says unequivocally

"We said ... the only solution was ... getting rid of the White man".

p. 558

In cross-examination he was asked to point to any one example of this anywhere and he felt driven to say that

"this only applied to people who spoke about sending people out for military training".

p. 787

And /

And this was only HARRI SINGH and four other people, on his own evidence, and it was hidden from others in BPC. His statement, at p.558, is a direct contradiction. In fact he admitted at p. 900 that it was not the broad policy of BPC members even to be anti-White.

3. The REV. MAYATHULA's statement, in the kombi, about BPC moving away from membership now and

"rather concentrating on sending people for military training"

was BPC's policy, or preparation - a BPC activity.

p. 580

Under cross-examination he contradicted this and admitted that it was NOT BPC policy but REV. MAYATHULA's own view.

p. 835

4. It was put to HARRI SINGH that he was under the influence of liquor at the doctor's quarters at lunch time on

the /

the 25th September. He emphatically denied this stating that he had had nothing to drink that day until late that evening.

p. 844

Just a short while later, in his evidence, he agreed that he had started the day with a double vodka at breakfast. Taxed about this contradiction he said he could not even remember having maintained earlier in his evidence that he had had nothing to drink that day.

p. 988

5. He admits that the only other time he talked in the Court he lied to it.

p. 902

Not an impressive record.

6. Another example of HARRI SINGH changing his version at will was when he alleges S. BUTHELEZI was telling him about military training.

p. 915

"Q. : You asked him whether the Executive knew about this? - Well he said to me that all this was still in the planning stages.

Q. : Do you say that you did or did not refer to the Executive? - The Executive? I don't think I referred to Executive. It came from the Secretary-General ... and I took it as being an official thing!"

But see, in fact, earlier at p. 667 :

H. SINGH ...

"Branches would have to sift people from their branches in order that we would be able to send them out of the Republic to undergo military training and I asked him ... if the rest of the Executive knew this".

SUBMIT : On his own evidence H. SINGH is so severely self contradictory, on so many separate issues, that he cannot be accepted.

REGARDING THE TAPE RECORDINGS OF THE TELEPHONE
CONVERSATIONS :

18.

A.

There are some portions of conversation that seem to suggest one thing and others that seem to suggest other things. The tapes afford no clear picture.

B.

There are two portions, however, that do assist the Court. They militate strongly against the State's version and support the defence version.

1. In order to make the first point clear it is necessary to look at how the State has misconceived the situation. In its Heads of Argument, at
p.22, paragraph (e);
p.23, paragraphs (ii) and (iii);
p.32, paragraph (e); and
p.35, paragraph (c),
the State contends that because of the

legal advice the Accused had obtained they intended to continue the rally after lunch on the 25/9/1974

"in a capacity other than SASO or BPC".

But, looking, for example, at p.86 of Exhibit C the one thing that is quite clear is that if the Accused were using this technique to escape responsibility, they understood quite clearly that someone other than a SASO or BPC person should address the meeting to make it "legal".

The fact that it was No. 2, the Secretary-General of SASO, and the SASO person all the newspapers had been publicising, who got out of the car to go to the rally, is totally opposed to this contention. It supports in fact the defence version that the idea of "continuing" was only a bluff.

2. The second point that assists the Court is that there is only one tape, placed before the Court, of a conversation on the telephone after the rally, and it is immediately after the rally. It is also a conversation between the arch-villain, on the State's case, the man who has just tried to cause confrontation by leading the crowd into the stadium and who has been headed off dramatically, at the gate, by policemen and dogs surprisingly emerging from the gate.

The same person, No. 2, is talking to an arch-conspirator, on the State case, who anxiously and animatedly wants to know from him three things :

- (i) What exactly happened, and what precisely No. 2 was able to do and say?

(ii) /

- (ii) What happened about all the people? and

- (iii) Why Accused No. 2 has not done or attempted to do certain things?

In these circumstances one would, if the State version were true, certainly expect No. 2 to say,

"Look, I tried to lead the people into the stadium but the dogs came at me out of the gate. I couldn't do it".

(This is particularly so because Accused No. 4's tone was of one who was upbraiding Accused No. 2 for not having done enough).

But nothing of this. Instead :

"Ai, those police have cordoned off that place. I was only able to shout Power. We sang songs. Die mense's scatter".

That is the defence version!

No. 2 is telling how the police scattered the crowd. No. 4 is saying you must go back. Not to go inside. We can't have the people there alone. You must get them away. The reflection will be on us. No. 4,

"Oh, hulle loop. Hulle gaan huistoe".

C.

1. The tapes of telephone conversations before the lunch time decision, on the 25th, are not very helpful because they concern a period of time when the Accused had only heard that the Minister of Justice intended to ban the rally but had not yet done so. In those circumstances they were quite entitled to go ahead with their plans until the Minister decided to act.
2. In addition, they were quite entitled to say I am not interested in the Minister's intentions. We intend to go

on until he acts.

3. It was the Minister who waited so long and who put them in the position where they had to extricate themselves without losing too much face (which most people know is a sine qua non for a politician).

No. 1 is therefore perfectly to be understood when he says

"Our movement was at that time a source of opprobrium and obloquy and it was crucial to come out of it in a good light".

p. 3721
Exhibit C,
p.7

In addition, see p.36 of Exhibit C where No. 2 says "if we stop" they will "say they never banned it".

D.

1. If they were intending confrontation and sacrificing No. 2, there was not much point in No. 2 preparing for a press

conference /

conference after the rally - the press conference that is talked about so much in the telephone conversations.

2. There would not be expressions to each other, as on p.13 of Exhibit C, that they did NOT want "recipients of drastic action".

E.

1. P.29 of Exhibit C - No. 2 says they will push until the last moment. i.e. until banned, so that the press can be shown up.
2. p.35 of Exhibit C - No. 2 says on the afternoon of the 24th that they do not know of any banning. It has not been banned.

F.

Finally, the tapes confirm the defence version that the SRC at Turfloop had organised

the /

the rally, not SASO.

Exhibit C,
pp.58; 59 &
62.

19.

THE POLICE EVIDENCE :

(a) LT. C.J. VAN NIEKERK :

(i) Arrived at Curries Fountain at about 3.15p.m. He says that about 20 policemen with dogs then arrived. They went into Gate A which was closed after them so that they were out of view of the crowds.

p. 1120

(ii) When it was clear that the crowds were wanting to go into the gate, and had moved straight towards the gate, the men came out with the dogs. Immediately the dogs came out the crowd became panic-stricken.

p. 1124

SUBMIT : Nothing could be clearer than

the /

the evidence up to this stage.
Because the defence had not yet
obtained possession of, and revealed,
photographs showing the presence of
dogs systematically surrounding the
crowd, the police version was that
the dogs had been kept out of view
of the crowd and only brought into
view when the crowd moved to the
gate.

The evidence which followed from this
witness in cross-examination, amply
re -inforced what I have submitted.

(iii) "All the dogs went into the
premises".

p. 1176/12

"When all the dog men were
inside I stood in front and
the gate stayed shut".

p.1181

"If the dogs had not been
there at that critical stage
the police would have had to

use their batons".

p. 1182

COLONEL JORDAAN said to the
officer in charge of the dogs,
MAJOR MEYER, that the dogs
should be brought out.

p.1183

SUBMISSION :

It is quite inconceivable that this evidence would have been given if there had been dogs all around the place all afternoon as the police later contended, as will be seen in this argument. It is clear, I submit, that the later story of dogs being around all the time was invented to try to explain why the photographs shows dogs standing all around a good natured crowd, quite clearly NOT MAKING THE SLIGHTEST MOVE towards the gate.

(b) /

(c) CAPTAIN DU TOIT :

(i) No. 2 was ALWAYS APPROXIMATELY
IN THE MIDDLE OF THE GROUP and
it seemed to me that he was
half sending the group towards
the gate.

p. 1738

(Compare this with CAPTAIN
WELMAN's evidence later at
p. 1805 where he says :

"No.2 was at the 'voor-
punt' of the crowd".

It is a clear conflict and one
of them is not telling the
truth).

(ii) "I was not aware that there were
dogs there. The dogs came out
and caused the crowd to scatter".

p. 1739

(iii) "When the FIRST dogs made their
APPEARANCE everybody scattered".
"It was unluckily the only place
that the dogs could be hidden".

p. 1897

p. 1897

SUBMISSION :

Now CAPTAIN DU TOIT is a witness who went to the rally for the sole purpose of observing closely what was to happen and to take the necessary action. (This is a point the State makes continuously in its Heads of Argument). He saw no dogs around and specifically volunteered that information to the Court.

It is idle for the State to try to overcome this conflict by saying that he might not have noticed them.

The whole point he is making is that there were NO dogs. And when the first dogs suddenly appeared the crowd scattered. In any event, what was the necessity for bringing out the dogs, if there were dogs all around?

The State version is a poor one.

(c) CAPTAIN R.L. WELMAN :

(i) No. 2 was at the "voorpunt"
of the crowd.

p.1805

(ii) NOW CAPTAIN WELMAN has put to
him that in the period of time
between the photograph,
Exhibit 10/1/A and 10/1/AA,
the dogs had come out.

THIS IS THE FIRST TIME THAT THE
PHOTOS OF THE DOGS STANDING
AROUND THE CROWD HAD BEEN SHOWN
TO A POLICEMAN.

What is the CAPTAIN's reaction?

"Yes, I agree - some of the dogs
have come out, not all the dogs
have".

p. 1981/19

His reaction is NOT, "Oh well
there were dogs around all the
time".

His reaction is unequivocally
that SOME of the dogs have come
out.

(iii) /

(iii) Then when it is pointed out to him that the photographs do not square with the police version he starts to change.

p. 1982

"I can't agree with these photographs".

(iv) And when further factors, such as nobody running, are pointed out to him, and the fact that the dogs are encircling the crowds he says

"They are moving about the crowd".

p. 1985

(v) Then when it is pointed out to him that people in the photographs are walking away and not towards the gate he SUDDENLY CHANGES AND FROM NOW ON THE POLICE VERSION IS A BRAND NEW ONE - dogs were patrolling all afternoon and these photographs

p. 1989

were /

were taken much earlier.

p. 1990

Very easy! Out of trouble!

But unfortunately not.

Because the photographs show
No. 2 in them without any
doubt!

SUBMISSION :

I would like to point out at this stage that there is another fact in the State evidence which supports the Accused. It is this. The defence version is that the dogs methodically encircled the crowd and then dispersed them. Therefore it is highly unlikely that the crowd advanced to the gate.

- (vi) When the witness is shown that
No. 2 is in the photographs and

when /

when he is shown Exhibit 29,
which it is suggested No. 2
was wearing, the witness
repeatedly emphatically
rejects both contentions.

p. 1989

He emphasises three times there-
after

"I am certain of that".

p. 1989

Then, when he is shown feature
after feature of the jacket,
including buttons, cheques
and colours, compared to the
photograph 10/24/E he is driven
to admit that it appears he was
wrong and that perhaps he made
a mistake and that No. 2 was
wearing that jacket, Exhibit 29.

p. 1999

The witness is driven to say
that the photographs A/10/24A-E
were all taken earlier in the
afternoon. They showed dogs

all around the crowd. If this is accepted the evidence of LT. VAN NIEKERK and CAPTAIN DU TOIT is untruthful, because they made it clear that no dogs were around earlier.

But in view of the photographs themselves - A/10/25 clearly shows people beginning to run away and the people in them tie in with the A/10/24 series - I have no hesitation in submitting unequivocally that the A/10/24 series was taken after the dogs have been let out of gate, and it shows that the crowd was NOT advancing towards the gate, but walking away from it, if anything.

p. 2009

(vii) MAJOR STADLER gave evidence after CAPTAIN WELMAN and was the first

Policeman /

policeman to say in his evidence-
in-chief that some dogs were
kept outside the stadium.

p. 2133

It was decided to keep the main
dog force behind the wall and
just a nominal number of dogs in
front

p. 2178

SUBMIT :

This may seem to the State to help
it but it can NOT square with
CAPTAIN DU TOIT's evidence who said :

- (a) he was not aware that the
dogs were there (1739); and
- (b) the dogs "hidden" behind
the wall (1897); and
- (c) the "first" dogs made their
appearance any everybody
scattered (1897).

Looking /

Looking at the evidence on p.2200
it is childish to suggest that
DU TOIT could not see the dogs
when he was standing about a pace
from them in photograph A/10/1/B.

In addition, LT. VAN NIEKERK,
who was there, specifically
observing, (as the State
repeatedly contends) at the time
the dogs were put behind the wall
said :

(a) all the dog men went into the
premises.

p. 1176

(b) When all dog men were inside
I stood in front of the shut
gate.

p. 1181

(c) The dogs were all put there
so that they were out of view
of the crowds.

p. 1120

Nothing could be more clearly

in /

in conflict with STADLER than
DU TOIT and VAN NEIKERK.

I am afraid I must submit to
this Court that MAJOR STADLER
was brought in to try to save
the situation where
dishonesty had been exposed,
but he failed to do so.

The only dogs were those behind
the wall, and his own evidence
leaks the truth, at p.2183,
when he says :

"I want to assure the Court
that if those dogs come out
and the crowd sees them it is
not easily controlable".

p. 2183

But the crowd had been seeing
dogs all afternoon, on his
version.

(viii) VAN STADEN :

Whenever there is a need for

police /

police to control crowds there
is a measure of disruption but
the police are geared for it.

p. 2367

I cannot say that the police
were obstructed by it or
hindered, in the maintenance of
law and order.

p. 2372

20.

I submit that the State evidence is highly
unsatisfactory.

In addition to what I have dealt with :-

- (a) Not one of the photograph exhibits
shows crowd hostility;
- (b) on the contrary they show singing,
amusement, dancing and clapping;
- (c) no photograph shows the Zulu war
steps referred to by MAJOR STADLER;

(d) /

- (d) no photograph shows the "horned" formation advance to the gate, or any advance at all;
- (e) no photograph shows No. 2 at the "voorpunt" of the crowd;
- (f) the video tape shows no crowd aggression or danger to the safety of the persons there. On the contrary it shows that they were singing in unison and it shows joviality;
- (g) the video tape shows no dogs outside the grounds;
- (h) no State photographs show dogs outside the grounds;
- (i) no evidence of No. 2 or any SASO or BPC person announcing to the crowd that the rally was going on or that they should go into the stadium.

21.

In addition to the unsatisfactory State evidence, and contrary to it, there is substantial evidence from the defence.

No. 1 Accused :

(a) The ban was in the papers Wednesday morning. We met at No. 4's rooms.

p. 3705

SUBMIT :

Why would they meet if they had already decided to go on?

Clearly they wanted to discuss the question of going on, or not.

(b) We didn't want to go on but we didn't want to loose face.

p. 3705

SUBMIT :

All subsequent actions must be looked at in the light of this.

(c) A press conference was arranged for

7p.m. /

7p.m.

p. 3708

SUBMIT :

This suggests they envisaged this means of pressing their grievances and gaining publicity. Clearly, if they had intended to go on with the rally the press conference would have been very small potatoes compared to the rally.

- (d) They intended to disperse the crowd and give a quick political jab.

p. 4276

This all fits in with the issue of withdrawing without losing face. Therefore the pretence of "still going on".

22.

No. 4 Accused :

- (a) Points out that at his flat on the 25th they discussed how to get out of the situation. And in this context

they /

they discussed a press conference afterwards.

p. 4898

SUBMIT :

They wanted some publicity out of it and as the rally wasn't going on that was where they would get it.

- (b) No. 5 indicated he would not like to go on with the rally.

p. 5152

23.

LEKOTA - Accused No. 3 :

- (a) Only No. 2 was sent to Curries Fountain because it was just a case of telling them to disperse. If we had been going to address the rally others would have gone too.

p. 5333

NB: The State suggests that all who weren't in the car were meant to be speakers.

p. 5437

But /

But even the State witnesses say no - see H. SINGH who said No. 5 was not going to take part.

(This is just another case of the State putting SINGH's in conflict with its own case).

- (b) Points out that it is illogical for the State to contend that the others were bluffing MAYATHULA about what was going to happen at the rally, when the State contends that he is one of the four secret leaders of the cabal.

p. 5499

24.

No. 2 Accused :

- (a) In Portugal CAETANO's regime was overthrown by a military junta headed by General Spinola. Then they started decolonising and reached a solution across a table. The solution was hailed by the entire world.

p. 6294

SUBMIT /

SUBMIT :

(i) That makes it clear that the State's contention is nonsense that there was a military battle which resulted in victory on a military basis; and

(ii) the State did not challenge this version given by No. 2.

(b) It was H. SINGH's idea to go to Lourenco Marques.

p. 6299

I had not met him before.

p. 6295

This has the ring of truth.

(c) No. 2 makes the point that a number of his telephone calls are not on the tape recording.

p. 6308, 631

(d) On the Tuesday No. 1 and I studied the Riotous Assemblies Act and came to the conclusion it was not banned. It

was /

was not ever my intention to go on with the rally in defiance of a Banning Order.

p. 6317

SUBMIT : Otherwise they clearly would not have studied the Act. There would have been no point.

(e) When, on Wednesday, we discovered the rallies had been banned we were undecided whether to go on with our contingency plan of BAWU taking over - so we went to the doctors' quarters to discuss it.

p. 6335

(f) At the doctors' quarters the topic of conversation was how :

(i) we were going to withdraw from the rally with grace; and

(ii) still protest the image of the organization.

p. 6337

SUBMIT :

This seems very reasonable. Having said all along they were going on and now being faced with an actual ban they would look foolish re-tracting. So it was necessary to discuss this.

(g) Did not take the megaphone along. p. 6340

(h) At the venue in Winterton Walk I started a song and we started to move off down Winterton Walk. p. 6343

(i) We were quite entitled, on the Tuesday, to say :

"Whatever the Minister says about going to ban, we are entitled to go on until it is banned".

Gives a similar example of "the Black Mikado" that week when DR. TREURNICHT said he would ban it. They went on and he did not ban it.

p. 6404

(j) /

(j) Clearly identifies himself in all the relevant photographs including A/10/1/a; A/10/1/AA and A/10/24/A. p. 6440, 6476 and 6480

(k) Says A/10/24/A and A/10/24/B taken at the same time. He says Rally D.15 is an enlargement of Rally A/10/24/B.

A/10/24/AA and A/10/24/D taken at about the same time.

p. 6483

A/10/26 and Rally D.16 show that people were threatened by dogs when the people were walking away from the gate.

(l) We wanted to expose the Government which "on the one hand" said it wanted good relations with Frelimo but would ban our rally that expressed solidarity with Frelimo.

p. 6708

SUBMIT :

This is not embarrassing the

administration /

administration of the affairs of State. It is a permissible democratic right.

- (m) It was clear to anyone there at Curries Fountain that we were going away.

p. 6717

SUBMIT : The photographs certainly seem to show this.

25.

- (a) RALPH MGIGIMA :

(i) At about 5p.m. the people were singing, clapping hands and dancing and were in a very happy mood.

p. 7074

(ii) The crowd started moving in an easterly direction.

p. 7075

(iii) Then I saw the police encircling the crowd with dogs.

p. 7076

(iv) /

(iv) identifies No. 2 in the
photographs.

A/10/1/AA and D.18 which is
a portion of it.

p. 7078

(v) Saw NO horn shaped movement
towards the gate.

p. 7080

(b) TSHABALALA :

(i) Dogs came out around the
crowds periphery;

p. 8027

(ii) identifies MUNTU (No. 2) in
A/10/24/E

p. 8031

(iii) the crowd did not move towards
the gate.

p. 8044

(c) HARPER :

(i) Crowd was chanting and singing.
It was jovial. Smiling.
Back slapping.

p. 7492

(ii) /

- (ii) The crowd tended to move east-wards. p. 7497
- (iii) The crowd had started to move away and dogs started to come out. The drift was towards the bus rank. p. 7497/20
- (iv) I saw no leader in the crowd. I saw no horn formation. p. 7498
And NB : He was standing in a very advantageous position on a turnstyle. p. 7493
- (v) I saw no group going towards the gate. p. 7499
The crowd remained jovial but lacking direction.
- (vi) I can think of no reason whatsoever for the police with the dogs to have come out. I was extremely shocked. p. 7509

(d) VASI SONI :

- (i) The crowd was singing and it was a happy crowd. p. 8376
- (ii) When first there I saw no dogs. They came out from the gate and went round the people. p. 8278
- (iii) The crowd did not move towards the gate at any time. p. 8379
- (iv) If there had been any concerted movement to the gate I would have seen it. p. 8390

SUBMIT :

This was a particularly good witness, who was cross-examined fiercely but was entirely unshaken.

In fact when asked if there could have been dogs earlier and he might not have seen them he

readily /

readily admitted this.

p. 8385

(e) MDUDUZI GUMA :

(i) As far as he could recall there were no dogs before the announcement.

p. 8470

The police dogs came out at a certain point. Saw No. 2 when he was joining the crowd.

p. 8470

(ii) The people moved towards the east in a disorganised way.

p. 8471

(iii) The police came out of the big gate with dogs in a moon shape, some to the east and some to the west.

p. 8472

(iv) He marks himself and No. 2 in photograph A/10/1/B.

p. 8473

(The witness is quite clearly , recognizable in the photograph).

SUBMIT :

This evidence discredits the police evidence. There is No. 2 and the dogs are out.

- (v) He identifies No. 2 in other photographs.

A/10/14

A/10/24/E

A/10/37

A/10/38

A/10/39

A/10/40 together with NORMAN

DUBAZANA

Rally D.4

Rally D.5

Rally D.7

p. 8475

Cross-examination :

- (vi) Disputes that the dogs were patrolling. Is shown photograph A/10/1/AA. Sees the dogs. Says that this is after the announcement.

(vii) /

(vii) The gates closed when I arrived.
Then they were opened and the
dogs came out.

p. 8501

(viii) There was no movement towards
the gate.

p. 8501

26.

The evidence does not establish that :

- (a) the rally was to go on;
- (b) the crowd was hostile;
- (c) the crowd tried to go into the stadium;
- (d) the purposes of the Accused were any
of the three as alleged.

27.

Insofar as Section 2(ii) results are concerned these results do not fall to be applied to the "Act" of organising or arranging a rally unless that act is a terroristic act, i.e. an act capable of endangering the maintenance of law and order or capable of assisting to endanger the

maintenance /

maintenance of law and order.

The mere organising or arranging of a rally is not per se an act which is capable of those things - for example a vintage car rally or a caravan rally.

It is only if the Court is satisfied that the circumstances are such that they are capable of endangering or assisting to endanger the maintenance of law and order that the Section 2(ii) results can be applied. It is submitted that in neither rally was it such a terroristic act.

It is submitted that there is no evidence from which it could be inferred that the said results were likely to occur and it is submitted that they did not in fact occur.

The fact that the results did not incur

assists us in the assessment of whether they were likely to occur.

28.

TURFLOOP - Section 2(ii) Results :

The State has not proved that :

- (a) the police were hampered or deterred from assisting in the maintenance of law and order by the organising or arranging of a rally. The rally was over by the time of the incidents on the soccer field.

On the State's submissions any rally which the police attended would be dislocation of police duties and therefore terroristic.

- (b) There is no evidence to suggest that the organising or arranging of the rally encouraged an insurrection or forceable resistance to the Government.

(c) /

- (c) It is submitted that it is ridiculous to contend that the organisation or arranging of the rally encouraged the killing of Whites, (or any of the other allegations under this Head).

The State sets out so-called supporting evidence which is nonsense.

"Speeches". These were exculpatory. The assaults on the lecturers were the results of anger at police methods.

- (d) The rally presented no danger to the safety of any person. It was the police action which caused all the danger.

- (e) Similarly with the causation of serious bodily harm.

- (f) Far from causing or encouraging feelings of hostility there was

general amusement. The evidence is overwhelmingly to this effect - both the State and the defence evidence.

- (g) There ^{are} / no results set out in Section 2(ii) corresponding with the allegation of the State in paragraph 4(t) as particularised, and neither does it make grammatical sense. (See p.17 of the Further Particulars).

Even if it did so correspond, then there is no evidence to support the allegation. The affairs of State must be a pretty delicate flower if a peaceful and mild little rally in the cinema hall at Turfloop caused embarrassment to their administration - particularly at the level of "terroristic activities".

29.

None of these results were proved to have occurred, nor was there proof, as the law requires, of their probability. Not one witness came to give such evidence.

30.

DURBAN :

- (a) Hampering or deterring the police from assisting in the maintenance of law and order.

VAN STADEN's evidence, already cited, kills this submission.

p. 2367 and
2372

- (b) Encouraging an insurrection and forcible resistance to the Government.

There was no such thing, no hint of such thing and no witness came to say or suggest this.

- (c) Encouraged the violent, revolutionary overthrow of the State and subjugation, chasing out of the country and/or killing of the Whites.

It /

It is interesting that even when asked to particularise the State is still contending for incompatible alternatives. It is because it doesn't know. It cannot prove either. There was no evidence to say this at all.

- (d) Endangering the safety of persons.

It endangered the safety of no person. All that endangered the safety of any person was the police behaviour which "shocked" MR. HARPER.

- (e) Feelings of hostility.

Again the evidence which the State relies upon here is non-existent.

31.

There was no proof of the probability of any of these results occurring. Not one

witness /

witness gave any such evidence. The evidence given was all the other way, it is submitted.

32.

In any event the Accused all gave evidence, and denied that they intended these results. I submit that their evidence should be accepted.

33.

Accused No. 5 :

Insofar as Accused No. 5 is concerned there are additional special considerations. It is common cause that

- (a) the Accused, together with others, wished to obtain Frelimo people to address the rally;
- (b) the Accused and others went to Lourenco Marques to achieve this;
- (c) on their return they heard that the rally was banned;

(d) /

(d) that Accused No. 5 was immediately underlined against the holding of the rally and maintained that attitude throughout persistently - that he was also adamant about this.

AND the State alleges that he would not get out of the car at the rally, because he was against the whole idea.

34.

It is surprising in these circumstances, that the State still maintains that the Accused was acting in concert with others and with a common purpose with intent to endanger the maintenance of law and order in arranging and organising the rally in Durban.

35.

What is required to prove common purpose is some positive act of association with the object of the common purpose in order to

indicate /

indicate that the Accused made common purpose with those people, but when the State case is an express, and frequent express, rejection of the common purpose, then with respect it has no case.

36.

I would like to draw attention, in particular, one point raised by the State at the Discharge Application stage. The State made the point against Accused No. 5, insofar as the relevant time is concerned, that

"Accused No. 5 agreed to go by with the general decision".

p. 841/15

37.

It is submitted :

(a) This evidence, from H. SINGH, is far from clear as to what precisely Accused No. 5 "agreed to". Did he agree to taking part, or did he merely accept that he was impotent to prevent it?

(b) /

- (b) The direct evidence of H.SINGH as to what No. 5 expressly and actually said is quite different from the deduction that he agreed to take part in it. See the evidence, where, what, in fact, he said was, p. 882/10
- "You want to carry on and there is nothing more I can say, so carry on".
- This indicates that he was washing his hands of the matter because he had voted against it. p. 842/25
- (c) The effect of the evidence is that H. SINGH and No. 5 said "We let it go on", NOT "We took part in it". p. 843/1-4
- (d) The fact that No. 5 was in a car which went near to the scene of the rally (but he had taken a decision not to get out of the car) indicates that he was NOT taking part, but actively disassociating himself from it. He was far from home, in Durban, with his p. 886/9

colleagues /

colleagues and therefore his mere presence in a car is no indication of his "associating himself" with the rally. What else could he do?

(e) It is important that the evidence shows that very late that afternoon No. 5 was again still expressly against the rally.

p. 1002/5

38.

It is submitted that the one, unclear, sentence relied upon by the State to implicate Accused No. 5 is insufficient. I submit that he should be found not guilty.

COUNT FIVE

1.

The essential elements of the charge are :

1. Accused, an office-bearer ... etc. of BPC;

2. /

2. with intent to endanger the maintenance of law and order;
3. wrote, compiled or prepared ... and issued or distributed documents, Annexure 2(i), (ii) plus (iii).

In addition :

It was likely to -

- (a) result in substantial loss to the South African Railways and Harbours; and
- (b) cause, encourage or further feelings of hostility between Whites and others.

NB: The allegation is that the evidence will disclose in what manner precisely these results will be likely.

2.

It is submitted that in terms of the St. vs. French-Beytach, 1972(3) S.A. at 457 E and 457 H to 458 B

the /

the act alleged must be one which is not entirely divorced from terroristic activities and must be within those activities as contemplated by Section 2(1)(a) of the Act.

3.

Once the proof required, as is set out above, is satisfied, the Court must, on the evidence before it, assess what the probabilities were of the proven act producing the particular notional result contended for by the State.

See: St. vs. French-Beytach, p. 458 B.

In regard to racial hostility it must satisfy the test in

Bunting's case

too, i.e. it must affect so intensely that it is likely to disturb the equanimity of the ordinary person and to make him do things subversive of the public order.

1916 T.P.D. at p.578.

4.

There is no evidence upon which it could be found that the act of compiling and distributing the three pamphlets, in the circumstances disclosed by the evidence, about the Chatsworth bus dispute was within the context of "terroristic activities" as is referred to in Section 2(1)(a). In fact the evidence is quite to the contrary, showing that the act is entirely divorced from such activities.

5.

Looking at the pamphlets :-

- (a) there is not the slightest bit of evidence on which to find an intention to endanger the maintenance of law and order;
- (b) the first and third documents applaud the demand by citizens for equal rights and support their stands.

They /

They do not initiate action. The action it finally supports is "coming together as oppressed people". The second document makes some trenchant criticism of the system in South Africa. BPC is not alone in this criticism. Many parts of the system make almost identical criticisms in almost identical terms. See: CHIEF BUTHELEZ's speeches.

I do not see how being a member of the regime can save one from punishment that would be due to another simply because he was not a member of the regime. Our rights, as citizens, to criticise are more robust than that.

- (c) The one document says that failure to unite quickly will result politically in the White man maintaining his present power over the Blacks and killing or destroying them politically.

6.

There is no evidence which proves that the documents were likely to have had the result of causing, encouraging or furthering feelings of racial hostility. In fact MR. BRAMDAW at pp. 1090 to 1094 said that his firm printed Annexure 2(iii) and did not think that they had regarded it as even necessary to submit it to a lawyer for advice.

He pointed out that such eminently "system people" such as MR. REDDY had also expressed very strong feelings, almost vitriolic ideas, against the Transportation Board.

7.

In addition there is positive evidence from one as distinguished and impressive as DR. MANAS BUTHELEZI that all these three documents simply remind him of what he always hears Black say.

p. 3424

In /

In these circumstances where is the evidence on which the Court can find that the acts are capable of endangering or assisting in endangering the maintenance of law and order or that the documents are likely to cause feelings of racial hostility?

8.

No. 1 gave evidence and pointed out that another, called NARAN, translated the words "Whites will overwhelm" into the words which apparently have now been alleged to mean "kill". Even if it were "kill" it would obviously not be literally meant.

p. 3616

It is very important to see that there is no boycott call in any of these documents.

9.

In the circumstances and in view of the fact that the boycott of trains had occurred

before /

before the pamphlets were issued and as a result of the desire by the people of Chatsworth to choose their own transport, I do not understand how the State can contend that it has proved that substantial loss to the Railways was likely to result.

H.SINGH 533/27 - the "people said they would refuse to use the trains. BPC THEN supported the people".

739/18 to 740/11

743/27-29

BRAMDAW 1672/27 - 1673/18

10.

ADAM SMALL discussed these Annexures in his evidence.

p. 6143.

His own reaction was that they did not encourage race hatred. He pointed out that he, as a Black man, had become so used to this sort of thing by experience.

Against these witnesses this sort of

quality /

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