

Fort Hare, and had been a teacher; but he had to leave teaching when Bantu education had been introduced. I also mentioned that Selborne Maponya, I think, I referred to him, told the meeting that he was a teacher by profession and had also to leave teaching for reasons I (5 didn't know. Then I mentioned that these were important people in the community, I think the people should think about the arrests of these people.

Yes.-----Something to that effect.

Now I want to read to you a verbatim report (10 of a portion of the speech as I have got it here, and I want to ask for your comments on it. Do you see?----Yes.

QUOTATION:

"Students are ill treated like criminals. Our complaints will be delivered by those (15 taking notes. Among our students is George Mbele who is being detained under the 90-days' Act. What is his crime? He is denied to read his lectures. He may starve so that he may give certain information. (20 Fellow citizens I call you because very soon you will be citizens. We do not want Bantustans and Apartheid. The resolutions passed at Addis Ababa are adopted by us."

QUOTATION ENDS:

Can you remember saying these words?----I think the ideas are expressed in a very clumsy fashion; it's very wrong for me, and I don't think in any case I would ever say we adopt the resolutions of Addis Ababa, because that was merely a public meeting, and I could merely (30 explain that we sympathise, or we share some of the ideas expressed at the Addis Ababa conference.

Do/.....

Do you deny having said these things that I have read out to you just now?----I am not denying: but I am merely saying that they were - they are not expressed in the fashion I put them.

You see, Mr. Mhlambiso, why I am asking you (5 about these meetings that you addressed, and why I am drawing attention to your speeches, is because last week when I cross-examined you, you said you had no idea why you were banned by the Government; you did not take part in political activities of any sort; and that you gave the (10 impression that you were just a student carrying on your business at Natal University.----That is no political activity. I do not think a person can merely be banned because he speaks at public meetings: I do not think that a person can be banned because he is opposed to Apartheid.(15

I'm not suggesting that you can be, or for that matter that you will be, but the fact of the matter remains, Mr. Mhlambiso, you were very active in political circles before your banning?----I don't know if that could be called "political circles", your Worship. I have explained to (20 this honourable Court that I went to speak at these meetings on behalf of the students by invitation of officials of such organisations.

of a
Surely the speeches you made were/political nature?----Depends how you construe the ideas expressed. (25
THE COURT: How who construes them? You, or how they are construed in what the prosecutor has put to you?----Yes.

I'm sorry, I don't quite follow. Do you mean how you construe the ideas, or how the prosecutor construes them?----How he construes the ideas. (30

Are you suggesting that you don't agree with him?----I don't agree with him, Sir.

PROSECUTOR/.....

PROSECUTOR: Just explain to me again the relationship between you and Amos Mngoma.----Amos Mngoma was no friend of mine. I only came to have something to do with Amos Mngoma when we were engaged in delivering food parcels to the people that had been arrested. (5

THE COURT: Was he also engaged in that?----Yes. And so were other students too, and some other people.

PROSECUTOR: Explain to me a bit more when you say that you and Amos were engaged in delivering food parcels; I don't quite understand what you mean by that?----I mean that the (10 relatives of the people that had been arrested sometimes deposited money at the firm of Arenstein and Fehler and we used this money to buy food for the people: also we went out with Amos Mngoma, his friend Levy, at the University of Natal, asking for donations and we then delivered food (15 to the people that had been arrested.

You must have come to know Mr. Mngoma very well?
----It doesn't follow.

But surely, you worked together with Amos on this venture?----I didn't work with Amos all the time. (20 There were other people that I worked with. Amos also worked with other people at certain times. And even then I cannot really say that I came to know Amos very well as a result of our activity in this regard.

Well how often did you see him?----I saw him (25 every time I went to deliver, I mean to take food parcels from the office.

Yes, and that was virtually every day?----Yes. Do you still maintain you didn't know him very well?----I do. (30

Did you at any time have any sort of a disagreement with Mr. Mngoma?----We never discussed anything

at/

at which we disagreed, or even anything of importance that I could note that we differed or agreed.

Did you ever have a conversation with the accused in this matter?----No.

Never?----Never ever had a discussion about (5 this matter.

THE COURT: Which matter is this?----Delivering of food.

PROSECUTOR: I asked him if he ever had a discussion with the accused, your Worship.

THE COURT: I think you said "on this matter",----You (10 said "on this matter", your Worship.

The belt has now been replayed and it seems you did ask the witness whether he had ever had any discussion with the accused on this matter, and he said no, he hadn't. Now I wonder, what matter are you referring to?(15

PROSECUTOR: Your Worship there might be a possibility of a misunderstanding because my question to the witness was: "Did you ever have a discussion with the accused in this matter," not "on this matter."

THE COURT: Oh well then I possibly misunderstood as well (20 Mr. Prosecutor.

I wonder if you would put the question over again, and let the witness answer it over again?

PROSECUTOR: As your Worship pleases.

I will put it then in a way in which it was (25 intended: Did you have - did you ever have a discussion with the accused?-----When?

Any time?-----I did.

Explain to me when; where; and what about?---- This was at the time I was introduced to him by Mr. Mewa (30 Ramgobin at his surgery. I think it was 1962 - middle of 1962, or some time in 1963.

Only/.....

Only on this one occasion? ----- Only on that occasion.

And you never saw the accused at the offices of Messrs. Arenstein and Fehler? ----- No.

Mr. Mngoma says he was a very frequent caller there? ----- I don't know about that. I never saw him at the office.

NO FURTHER QUESTIONS BY THE PROSECUTOR.

NO RE-EXAMINATION BY MR. UNTERHALTER.

(10

C A S E F O R T H E D E F E N C E

THE ACCUSED IS REMANDED TO 18.8.1964.

THE COURT ADJOURNS.

(15

RESUMED ON 18.8.1964.

MR. LIEBENBERG ADDRESSES THE COURT.

REMANDED TO 19.8.1964.

(20

RESUMED ON 19.8.1964.

MR. LIEBENBERG CONTINUES ADDRESSING THE COURT.

MR. UNTERHALTER ADDRESSES THE COURT.

REMANDED TO 20.8.1964.

(25

RESUMED ON 20.8.1964.

MR. UNTERHALTER CONTINUES ADDRESSING THE COURT.

REMANDED TO 21.8.1964.

RESUMED/.....

RESUMED ON 21.8.1964.

MR. UNTERHALTER CONTINUES ADDRESSING THE COURT.

MR. LIEBENBERG REPLIES.

REMANDED TO 3.9.1964 FOR JUDGMENT.

(5)

RESUMED ON 3.9.1964. APPEARANCES AS BEFORE.

ON RESUMPTION:

BY THE COURT:In this matter I have considered the evidence, the arguments and all the other relevant considerations and I have prepared written Reasons for Judgment. I do not propose to read these now. They are here and I hand them in to form part of the record. The Court's Judgment is as follows: (10)

On Count 1 - GUILTY. On Count 2 - GUILTY on the main count. Count 3 was withdrawn by the Public Prosecutor before plea. Count 4 - GUILTY OF ATTEMPTING TO DEFEAT OR OBSTRUCT THE COURSE OF JUSTICE. Count 5 - GUILTY AS CHARGED. (15)

(20)

JUDGMENT/.....

J U D G M E N TBY THE COURT:

1. The accused is described in the charge sheet as (5
a Bantu, male, aged 34 years, Medical Practitioner.

2. The charge sheet contains five (5) counts. The
third count was withdrawn, before plea, by the Public
Prosecutor Mr. Liebenberg. When the case first came (10
before this Court on the 20th July 1964 the accused pleaded
not guilty to all the charges. He has been defended by
Mr. Unterhalter, assisted by Mr. Motala, instructed by
Messrs. Arenstein and Fehler.
(15

3. The Public Prosecutor was asked for, and furnished,
further particulars of all the charges.
Count one (1) states that the accused wrongfully
and unlawfully became or (particularised as "and") continued
to be an office bearer, officer or member of an unlawful (20
organisation, namely the African National Congress, which
became unlawful on the 8th April 1960. He is alleged
to have committed the offence between the 1st August 1962
and the 22nd February 1964. In his particulars to
count one (1), paragraph 4(b), the Public Prosecutor (25
stated that he would rely on Section 12(1) of Act No. 44
of 1950 in respect of the accused's attendance at the
A.N.C. meetings detailed in Annexure "A" to the charge.

- Count two (2) is framed in the alternative. The
main charge is that during the period mentioned above the (30
accused took part in, or assisted in, the activities of
the A.N.C. by attending and participating in meetings,

making/.....

making his flat available for meeting No. A8, and conveying A.N.C. members to meeting No. A10.

The alternative charge states that he performed the acts mentioned in the main charge which were calculated to further the objects of the African National Congress. (5

Count three (3) was withdrawn by the Public Prosecutor before plea.

Count four (4) is framed in the alternative. The main count is that the accused defeated or obstructed the course of justice by knowingly and intentionally removing (10 Elias Kunene and Cecil Nduli, witnesses in a criminal case pending at Ladysmith, to the Basutoland border at Quacha's Nek, on the 21st and 22nd February 1964, thereby assisting them to leave the jurisdiction of the South African courts and thus preventing their being called as (15 witnesses.

The alternative charge alleges that a conspiracy had occurred to so remove the abovenamed witnesses, that the accused became a member of that conspiracy at the offices of attorneys Arenstein and Fehler and that the (20 conspiracy continued at the Goodwill Lounge, the Victoria Street bridge and other specified places.

Count five (5) alleges that the accused assisted the abovenamed Elias Kunene and Cecil Nduli to go to Basutoland without valid passports or permits. (25

4. A great amount of evidence was heard in this case. It established that the organisation known as the African National Congress (A.N.C.) had been in existence for nearly fifty (50) years and that it was declared (30 unlawful on the 8th April 1960. Apart from the documentary exhibits, there was evidence that the A.N.C.

had/.....

had continued to exist after it was declared unlawful on the 8th April 1960, and Mr. Unterhalter conceded that this was so. The accused's guilt on count one (1) depends upon whether the prosecution has proved, beyond a reasonable doubt, that he attended one or more of the meetings (5) particularised in Annexure "A" to the charge sheet; and that such meeting or meetings were A.N.C. meetings. On count two (2) the prosecution must prove that he participated in the affairs of the A.N.C. by attending meetings or otherwise as particularised and summarised (10) inter alia in paragraph three (3) hereof.

5. The meetings were deposed to by the witnesses Elias Kunene, Stephen Mtshali, Solomon Mbanjwa and Amos Mngoma. Before dealing with their evidence it is (15) necessary to consider the law relating to accomplices. Section 257 of the Criminal Code reads:

"Any Court or Jury may convict any accused of any offence alleged against him in the charge (20) on the single evidence of any accomplice, provided the offence has, by competent evidence, other than the single and unconfirmed evidence of the accomplice, been proved to the satisfaction of such Court or Jury, as the case may be, to have been actually (25) committed."

In the case of the State versus Kellner, 1963(1) P.H. H.57 (A.D.) the Chief Justice is reported as having said that in Section 257 of the Criminal Code "mededader" (the word used in the signed text) means an accomplice in (30) a sense including both a principal offender and an accessory and that having regard to the wording of Section 254(1) "accessory" means "medepligtige", in the sense of a person, other than the principal offender, criminally associated with the commission of the offence. (35) Such a person can be associated with an offence which he himself cannot commit, not only in regard to a common

law offence such as rape, but also in regard to a statutory offence such as the possession of intoxicating liquor by a Coloured person - see Rex vs. Jackelson 1920 (A.D.) page 486. Although such a person cannot be convicted of such an offence, he can, if he is an aider and abettor, be (5) convicted as an accessory or "medepligtige", and if he can be so convicted, he would, in spite of his inability himself to commit the offence, be an accomplice for the purpose of Section 257 which draws no distinction between the various categories of accomplices. (10)

Apart from the statutory rule - Section 257 - above, there is the cautionary rule. In the case of the State versus the Avon Bottle Store, 1963 (2) S.A.L.R. 389 (A.D.) Botha, J.A. is reported as having said; -

"It is clear that the 'cautionary rule' requires (15) no more than an appreciation by the trier of fact of the risk of false incrimination of an accused by an accomplice, a risk which will be reduced by the presence of certain features, such as corroboration of the accomplice (20) implicating the accused. The independent testimony of an accomplice is competent evidence and I can see no reason why corroboration of one accomplice by another implicating the accused cannot, if the latter is reliable, (25) reduce the risk of false incrimination. Whether or not that risk has been satisfactorily reduced will obviously depend on the circumstances. It appears from the Magistrate's reasons for judgment that, while considering the evidence (30) of the accomplice who testified on behalf of the State, he persistently warned himself expressly of the special danger of convicting on accomplice evidence. That was neither necessary nor sufficient. What is necessary is that the (35) judicial officer, who is also the trier of fact, should demonstrate by his treatment of the evidence of an accomplice that he has in fact heeded the warning."

In the case of Rex vs. Ncanana 1948(4) S.A.L.R. (40) (A.D.) at pages 405 and 406 it was held that: -

"The risk that he may be convicted wrongly although Section 285 (now 257) has been satisfied will be reduced, and in a most satisfactory way, if there is corroboration implicating the accused. But it will also be reduced if the accused shows himself to be a lying witness or if he does not give evidence to contradict or explain that of the

accomplice/.....

accomplice. And it will also be reduced, even in the absence of these features, if the trier of fact understands the peculiar danger inherent in accomplice evidence and appreciates that the acceptance of the accomplice and rejection of the accused is, in such circumstances, only permissible where the merits of the former as a witness and the demerits of the latter are beyond question." (5)

In the case of R. vs. P. 1957(3) S.A.L.R. 444 (A.D.) it was held that: - (10)

"Since a person may tell the truth on one point and lie on another it may seem difficult to understand how corroboration of a material point can show, or even tend to show, that the story of the accomplice is true, but it at least tends to show that the whole story is not concocted." (15)

This statement was repeated in the case of the State vs. Moodley and another 1963(2) P.H. H 258 T and the Court added that in addition the overall probabilities of the case were always important. (20)

In the case of R. vs. Nhleko 1960(4) S.A.L.R. 712 (A.D.) it was held that in order to meet the requirements of the cautionary rule, the corroboration must implicate the accused. (25)

In the State vs. Nyoni and another 1962 (1) P.H. H 19 the Cape Provincial Division held that all that is required is that the evidence of the accomplice must be confirmed in some material respect so that it is shown that he is a reliable witness and that he can be trusted to be telling the truth. The case of R. vs. P. 1957(3) S.A.L.R. 444 (A.D.) was also there cited as authority for that statement. In the case of R. vs. Ngcobo, 1959(2) P.H. H 243 the Natal Provincial Division held that the corroboration must go further than merely confirming the accomplice's evidence and that it must implicate the accused. (30) (35)

6. The accused himself did not venture into the witness/..... (40)

witness box. Mr. Unterhalter argued that there was no need for him to have done so. The accused's failure to give evidence must not be pushed too far. It is merely one of the factors to be borne in mind - see the State vs. Matsiepe 1962(4) S.A.L.R. (A.D.) page 708. (5)

It may be a factor strengthening the State's case if it has made out a prima facie case - see State vs. Masia 1962(1) P.H. H 95 (A.D.).

7. The thirty-six (36) year old Elias Kunene stated (10) that he had passed standard four (4), then worked as a kitchen assistant for six (6) months and as a builder's labourer for another six (6) months in Durban. He was then employed by Amalgamated Packaging Industries for eight (8) years as a labourer. He was dismissed for his political (15) activities and he became a full-time organiser for the A.N.C. Except for a short break he remained so occupied until the 8th April 1960 when the organisation was declared unlawful. He said he had acquired a fairly good knowledge of Bantu political movements in South Africa and also of the structure of the A.N.C. which had a constitution and whose policy was directed by decisions taken from time to time at its national conferences. He said he had seen the accused at A.N.C. meetings before 8.4.1960 but could not say whether he was then a member. He said that he, witness, had been (25) detained during a state of emergency from the 29th March 1960 until the 7th July 1960. At the time of banning the witness was being paid his salary by the A.N.C. as a full-time organiser. He was still paid, though not so regularly, after banning by the same organisation, the A.N.C., which (30) had then gone underground. On the 8th April 1960 he was chairman of its Youth League and also a member of its

Natal Provincial Executive Committee. The witness said that a National conference of the A.N.C. decided at a meeting held in Durban in December 1959, under the chairmanship of Govan Mbeki, that if the A.N.C. was banned, it would go underground. No directive was given (5 as to the form it would thereafter take, that being left to the National Executive.

8. In the course of his evidence he was subjected to a lengthy and searching cross-examination. He gave details of how the A.N.C. was kept alive after it was declared unlawful. He said that this was done for the purpose, as it was put to him in cross-examination and he agreed, of continuing the struggle against discriminatory legislation. He said it was done inter alia by its National Executive, (15 through Walter Sisulu, Govan Mbeki and others by appointing a new Ad Hoc Committee through which the new Regional and Branch Committees were thereafter controlled. EXHIBIT "W" is a copy of the A.N.C. Constitution. It is admissible in terms of Section 12(4)(c) of Act No. 44 of 1950 - see also (20 the State vs. Nkosi 1961(4) T page 320. Clause 10(1) of the Constitution seems to be in point. If the underground and necessarily secret organisation functioned in a manner which was not strictly in accordance with its constitution, it was nevertheless functioning. To hold otherwise would be (25 tantamount to opening the door to the circumvention and stultification of this legislation by deliberate procedural omissions and subterfuges of the simplest kind. Kunene said that after the A.N.C. had been declared unlawful it held a conference at Lobatsi, in Bechuanaland on the 27th and 28th (30 October 1962. As the A.N.C. was unlawful in the Republic this conference could not be held here. It was attended by

A.N.C./.....

A.N.C. senior officers and delegates from the Republic and other African countries. The delegates from the republic included one Oliver Tombo, Deputy President of the A.N.C., the abovenamed Govan Mbeki and other South African leaders of the A.N.C. He also stated that at an earlier stage, (5) before 8.4.1960 one Nelson Mandela who had been President of the A.N.C. in the Transvaal, had devised what was called the Mandela or "M" plan. After banning one Milner Ntsangane was sent by the A.N.C. National Executive to introduce the "M" plan to the local branches of the (10) underground A.N.C.

9. If Kunene's evidence is correct he was an accomplice. The Court was aware of the dangers of accepting an accomplice's evidence and continually warned (15) itself of those dangers. At the time of giving evidence he was still a ninety (90) day detainee and uncertain as to whether he would himself be prosecuted or not. He therefore had strong motives to try to ingratiate himself with the authorities who had still to decide, as he (20) believed, whether he would be prosecuted. He was detained on the 25th June 1963. He was then asked whether he was a member of the A.N.C. He declined to make any statement and was thereafter kept in solitary confinement. He was further questioned and so detained for another month and (25) he then decided to make a statement. He said that when he drafted it the questions put to him by the police were still fresh in his mind. The draft took him a month to complete. The statement was then typed, he was given a copy and he was released on the 21st September 1963 -- the (30) day the statement was completed. He said his reasons for making the statement were that; -

- (a) He realised that others must already have spoken,
- (b) He wanted to state the facts as he knew them so that, if he was to be charged, he would be charged for something of which he was, (5) himself, aware,
- (c) He wanted to tell the truth,
- (d) He wanted his freedom, and,
- (e) He was against the violent and communistic tendencies which he felt had come into the (10) A.N.C.

After he was released he was required to give evidence at the trial, at Ladysmith (Natal), of the persons enumerated in Annexure "B": but he did not do so: instead he went to Basutoland in February 1964. I shall deal more fully with his trip to Basutoland, which is the subject of counts four (4) and five (5), presently. After he had been in Basutoland for about a month, he returned to the Republic and went into hiding. While he was in hiding the Reverend Nhlabati, one of the accused in the Ladysmith case, showed (20) him a copy of a statement. Nhlabati alleged that this statement had been made by the accused in the present case and it contained, so Kunene said, disparaging and inaccurate statements regarding him - Kunene. Besides that, Kunene said, he felt he had been left in the lurch (25) in Basutoland and he was "fed-up". So he decided to give himself up, and did so, on the 1st of May 1964 - after the completion of the Ladysmith trial. He then made another statement of which he was also handed a copy. He had a Bible and these two statements to read during his (30) detention in solitary confinement. He said his motives were only to tell the truth and he denied being biased against the accused.

10. All the many dangers in accepting his (35) evidence/.....

evidence must be borne in mind. He is intelligent, a quick thinker, he speaks easily and well. He has had plenty of time in solitary confinement for reflection, for imagination and for invention. He wanted his freedom. He had strong motives to misrepresent. He had previously (5 had experience of giving evidence in a case in which one John Mkadimeng was charged with subversive activity. The Court felt that adequate confirmation and corroboration were essential before his evidence could be accepted against the accused; towards whom he, nevertheless, claimed to be (10 sympathetic. He said he still believed in the principles of the A.N.C. and was against violence and communism. He was criticised by Mr. Unterhalter for not denouncing the Spear of the Nation, violence and communism more openly. I feel that his not having done so was perhaps understandable in the then prevailing underground climate of this organisation.

11. He said that there were three regions of the A.N.C. in Natal i.e. Durban, Pietermaritzburg and (20 Ladysmith (or Northern Natal). Under these Regional Committees came the branches consisting of seven (7) or more Executive members including a Chairman, Treasurer and Secretary. Working under the Branch Executives were the zone leaders whose duty it was to collect funds and (25 to recruit new members. He said that the re-organised A.N.C. was to carry out the "M" plan as explained by Milner Ntsangane who was deputed thereto by the National Executive. He said that he had served on the Regional Committee with six (6) others - not then including the (30 accused - and that, as the organisation had not functioned effectively, a separate Secretariat had been appointed.

This/.....

This consisted of some of the existing Regional Committee members. This Secretariat's functions were to get things working smoothly. It was formed between September and November 1962. He had known the accused for some years - first as a student and then as a qualified Medical Practitioner. The accused was appointed to this Secretariat but the witness could not say, of his own knowledge, whether the accused had previously participated in its activities. He had not seen the accused at any Secretariat meetings nor did he, himself, know of any work the accused had done for this Secretariat. He also did not know whether the accused had been advised of or accepted his appointment to that Secretariat. This is perhaps a small point but it does show that Kunene was not grasping at every opportunity of incriminating the accused. He could easily have said that the accused had accepted that appointment. This Secretariat was disbanded in February 1963. Then, also in February 1963, two new committees were formed. These were:

(a) An Ad Hoc Committee whose members were appointed by Govan Mbeki the A.N.C. National Executive member from Johannesburg, and,

(b) A New Regional Committee.

The accused was a member of this new Regional Committee and was also its Chairman. The Regional Committee was sub-divided into a new Secretariat and various other sub-committees.

12. The witness deposed to several meetings which had taken place from January/February 1963 onwards. Annexure "A" to the charge sheet may here be referred to. He said that the first meeting on "A" was held at the

home/.....

home of Reverend Nhlabati as stated in "A", in late January or February 1963, and it was attended by A.N.C. Regional Committee and Branch members as well as other persons - about fifty (50) persons in all being present. He said he did not know whether the Reverend Nhlabati was a member of any organisation. He said that the accused was elected to the chair and acted as Chairman of the meeting at which, inter alia, a beerhall boycott was decided upon - but this eventually fizzled out. Measures to oppose Bantu womens' reference books were also discussed. (5) Apart from being Chairman, accused seems, according to Kunene, to have taken no part in the actual discussions. (10)

13. If Kunene has told the truth about the accused's presence at and participation in this meeting, as Chairman, and if he is correct in describing it as an A.N.C. meeting, the accused is, in terms of Section 12(1) of Act 44 of 1950 guilty on count one (1) and also on count two (2). His evidence about this meeting is supported by that of the accomplice Stephen Mtshali who also says that the accused was chairman. Both say it was an A.N.C. meeting. They contradicted each other on some points. Kunene said that he went to the meeting by motor car and not by bus as Mtshali said they had. Kunene said he could not remember seeing Mtshali at this meeting. (15) Mtshali at first did not include Kunene's name when listing those present but in cross-examination he did and he explained that he had thought he had included him in his evidence in chief. He said he was sure he had seen Kunene there because he had spoken to him at the door about (20) marxism. (30)

14. Apart from being an accomplice, who had every opportunity of falsely incriminating the accused, Mtshali is a self-confessed communist, an unrepentant saboteur and former ninety (90) day detainee. I would not accept his unconfirmed evidence on any point. He also made (5) his statement while he was in solitary confinement. He had no opportunity of comparing facts or circumstances with Kunene or any other person so confined. Mr. Unterhalter elicited from Detective Warrant Officer Wessels, in cross-examination (at page 804) that the accomplices (10) Kunene, Mtshali, Solomon Mbanjwa and Amos Mngoma had made their statements, in which the accused was implicated, months before the accused was arrested. Mr. Liebenberg, the Public Prosecutor, is a man whose integrity is undisputed and unchallenged. It follows that both (15) Kunene and Mtshali must have mentioned the accused as being present at meetings A1 independently and long before the accused's arrest. The fact they both said he was at meeting A1 is circumstantially probative. If it is not a fact it is a strange coincidence. So is their (20) description of the business of the meeting. Kunene's evidence, and the evidence of Mtshali to a lesser extent, is supported by EXHIBIT "G" of which the Defence agreed "H" was a substantially correct translation. EXHIBIT "H" shows that "G" is prima facie a circular dealing with (25) the matters stated to have been discussed at the meeting i.e. passes for Bantu women and a beerhall boycott. It is headed "The voice of the A.N.C. about passes for women" and it concludes "Issued by the Durban Regional Committee, African National Congress." Its prima facie evidential (30) value flows from Section 12(4)(c) of Act No. 44 of 1950. Kunene says "G" was issued immediately after meeting A1.

Bantu/.....

Bantu Constable Afrika Mpanza found it under his door on a date which, he agreed, was the 1st February 1963.

Mpanza's evidence fixes the meeting A1 as late January 1963. According to Kunene the accused was, as mentioned above, on the then existing Regional Secretariat. (5

The pointers are to A1 being a meeting of the banned, but still vibrant, A.N.C. and to the accused being present and taking part in, or assisting in, the activities of the unlawful organisation by being chairman of the meeting. (10

The accused gave no controverting testimony. The cross-examination of Kunene at page 143 of the record, line seven (7), does not suggest that this meeting was not held or that the accused was not chairman: and the suggestion that it was not an A.N.C. meeting was refuted (15 by the witness.

15. Kunene also deposed to the accused being present at A.N.C. meetings nos. A2 and A3 at which he was elected chairman of the Durban Regional Committee of the A.N.C., (20 and he accepted. No other verbal evidence was led to support him specifically thereon.

16. Kunene also described how meeting A4 was held on a Saturday evening in the beginning of March 1963. (25 The accused, he said, was present as a member of the new Regional Committee, but the witness could not recall his having taken any part in the meeting. George Mbele was chairman and did most of the talking. Finances, equipment and the handing over from the old to the new Regional (30 Committee were dealt with. The witness at this stage had £100 (R200.00) A.N.C. funds in the Johannesburg Building Society/.....

Society under the name of "African Savings Club". Other A.N.C. matters were also discussed at this meeting which lasted from 8 to 10 p.m.

The witness Stephen Mtshali said that the accused was at this meeting which, he also said, was an A.N.C. (5 meeting with George Mbele as chairman at which, inter alia, finances were discussed.

Here again there were contradictions, e.g. Mtshali said that one Ernest Gallo was present at this meeting. In cross-examination he agreed that in his (10 evidence at the Ladysmith trial he had omitted Gallo. Another minor contradiction was that Mtshali said that the meeting had lasted until midnight whereas Kunene said that it closed at about 10 p.m. Kunene said that Mandhla Sithole was at this meeting whereas Mtshali could (15 not recall his being present. Mr. Unterhalter argued that these factors pointed to a propensity on the part of the witnesses, whose memories were, he said, understandably strained, to mistakenly either include or exclude individuals from meetings. He argued that although (20 the criss cross of the net of inclusion may fortuitously touch here and there so as to include the accused, it would, with these witnesses be unsafe to make an adverse finding. The Prosecutor, on the other hand, argued that these features could so easily have been avoided by collaboration and that their presence gave their evidence the stamp of reliability. The Court continually reminded itself of the dangers of accepting the evidence of witnesses like these. Here again the pointers indicate to the accused's attendance at an A.N.C. meeting. He avoided the (30 witness box.

17. (1) The witness went on to say that shortly after meeting A4 Milner Ntsengane came from Johannesburg to check, as he said, on Govan Mbeki's report. He and Milner saw George Mbele on a Monday and later went to see Ex Chief Luthuli at Stanger; he was National President (5 of the African National Congress before the 8th of April 1960 and is the accused's father-in-law. According to the witness he was still regarded as the head or leader of the A.N.C. with whom they still discussed its business. He said they talked of the "M" plan and Ex Chief Luthuli (10 suggested that they find and appoint an A.N.C. organiser for Zululand - offering to pay his salary for two (2) months. He also asked the witness, he said, to request the Ad Hoc Committee of the A.N.C. to issue leaflets to the Zululand Chiefs and Indunas pointing out to them that Chief Cyprian (15 of the Zulus had no more authority than they did in regard to an impending meeting to be held for discussion of the Bantu Authorities Proposals.

(2) Thereafter, the witness said, he devised a plan to make the local A.N.C. organisation work more (20 effectively. Part of his plan was that the accused with another A.N.C. member, one Fred Dube, should be in charge of the Umlazi new township A.N.C. branch. The accused however made it known at the proposed, but quorumless, meeting A5 that he was not prepared to do so as he wanted to go on study leave.

18. According to Kunene the next meeting which the accused attended was No. A6 on a Wednesday in March 1963. At this meeting the witness, the accused and others (30 including Chief Luthuli (through his representative one Yengwa) disassociated themselves from any violence in

A.N.C. affairs as, it then appeared, that the body known as the Spear of the Nation was becoming associated with the A.N.C. and they were against violence.

In respect of this meeting there is no specific corroboration of Kunene's evidence. He said that a further Regional Committee meeting was held in March 1963 at which Selbourne Maponya took the chair in the accused's absence on study leave. He said that after that meeting he did not see the accused at any A.N.C. meetings and that, in any case, no Regional Committee meetings were held in April, (10 May or June 1963 as a Regional Committee quorum could not be formed.

19. Kunene said that he had heard that pamphlets "F" had been distributed by another body, and if so, the (15 distribution had occurred without the consent of the new Regional Committee which had decided not to distribute them after they came from Johannesburg. The A.N.C. is mentioned on the first page of the pamphlet which is stated at the foot of the last page to be issued by the A.N.C. (20 Section 12(4)(c) of Act No. 44 of 1950 would seem to apply to it. Indian Detective Sergeant Naidoo found these in three shops in Grey Street Durban on the 8th of May 1963.

20. I shall deal with Kunene's further evidence when (25 considering counts four (4) and five (5).

21. The next meeting on Annexure "A" is No. seven (7).

(1) Kunene said that he could not recall such a meeting. It was stated in evidence that this meeting (30 was held in the office of George Mbele who was then employed by Attorney N.T. Naicker in Valbro Chambers Durban.

Witnesses/.....

Witnesses Mtshali and Solomon Mbanjwa deposed to it. I have referred to some of Mtshali's unimpressive qualities as a witness in paragraph 14 above. His evidence occupies a little more than 200 pages of the typed record. He is a twenty-two (22) year old Bantu male who (5) passed standard eight (8). He said he joined the A.N.C. in 1962 after it had gone underground and he remained a member until his ninety (90) day detention in August 1963. He said he had given evidence in the sabotage trial in Pietermaritzburg and also in the Ladysmith trial. (10)

Mr. Unterhalter stated that there were times when the witness seemed to him to be reciting. I also got that impression. I feel that an explanation may be that he knew the names of the members of the Ad Hoc and Regional Committees and, if he knew that A7 was a joint meeting (15) of the Ad Hoc and Regional Committees, he would, quite naturally, tend to recite their names.

(2) The thirty-five (35) year old Solomon Mbanjwa said that he had been a member of various organisations including the A.N.C. which he had joined (20) in 1956. He ceased to be a member when it was declared unlawful in 1960. He rejoined it in 1962 and he remained a member until his arrest on the 26th of June 1963. After rejoining in 1962, he held meetings in Hammarsdale area, where he lived, so as to stimulate interest in the banned (25) A.N.C. He said he was later appointed to the Ad Hoc Committee of the A.N.C. by its National Executive. He gave details of the meeting A7 (see page 716 of the record) and said that amongst those present was the accused in his capacity as chairman of the Regional Executive Committee. (30)

At the meeting the chairman, George Mbele, referred to a political statement which had come from the National

Executive of the A.N.C. It was not then read, he said, and it was agreed that it would be read and discussed at another meeting to be arranged. During the meeting there was a knock on the door at about 7 or 7.30 p.m. Those present all thought it was the Security Branch. The business of the meeting came to a stop, papers were torn up and one Selbourne Maponya produced a nip of brandy to mislead the police, if they came, into thinking it was a party. (5)

The witness said that George Mbele then 'phoned Naicker his employer. (10)

The witness said that he thought that they all spoke at the meeting but he could not say whether the accused had done so. He said he had not previously known the accused and that that was the first meeting at which he had seen him. (15)

He said that the Ad Hoc Committee decided to issue the pamphlet "T" and he explained that "Miss S. Gumede" on the first page of "J" was his underground Ad Hoc address. The pamphlet "T" lends some support to Kunene's evidence dealt with in paragraph 17 above. (20)

This witness was also an accomplice and he agreed that he had committed sabotage by dynamiting pylons. He said that he had made his statement to the police only after he had been in detention for some two (2) or three (3) months. His evidence must be treated cautiously and with (25) circumspection in the manner to which I have already referred.

(3) There have been contradictions in regard to this meeting. Kunene could not recall such a meeting. Mtshali said at first that he could not recall the matters (30) discussed or whether Kunene was there: and then he said that Kunene was not there. Mbanjwa said Kunene was there

yet/.....

yet he could not recall Milner Ntsangane being present. These contradictions point away from collaboration between the accomplices. I feel that some contradictions must be expected in a case of this kind.

(4) Both Mtshali and Mbanjwa deposed to this (5 A.N.C. meeting being held and to the accused being present. They both mentioned the knock, the brandy and the 'phone call. In evidence Mr. Attorney Naicker (page 813) confirmed the 'phone call.

(5) Here again the pointers are towards the (10 accused being present at an unlawful A.N.C. meeting and there is no controverting testimony from him.

22. Mtshali is the only witness who deposed to the meeting A8. There is no corroboration of his evidence. (15 Such other evidence as there is contradicts him; e.g. Kunene said he was not there (page 221 line 21). Mtshali said he was present (page 529 line 18). Mbanjwa said that he could not remember such a meeting (page 751 line 7); whereas Mtshali said Mbanjwa was present (page 530 line 19) (20

Apart from that Mtshali contradicted himself and his evidence hereon cannot be accepted.

23. Mtshali also deposed to the meeting A9 at which he said the accused was present. He said that the meeting (25 was held in July 1963 and he gave details corresponding to those set out in Annexure A9. He is to some extent corroborated by the witness Amos with whose evidence I shall deal more fully in paragraph 33 hereunder. Amos said that he had agreed to Enoch Mhlongo's innocent but misleading (30 request for the use of his room for a meeting which he discovered only later (presumably on inadmissible hearsay evidence)/.....

evidence) was an A.N.C. meeting. Amos said that he went out that afternoon and did not actually attend the meeting. He said he saw the accused and others there when he left but when he returned, some hours later, they had gone (page 401 line 2): Mtshali says they were still there (5 when Amos returned (page 697 line 12). Mtshali is corroborated as to the accused being present but his evidence as to the unlawful nature of the meeting is confirmed only by the general circumstances of the case. Here, too, the accused has given no evidence. (10

24. Mtshali's evidence stands alone as to meeting A10.

25. (1) Detective Warrant Officer Dirker stated that he had had several years police experience including (15 twelve (12) years in the Security Branch and that it was his duty to investigate subversive political organisations inter alia the A.N.C., P.A.C. and the South African Communist Party. He said that on Thursday the 11th of July 1963 he and other policemen raided Lily's Leaf (20 farm at Rivonia, Johannesburg. There they arrested some Bantus, Indians and Whites. They also seized some documents including EXHIBIT "Q". Among those arrested were Walter Sisulu, Govan Mbeki and Raymond Mhlaba. He said that the Lily's Leaf premises had the appearance (25 of being used as an office of the A.N.C. because he found about two hundred (200) pamphlets which indicated that they were issued by the A.N.C. He also found and seized a typewriter, duplicating machines and used A.N.C. duplicating waxsheets. (30

(2) He went on to say that on Wednesday the 7th of August 1963 they raided premises known as Trevallyan

in/.....

in the Krugersdorp district. They there seized a large quantity of documents inter alia EXHIBITS J, K, L, M, N, O, P, R and S.

(3) He said he had attended meetings which he knew to be A.N.C. meetings because (5)

- (a) They were announced to be such by the chairman,
- (b) The speakers were A.N.C. members,
- (c) The A.N.C. flag would fly,
- (d) The A.N.C. anthem would be sung, (10)
- (e) The A.N.C. thumbs up sign would be given and,
- (f) A.N.C. matters would be discussed.

(4) From his attendance at meetings and his other observations he knew inter alia these other persons:- (15)

- (a) The abovenamed Walter Sisulu, Secretary General of the A.N.C. before and after banning - see EXHIBIT "Q" - the Radio Liberation Inaugural Broadcast dated the 26th March 1963 - (20 bottom of page one (1) and EXHIBIT "S" He was a member of the A.N.C. National Executive. He was arrested on the 11th July 1963 at Rivonia.
- (b) Ex Chief Albert Luthuli, pre-banning (25 President of the African National Congress.
- (c) Nelson Mandela, pre-banning Transvaal President of the A.N.C. and the originator of the "M" plan mentioned (30 above.
- (d) The abovenamed Govan Mbeki, a member of the A.N.C. National Executive.
- (e) Oliver Thombo pre-banning Secretary (35 General of the A.N.C.
- (f) Duma Mnokwe another pre-banning Secretary General of the A.N.C.

26. In terms of Section 12(4)(c) of Act No. 44 of (40 1950, the contents of EXHIBITS "J" to "S" (inclusive) show prima facie inter alia that the A.N.C. was alive and active/.....

active after it was declared unlawful. They support the accomplices' evidence as to the activities of the African National Congress after it was declared unlawful.

27. As I have already stated the fact that strict (5
A.N.C. constitutional procedure may not have been followed
in convening and holding meetings or appointing office
bearers, does not make those procedures any the less
A.N.C. procedures. If it did, it would be impossible to (10
implement the law as the simplest deliberate omission or
deviation could then, in fraudem legis, convert actually
unlawful conduct into ostensibly lawful conduct. In the
nature of things the organisation's underground activities
would necessarily involve adaptation and improvisation.

(15)

28. Bantu Detective Sergeant Paul Zulu stated that
he had seen the accused at A.N.C. meetings before the
organisation was declared unlawful. At some of these,
he said, the accused had spoken.

(20)

29. Count three (3) was withdrawn before plea.
I come now to a consideration of counts four (4) and five (5)

(1) The witness Elias Kunene said that he was
arrested on the 25th June 1963. At that time, he said, the
accused was back in Durban. He lived at Lamontville and (25
he was still on the Regional Committee. Kunene made a
statement while in solitary confinement. It was completed
on the 21st September 1963 and he was released. After his
release he agreed, reluctantly it seems, to give evidence
for the State at the trial, in Ladysmith, of the persons (30
mentioned in Annexure "B". The Reverend Nhlabati was one
of them. Others of them were his friends and associates

in/.....

in the A.N.C. He says he decided to give evidence as he realised there was no other way. He was later approached and he agreed to meet his old friend Amos Mngoma who was then employed at the offices of Messrs. Arenstein and Fehler attorneys of Durban. They met at the Goodwill Lounge in (5 Durban on a Tuesday in February 1964 shortly after he had seen the police. There they had a discussion. Kunene gave no details of this discussion.

(2) After their discussion he met the Reverend Nhlabati and Cecil Nduli in the Zulu Congregational Church (10 in Beatrice Street at 11 a.m. on a Sunday. There, he said, the Reverend Nhlabati, **an accused in the Ladysmith case**, persuaded him not to give evidence in the Ladysmith case and to leave South Africa.

Had it not been for this persuasion, he said, he (15 would not have left South Africa. He said he had intended to give evidence at the Ladysmith trial because he felt that by **doing** so he could tell his own story and assist those accused who, like himself, were against the association of the A.N.C. with violence, communism and the (20 Spear of the Nation. He admitted that there he told the Reverend Nhlabati a lie in saying that the police had not yet told **him** to give evidence. He said his reason for doing so was that he did not want it generally known that he was going to give evidence for the State but he agreed (25 that he actually decided there to leave South Africa without then actually telling the Reverend Nhlabati so.

Then on Friday, the 21st February 1964, he, the Reverend Nhlabati and Cecil Nduli met at the Methodist Church in Grey Street Durban between 1 and 2 p.m. There (30 the Reverend Nhlabati said they should leave the same night and he and Cecil Nduli agreed to do so. At about 9 p.m.

that/.....

that same Friday night he went to the Zulu Congregational Church in Beatrice Street and there met Cecil Nduli. The Reverend Nhlabati arrived soon afterwards in a private motor car, he said they would be conveyed in the accused's motor car and told them to follow him to a spot on the (5 South Coast Road. They did so in a "Pirate" taxi and there the Reverend Nhlabati pointed out a motor car which he said was the accused's and told them to get into it. They did so. The accused was the driver. One Sydney Dunn, a Coloured university student, was also in the motor car. (10 The Reverend Nhlabati gave them each money and spoke to the accused. The time was then about 11.30 p.m. on Friday the 21st February 1964. I pause here to remark that this was the first time the accused was brought into this aspect of the case by Kunene. If his evidence is correct it shows (15 that the Reverend Nhlabati and the accused must have had some prior arrangement. As will be seen presently it is a fact that the accused drove the motor car containing Kunene, Nduli, Dunn and a sick man to the border post at Quacha's Nek. They arrived there early on Saturday the (20 22nd February 1964. Kunene said that the accused had driven them to Matatiele where they arrived at 6 a.m. on Saturday the 22nd February 1964. Thence the accused drove them to Quacha's Nek. On the way, Kunene said, the accused mentioned the difficulty of crossing the border and said (25 they may try to bribe the police. They also picked up the sick Bantu man en route and the accused said it may facilitate the border crossing if they said they were taking him home.

(30

30. The witness's account of what happened at the border gate varies in some details from the police evidence.

Kunene/.....

Kunene said that:

- (a) They stopped the motor car some distance from the gate (according to the plan EXHIBIT "A" some 231 paces);
- (b) They all walked to the gate with their things; (5)
- (c) The gate was closed and there was a policeman standing on a nearby verandah, so,
- (d) They sent the sick man to find out when the gate would open, he returned and said it would open at 8 o'clock; (10)
- (e) Later they sent Sydney Dunn and he came back and said that they had to wait until 8 a.m.: Kunene also said that Sydney Dunn, accused and he had been drinking but he could not say if Dunn was drunk; (15)
- (f) Then the four (4) of them, Sydney Dunn, the accused, Cecil Nduli and the witness went away leaving the sick man there;
- (g) The four (4) of them then got into the motor car; (20)
- (h) As the road was too narrow the accused reversed the motor car;
- (i) He, Kunene, told the accused to stop, he and Cecil Nduli then went up the path and over the fence into Basutoland at the point marked E on EXHIBIT "D": they did not have the necessary authority to do so. (25)

31. He went on to say that they stayed at Qacha's Nek in Basutoland until Monday the 24th February 1964 when they were flown to Maseru. In Basutoland they met various members of the A.N.C. Kunene said he returned to Durban on the 28th March 1964 with Solomon Mbanjwa and Cecil Nduli. They wished to surrender themselves; but he saw the Reverend Nhlabati and he thereafter went into hiding in Kwa Mashu and Pietermaritzburg. He said that he eventually surrendered to the police on Friday the 1st May 1964 after the Ladysmith trial, at which he did not give evidence, had concluded on the 24th April 1964. He said that Cecil Nduli was now in Swaziland as far as

he/..... (40)

he knew.

32. Kunene admitted that he had not always been wholly frank, as for example in his interview with the Reverend Nhlabati, and he agreed that there were things (5 which he had forgotten.

The overall impression made was that he was trying to tell the Court the truth as he remembered and knew it. There were many respects in which he could easily have given far more incriminating evidence than he did (10 especially as to the accused's attendance at and participation in A.N.C. meetings. I do not regard his paying himself his salary, when he believed he was, in the special underground circumstances, duly authorised to do so, as reflecting on his honesty. Nevertheless I emphasise (15 that I was mindful of the dangers and I was not prepared to accept his unconfirmed testimony.

33. (1) The witness Amos Mngoma stated that he had worked for Attorneys Arenstein and Fehler from 1957 as a (20 Clerk and Interpreter. He worked for them until he was arrested on the 9th February 1964. He had joined the A.N.C. in 1956 and remained a member until it was declared unlawful on the 8th April 1960 after which, he said, he remained sympathetic but he took no further active part (25 in its affairs. He said that he and his good friend Elias Kunene had been interested in Bantu politics and the latter had also been associated with the A.N.C. He explained that he, witness, had been a member of the Natal Youth Action Committee and the Federation of Youth. He said in (30 cross-examination that he had agreed to Ernest Gallo's post-banning suggestion that he be appointed to a finance

sub-committee/..

sub-committee of the Ad Hoc Committee. He said nothing came of that and he had not actually served on the committee.

(2) I have already dealt with his evidence about meeting A9 in paragraph 23 above.

(3) He said he knew Milner Ntsangane who was (5 due to appear with others in a criminal case in Ladysmith.

34. Amos said that he had a discussion with Thami Mhlambiso, an N.U.C. student, who often visited him at Arenstein's office. He had also taken food to the Ladysmith accused while they were in the local gaol. He also said that he spoke to Milner Ntsangane in the Durban gaol on the same day as he had seen Thami - in December 1963 or January 1964. He said that a few days after he saw Milner in gaol he had an interview with the accused and (15 Thami at Arenstein's office. He said that accused often came there and, on that day, accused asked him if he had seen Elias Kunene as Milner had said he had. He said he had not seen Elias Kunene. So, he said, the accused said he had better hurry and see Elias Kunene as they believed (20 that he of all people could influence him. He said accused said that he should make a careful approach to Elias Kunene as they thought he could be troublesome, and he should persuade Elias Kunene not to give evidence in the Ladysmith case. He said that the accused said that Kunene was the (25 main witness in the Ladysmith case since the State's "star witness", Selbourne Maponya, was gone. He said that accused said that Elias Kunene should avoid giving evidence either by leaving South Africa; in which case, he (accused), would finance him; or, he could stay here and not give (30 evidence. If he was then gaoled, he (accused) would reimburse him for loss of wages and other necessary

expenses/.....

expenses. He said the accused wanted him to hurry and report back to him (accused) as it was nearly time for the Ladysmith case to commence. He said that Thami also said that he (Amos) should hurry and report back to the accused as he (Thami) would soon be going to the Cape (5) on a visit. In cross-examination the witness first said that only Thami had said that he should report back and then he corrected himself when his attention was drawn to his previous statement. He also explained the difficulty and delay they had experienced in communicating with (10) each other and he said he had heard rumours that Elias Kunene was an informer.

The witness said that the accused was present at their discussion for about five (5) minutes but that Thami stayed on and left later at about 4.30 p.m. He contradicted (15) the Defence suggestion that the accused was not at any such interview.

He said he agreed to see Elias Kunene because he sympathised with the Ladysmith accused and also wanted to see them acquitted. (20)

35. Amos said that he saw Elias Kunene in the Goodwill Lounge. He said this happened at lunch time on Thursday the 6th or Friday the 7th February 1964 - as he was arrested on Sunday the 9th. He did not meet anyone (25) else that day and his meeting with Elias Kunene was arranged by Gladys Manzi who was present during part of the discussion. He said that this meeting occurred some time after he had spoken to Thami and accused as he had had difficulty in making contact with Kunene who usually (30) called at his place of employment only on Fridays. He said his own movements were restricted and he did not want to

have/.....

have too many people in the know. Kunene said - see page 77 - that Amos had first seen him at his (Kunene's) work and that they had agreed to see each other again at the Goodwill Lounge.

Amos said that he had then told Kunene why he had been sent to him but he did not say by whom. (5)

Amos said that Kunene did not say whether he had already been approached but he said he had not yet decided what he was going to do as he was afraid he may be detained for a longer period than six (6) months like Sobukwe had been and he wanted to discuss the matter with his wife. (10) They then talked of other things and agreed to meet on the following Tuesday.

The witness then said that he could recall that the Goodwill Lounge talk with Kunene had occurred on a Thursday because he met the Reverend Nhlabati on the next day, i.e. a Friday, just before 2 p.m. The witness Kunene said this meeting in the Goodwill Lounge occurred on a Tuesday. (15)

36. Amos went on to say that he saw the Reverend Nhlabati on the Friday afternoon at the bridge near the Victoria Street busrank. He said he met the Reverend Nhlabati by coincidence. He said that the Reverend Nhlabati said that Gladys Manzi had told him of the conversation with Elias and he asked what had been agreed upon. The witness told him that he was to see Kunene again on Tuesday and that he was leaving for Ladysmith that same Friday evening. No more was then said about Kunene. In cross-examination he said he surmised that the Reverend Nhlabati knew of his conversation with Kunene because he had been told of it by Gladys, who, he then said, had/..... (20) (25) (30)

had later denied having done so when he taxed her about it: a denial which, one feels, could have been false.

Amos said that at the time he was, for reasons which he said were not known to him, a restricted person. He had no authority to go to Ladysmith and he was arrested (5 on the 9th February, 1964, Sunday, in Pietermaritzburg. He was then on his way home from Ladysmith where he had arranged food and clothing for the arrestees in the Ladysmith trial.

(10)

37. The witness said that he was also a ninety (90) day detainee and had been questioned in two (2) phases. The first of these was during the first month when he was asked, and satisfactorily answered as far as he could judge, questions about his visit to Ladysmith. The (15 second was some three (3) months later in about May or June 1964 when he was questioned and spoke about the meeting at his room, A9, and the conspiracy to get Kunene not to give evidence at Ladysmith. He said that he had first refused to speak but later decided to do so. He was cross- (20 examined at length as to his reasons for speaking. I feel that these can, in all the circumstances, be regarded as satisfactory. Like Kunene he had also given evidence in another case. He was also an accomplice. He was under detention for ninety (90) days and was released and was (25 immediately re-arrested. He knew that his release depended upon his answers to questions being considered satisfactory. He, too, would have motives to misrepresent. Adequate confirmation is sine qua non to the acceptance of his evidence. (30

38. The witness Ralph Davey stated that he had piloted the aeroplane in which Kunene, another Bantu man (presumably Nduli) and a Bantu female were passengers in Basutoland on the 24th February 1964. His evidence was not challenged. (5)

39. I come now to the police evidence as to the events at Quacha's Nek.

40. (1) The impression which Constable Snyman made (10 upon the Court was that he was honest and that he was making a sincere attempt to give his own version of the unembellished truth. He said that he stood on the verandah at 7 a.m. on Saturday the 22nd February 1964. He saw five (5) Bantu males leave the motor car in the road and (15 walk towards the border gate. Two (2) of them, one being Kunene, then came and asked him to open the gate on two (2) separate occasions. They said they had no passports and that the official at the gate should issue them. He told them that the gate would open at 8 a.m. at which time they (20 should return. He said that they then said that they would go through another way and the four (4) of them, that is the accused, Dunn, Kunene and the other Bantu male, went back to the motor car leaving the sick man at the gate. Dunn and the accused got into the motor car and Kunene and the (25 other Bantu man walked on foot. The witness said the motor car remained where it was. He went up to it and asked the accused for his name to which he replied "Luthuli van der Merwe". Then he said his name was Luthuli and he said the other two (2) had gone to drink beer. Dunn gave his (30 name correctly as Sydney Dunn.

Meanwhile the other two had disappeared round a

bend/.....

bend and the witness later saw them walking beyond the fence in Basutoland somewhere near the point E on EXHIBIT "D".

He had told the accused and Dunn to go to the gate and he passed them there when he returned to the post to make a report to Sergeant Smith who had meanwhile arrived. (5

He said that he had not noticed that any of them were under the influence of liquor.

I could think of no reason for rejecting Snyman's evidence. I believed him.

(10

41: Sergeant Smith, of the South African Police at Quacha's Nek, said that on that morning the accused and Sydney Dunn had come to the office. The accused said that they had no passports, that he wanted to go to Quacha's Nek to see his girlfriend and he asked if he, the Sergeant, (15 would issue passports to them. Sergeant Smith explained to the Court that he could not issue passports but that there was provision for him to issue emergency permits. He said he told the accused and Dunn to wait while he dealt with the passengers on a bus which had, just then, arrived (20 from Basutoland. Snyman had reported to him at this time and Sergeant Smith sent him to the Basutoland Control Post to report there as well. Having disposed of the bus he went to the accused and Dunn who were standing on the verandah. The Sergeant said that the accused then told (25 him that the motor car was his and that his name was Albert Luthuli of Glenerville Laan. Accused also said that the other man, that is the sick man, had been picked up by him along the road and that the other two (2) had gone to drink beer in Basutoland. He said that they were (30 strangers whom he had picked up along the road. He told the accused to remain there and the matter was further dealt with

by/.....

by Detective Sergeant van Rooyen when he arrived. Sergeant Smith said that the accused was sober but that Dunn, who was under the influence of liquor, continued drinking and collapsed. The Sergeant did not see Elias Kunene or his companion at all. He said that although (5 the accused had said that the third man was sick, he did not mention that he was Doctor Pascal Ngakane until Sergeant van Rooyen came at about 9.15 a.m. on that same day. The Sergeant then immediately taxed him and he then explained that he had misunderstood and had thought that the Sergeant (10 had asked whose motor car it was and he had said A. Luthuli. The Sergeant said they spoke Afrikaans which the accused speaks well. He explained that he had not mentioned the accused's explanation earlier because in his earlier evidence he had deposed to the earlier events. (15

(2) I can think of no reason why I should not accept Sergeant Smith's evidence. He impressed the Court as being quite honest. I am satisfied that the accused told him at least two deliberate falsehoods - the first that he was Albert Luthuli and the second that Kunene and (20 Nduli were strangers to him. His statement that he picked them up along the road does not accord with his evidence on his bail application (see EXHIBIT "EE") in which he said that he had "been approached."

42. Detective Sergeant van Rooyen impressed the Court as an honest reliable witness. He found the accused, Sydney Dunn and Elias Faku (the sick man) at Quacha's Nek on his arrival there at about 9.15 a.m. on that Saturday morning the 22nd February 1964. The accused then gave (30 his correct name and address and said that the motor car was the property of his wife - Doctor Albertina Luthuli.

He/.....

He said that Sergeant Smith took no part in the actual interview but that he taxed the accused about his name and that the accused then explained that he had misunderstood. The witness said that the accused stated that he had previously come to Quacha's Nek hospital to take a patient (5) named Ernest Gallo to Durban and that, during the two (2) hours that he had been there, he had seduced a nurse who became pregnant and that he and Dunn had come to attend to the matter as he was a married man. The accused told Sergeant van Rooyen that the other two (2) men were (10) complete strangers to him and that he had picked them up along the road between Matatiele and Quacha's Nek (see page 391 line 9 of the record). He gave Sergeant van Rooyen a description of the two men. In his bail application EXHIBIT "EE" the accused made no mention of the nurse at Quacha's Nek. A (15) fair reading of his evidence does not indicate that he intended to convey that he had picked up Kunene and Nduli between Matatiele and the police post at Quacha's Nek - see his reference to this (sick) man at the bottom of page two (2) of EXHIBIT "EE". (20)

43. Detective Warrant Officer Wessels stated that he had been concerned in the investigation of the Ladysmith case of the State versus George Mbele and others (see EXHIBIT "B") in which Elias Kunene and Cecil Nduli (25) were witnesses. As a result of their disappearance, he said, the Ladysmith case had been withdrawn against a number of the accused - including the Reverend Nhlabati. He confirmed that the Ladysmith case had concluded on the 24th April 1964 and that Kunene had surrendered himself (30) to the police shortly thereafter. I have dealt with Detective Warrant Officer Wessels' evidence regarding the/.....

the accomplices' statements elsewhere in this judgment.

44. Detective Warrant Officer Weidemann said that he visited the border control post at Quacha's Nek on the 17th July 1964. He handed in the plan EXHIBIT "A", (5) the key EXHIBIT "B" and the photographs EXHIBITS "C" and "D".

45. The Attorney General's authority in connection with count five (5) is contained in EXHIBIT "E". (10)

46. The only witness called for the Defence was Thami Mhlambisa. He said that he had been a student at Fort Hare until he was expelled. He then became a student at Natal University College and he remained so until he (15) was placed under restriction. He did not know why he had been expelled or why he had been placed under restriction. He denied Kunene's evidence about the conspiracy and he said he knew nothing about such an interview. He said that he had worked for a local (20) attorney after he was banned and until he was arrested. At present, he said, he was an awaiting trial prisoner in the local gaol on charges similar to those in this case. He said he intended pleading not guilty at his trial which had been set down for hearing on the 26th August (25) 1964. He told a story that was obviously improbable. He said that he was interested in Bantu political affairs and he gave details of his activities in that respect. He had also been a member of the African National Congress since 1958 but he claimed that after it was banned he (30) did not even know that the organisation had gone underground and that it was active in Durban yet, he said, he was friendly inter alia with George Mbele and Sello. He said
he/.....

he could not remember whether he had ever even told them of his sympathy with the African National Congress. I was quite satisfied that this witness was not telling the truth and I rejected his evidence.

47 (a) The following are my findings in respect (5
of counts one (1) and two (2).

(1) That the A.N.C. was an organisation which became unlawful on the 8th April 1960.

(2) That it thereafter continued to exist and to be active. (10

(3) That those activities included inter alia the holding of meetings and the publication of documents of which the exhibits before the Court are examples.

(4) That the accused attended, and took (15
part in, the meetings enumerated in Annexure "A" numbered one (1), four (4), seven (7) and nine (9).

(5) That these were meetings of the (20
unlawful African National Congress.

(b) It is true that there are contradictions in the evidence of the accomplices. They were skillfully cross-examined for long periods and it would have been strange indeed if there were no contradictions or inconsistencies. They made their statements while (25
under detention in circumstances to which I have already referred. But they did so independently and without any opportunity for collaboration or concoction. They must have mentioned the accused's name, initially, months before his arrest at Quacha's Nek on the 22nd of (30
February 1964. They could not then have felt or anticipated that his presence at meetings, which they must then also have detailed and described independently, would assume the significance it has. I am aware of the dangers of accepting accomplice evidence, especially in (35
this case, but I am satisfied that the only reasonable

conclusion/.....

conclusion to which I can come is that the accused was present at the meetings one (1), four (4), seven (7) and nine (9). I am also satisfied that the accomplices can and should be believed when they say that these were meetings of the African National Congress. As I have (5) already said the accused elected not to give evidence. Upon a proper application of Section 12(1) of Act No. 44 of 1950 the accused's membership of the unlawful organisation has been proved.

He is therefore found GUILTY ON COUNT ONE (1) (10)

His attendance at and participation in meetings makes him GUILTY ON COUNT TWO (2) (MAIN COUNT) and he is so found GUILTY.

48. The Court will now consider the evidence on (15) counts four (4) and five (5).

(1) If the evidence of Kunene and Amos about the Goodwill Lounge meeting is correct, Kunene could not then have known who had sent Amos to him. Kunene gave no details of the discussion and Amos said that he did (20) not tell Kunene who had sent him there. It follows therefore that Kunene was not directly persuaded to leave South Africa by the accused. He himself said (paragraph 29 (2)) that the Reverend Nhlabati had persuaded him to do so.

(2) There was no evidence of any kind that the (25) accused, Amos and Kunene were ever together at any place at one and the same time.

(3) The first mention that Kunene made in evidence of the accused in connection with the trip to Quacha's Nek was his statement that the Reverend Nhlabati had told him, on the evening of their departure, that the accused would be conveying them.

(4) According to Kunene the Reverend Nhlabati seems to have made all the arrangements, to have done a good deal of the talking and to have provided the money.

(5) Amos said that he saw the Reverend Nhlabati the day after the Goodwill Lounge talk. If that evidence is correct, the link between the Reverend Nhlabati and Kunene via Amos is complete without the accused being necessarily involved as at that stage.

(6) There is only the evidence of Kunene that the journey to Quacha's Nek commenced on the South Coast road and that the accused drove them thence. I can see no reason why that statement should not be accepted. There is nothing to suggest why it should not and a good deal to suggest why it should.

On the 12th June 1964 the accused gave evidence before the Magistrate at Pietermaritzburg in making an application for bail. A copy of those proceedings was handed in as EXHIBIT "EE". The accused is shown therein to have deposed inter alia as follows: -

"I was arrested on Basutoland border at Quacha's Nek. I was approached by one Elias Kunene who asked me to take him to Basutoland border. He said his life was in danger and he was running away from people attacking him. He said he had given evidence in two cases in Pretoria and this was a vengeance threat. I agreed to take him to Quacha's Nek. I had known him. I went to the police at the border post. We were four (4). We arrived approximately 6.30 a.m. and spoke to the police. I am not certain who spoke, I may have. We asked what time the post would open. We were told it would open at 8 a.m. We went and sat in the car about one hundred (100) yards from the post. Elias and his friend said they were going for a beer drink. We saw them jumping over the border fence into Basutoland. We sat and waited for the post to open. Two (2) of us were left, Sydney Dunn and myself."

Further on he says: -

"Between Matatiele and Quacha's Nek we picked up a further Bantu male. He looked sickly and we gave him a lift. I don't remember anybody asking him whether we could expect trouble at

the/.....

the border post. I did not mention this man as it happened between Matatiele and the post."

From this it is plain that the accused conveyed Kunene and Nduli to the border post. The accused would have come from Durban and so did Kunene and Nduli. The (5 journey must have commenced somewhere. All that the accused has said was that he was "approached" (as stated in "E.V") by Kunene to take him to the Basutoland border. I can think of no reason why Kunene should have concocted his evidence of the rendezvous on the South Coast Road; (10 and the circumstances point to its acceptance. The accused could only have been there by prior arrangement with someone in the know - a circumstance which would strengthen Amos' evidence implicating the accused in the conspiracy. In the course of a closely reasoned and analytical (15 argument Mr. Unterhalter did not suggest any other point of commencement of the journey. The only light the accused cast upon the point was his evidence on his bail application. There is nothing **there to contra-** indicate the South Coast Road as the point of commencement. (20

(7) It is true that there are contradictions about the movement of the motor car and the number of persons who spoke to Snyman. I do not think that they seriously affect the position.

(8) Mr. Unterhalter suggested that if the (25 accused gave his name as Luthuli van der Merwe he may have done so flippantly. As the accused gave no evidence, no explanation was forthcoming from him. If that was in fact the explanation, it was not only in poor taste, but it, like the remark about drinking beer, was in ill (30 accord with the other Defence suggestion advanced in argument that "the accused merely helped to get them to the/.....

the border post where he could ask for a passport and the proceedings only became illegal after Kunene left the motor car." There was nothing in the cross-examination of Kunene to found or indicate that suggestion. The cross-examination of Kunene on the events at the border post

was brief indeed - (see page 291 lines 3 - 27)

The accused is a medical man. If Kunene and Cecil Nduli had taken him by surprise by jumping the fence, one would have expected him to have acted responsibly with the police and not flippantly, evasively and untruthfully. I feel that his conduct at the border post, as revealed by the police evidence, permits of no other reasonable conclusion but that he was in the know and in the conspiracy alleged in count four (4). His failure to give evidence does not ennure to his benefit - see Rex vs. Davidson 1960, Volume one (1), P.H. H 109 (A.D.)

49. (a) The following are my findings in respect of counts four (4) and five (5).

(1) That the Ladysmith trial was pending as stated in the first paragraph of the main charge on count four (4).

(2) That Elias Kunene and Cecil Nduli were necessary and material witnesses for the State in that case.

(3) That the accused well knew that.

(4) That he desired and intended to defeat or obstruct the due course of justice in that case by eliminating Kunene's evidence.

(5) That, with that object in view, he conspired with Amos Mngoma and Thami Mhlambiso, as alleged in the charge, to persuade Kunene not to give evidence in the case.

(6) That in pursuance of, and as part of, that conspiracy he met Kunene and Nduli on

the/.....

the South Coast Road on the night of Friday the 21st February 1964.

(7) That, accompanied by Dunn, he drove them through the night via Matatiele to the border police post at Quacha's Nek. (5)

(8) That they arrived there before 8 a.m. on Saturday the 22nd February 1964.

(9) That there the accused was guilty of the untruths and evasions to which I have already referred. (10)

(10) That he has not contradicted or explained these.

(11) That the Defence suggestions and conjectures as to the possible reasons for the trip and his behaviour are unacceptable.

(12) That Kunene, who was over the age of sixteen (16) years, and Nduli jumped the fence into Basutoland and out of reach of the Republican Courts.

(13) That they had no valid passports (20 or permits - see EXHIBITS "CC" and "DD").

(14) That the accused knew that and assisted them to leave the Republic as set out in count five (5).

(15) That they returned to South Africa (25 before the Ladysmith trial and then avoided giving evidence therein.

(16) That this failure to give evidence resulted in the charges against some of the accused (including the Reverend Nhlabati) (30 being withdrawn and consequently in the obstruction of the due course of justice.

(b) On these findings I feel that justice was obstructed by Elias Kunene and Cecil Nduli failing to give evidence; but that the final, effective and proximate (35 cause of that failure may not have been due to the accused. I am, however, satisfied on all the evidence and the other relevant factors and circumstances in the case (of which the accused's failure to give evidence is one) that the accused was guilty of attempting to defeat (40 or obstruct the course of justice on count four (4). He is, therefore found GUILTY OF AN ATTEMPT ON THE MAIN COUNT FOUR (4).

(c)/.....

(c) On these findings the accused is GUILTY
on COUNT FIVE (5) and he is so found GUILTY.

R.G. BEAMISH
REGIONAL MAGISTRATE
DURBAN.

MR. UNTERHALTER INFORMS THE COURT THAT HE WISHES TO CALL A WITNESS IN MITIGATION, AND APPLIES FOR AN ADJOURNMENT UNTIL 11.15 A.M.

APPLICATION GRANTED.

THE COURT ADJOURNS.

(5)

ON RESUMPTION:

ACCUSED HAS NO PREVIOUS CONVICTIONS. FORM S.A.P.69(d) HANDED IN.

MR. UNTERHALTER CALLS:

(10)

RONALD CHARLES ALBINO: (Sworn, states).

EXAMINED BY MR. UNTERHALTER:

Professor Albino, what position do you occupy in Durban? ---- I am a Professor of Psychology in the Medical Department of the Natal University.

(15)

What degrees do you hold? ---- Degree of Master of Arts in Psychology.

At which university? ---- University of South Africa.

When did you graduate? ---- Late sometime in the forties. I am afraid I cannot recollect the exact date.

(20)

Do you belong to some learned societies? ---- I belong to the South African Psychological Association and the British Psychological Society.

And apart from being a professor at the University, what would you describe your professional status as? ---- Well, (25) I am also a registered clinical psychologist, registered with the South African Medical and Dental Council, and I do hold the position of scientific advisor on Neuro-psychology to the Council for Scientific and Industrial Research, and I am also a member of the Council of the South African Psychological Association. This I think describes my status.

(30)

Have you written for learned journals? ---- Yes, I

have/.....

have written a large number of papers, I can't recollect how many but I think somewhere between twenty and thirty now.

On your subject? ---- Yes, on my subject, on psychology.

And where have they been published - just generally? (5
---- In overseas learned journals, The British Journal of Psychology, the American Journal of Experimental Psychology, the British Journal of Medical Psychology. These are the kinds of journals. I have papers in all of those.

Can the Court assume that you have an extensive (10
acquaintanceship with the literature on your subject? ---- I think so, yes.

Have you interested yourself in a particular aspect of psychology, that is isolation and its effects on the individual? ----- I have been very interested in the effects of (15
isolation from the environment in individuals for some years now, since about 1956/57, when work of this kind was done in Canada in the first place, and it became a subject in which many people were interested.

Did you conduct any experiments in regard to this (20
topic? ---- In 1957 we did a small experiment at the University of Natal on isolation, in which we isolated adolescent students, male students, in a small room - rather long room - its measurements I forget precisely what they were - I think they were about fifteen feet by nine - they were isolated for (25
periods of between eight and twelve hours and we observed the behaviour of these people in this room during this period.

And there are certain findings which you made as a result of that? ---- The findings made were more or less consistent with those which had been made in other experiments (30
elsewhere in the world.

That is in terms of the literature that you had read?

----- In/.....

---- In terms of the literature, yes.

Now, you interviewed the accused Dr. Ngakane, this morning here, did you? ---- I did, yes.

Prior to that, had you ever had an interview with him? ---- I do teach at the University of Natal Medical School and I naturally know his name and I asked him when I came in if he knew me and he said I had taught him in 1952, I think it was, but I certainly have no recollection of having spoken to him outside the classroom. I may have done so but I have no recollection of having done so. (5 (10

Did you question him on his experiences while he was in isolation? ---- I did. I spoke to him, I think I talked to him for a matter of twenty minutes under not the best conditions in this room actually this morning.

How did you obtain the information from him? What was your approach in getting information from him? ---- I merely asked him to tell me about his experiences when he was detained, which he proceeded to do. I carried on the interview as we normally carry on psychological interviews, which of course is to say extremely little in the way of interrogation; you merely allow the person to talk as freely as you can possibly get them to do so, without any leading questions, if possible. (15 (20

Would you please tell His Worship what he said to you of his experiences in isolation? ---- Well, he gave me a circumstantial and detailed account, actually a rather orderly account of his time in detention. I didn't make any very extensive notes of the details of his detention, which were not what was interesting me. I was merely looking for certain features in his own behaviour and experience. After he'd been talking some time, he told me various things which he told me incidentally in giving - while I was interviewing him, all of which are consistent with what has been observed, both in (25 (30

experimental studies and also in studies of people who have been detained in isolation for a long time elsewhere in the world in other countries.

What were those? ---- He first of all said that he occupied himself - he had no literature at certain times; at (5 other times he did, but at times he had no literature. He occupied himself in singing and talking to himself. This is a typical symptom of people who have been isolated. He also told me that he felt a great desire to talk to other people; he said to visitors and I questioned him on what he meant by (10 visitors and he said anybody; his interrogators, the warders, anybody who was likely to come into his cell. He was very pleased to see them, and he wished, if he could, to see them quite frequently. He also mentioned that he suffered from insomnia; after about 11 o'clock at night he said he found it (15 extremely difficult to sleep consistently for long periods, and when he did sleep he had nightmares. He also said that he was extremely depressed while he was in isolation. I didn't go into this in very great detail, I just merely took his statement that he did feel depressed. He also reported having had one hallucinatory episode - I didn't enquire whether he had any (21 more, for the simple reason that when a person sees that you are interested in a particular kind of experience they may have had, they may start to produce others of the same kind. So this one he merely gave me in very great circumstantial detail. (25 He said that he was lying with his eyes closed on his bed and he felt his child touch his shoulder and he carried on a conversation with his child and his family, believing them to be in his cell. He said he suddenly came to his senses and realised they were not there and of course stopped the con- (30 versation. He may have had more episodes of this kind but I didn't enquire into them. But this again is rather typical

of/.....

of what does happen. He did also report, but this is not a psychological matter, but it is interesting as it might imply that he was suffering to some degree, that his gastric ulcer became worse while he was in gaol and he sought treatment for this. Now we do know, although it is not my own special field, that gastric ulcers are very sensitive to psychological stress of one kind or another, and I would say that the ulcer's getting worse may be an indication of his feeling stress. That is the gist of our interview. (5)

Now, in the light of what you were told by him, in the light of your findings from the experiment that you say you conducted and in the light of the literature on the subject with which you are acquainted, can you express an opinion as to the nature of the experience that the accused underwent in isolation in terms of, shall we say, suffering? ---- If I may put here perhaps a rather tortuous argument, my own opinion is that it is extremely difficult to say of anybody how much they have suffered from a certain kind of experience. If a man has a broken leg or has had a wound in his skull, one can assert that he is suffering physical pain. In the case of his psychological state it is extremely difficult to assess directly how painful they may be. Now, two things lead me to believe that people who have suffered these kinds of experiences in isolation, have in fact suffered to what I myself as a human being, or I think anybody else would regard as a fairly extreme degree of suffering. The first thing is that the symptoms which the accused person ^{told} me that he experienced in gaol, are all symptoms which one might call 'defences' against unpleasant psychological states. The man is probably talking and singing to himself simply because he finds the silence intolerable, extremely intolerable. Normal people do not have any need to sing and talk to themselves. We only do this - if (10) (15) (20) (25) (30)

we look back in our own experience - when we are extremely lonely and do feel a certain disintegration within our own personality and we want to pull ourselves together.

BY THE COURT: Say that again please. You say you only sing or talk to yourself when you feel your personality disintegrating?

---- I would say that I think the normal person would only start singing and talking to himself in private (The Court intervenes). (6

But don't you have to separate the two things? ---- Singing and talking to himself? (10

Are they the same things? ---- I think I see what you are getting at but (The Court intervenes).

A woman baking a cake in the kitchen sings to herself; surely there is no disintegration of personality? ---- We all hum to ourselves; I can see this. (15

But what I suggest, with great respect, is that there might perhaps be a difference between singing to oneself and talking to oneself? ---- I will be prepared to agree with you on this. I would rather say it is the manner in which the singing is carried out. We never heard this man singing in gaol but I would suspect myself that he probably sang very loudly and talked rather loudly. He was not just humming a little tune. But if I may now point to the literature. There is literature which - if I may give a case here of a man who, after three months alone - this was a man called Bird (The Prosecutor intervenes). (20 (25

BY THE PROSECUTOR: I am sorry to interrupt but the Professor is reading from some notes and I am afraid I don't know what notes he is reading from. Perhaps if the Professor could indicate it might assist us? ---- These are notes I have taken from the literature which is extremely extensive literature on isolation. There are, I should say, about two (30

hundred individual references to this subject which I cannot carry in my head all the time. I am referring to notes which I have taken from this literature.

With the greatest respect, if the Professor is going to give evidence about that particular literature, then it should be produced here so that it can be inspected by myself or Your Worship, but I object to the Professor giving his evidence whilst reading from notes. I submit it is not the proper way to do it and not the proper way to give this type of evidence. (5 (10

BY MR. UNTERHALTER: I might try to clear it up. My learned friend is correct. Are the books available and particular passages to be shown to the Court if they are required? ---- Some of them are, some of them are not. These books are distributed in libraries all over the country. (15

Well, the ones from which you have made your notes that you wish to speak of, are they in Durban? ---- No, these notes have been made from books which have been obtained from various sources. It will be difficult for me to say which of these books are available off-hand, but some of them are available. I am afraid I can't say off-hand. (21

So you are not able then to say in regard to these which you are speaking to that you could (Witness intervenes) ---- I can give you the reference to the books, but I cannot produce the books necessarily. (25

If you were given the opportunity, would you be able (The Court intervenes).

BY THE COURT: Shouldn't we better first hear what the point is upon which the Professor wishes to dilate? He may be able to dilate upon the point from his own professional knowledge. (30

BY MR. UNTERHALTER: Could you follow that up please, from your own knowledge? ---- If I may just finish what I was saying

on/.....

on this particular point. I was going to say that other people who have been isolated have said that in order to get away from the silence and the isolation which they found intolerable, they had to undertake certain tasks. They would either sing to themselves, talk to themselves or do peculiar things, like repeat to themselves endlessly poetry that they knew, attempt to solve mathematical puzzles. I heard recently myself of a man who was detained in Natal, who spent his whole time watching and making friends with a cockroach in his cell. In other words, they undertake activities of this kind to relieve the isolation. (5) (10)

BY THE COURT: For something to do? ---- For something to do, because they find the isolation intolerable. Now with our own cases which we isolated who were normal, healthy adolescent university students who knew they were coming out of isolation, and I would suspect they looked upon it as giving them a little bit of prestige to be used for a psychological experiment, these students, the majority of them, found the situation very unpleasant. They said so, and they sang and talked to themselves in exactly the same way as the accused has reported he sang and talked to himself. We heard them doing this because we had communication with the room in which they were isolated whereby we could hear what they were doing, but they could not hear what we were doing. We could also watch them. We observed the majority of these people to walk up and down the room, to sing, to do rather peculiar - to carry out rather peculiar acts, behave in a rather odd way. I may say they knew they were being observed these people. They didn't carry out these behaviours in the belief that nobody was watching them. (15) (20) (25)

BY MR. UNTERHALTER: Now what do you say in regard to the reported hallucination? ---- This again is a thing that occurs in many studies and even in our eight hour isolation period

some/.....

some of our students did experience hallucinations. One man said that there was a severe storm outside and the rain seemed noisy, and another man heard and complained of the noise of the trains which were shunting up and down outside the building. There were no trains within about four miles and the day was a day rather like today. It was this time of the year that we did the experiments and there was no rain. (5)

And in regard to the insomnia and the nightmares? ---- I recollect but I can't say off-hand that this is a finding that appears quite frequently in isolation, but I can't say whether this is a usual one or whether this is unique to this particular individual. (10)

Depression? ---- Depression is a very frequently reported event. One man who was imprisoned in Russia in isolation, asserted that he tried to kill himself because he became so depressed. (15)

Is there anything else that you feel you can usefully add to what you've said in order to assist His Worship on this aspect of the experience that the accused has undergone? ---- I don't think so, except perhaps to summarise what I have said in a very brief manner, and that is that I will say that this particular person I interviewed this morning showed signs of experiences and behaviour which are consistent with those reported in the literature for people who have been isolated, and that, in my own opinion, speaking as a psychologist, some of these forms of behaviour and experience are definitely by virtue of their nature to be regarded as implying a state of suffering in the person concerned. They are, as I have put it, defences against an intolerable sense of isolation and personal disintegration. I am not prepared to go to the limit of course to put a number or a measurement on the degree of suffering. That is something I can't do. (20) (25) (30)

If/.....

If you were told that the isolation commenced on about the 22nd February of this year, and continued until the 10th June of this year, interrupted by periods of interrogation and certain periods when he was removed from one gaol to another and two occasions when he saw his wife - just on two occasions throughout the whole period - what view do you express of the period of isolation in regard to the suffering? ---- When I was interviewing him this morning, it became clear to me that the isolation certainly wasn't a continuous one; there was a point at which he had some books to read; he did have the Bible, and he appears to have had shorter or longer episodes of isolation broken by some degree of contact. Now in my own opinion the isolation coupled with the uncertainty as to what is going to happen to you next - whether you are going to be removed to another gaol, whether you are going to be allowed to see this person or not, whether you will be interviewed today or not - this rather complete lack of certainty about his environment together with episodes of isolation, I would say would be extremely destructive and intolerable, even more than a long and continuous period of isolation. What makes me say this, is that there is experimental evidence that complete and absolute isolation - this is what we call sensory deprivation, where a person virtually has no light shining upon him, he can hear nothing and can feel very little - he is suspended in a tank of water - that the effects of this kind of isolation are not so damaging as when there is something going on in his environment but is rather unpredictable as to what is going to happen next - that is what we call perceptual deprivation. This seems to be more damaging and this is what this particular man suffered. But again I must say, to measure quantitatively how much this particular person had suffered is beyond my capacity on the basis of a twenty minute

interview/.....

interview.

NO FURTHER QUESTIONS BY MR. UNTERHALTER.

CROSS-EXAMINED BY THE PROSECUTOR:

Can you positively say that the accused suffered any damage to his personality as a result of this isolation? ---- (5)
Do you mean as a long-term?

Yes? ---- Apart from the apparent obvious inconvenience attached to the matter, there is no - well, I would say he was more than inconvenienced at the time, considerably more than he was inconvenienced. If I were hallucinating in this way and talking and singing to myself and having insomnia and nightmares, I would regard myself as inconvenienced, but as for any long-term effect of the isolation there is no evidence, yes or no. You see, I don't know this person, I haven't interviewed him before, so I have made no equation this morning as to his present state. I was rather careful not to assess his present state. (15)

And apart from what he told you, you can't, with respect, say what his experiences were in isolation? ---- (Silence). (20)

Can you? ---- I would submit that the only possible way of establishing anybody's experiences at any time, is from what they tell you. I, as a psychologist, have no means of entering a man's head and discovering whether he is depressed or not. That would be impossible. The point I am trying to make is, that I don't think that in basing my conclusions upon what he told me, that I am doing anything exceptional or unusual. This is the only means I have of making (The Prosecutor intervenes). (25)

I am not for one moment suggesting that you are doing anything unusual at all, but the point I am trying to get at, is that the accused knows that he is being convicted of certain

offences/....

offences and he knows that what he tells you is going to be used as evidence in mitigation of whatever sentence might be passed upon him. Surely there would be a natural tendency to exaggerate? ---- I was very aware of this in interviewing the accused, and if I may say, one of our professional skills (5 is of course, or perhaps our major professional skill is that of interviewing and I was extremely careful to ask him - I can't say no leading questions because no matter how careful one is, one's gestures and manner of speech perhaps do lead people, but I did all that was in my power to not give (10 him any indication as to what I was looking for. I also asked him afterwards, but he might have been untruthful about this, but he gave me the impression that he was truthful, as to whether he was aware of the fact, as a medical man, that there was any literature on the subject of (15 isolation. The way I put it to him perhaps will make it clear. I did ask him, had he read anything about isolation, and he said yes, he had. He had read in the newspapers about people being isolated in coalmines, I think he said. Then I went on to say "But do you know anything about the (20 technical literature? Did you know there was technical literature?" He said no, he didn't, but he assumed that there was one because he had seen my name on the document which implied that there possibly was technical literature. I was satisfied at the end of my interview with the accused that he (25 did not know what I was looking for. You see, if I may say so, the existence of hallucination - this is perhaps the most dramatic effect of isolation - and unless a man is really very cunning, this is probably the first thing he would have said if he had read about hallucinations. I talked and talked to him, waiting for hallucination to come up, and it didn't come up until the very end when I said to him "Now, is there anything

else/.....

else that you can remember that happened? Did you see people in the room who weren't there" - I think this was my question, a question of this kind, and without a moment's pause, he said "Yes, I was lying on my bed and my child came up and tapped me on the shoulder." Now, he came out with it so quickly, the (5) circumstances were so detailed that I am convinced this was a genuine report. And then I said "Have you had any more?" and he said "I can't remember." I think if he was wanting to deceive me, he would have found some more. That is all.

BY THE COURT: Are you satisfied that he wasn't consciously (10) exaggerating or attempting to deceive you? ---- I am convinced of that because he even impressed upon me at one point of this discussion with me that he hadn't been ill-treated in any way. He said there were certain conditions in the gaol which he found unpleasant but I have a suspicion that he didn't quite (15) know what I was interviewing him for. Whether I wanted him to say that he'd been ill-treated or whether I wanted him to say the gaol was unpleasant. I believe in my own mind that he did not know what I was asking him about.

NO FURTHER QUESTIONS BY THE PROSECUTOR. (20)

NO RE-EXAMINATION BY MR. UNTERHALTER.

BY THE COURT: In reference to his saying, as you say, impressing upon you that he had not been ill-treated, did he volunteer that information or did you ask him about that? ---- I can't remember precisely how this came up. I didn't ask him that; (25) I am quite sure about that but it might have come from my perhaps pressing questions about "How did you feel? Did you feel anything unusual?" And the questions I was putting upon him were questions of this kind which had no reference to the content; I didn't want to say "Were you depressed?" and so (30) on, for the fear of leading him and I think he was puzzled and he wondered what I was looking for.

Now you've told us that you were convinced that he was telling you the truth, for instance, about this episode of hallucination. Were you as convinced that he was telling you the truth about not having been ill-treated while he was in captivity? ---- I was convinced about the truth. I have no doubts at all that he was telling me the truth as far as he knew. (5)

So that the actual or incipient disintegration to which you have deposed then would be related not to ill-treatment but to solitary confinement se ipse? ---- This is the whole point, that these changes that occur in people who are confined in solitary confinement, in what we call isolation, occur as a result of the isolation. (10)

Yes, but now the psychological concept of isolation varies, I take it, from the layman's concept of isolation? ---- If I may explain what our word means. Do you wish me just to name them or to describe them so that you can perhaps see how they coincide? (15)

Yes, well, it is a very vast field. I am very interested in anything that can assist the accused. But he did make it clear to you that whatever psychological trauma you might have found or suspected, was not due to ill-treatment; it was simply, as you put it, due to isolation? ---- Yes, but we mustn't get confused by words, (The Court intervenes). (20)

You found no sign of permanent damage then, is that why you are worried about being confused by words? ---- What I mean by being confused by words, he gave me no indication at all that he had been physically ill-treated. He did say that the gaol stank and things of this kind, and that the blankets were lousy. (25) (30)

And when he said 'lousy' did he mean in the? (Witness intervenes) ---- He meant lousy, but he gave me no

impression/.....

impression whatsoever that he had suffered any physical ill-treatment. The isolation itself is, by virtue of the fact that it produces such changes in people, I think to be defined as a form of ill-treatment.

And you say that as a psychologist? ---- I say that (5
as a psychologist; purely and simply as a psychologist.
Perhaps I may put it this way - if I wished, and I have one of
my major interests in isolation or its possible uses in
destroying the structure of an abnormal personality - a person
who is diseased and disordered - in order that one can begin (10
from the ground up to reconstruct his personality, this is one
of the sources of my interest. Now, this arises out of my
firm conviction that the best way of disintegrating a person is
to put him into the isolation situation, and this I regard as
a form of unpleasant treatment. (15

MR. UNTERHALTER APPLIES FOR AN ADJOURNMENT AND GIVES HIS REASONS
FOR HIS APPLICATION.

THE PROSECUTOR RAISES NO OBJECTION TO THE APPLICATION.

BY THE COURT: Mr. Unterhalter, the Prosecutor has pointed out (20
to me that in this judgment, on page 26, line 33, that name
there should not be Solomon Mbanjwa, it should be Selborne
Mapunja. I think it is probably due to the fact that I wrote
the initials of these people in my notes and not always their
names. It should be Selborne Mapunja. I wonder if we could (25
just correct it now?

MR. UNTERHALTER RAISES NO OBJECTION TO THE SUBSTITUTION OF THE
NAME SELBORNE MAPUNJA FOR SOLOMON MBANJWA IN THE RECORD.

BY THE COURT: Then on page 36, line 18, there is another name
that is wrong - the name Kunene should be Amos - "he denied (30
Amos' evidence".

MR. UNTERHALTER RAISES NO OBJECTION TO THE CORRECTION BEING
EFFECTED TO THE RECORD.

THE/.....

THE PROSECUTOR RAISES NO OBJECTION.

BY THE COURT: The corrections have then been made and I have initialled them both.

ACCUSED REMANDED TO 4.9.1964.

----- (5)
ON THE 4th SEPTEMBER, 1964, THE COURT RESUMES. APPEARANCES AS BEFORE.

ON RESUMPTION:

MR. UNTERHALTER ADDRESSES THE COURT IN MITIGATION OF SENTENCE.
THE PROSECUTOR REPLIES. (10)

MR. UNTERHALTER FURTHER ADDRESSES THE COURT.

S E N T E N C E .

BY THE COURT:

I have given the question of sentence much thought (15)
and I have had due regard to all that has been said on both
sides as well as to all the considerations which I believe
have a bearing in this matter. The accused is a medical man,
he is a first offender, he has been in custody for some time.
I have no reason to believe that he would have participated (20)
in or agreed to any violence, but the laws of the land must
be obeyed and severe penalties are provided for these offences.
Moreover, it is in the interests of the State and of all
concerned that the administration of justice should not be
interfered with in any way and one finds on Count 4 that the (25)
accused, a medical man from whom the highest standards of
behaviour are expected, participated in a deliberately con-
ceived unlawful enterprise to defeat and obstruct the course
of justice. I feel that the proper sentence here is as
follows: Count 1 - TWELVE (12) MONTHS' IMPRISONMENT. (30)

Count 2 - FIFTEEN (15) MONTHS' IMPRISONMENT.

The sentences on Counts 1 and 2 will run concurrently.

Count 3/.....

Count 3 was withdrawn before plea.

Count 4 - EIGHTEEN (18) MONTHS' IMPRISONMENT.

As I have already said, it is a serious offence to interfere or attempt to interfere with the due administration of justice.

(5)

Count 5 - SIX (6) MONTHS' IMPRISONMENT.

The sentences on Counts 4 and 5 will run concurrently.

BY THE COURT: I have already remarked that I am indebted to the Prosecution and the Defence for the manner in which they did their work and the help which they gave the Court at all times.

(10)

TRANSCRIBER'S CERTIFICATE.

We, the undersigned, hereby certify that the foregoing is a transcript of the original evidence mechanically recorded in the case of -

THE STATE VERSUS: PASCAL NGAKANE.

We certify the transcript to be correct.

E.M.A. Bond
.....

E.M.A. BOND.

S. Hulme-Jones
.....

S. HULME-JONES.

S.S. Strydom
.....

S.S. STRYDOM.

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