

organisation. You were herded together where mass psychology misled you and that you were misguided by your leaders, but it is obvious that you went out to seek training to return to this country to do damage to the security and the safety of the State. By applying and practising the knowledge you have gained there, and the military training you acquired there, it would be dynamite to the security and safety of the state, and the safety of the public in general, for that reason the crime that you have committed, merits a very severe sentence," and the 10 learned judge duly sentenced the accused to twenty years imprisonment. That of course, concerns a case where the recruits had actually been to train and had returned to the Republic, which, but for the timely intervention of the Police, may well have happened in the instant case.

There is one other case to which I must refer, that of the State vs. Dinake Malepe and 13 others heard in this division on the 12th July 1963. In that case it concerned a matter of sabotage, and my brother Hill in a comprehensive and lucid judgment, having found the accused 20 guilty, dealt with them individually, as I propose doing in the instant case, and it is significant that in respect of some of the accused in that case, who took very little, if no part, in the planning and or conducting of the scheme which was set afoot, he still took a very serious view.

In the case, for instance, of No. 8 accused, the learned judge said "That apart from your attending meetings, there is no evidence that you took an active part in organising the meetings, or in carrying out the 30 purpose of the meetings, but the crime is still serious enough to merit a sentence of 10 years imprisonment."

In the case of another accused, he found that "the evidence does show that you were somewhat reluctant in

carrying out the plan or attempting to do so". The sentence was also ten years imprisonment.

In the case of the 14th accused, the learned judge found the following: "You attended the meeting of the 7th April, and although there is evidence of one of the witnesses, that you at one time, collected subscriptions from, probably during 1962, there is no evidence that you took any leading part in the commission of the offence", and that accused was sentenced to 10 years imprisonment.

It is quite clear therefore, that this type of 10 offence which involves subversive activities, is an extremely serious offence.

In the light of those remarks, I propose dealing with the accused individually. I have taken into account what learned counsel said on their behalf in mitigation, and do not propose referring to that aspect in respect of each accused.

In respect of No. 1 Accused: on the evidence, he, at Bloemfontein, during the period 2nd May to 7th June 1963, was responsible for recruiting, inter alia Adam 20 Motsapi, Solomon Montwedi, Herbert Sitilo and Samuel Bapane He supplied them with train tickets, with a red beret, which had to be worn by Adam for identification purposes when they arrived in Germiston.

He told them what to do if they were not met at Germiston on the 8th of June. According to the evidence, at that stage, there was somebody who was referred to as the Reverend Mokoeana, and was also present. He is, however, not before me.

Although he told them that they were going to 30 a school in Bechuanaland for further education, and told them it was free education for an indefinite period, he must,

in the nature of things, have known that the true purpose was for training of some sort, even if not military training, outside the Republic with the ultimate object of furthering the aims of the banned organisation, the African National Congress. That conclusion is, indeed, in accordance with his plea of guilty.

He supplied the tickets, the information and the means of identification, which all indicate that he knew full well the need for secrecy. He also that the date that the recruits had to be in Johannesburg, was to be on a date prior to the leaving of this particular convoy which was intercepted. 10

He may not have known that the purpose was to compel the recruits to undergo military training willingly, but he must have known that the purpose was training of some type or other, which would further the aims of the African National Congress. This is also indicated by the fact that if he did not know, he would not have told the recruits not to tell even their parents of what was going on. It may well be that because of the difficulties experienced, in obtaining recruits for military training, he himself may not have been informed that the purpose was military, but he must have known full well that the purpose was illegal training of some sort, which was intended to further the objects of the African National Congress. 20

The fact that the entire project, on this occasion, that is on the night of 9th to the 10th of June 1963, ended in failure due to the timely intervention of the Police, does not render it less dangerous or potentially so. 30

No. 1 clearly must have known that he was sending recruits to receive training with the object that they should return to the Republic and do damage of some sort to the safety and security of the State. As indicated in the other judgments to which I have referred, in which the project also ended in failure, the fact that the project did end in failure, does not lessen the seriousness of the offence in any way.

Taking into account all the factors I have mentioned, and bearing in mind what counsel for the accused said in mitigation, I feel I would, nevertheless, be failing in my duty to the State and the security of all its subjects, irrespective of colour or creed, if I do not pass a sentence which is to serve, not only as punishment, but which, I hope, will serve as a deterrent to others, who may still be foolish enough to nurse similar dangerous ideas even if they are idle and foolish in the extreme. 10

I take into account the fact that it has not been proved that No. 1 took part in any other recruiting drive, bar the one alleged in the indictment and as set out in the further particulars in respect of the four recruits whom I have mentioned. Otherwise, in terms of the judgment of my brother Theron, in view of the fact that he was one of the recruiters, the sentence might well have been the ultimate. 20

I may mention that in respect of all the other accused, I shall also regard it as being one offence only, that is the one on the date alleged in the indictment and as set out in the further particulars, and not that they 30

took part in any other recruiting drives prior to the period alleged in the indictment.

Accused No. 1, therefore, who recruited at least these four people in Bloemfontein, in circumstances to which I have referred, will be sentenced to 12 (TWELVE YEARS) IMPRISONMENT.

In respect of Nos. 2, 3 & 4 - they were recruited in Cape Town and were arrested in the convoy on the 10th of June 1963.

X On their own plea of guilty, they were going to 10 be trained outside the Republic and obviously, having been trained in something or other, they were going to return to the Republic to further the objects of the African National Congress.

Although it has not been proved that they knew it was to be military training, the fact, nevertheless, remains that they must have known it was training of some sort, with the object of putting such training as they were to receive, to subversive use on their return to the Republic.

They gave no evidence on their own behalf, and 20 on their own plea, there is obviously no room for finding that they were completely deceived. They were willing potential trainees, they were willing to receive training to further the ends of those whose sole object it was to create chaos and confusion, so that they, the devisers of this scheme, could benefit thereby at the cost of all and sundry X

The fact that they were fortunately prevented from receiving such training, by the Police, is not something which counts in their favour, and it might well be 30

argued, as indeed, Mr. Oosthuizen on behalf of the State, did argue, that they should be treated on exactly the same basis as the persons who were found guilty in the case to which I have referred, and in which my brother Theron sentenced them to 20 years imprisonment.

The fact that they were effectively prevented from leaving the Republic to receive such training, is no fault of theirs, and there is, therefore, much merit in Mr. Oosthuizen's argument that they should be treated as if they had received the training. 10

X However, on all the evidence, I feel that I should distinguish between this case and the case to which I have referred. Not on the basis that they had not yet received their training, but on the basis that it cannot be said they were fully acquainted with the nature of the training they would receive. That may perhaps have come to them as a great shock subsequently. They, however, knew it was going to be training of some sort, designed to further the ends of the African National Congress. 15

So for instance, No. 2 Accused, according to 20 the evidence of David Singqomo, was at a training camp in the Cape, where they were instructed inter alia by a person called "Commandant Goldberg." However, I am not going to distinguish between No. 2. and the others, I shall deal with them, as if they were potential trainees to be trained in something or other with the object of furthering the aims of the African National Congress.

On that basis I am entitled to distinguish between their case and the case to which I have referred.

Nos. 6, 8, 9, 10 & 11, are recruits from 30 Durban, who were arrested in the same convoy as Nos. 2, 3 & 4, and exactly the same principles apply to them as

apply to Accused Nos. 2, 3 & 4, and there is nothing to distinguish, their cases from each other.

Accordingly the sentence in respect of Nos. 2, 3, 4, 6, 8, 9, 10 & 11 will be one of 10 (TEN YEARS) imprisonment.

In respect of No. 15 in a separate finding in regard to him, he was found guilty of conspiring to procure the undergoing of military training of approximately 50 recruits arrested in the convoy of the 9/10th of June 1963. That is, the undergoing of military training outside the Republic for the purpose of furthering the achievement of the objects of "Umkonto Weziswa" or the "Spear of the Nation." 10

He was the leader of the convoy, the organiser thereof, and what might well be termed the transport manager.

In terms of the judgment delivered previously, he knew what the evil objects of this training were. He was the willing tool of those self-seeking individuals who were behind the scheme. 20

He might very well be said to fall squarely within the ambit of the "leaders of the organisation" to whom my brother Theron referred in the case to which I have referred, and in respect of whom my brother Theron suggested that the death sentence might be appropriate.

However, as it has not been proved beyond a reasonable doubt, and I stress the words "beyond a reasonable doubt", that he took part in any other recruiting drive bar the one which failed on the 9/10th of June, I will not impose the sentence which was suggested in that case although he was, in fact, a recruiter who knew what the ultimate object was. 30

The Sentence in respect of No. 15 is 20 (TWENTY YEARS) IMPRISONMENT.

In regard to No. 16 - he recruited Ignatius Rangane, Jackson Dlamo, David Polson, Edward Tshabalala and Arnold Nkosi at Johannesburg. His case is exactly the same as that of No. 1 accused, and the same principles apply to him, and the sentence will be the same as that of No. 1 Accused.

In other words, it will be 12(TWELVE YEARS) imprisonment.

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No. 17 recruited John Dlamo and Johannes Motapi, that is in accordance with this own plea, and in accordance with the further particulars to the charge.

He was, therefore, guilty to a lesser degree, than Nos. 1 and 16, and although it may be possible that he recruited other people only two have been proved against him, and what I said in respect of No. 1 applies to him to a lesser degree, and he is therefore, entitled to a lesser sentence.

His sentence will accordingly be 10(TEN)YEARS IMPRISONMENT.

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No. 18 recruited Paulus and Christwell Medina(?) His house, in addition, was used as what I may term a "clearing station" for the recruits.

His case therefore, is slightly worse than that of No. 17, because of the use of his house, and what I said in regard to No. 1 applies, therefore, to a lesser degree to him, but in a slightly more serious degree than what was said in respect of No. 17, and his sentence will be one of 11(ELEVEN) YEARS IMPRISONMENT.

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No. 19 Accused who worked at the Rand Daily Mail and recruited Moses Motlala(?), who stated that he saw him giving the African National Congress salute on



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occasions, was proved to have recruited only one person and what I said in respect of No. 1, therefore, applies to him to a much lesser degree, and view of that fact that there is no evidence of any other recruiting by him, bar that of the one recruit, his sentence will be 5 (FIVE) YEARS IMPRISONMENT.

In regard to, No. 20 - he recruited Ignatius Rangan and what I said in regard to No. 1, applies to him to the same degree as it does to No. 19, that is, that he recruited only the one person proved against him and in respect of whom he pleaded guilty. 10

His sentence, therefore, will be the same as that of No. 19, namely 5 (FIVE) YEARS IMPRISONMENT.

It was submitted by Mr. Hare that in respect of Nos. 19 & 20 only one witness implicated each of them, and that their evidence, therefore, should be scrutinised carefully but on their own plea of guilty, and on the evidence of these two accomplices, if I may refer to them as such, it is clear that they recruited those two people, one each, in other words, full well knowing that the ultimate object was, after they had acquired training, that such training would be used to further the ends of the African National Congress. 20

The result, therefore, is that Nos. 1 & 16 each will undergo 12 (TWELVE) YEARS IMPRISONMENT, Nos. 2, 3, 4, 6, 8, 9, 10, 11 & 17 - 10 (TEN) YEARS IMPRISONMENT, NO. 15 - 20 (TWENTY) YEARS IMPRISONMENT, NO. 18 - 11 (ELEVEN) YEARS IMPRISONMENT and NOS. 19 & 20 - 5 (FIVE) YEARS IMPRISONMENT

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ON RESUMPTION ON THE 30TH DECEMBER, 1963:

MNR. OOSTHUIZEN deel die Hof mee dat al die beskuldigdes hulle vorige veroordelings erken, ingeslote Beskuldigde No. 16. Vorm van Phillips word aan die Hof oorhandig, indien die Hof daarna verwys.

S E N T E N C E.

STEYN, J:

The question of sentence is always one which occasions difficulty. In the instant case that difficulty is perhaps increased by reason of the fact that, according to learned counsel for the State, Mr. Oosthuizen, the matter is a res nova in the sense that there is no previous decision in this Court in which any person has been found guilty of a similar offence. The result is, that there can, therefore, be no guidance obtained from any prior case in these Courts, in regard to the principles applicable, in sentencing a person who has been found guilty of the offence charged.

It has, therefore, been my task to approach the matter on the basis of my having to formulate, as best I can, some principles in this regard.

Firstly, one section which is relevant, is Section 11 of Act No. 44 of 1950, AS AMENDED BY Section 8 of Act No. 15 of 1954, and section 10 of Act No. 76 of 1962, and Section 5 of Act 37 of 1963.

Section 5 (b) Ter of that Act, as amending Section 11 of the Principal Act, reads as follows (Quotes), and Section 5 (b) reads as follows (Quotes). In other words, the section to which I have referred, refers to persons who have actually undergone any training, being military or otherwise outside the Republic, and imposes an onus on any such person to show beyond a reasonable doubt, that he did not undergo any such training, for the purpose of using it, or causing it to be used in furthering

the achievement of any such object.

In addition, a person who is found guilty under this Section, is liable, inter alia, to the death penalty, and at the very best, to a penalty of not less than five years. In the instant case, it has been conceded by counsel for the State that the minimum penalty does not apply, because none of the accused are charged with the offence of having obtained such training, although it is no thanks to them that they did not do so. It was entirely due to the efficient and timely intervention of the Police, which is obviously something which cannot be taken in their favour. Had the police not interfered when they did, then no doubt, some of the accused would have been elsewhere undergoing training at the moment. It is no fault of their own that that did not happen. 10.

Section 19(2) of the Riotous Assemblies Act No. 17 of 1956, which is relevant in this present case, reads as follows (Quotes). That is the offence of which they have been found guilty namely of conspiring with others to aid or procure the commission of the offence to which I have referred, which is the securing of training of people resident inside the Republic outside the Republic, for the purpose of advancing, or intended to advance the objects of the African National Congress, a banned body. 20.

That is the offence to which all, but one of them, pleaded guilty.

It is perfectly clear that on their own plea, and indeed, as supported by the evidence, they knew that the object of securing the training of recruits, and indeed, the recruits themselves also knew that object, was that they were going to obtain training outside the Republic, for

the purpose of advancing the aims or objects of the African National Congress.

Those objects on the evidence, which they also must have known, were anything but peaceful objects. The only objects which they must have had in mind, were inter alia, the object of creating chaos and confusion, thereby to facilitate the unconstitutional over-throwing of law and order.

In some countries this would be regarded as being equal to High Treason, and indeed, in some countries 10.  
the appropriate penalty would, no doubt, be passed.

When they embarked upon the recruiting of recruits for the purpose of training outside the Republic they, and the recruits themselves when they embarked upon what they thought was going to be their training, must in accordance with their plea, have been well aware of the fact that that training was eventually intended to help in an unconstitutional manner to overthrow the Government, and even if on an overall assessment the entire plan may have been foolish in the extreme, it does not detract from 20.  
the fact that it was potentially dangerous.

I have found some guidance in one case in these Courts, namely the case of the State vs. H. Fazzi and 6 others, where my brother Theron dealt with the case of accused who had actually been found guilty of having obtained the training referred to in the Section. In passing sentence, the learned Judge said the following: "I have considered in your case whether the appropriate sentence should not be the death sentence. I have come to the conclusion that it would not. The reason that I 30.  
have come to that conclusion, is that the evidence clearly shows that you people were recruited by leaders of your

organisation. You were herded together where mass psychology misled you and that you were misguided by your leaders, but it is obvious that you went out to seek training to return to this country to do damage to the security and the safety of the State. By applying and practising the knowledge you have gained there, and the military training you acquired there, it would be dynamite to the security and safety of the state, and the safety of the public in general, for that reason the crime that you have committed, merits a very severe sentence," and the learned judge duly sentenced the accused to twenty years imprisonment. That of course, concerns a case where the recruits had actually been to train and had returned to the Republic, which, but for the timely intervention of the Police, may well have happened in the instant case. 10.

There is one other case to which I must refer, that of the State vs. Dinake Malepe and 13 others heard in this division on the 12th July, 1963. In that case it concerned a matter of sabotage, and my brother Hill in a comprehensive and lucid judgment, having found the accused guilty, dealt with them individually, as I propose doing in the instant case, and it is significant that in respect of some of the accused in that case, who took very little, if no part, in the planning and or conducting of the scheme which was set afoot, he still took a very serious view. 20.

In the case, for instance, of No. 8 accused, the learned judge said "That apart from your attending meetings, there is no evidence that you took an active part in organising the meetings, or in carrying out the purpose of the meetings, but the crime is still serious enough to merit a sentence of 10 years imprisonment." 30.

In the case of another accused, he found that "the evidence does show that you were somewhat reluctant in

carrying out the plan or attempting to do so". The sentence was also ten years imprisonment.

In the case of the 14th accused, the learned judge found the following: "You attended the meeting of the 7th April, and although there is evidence of one of the witnesses, that you at one time, collected subscriptions from, probably during 1962, there is no evidence that you took any leading part in the commission of the offence", and that accused was sentenced to 10 years imprisonment.

It is quite clear therefore, that this type of offence which involves subservise activities, is an extremely serious offence. 10.

In the light of those remarks, I propose dealing with the accused individually. I have taken into account what learned counsel said on their behalf in mitigation, and do not propose referring to that aspect in respect of each accused.

In respect of No. 1 Accused: on the evidence, he, at Bloemfontein, during the period 2nd May to 7th June 1963, was responsible for recruiting, inter alia, Adam Motsapi, Solomon Montwedi, Herbert Sitilo and Samuel Bapane. He supplied them with train tickets, with a red beret, which had to be worn by Adam for identification purposes when they arrived in Germiston. 20.

He told them what to do if they were not met at Germiston on the 8th of June. According to the evidence, at that stage, there was somebody who was referred to as the Reverend Mokoeana, and was also present. He is, however, not before me.

Although he told them that they were going to a school in Bechuanaland for further education, and told them it was free education for an indefinite period, he must 30.

in the nature of things, have known that the true purpose was for training of some sort, even if not military training, outside the Republic with the ultimate object of furthering the aims of the banned organisation, the African National Congress. That conclusion is, indeed, in accordance with his plea of guilty.

He supplied the tickets, the information and the means of identification, which all indicate that he knew full well the need for secrecy. He also <sup>knew</sup> that the date that the recruits had to be in Johannesburg, was to be on a date prior to the leaving of this particular convoy which was intercepted. 10.

He may not have known that the purpose was to compel the recruits to undergo military training willingly, but he must have known that the purpose was training of some type or other, which would further the aims of the African National Congress. This is also indicated by the fact that if he did not know, he would not have told the recruits not to tell even their parents of what was going on. It may well be that because of the difficulties experienced in obtaining recruits for military training, he himself may not have been informed that the purpose was military, but he must have known full well that the purpose was illegal training of some sort, which was intended to further the objects of the African National Congress. 20.

The fact that the entire project, on this occasion, that is on the night of 9th to the 10th of June 1963, ended in failure due to the timely intervention of the Police, does not render it less dangerous or potentially so. 30.

No. 1 clearly must have known that he was sending recruits to receive training with the object that they should return to the Republic and do damage of some sort to the safety and security of the State. As indicated in the other judgments to which I have referred, in which the project also ended in failure, the fact that the project did end in failure, does not lessen the seriousness of the offence in any way.

Taking into account all the factors I have mentioned, and bearing in mind what counsel for the accused said in mitigation, I feel I would, nevertheless, be failing in my duty to the State and the security of all its subjects, irrespective of colour or creed, if I do not pass a sentence which is to serve, not only as punishment, but which, I hope, will serve as a deterrent to others, who may still be foolish enough to nurse similar dangerous ideas even if they are idle and foolish in the extreme.

I take into account the fact that it has not been proved that No. 1 took part in any other recruiting drive, bar the one alleged in the indictment and as set out in the further particulars in respect of the four recruits whom I have mentioned. Otherwise, in terms of the judgment of my brother Theron, in view of the fact that he was one of the recruiters, the sentence might well have been the ultimate.

I may mention that in respect of all the other accused, I shall also regard it as being one offence only, that is the one on the date alleged in the indictment and as set out in the further particulars, and not that they

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took part in any other recruiting drives prior to the period alleged in the indictment.

Accused No. 1, therefore, who recruited at least these four people in Bloemfontein, in circumstances to which I have referred, will be sentenced to 12 (TWELVE) YEARS) IMPRISONMENT.

In respect of Nos. 2, 3 & 4 - they were recruited in Cape Town and were arrested in the convoy on the 10th of June 1963.

On their own plea of guilty, they were going to be trained outside the Republic and obviously, having been trained in something or other, they were going to return to the Republic to further the objects of the African National Congress. 10.

Although it has not been proved that they knew it was to be military training, the fact, nevertheless, remains that they must have known it was training of some sort, with the object of putting such training as they were to receive, to subversive use on their return to the Republic.

They gave no evidence on their own behalf, and on their own plea, there is obviously no room for finding that they were completely deceived. They were willing potential trainees, they were willing to receive training to further the ends of those whose sole object it was to create chaos and confusion, so that they, the devisers of this scheme, could benefit thereby at the cost of all and sundry. 20.

The fact that they were fortunately prevented from receiving such training, by the Police, is not something which counts in their favour, and it might well be 30.

argued, as indeed, Mr. Oosthuizen on behalf of the State, did argue, that they should be treated on exactly the same basis as the persons who were found guilty in the case to which I have referred, and in which my brother Theron sentenced them to 20 years imprisonment.

The fact that they were effectively prevented from leaving the Republic to receive such training, is no fault of theirs, and there is, therefore, much merit in Mr. Oosthuizen's argument that they should be treated as if they had received the training. 10.

However, on all the evidence, I feel that I should distinguish between this case and the case to which I have referred. Not on the basis that they had not yet received their training, but on the basis that it cannot be said they were fully acquainted with the nature of the training they would receive. That may perhaps have come to them as a great shock subsequently. They, however, knew it was going to be training of some sort, designed to further the end of the African National Congress.

So for instance, No. 2 Accused, according to 20. the evidence of David Singgomo, was at a training camp in the Cape, where they were instructed inter alia by a person called "Commandant Goldberg". However, I am not going to distinguish between No. 2 and the others. I shall deal with them, as if they were potential trainees to be trained in something or other with the object of furthering the aims of the African National Congress.

On that basis I am entitled to distinguish between their case and the case to which I have referred.

Nos. 6, 8, 9, 10 & 11, are recruits from 30. Durban, who were arrested in the same convoy as Nos. 2, 3 & 4, and exactly the same principles apply to them as

apply to Accused Nos. 2, 3 & 4, and there is nothing to distinguish, their cases from each other.

Accordingly the sentence in respect of Nos. 2, 3, 4, 6, 8, 9, 10 & 11 will be one of 10 (TEN) YEARS imprisonment.

In respect of No. 15 in a separate finding in regard to him, he was found guilty of conspiring to procure the undergoing of military training of approximately 50 recruits arrested in the convoy of the 9/10th of June 1963. That is, the undergoing of military training outside the Republic for the purpose of furthering the achievement of the objects of "Umkonto We Sizwe" or the "Spear of the Nation". 10.

He was the leader of the convoy, the organiser thereof, and what might well be termed the transport manager.

In terms of the judgment delivered previously, he knew what the evil objects of this training were. He was the willing tool of those self-seeking individuals who were behind the scheme. 20.

He might very well be said to fall squarely within the ambit of the "leaders of the organisation" to whom my brother Theron referred in the case to which I have referred, and in respect of whom my brother Theron suggested that the death sentence might be appropriate.

However, as it has not been proved beyond a reasonable doubt, and I stress the words "beyond a reasonable doubt", that he took part in any other recruiting drive bar the one which failed on the 9/10th of June, I will not impose the sentence which was suggested in that case although he was, in fact, a recruiter who knew what the ultimate object was. 30.

The Sentence in respect of No. 15 is 20 (TWENTY) YEARS) IMPRISONMENT.

In regard to No. 16 - he recruited Ignatius Rangane, Jackson Dlomo, David Polson, Edward Tshabalala and Arnold Nkosi at Johannesburg. His case is exactly the same as that of No. 1 accused, and the same principles apply to him, and the sentence will be the same as that of No. 1 Accused.

In other words, it will be 12 (TWELVE) YEARS imprisonment.

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No. 17 recruited John Dlamo and Johannes Motapi, that is in accordance with this own plea, and in accordance with the further particulars to the charge.

He was, therefore, guilty to a lesser degree, than Nos. 1 and 16, and although it may be possible that he recruited other people only two have been proved against him, and what I said in respect of No. 1 applies to him to a lesser degree, and he is therefore, entitled to a lesser sentence.

His sentence will accordingly be 10 (TEN) YEARS IMPRISONMENT.

No. 18 recruited Paulus and Christwell Medina (?). His House, in addition, was used as what I may term a "clearing station" for the recruits.

His case, therefore, is slightly worse than that of No. 17, because of the use of his house, and what I said in regard to No. 1 applies, therefore, to a lesser degree to him, but in a slightly more serious degree than what was said in respect of No. 17, and his sentence will be one of 11 (ELEVEN) YEARS IMPRISONMENT.

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No. 19 Accused who worked at the Rand Daily Mail and recruited Moses Motlala(?), who stated that he saw him giving the African National Congress salute on

occasions, was proved to have recruited only one person and what I said in respect of No. 1, therefore, applies to him to a much lesser degree, and in view of that fact that there is no evidence of any other recruiting by him, bar that of the one recruit, his sentence will be 5 (FIVE) YEARS IMPRISONMENT.

In regard to No. 20 - he recruited Ignatius Rangane and what I said in regard to No. 1, applies to him to the same degree as it does to No. 19, that is, that he recruited only the one person proved against him and in respect 10. of whom he pleaded guilty.

His sentence, therefore, will be the same as that of No. 19, namely 5 (FIVE) YEARS IMPRISONMENT.

It was submitted by Mr. Hare that in respect of Nos. 19 & 20 only one witness implicated each of them, and that their evidence, therefore, should be scrutinised carefully but on their own plea of guilty, and on the evidence of these two accomplices, if I may refer to them as such, it is clear that they recruited those two people, one each, in other words, full well knowing that the 20. ultimate object was, after they had acquired training, that such training would be used to further the ends of the African National Congress.

The result, therefore, is that Nos. 1 and 16, each will undergo 12 (TWELVE) YEARS IMPRISONMENT, Nos. 2, 3, 4, 6, 8, 9, 10, 11 & 17 - 10 (TEN) YEARS IMPRISONMENT, No. 15 - 20 (TWENTY) YEARS IMPRISONMENT, No. 18 - 11 (ELEVEN) YEARS IMPRISONMENT and Nos. 19 & 20 - 5 (FIVE) YEARS IMPRISONMENT.

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SOLOMON MBANJWA

THE STATE v. FAZZI & OTHERS

EVIDENCE IN CHIEF

1. He joined the ANC in 1956 and became secretary of his branch. In 1960 the ANC was banned. He revived his membership in 1962 and remained active until his arrest. pp. 163 - 164A.

2. After the ANC was banned it changed its policy to violence. Another organisation, which was part of the ANC, decided on violence. This was MK. He then describes the organisation of High Command etc. in MK. pp. 164A- 165.

3. The plan of MK was to use sabotage and eventually arms to fight the Government. He became a recruiting officer of MK. pp. 165 - 166.

CROSS-EXAMINATION BY THE ACCUSED

4. Before the banning of the ANC its policy was non-violent. He was told about change of policy when he joined MK. This was done by Ronnie Kasrils. He did not know why the policy changed, and did not ask any questions. He was willing to accept the change in policy. pp. 166 - 168.

5. The ANC was an organisation for Africans only. The MK was open to all races. After it was banished there

remained / ...

remained a black man's organisation,  
but not the new military wing. p. 169.

6. None of the people recruited by him  
ever asked how MK was going to fight.  
They simply went when they were asked to  
go. p.170.

7. His object in joining the ANC was to  
protest against laws he did not like and  
thought were no good, and to fight for  
"our freedom". p. 171.

8. He revived his membership in the  
ANC by becoming a member of MK. He then  
became a member of the Provincial Head  
Committee of the banished ANC. p. 172.

9. When you join MK you do not take an  
oath or sign any document - it is all  
done verbally. There are no subscrip-  
tions. p. 172.

10. The difference between the old ANC  
and the new organisation is that the ANC  
was black people only, and the military  
wing was all races. p. 172.

SOLOMON MBANJWA.

DURBAN: EVIDENCE IN CHIEF.

1. M.K. is an organisation which is fighting the Government by way of bloodshed. He joined M.K. during second half of 1962. Started as a platoon leader and at the end became a recruiting officer for military training. At first, his contact on the Regional Command was Bruno Motolo, then Ronnie Kasrils, and then he became a member of the Regional Command himself. P.63-64
2. Bruno Motolo instructed him in the art of sabotage. He in turn passed on the instruction to his section, which was the Hammersdale Section. P.72-73
3. He reported the results of the training to Ronnie Kasrils, who gave him instructions to cut signal wires. PP.73, 80
4. On a Sunday in October (date not remembered) his section decided to cut signal wires at Georgedale and Hammersdale. Nkosi and Mdhlalose were to cut the wires at Georgedale. Mbanjwa was to cut the wires at Hammersdale. Mbanjwa did nothing because the weather was damp, but he received a report that the other two had carried out the job at Georgedale. P. 83
5. Towards the end of October 1962, Bruno Motolo met him at Lakhani Chambers, and



asked him to accompany him to a target (which turned out to be the pylon at New Germany).

P. 83-84

6. The next day he went with Bruno Motolo and Ronnie Kasrils to the house of George Naicker, where they found George Naicker and Billy Nair. They all went into the garage where he was shown sticks that he was told was dynamite, and other equipment such as rubber gloves, etc.

P. 84-94

7. On the next day he and Duma went, on instructions from Bruno Motolo, to the New Germany pylon. When they were near the pylon Bruno and Ronnie arrived in a black car. Bruno got out with a kitbag and a parcel. There follows a full description of how the charges were prepared, etc. (The explosion was timed for 9 p.m., which was to coincide with jobs by Ronnie at Pine-town and Billy at Montclair.)

P. 94-103.

8. After they had prepared the charges they ran away. On the way Bafana Duma disappeared, but Bruno Motolo and Mbanjwa kept together. They waited at the bus terminus until they heard an explosion and then caught the next bus to town.

P. 103

9. The next day Bruno and Mbanjwa bought a paper. There was nothing reported about their pylon, but were reports of other pylons.

/ They

- They then decided to go to the scene. They went there, saw that the pylon was damaged, and went to work. P. 105
10. Bruno taught Mbanjwa how to make various types of bombs on two occasions, and Ronnie gave him a book on Guerilla Warfare. P. 107-108
11. During November 1962 he and Bruno did a job on the railway line between Ntshongweni and Cliffdale Stations. The attack was on the posts which carried the power lines. P. 108-111
12. During December 1962 the Hammersdale section, under Mbanjwa, attacked a pylon on the line between Cliffdale and Hammersdale. The pylons carried a cross member which spans the railway line. While they were preparing the charges at the scene they were observed by an African. Nothing happened, and they completed the charges which went off just after a passenger train from Cliffdale to Hammersdale had passed the scene. P. 111-118
13. Kasrils informed Mbanjwa that Kisten had blasted an electric standard at the Umlazi bridge. This was subsequently confirmed by Kisten himself. P. 118-119
14. During the first two weeks of December 1962, Kasrils informed Mbanjwa that Ebrahim Ismail had done a job at Kajee's office. Ismail admitted this. P. 120-121

15. During March/April 1963 Mbanjwa was informed by Kasrils that he had been appointed to the Regional Command. P. 121-122.

16. Mbanjwa attended his first meeting of the Regional Command at the end of April. The meeting was held in the van, which was driven to a place near the Reservoir Hills. At this stage the Regional Command consisted of Curnick Ndlovu (Commander), Billy Nair (Secretary) Bruno Motolo (Technical Committee Commander), Ronnie Kasrils (in charge of Platoons) and Mbanjwa, who was to be the recruiting officer for military training. At this meeting the main topics of discussion were:

- (i) A decision not to continue sabotage because of the 90 day law.
- (ii) The £55 per month which was to be sent by the N.H.C., but had never been received.
- (iii) A motor car which had been promised by the N.H.C., but which had not been received.

P. 121-125

17. The next meeting was held in the van at a place near Howard College, approximately one week later. The same people attended. The discussion dealt with a request for 6 recruits by the N.H.C. This was Mbanjwa's job, but it was decided that

/ the

the members of the Regional Command would assist him to find 4 people, and that he would look for 2 people in Maritzburg. The recruits were to travel to Germiston where they were to be identified by means of an umbrella which was to be opened and closed continuously. At this meeting Ronnie suggested that Kisten was unreliable and should be replaced - this was left to Billy Nair to deal with. It was also decided that members of the Regional Command should go into hiding, and should not be seen together - this was because of fear of 90 day arrests. P. 125-126

18. The next meeting was a week later - in the van - the same people being present. There were complaints about lack of finance. Billy Nair said he was not receiving replies to his letters. Ronnie Kasrils complained about R150.00 which he had lent to the N.H.C. for recruits in February, and which had not yet been repaid. The meeting was at the same place as the previous week. P. 127

19. The next meeting was a week later. The same people were present. The meeting was in the van at a point near Howard College, but not the same place as previously. Kasrils reported that one of the groups had attacked a passenger train on the North Coast line with petrol bombs. The incident was not *discussed by the meeting despite the fact* that a decision had been taken some weeks

previously to suspend sabotage. (Several questions were asked by Milne J.P. about this, and no explanation was given.) There was discussion about obtaining more recruits for M.K. It was also decided that the Hammersdale Section should look for goods trains which could be attacked with petrol bombs.

P. 127-130

20. The meeting due for the next week was not held because the van was out of order. The Hammersdale Section kept goods trains under observation to find out the time when they usually ran.

P. 131

21. The next meeting was held without prior arrangement. All but Curnick were present. Ronnie said that the Kwa Mashu section wanted to destroy a signal box, and wanted the Regional Command to give its approval to the project. Approval was given. Bruno said that the N.H.C. wanted the Regional Command to employ seven persons in Natal on a full time basis. The meeting decided that this could not be done until money was available. P. 132

22. Solomon Mbanjwa as recruiting officer assisted in sending away four groups of recruits. Ronnie provided the money for the first group which went away in February; Curnick provided the money for the second and third groups, and Billy for the fourth group. The first group went with Solomon

to Johannesburg; the second and third groups went alone to Germiston. The fourth group was supposed to get off at Germiston and went with Bruno. On the second occasion there were five recruits; on the third occasion eight recruits; on the fourth occasion ten recruits who left in two batches - the first group of 6 on the early train and the second group of four on the later train. P. 133-134

23. Solomon Mbanjwa, when he recruited persons to M.K. informed them that it was the military wing of the A.N.C., which worked underground, and that they must preserve secrecy. P. 135

CROSS-EXAMINATION.

24. Mbanjwa joined M.K. in second half of 1962 and heard of sabotage attempts about two months before that. He did not know of sabotage on 16 December 1961. P. 142-143
25. He did not know that sabotage was aimed against the Government until he joined M.K. He was, however, an active Trade Unionist and a regular reader of New Age. He took an active and keen interest in politics. P. 143-146
26. He got to know Bruno as a trade unionist, and they had several discussions on Trade Unionism - i.e. the need to form strong unions to protect the workers. P. 146-147

27. He addressed political meetings in 1960 and belonged to the A.N.C. before it was banned, but not afterwards. He was secretary of his branch in Sometseu Road Location before the banning, and helped recruit members for the A.N.C. P. 148-149
28. Mbanjwa was recruited for M.K. by Bruno Motolo, who told him that Ronnie Kasrils would inform him in detail of the objects of the Association. He joined before he heard what the objects of the Association were, though he had read about M.K. in New Age during 1961 whilst he was in Port Elizabeth. P. 150-151
29. He did not know anything about the organisation and at that stage was not sworn to secrecy. A week after the meeting with Bruno, Ronnie came to Lakhani Chambers and explained the objects of the association to him. He was told that the organisation aimed at committing acts of violence to get freedom and to overthrow the Government if the necessary strength could be obtained. He talked about violence not bloodshed. As far as M.K. was concerned, however, there is no difference between violence and bloodshed because in blowing up buildings people could be killed. P. 153-156.
30. He became a platoon leader towards the end of September 1962, and obtained his instruction from Bruno. His first act of sabotage was the New Germany pylon. P. 156-158

31. He made a statement to the police, but did not see it again after he had made it. He has not been questioned on his statement and saw the members of the prosecution for the first time in Court. He has never spoken to the members of the prosecution, and never discussed his statement with the police. P. 167-168
32. All his evidence is based on memory and he has no notes to assist him. P. 168
33. His evidence is given in detail as to words used, colour of torches, etc. He also said that purpose of visit to garage at Naicker's house was not disclosed to him. P. 168-180
34. He attended five meetings of the Regional Command and has mentioned everything that he can remember about those meetings. P. 200
35. The train which was attacked with a petrol bomb was not described as a passenger train or a goods train. There was no discussion on the incident and no censuring of the group which had undertaken the job. P. 202-203
36. He remembers something being said about life not being endangered but this was not discussed at any of the meetings. The attacks on the pylons were not done with the intention of destroying the train, but with the intention of destroying the pylon which carries the wires that drive the train. P. 206-207



37. He was arrested as a 90 detainee on the 26th June. He was arrested on a bus, without a struggle, and was removed to Pretoria on the 27th June. He came back to Durban on the 15th July, and went back to Pretoria on the 18th September, then came back to Durban on the 30th October where he has been ever since.

P. 208

38. He was not questioned in Durban on the day of his arrest, other than to be asked where his wife lived and where he had been in hiding. At Pretoria he was questioned extensively. He was in solitary confinement and his only food was coffee, bread, porridge and putu. He was allowed out of his cell once a day for 15-20 minutes (in Pretoria). The detention was hard because of the loneliness and the inactivity. He was not allowed reading matter and was not given a bible. He received no visitors, but was seen once a week by a visiting Magistrate.

P. 208-212

39. He was questioned by Police on M.K. From the questioning some of the police seemed to know about the organisation, others not. He decided to tell the police about the organisation in August, towards the end of the month. Until then he denied everything the police asked.

P. 212.

40. The Police questioned him about MK and ANC, but he is unable to give any indication of any of the questions that were put to him. His explanation for this is that he was in solitary confinement for a long time, and "any person would realise what it is like to be in solitary confinement for a long time". He can't remember all the questions because "I was asked so many questions that eventually I got confused".

pp. 212 - 214.

41. At first he denied all knowledge of the organisations. This was because he did not want to betray his friends, and because he wanted to protect the organisations. His heart and soul was in the organisations and at the time he wanted to change the government. He had an affection for the leaders and members of MK. Despite this he ultimately confessed - "it just came to me and I decided to tell them". He is unable to explain the reason for his change in attitude. It was not because he could not bear the 90 day detention - in fact he was kept in solitary confinement up to the day on which he gave evidence. At all times food was supplied to him from home.

pp. 215 - 218.

42. He cannot say what his political attitude would be if he were released,

or / ...

or whether it has changed in any way since making the statement. He has not thought whether it was correct for him to join MK. p. 218.

43. He has made only one written statement and made no statements before he told the truth. p. 219.

44. He does not know the names of the people who questioned him, but he was not treated badly by them. p. 220.

45. He made a statement without thinking whether he would be used as a State witness. He knew that he was liable to heavy penalties and that as a prominent member he could even get the death sentence. He did not ask for any concessions when he made a statement and did not expect to be used as a witness. The decision to make a statement was his own - the police did not tell him what they knew about him. pp. 220 - 221.

46. When he was in Pretoria he had only one shoe. He lost the other shoe whilst running away from the police. He ran away after he had got off the bus where he had been arrested. There was no struggle with the police. pp. 222 - 223.

47. He is a friend of Bruno Motolo's. They drank together on occasions but never went out together to beer drinks. p. 223.

48. He does not know why he is still in custody and has not been told that he will be released after giving evidence. p. 223.
49. He first started to assist with recruiting in February 1963. At that stage he assisted Bruno Mtolo, but was not himself a recruiting officer. p. 228.
50. It took about two weeks to complete the statement which was the only one he made. He was not questioned at all when the statement was made. The statement was taken by one policeman, bit by bit - he did not come every day during the two weeks, and when he came it was for a short time each day. p. 272.
51. When he was taken to Pretoria after his arrest he was identified by the recruits whom he had sent away. p. 273.
52. He had no contacts in Germiston or Johannesburg. On the occasion that he accompanied the recruits he handed them over to Joe Modise. p. 274.
53. He was not asked to be a State witness, but was told towards the beginning of November that he would be called as a State witness. He was not told that if he gave evidence for the State he would not be prosecuted. He

was not taken before a Magistrate to  
make a statement. He was not taken  
through his statement again and never  
saw the statement after he had made it. p. 277.

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