State vs Roxa

OP 5.3.1965.

U I T S P R A A K.

DEUR DIE HOF.

Die beskuldigde is aangekla weens vier oortredings ingevolge die Wet op die Onderdrukking van Kommunisme Nr.44 van 1950, soos gewysig, en soos gelees met verskeie Proklamasies en met ander Wetsbepalings.

Die eerste aanklag is ingevolge artikel 3(1)(a)(i) van die Wet ten effekte dat hulle gedurende die tydperk 8 April 1960 tot 1 Desember 1964, te Port Elizabeth wederregtelik en onwettiglik lede geword of gebly het of ampsdraers was van die onwettige organisasie bekend as die African National Congress of die Umkonto-we-Sizwe.

Die tweede aanklag, ingevolge Artikel 3(1)(a)(iii) van die Wet, is dat gedurende dieselfde tydperk het hulle wederregtelik en onwettiglik bygedra, of bydraes gevra het wat gebruik sou word direk of indirek tot die voordeel van die A.N.C. wat n onwettige organisasie is.

Die derde aanklag is ingebring ingevolge artikel 3(1)(a)(iv) van dieselfde Wet, dat gedurende dieselfde tydperk hulle wederregtelik en onwettiglik deelgeneem het aan die aktiwiteite van die onwettige organisasie, of handelinge uitgevoer het in die direkte of indirekte voordeel van daardie organisasie.

Daar is n alternatiewe aanklag tot aanklag die. Ek ag dit nie nodig om dit uiteen te sit nie.

Die vierde aanklag is ingevolge artikel 11 (1) gelees met 11 (2) en 3(1)(a)(iv) van die Wet, en dit is dat gedurende dieselfde tydperk die beskuldigdes, een en almal van hulle, toegelaat het wederregtelik en onwettiglik dat n huis of huise van hulle gebruik word in verband met die oortredings wat in artikel 3(1)(a)(iv) van die Wet uiteengesit is, naamlik dat hulle willens en wetens lede van die A.N.C. n onwettige organisasie, toegelaat het om n aktiwiteit voort te sit in die direkte of indirekte belang van daardie organisasie deur

in hulle huise vergaderings te laat hou.

Die beskuldigdes het op al hierdie aanklagtes onskuldig gepleit en daar is n magdom van getuienis teen en vir hulle saak gelei.

Die beskuldigdes is aanvanklik deur adv. Chernin in opdrag van mnre. Hayman en Arenson van Johannesburg verteenwoordig en op n latere stadium deur Adv. Hannon.

Die hof ag dit in hierdie saak nie nodig om n volledige opsomming, om enigsins n lang opsomming te gee van die rekord wat sowat 640 bladsye beslaan nie. Ek vind dit vir die doeleindes van hierdie uitspraak voldoende om te verwys in hoofsaak na die getuienis van drie, moontlik selfs net twee persone by wie se getuienis hierdie saak moet staan of val. Verder ag hierdie hof dit nie nodig om n lang betoog te lewer aangaande die wyse waarop die getuienis benader moet word nie.

Die gewysde sake in die Hooggeregshof, wat die leiding verskaf waarkragtens hierdie hof die getuienis moet benader van getuies soos wat in hierdie saak getuienis gelewer het, is uiteengesit in n lang reeks sake. Ek ag dit selfs nie nodig om daardie sake aan te haal nie, maar met die hoogste respek wil ek egter dit noem, dat ek in my eie sienswyse nie beter kan doen nie - ten behoewe van die persone wat hierdie saak ondersoek het, die persoon wat die saak in die hof gevoer het namens die Staat en die persoon wat die saak namens die beskuldigdes verdedig het - as om aan te haal uit die uitspraak van die Belese Regter Munnik in die saak van Staat teen Zitha en Ander gerapporteer in 1965 (1) S.A. 166 op bladsy 167 (E):

> "It is necessary to set out the details of the charges on which the accused were convicted. Countl alleged that the accused were guilty of the offence of contravening section 3(1)(a)(i) read with section 11 of Act 44 of 1950, as amended,and further read with sections 1 and 2 of Act 34 of 1960, as amended,Proclamation 119 of 1960 83 of 1961, 67 of 1962, 31 of 1963 and 91 of

1963 in that during the periods 8th April,1960, to the 30th April,1963, and at or near King Williams Town in the district of King Williams Town ..they did wrongfully and unlawfully become or continue to be office bearers, officers or members of an unlawful organisation, to wit, Pan Africanist Congress, also known as Poqo".

Count 2 alleged that the accused had contravened: Section 3(1)(a)(iv) read with Section 11 of Act 44 of 1950, as amended, and further read with sections 1 and 2 of Act 34 of 1960, as amended, Procs. 119 of 1960, 83 of 1961, 67 of 1962, 31 of 1963, and 91 of 1963 in that during the periods 8th April, 1960, to the 30th April, 1963, and at or near King Williams Town in the district of King Williams Town .. they did wrongfully and unlawfully take part in the activities of an unlawful organisation, to wit, the Pan Africanist Congress, also known as Poqo, or carry on in the direct or indirect interest of the said unlawful organisation activities in which it was or could have been engaged at the date when it was declared unlawful, namely, the 8th April, 1960.

Particulars were asked in respect of those of the accused who were represented by counsel in the court a quo and were furnished by the Prosecutor. It is clear from his reply that he intended the particulars to apply to all the accused. It is not necessary to set these particulars out in detail. It is sufficient to say that they indicated that the State (a) intended to rely on the presumptions created by section 12 (1) of Act 44 of 1950; (b) alleged that the accused attended meetings of the Pan Africanist Congress during 1962 and up to April, 1963, at various places specified in the particulars; and (c) alleged that the accused publicly advocated, advised, defended

or encouraged the promotion of the purpose of the Pan Africanist Congress.

Furthermore it was alleged that accused nos.1, 12 and 13 addressed meetings in Zwelitsha location.

The presumption created by section 12(1) of Act 44 of 1950, and referred to in the further particulars, is to the following effect: If in any prosecution under this Act or in any civil proceedings arising from the application of the provisions of this Act, in which it is alleged that any person is or was a member of active supporter of any organisation, it is proved that he attended any meeting of that organisation or has advocated, advised, defended or encouraged the promotion of its purposes, or has distributed or assisted in the distribution of, or caused to be distributed any periodical or other publiction or document issued by or on behalf or at the instance of that organisation he shall be presumed, until the contrary has been proved, to be or to have been a member or active supporter as the case may be of that organisation.
It is clear, therefore, from the charge sheet, as amplified by the further particulars furnished by the State that, in so far as count 1 was concerned, the case which the accused had to meet was that they had attended meetings of the banned Pan Africanist Congress and therefore by virtue of the presumption created by section 12(1) were members of the organisation.

All the witnesses called to prove the attendance of the accused at meetings were themselves members of Poqo, and therefore liable to be charged with offences similar to those on which the present accused were arraigned, at least in so far as count 1 is concerned.

It is clear from the judgment in the case of S. vs. Xoswa and others, 1964 (2) P.H. H.155 that these witnesses were neither accomplices nor accessories after the fact. In so far as it is suggested in some of the cases that persons in the position of these witnesses were either accomplices or accessories after the fact then such authorities in my view are clearly wrong.

Mr. Smalberger argued however, that in terms of S. vs. Yasini and another, 1964 (1) P.H. H 9: S.v. Booi 1964 (1) (S.A.) 224 (e); S.v. Makuala and others 1964 (2) S.A. 575 (e), whether or not these witnesses were strictly speaking accomplices, they should have their evidence scrutinised and treated on thesame footing as if they were technically accomplices. These are all decisions of this Court and have consistently been followed in this Division. A perusal of the judgments in those cases discloses that in all three it was laid down that in dealing with the evidence of witnesses of this type the cautionary rule should be applied.

The decision in S.v. Xoswa & others, supra, is at first sight in conflict with these decisions, but a careful analysis of the position has led me to the conclusion that the conflict is more apparent than real.

In Xoswa's case (unfortunately as at present reported only in abbreviated form in Prentice Hall) van Winsen J. (with Theron J. concurring) after coming to the conclsion that the witnesses (whose position was on all fours with that of the witnesses in the present case) were not accomplices, went on to say:

"The same conclusion holds good for the cautionary rule. It is true that in R. v. Nhleko, 1960(4) S.A.712 at page 722 (76 P.H.H325) the Appeal Court held that the cautionary rule should be applied to persons who in the

strict sense of the term are not accomplices, that is, to accessories after the fact. The basis for this decision was that considerations which impelled caution in dealing with accomplices evidence operate equally in regard to an accessory after the fact.

By no stretch of imagination can the State witnesses be considered to be, or be equated to accessories after the fact. It seems to me to be wholly wrong to seek to extend the cautionary rule to any case where some reason exists to think that a witness might have access to knowledge of the details of a crime or that he may have a motive for implicating the accused. It was, in my view, never the intention of the Courts that the cautionary rule should be extended to a case where the witness whose evidence is under scrutiny can neither be charged whether as member or accessory with the crime upon which the accused stands arraigned, nor even with some offence connected with that crime. In reaching the conclusion that the cautionary rule does not apply in the circumstances of this case I do not wish to be understood as saying that if a trier of act is aware that a witness has a motive to implicate an accused or that he has access to information about the crime charged which would tend to render his evidence implicating the accused in the perpetration thereof more plausible, he should not exercise caution in the assessment of the value of such witness' evidence. Such caution is however, not enjoined by the cautionary rule but by the dictates of common sense.

Now while it is true that van Winsen J. expressed the view that the cautionary rule is not applicable he nevertheless observes that caution should be exercised in the assessment of the value of such witness' evidence. In my view this is in fact a restatement of the cautionary rule

as explained in the case of R.v. Ncanana 1948 (4) S.A.399 (A.D.) by Schreiner J.A. and in S.v. Avon Bottle Store (Pty) Ltd., 1963 (2) S.A.389 (A.D.) by Botha J.A. I had occasion to deal with this matter in S.v. Ngcongolo and Others (unreported) a judgment delivered before the Avon Bottle Store case, and can do no better than repeat what I said there:

"In regard to the approach of the court with regard to the evidence of single accomplices, this is dealt with in the case of R.v. Ncanana 1948 (4) S.A. 399 A.D. in a judgment by Schreiner J.A. and later in the case of R.v. Mpompotshe, 1958 (4) S.A. 471 (A.D.) Schreiner J.A. in a judgment in which four Judges of the Appellate Division concurred, stated that in spite of the fact that, according to the test in Thielke's case that where one accomplice corroborates another, it was not necessary to prove the commission of the offence, this does not mean that the approach to the evidence of an accomplice, as laid down in R.v. Ncanana, could be disregarded once there was more than one accomplice. In other words, as I understand the judgment in Mpompotshe's case read with Thielke's case, where one accomplice corroborates another proof of the commission of the crime is not a prerequisite for a conviction. But, nevertheless, the approach to the evidence of an accomplice as laid down in Ncanana's case as a rule of practice - not of law - must still be followed.

What is this rule of practice? I can do no bter than to quote what Schreiner J.A. said in Ncanana's case at pp.405-6. After then dealing with the various cases he said: It seems to me that, leaving aside obscurities in the language of the judgment, which are only partly, I think, attributable to the vagaries of the printer, the head-note in R.v. John may have contributed to a misunderstanding of what was intended to be conveyed in the judgment.

The head-note refers to "the common law practice, requiring corroboration of an accomplice's evidence". But it is, I think, reasonably clear that the judgment did not state a supposed rule that, even when the requirements of section 285 are satisfied, corroboration, i. e. confirmation by other direct or circumstantial evidence) connecting the accused with the crime is necessary before the accused can be duly convicted. The rule of practice which it was intended to state, and which it is consistent with, if it is not expressly approved in, decisions of this court (see R.v. Kubuse, 1945, A.D. 189; R.v. Brewis, 1945 A.D. 261; R.v. Kristusamy, 1945 A.D. 549) is that even where section 285 has been satisfied, caution in dealing with the evidence of an accomplice is still imperative. The cautious court or jury will often properly acquit in the absence of other evidence connecting the accused with the crime, but no rule of law or practice requires it to do so. What is required is that the trier of fact should warn himself, or if the trier be a jury, that it should be warned of the special danger of convicting on the evidence of an accomplice; for an accomplice is not merely a witness with a possible motive to tell lies about an innocent accused but is such a witness peculiarly equipped, by reason of his inside knowledge of the crime, to convince the unwary that his lies are the truth. This special danger is not met by corroboration of the accomplice in material respects not implicating the accused, or by proof aliunde that the crime charged was committed by someone; so that satisfaction of the requirements of section 285 does not sufficiently protect the accused against the risk of false incrimination of an accomplice. The risk that he may be convicted wrongly

although section 285 has been satisfied will be reduced, and in the most satisfactory way, if thereis corroboration implicating the accused. But it will also be reduced if the accused shows himself to be a lying witness or if the accused does not give evidence to contradict or explain that of the 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 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.

Where a conviction follows upon a failure of the Court itself properly to appreciate or to instruct the jury in the dangers of accomplice evidence, and where the matter is taken on appeal, it will depend upon the circumstances of the case and on the relative statutory provisions governing the appeal whether the conviction is set aside or the case otherwise disposed of. But, whatever be the the position on appeal, it is in my view clear that, where accomplice evidence is the basis of the Crown's case, grave error, to the disadvantage of accused persons, may be caused by treating section 285 as covering the whole field, while similar error, to the disadvantage of the Crown, may be caused by insisting, before there can be a conviction, that, save where the accused gives no evidence or false evidence, there must be corroboration in a respect implicating the accused. In so far as the views expressed by the Learned Judge in R. v. Kibi,supra, and in R.v. Zware, supra, are not in accordance with what I have stated they appear to me to be wrong.

Now, if I may be so bold as to summarise what the

Judge has said, it seems to me this: there is a risk that an accomplice may falsely implicate someone else. He participated in the crime and therefore he is familiar with the details and is able to give convincing evidence as to its commission. It is very easy falsely to substitute the accused for other persons who took part in the crime with the accomplice for reasons best known to the accomplice. Therefore, the rule of practice is aimed at reducing this risk of false implication, and one way in which this is done is by insisting on the presence of other evidence implicating the accused in the commission of the offence. So, for instance, to give an every-day example: if an accomplice names A as the perpetrator of the offence with him, and A's finger-prints are found near the scene, or his reference book is left in the vicinity. But this risk may be reduced by other means so that the absence of evidence implicating the accused does not mean that the Court cannot convict on the evidence of the accomplice.

The accused may show himself to be a lying witness or he may go into the witness box to contradict the accomplice, but, even if the accused does go into the witness box and does contradict the accomplice and is not shown to be a lying witness, the Court may convict if it fully appreciates the danger inherent in accomplice evidence and that the acceptance of the accomplice and the rejection of the accused is only permissible where, to quote Schreiner J.A. "the merits of the former as a witness and the demerits of the latter are beyond question".

A great deal of confusion has arisen from the erroneous conception that the application of the cautionary rule involved *the requirement of corroboration* of an accomplice's evidence. If I am right in my view as expressed

in S. v. Ngcongolo & others as to what the cautionary rule means, then the cautionary rule itself merely requires on the part of the trier of fact caution enjoined "by the dictates of common sense".

In S.v. Makaula, supra, the following passage appears in the judgment of van der Riet J.:

"It is unnecessary to decide whether these witnesses are accomplices for it was held in S.v. Booi and others, that in any event they should be treated as such. Nor is it necessary to deal fully with the evidence given by the witnesses on the first count for Mr.Steward on behalf of the appellants was successfully able to show that in fact no one witness corroborates another that any one appellant was present at a meeting and that therefore corroboration necessary either in terms of Act 56 of 1955 or under the cautionary rule was not present ....."

In so far as this passage suggests that the cautionary rule is one requiring corroboration of an accomplice's evidence I must respectfully disagree with the view expressed therein, and repeat what I have said in Ngcongo's case, supra.

In the present case the magistrate has outlined his approach to the evidence of the State witnesses in the following passages:

"Nearly all the witnesses who have givenevidence for the State were liable to be charged with the same sort of offence with which the accused have been charged, and having regard to the nature of their testimony, their evidence must be regarded and scrutinised on the same footing as that of accomplices. There must be corroboration of the evidence of these witnesses and this corroboration must be in respects implicating the accused. S.v. Yazini and another, of 1964(1) P.H. H.9 corroboration of an accomplice's

evidence may be found in the evidence of another accomplice but the danger of accepting the evidence of an accomplice still remains and the court specifically directs its mind to the danger of accepting the evidence of these witnesses and to whether they have implicated the accused in order to shield some other person or gain immunity for themselves, and whether they are justified in introducing the accused into their stories or are biased or prejudiced against the accused in any way and their evidence is thus scrutinised very closely".
Then again at p. 18:

"I think it is clear from the evidence that the witnesses for the State have given, that they have not fabricated these stories in regard to the meetings and salutes which they have mentioned. They did not give the impression that they were biased against the accused in any way or that they were trying to shield someone else or gain immunity for themselves. In my view, with the exception of Roland Monde Faniso, they gave their evidence in a straight forward and satisfactory manner regard being had to the circumstances under which and the time when these events happened. In most instances the accused whom the witnesses have pointed out are well known to these witnesses; from their demeanour and the manner in which they gave their evidence, I am satisfied that they are persons who have spoken the truth and that they are honest and reliable witnesses and I accept their evidence, and I reject the denials by the accused that they attended Poqo meetings or took part in the activities of the Poqo organisation or gave the Poqo salute".

Now these passages show that the magistrate infact applied the cautionary rule, save that he *erredin good company* in believing that for the fulfilment of its dictates there had to be corroboration. The passages

I have quoted also show that he regarded the State witnesses as corroborating one another even when the - one testified to the presence of an accused at one meeting and another to his presence at another meeting.

In the present case Mr. Szalberger has in my view correctly maintained that evidence of the presence of an accused at one meeting is not corroboration of evidence of his presence at a different meeting. A simple analogy will show that this must be so. Had an accused been charged with attending a specific meeting on a specified date, evidence of his attendance at other meetings on other dates would have been inadmissible to prove his presence at the meeting alleged. See R.v. Butelezi, 1944 T.P.D. 254.

The difficulty that I have in this appeal is that the magistrate adopted what I consider to be an erroneous approach in two respects. Firstly, he regarded the cautionary rule as one requiring corroboration, and, secondly, the corroboration he purported to find was not corroboration. This Court sitting as a court of appeal cannot say with certainty to what conclusion the Magistrate would have come had he approached the matter correctly. It is true that he gives his reasons for accepting the evidence of the State witnesses, but he gives no reasons for rejecting the evidence of the accused other than the fact that he accepts the State witnesses. In other words he has not satisfied himself as to the merits of the State witnesses and the demerits of the defence witnesses, to paraphrase the words of Schreiner, J.A. in Ncanana's case.

It is common cause that these observations apply only to accused nos. 1,3,4,5,6,7,8,9,10,11,12, 24 and 25 and then only in so far as count 1 is concerned. In the case of each of these accused, although there was evidence that such accused attended more than one meeting, there

was only one State witness to each meeting attended by such accused.

That the magistrate was chary of convicting when there was no corroboration even of the erroneous nature envisaged by him, is evidenced by his judgment in regard to accused no. 26. In dealing with this accused he said: " No. 26 was seen at a meeting by one witness only and that is Maxolisi Boyi". He then goes on to deal in the following terms with two letters written by the accused to a woman called Rose:

"In these letters the accused no. 26 makes reference to service, sacrifice and suffering and also to the effect that he would be in the forefront if the battle was against the white people. The accused's explanation as to why he used these expressions in these letters is most unconvincing and quite unacceptable. The disciplinary code of the Pan Africanist Congress shows that the motto is service, sacrifice and suffering. These two letters show in my opinion that accused no. 26 was aware of the motto of the Pan African Congress and that he was quite prepared and willing to fight the white man. I think that the only reasonable inference that can be drawn from these letters is that he was a member of the Pan African Congress. I also do not think that corroboration of Moxolisi's evidence must be that this accused no. 26 attended a Poqo meeting. After all there is only a presumption in law that a person who attends a Poqo meeting is a member of Poqo. In my view these letters which were written by this accused with the necessary inference which I think should be drawn from them provide sufficient corroboration of Moxolisi's evidence implicating this accused as being a member of Poqo".

Even if the letters proved the accused's membership of the Pan Africanist Congress, the State cannot rely on them because, as I have already pointed out, it is

bound by its further particulars wherein it clearly indicated that attendance at meetings is the basis of its case against the accused. But in my view the letters do not amount to more than a strong indication that the accused sympathised with the aims and objects of the Pan Africanist Congress. This of course does not provide corroboration of the fact that he attended the meeting alleged by Moxolisi Boyi. As the Magistrate therefore erred in finding the letters to constitute corroboration of Moxolisi's evidence, the accused is in the same position as to the others to whom I have referred. One does not know whether or not the Magistrate would have convicted him if he had not misdirected himself as to the inference to be drawn from the letters.

In so far as accused nos. 14,15,17,18, 19, 20, 21, 22 and 23 are concerned, in the case of each of them it was conceded by Mr. Smalberger that there was the necessary overlapping of the evidence of two State witnesses to constitute the corroboration which the Magistrate thought necessary, but Mr. Smalberger has attacked the convictions of accused nos. 21 and 23 on another ground, which I shall now proceed to deal with.

Both these accused produced alibi evidence that they had attended a circumcision school at the time they were alleged to have been at the meetings in question. Mr. Smalberger contended that the magistrate had rejected the alibis simply because he accepted the State evidence and that in terms of the decision of R.v. Hlongwane,1959 (3)S.A. 336 (A.D.), this approach vitiated the conviction. A careful reading of this judgment, however, shows that the magistrate did consider the alibi evidence and, although he does not deal with itin great detail, it is clear that he considered the evidence as a whole before rejecting the alibis. I am unpersuaded that he erred in this respect.

In so far as count 2 is concerned, Mr.Smalberger conced

that there was sufficient evidence upon which the Magistrate could convict accused nos. 12 and 15 on this count since it was not attendance at meetings but the making of speeches which constituted the offence. In my view the concession was properly made and accused nos. 12 and 15 were rightly convicted on this count".

Uit hierdie pas aangehaalde saak, die saak van Zitha waarin die belese Regter met al die autoriteite handel en volledigliik uiteensit op watter wyse die getuienis van getuies benader moet word, persone wat self 'n aandeel gehad het in die A.N.C., self lede was, word die getuienis in hierdie saak benader. En dit bring my tot die getuienis van die persone na wie ek moet verwys vir die doeleindes van die uitspraak.

Die eerste is die man met die naam Ambrose Nogaya. Ambrose Nogaya het elkeen van die beskuldigdes betrek in hierdie saak. Ambrose Nogaya was self lid van die A.NC. en hy kan gevolglik van derglike oortredings as die beskuldigdes aangekla word. Die getuienis van Ambrose Nogaya moet gevoglik benader word op die wyse soos uiteengesit in die saak van die Staat teen Zitha en al die gewysdes waarna Regter Kunnik in daardie saak verwys.

In Ambrose Nogaya se getuienis is daar een uitstaande punt. Die advokaat vir die Verdediging het vir hom gesê "ek stel dit aan jou dat ek onweerlegbare getuienis sal bring dat beskuldigde nr. 7 gedurende 'n sekere tydperk, en die tydperk is gegee van 1960 tot Februarie 1963, uit Port Elizabeth afwesig was en gevolglik nie vergaderings en aktiwiteite kon bywoon waarna jy as getuie verwys nie." Hierdie getuie het kategories daarop geantwoord dat hy volstaan by sy getuienis dat beskuldigde nr. 7 wel daardie vergaderinge bygewoon het op die wyse wat hy gesê het en deelgeneem het aan al die aktiwiteite ten opsigte waarvan die getuie getuig het.

Ek haal aan uit bladsy 68 tot 69 van die getikte rekord van hierdie saak, as volg: Die vrae wat gestel is deur die advokaat vir die Verdediging het so gelui:

"If I lead evidence to this court that he (referring to accused no. 7) was not in Kwazakele. He was, in fact, hundreds of miles away from 1960 to February, 1963, what will you say to that? The reply was: "I have seen him on several occasions at Kwazakele". The next question was: "When?". Reply: "During the period you have mentioned". By the Court: "What period? - From 1960 to February, 1963? Reply: "Yes".

Die tweede getuie wat op hierdie besondere punt met betrekking tot bywoning van vergaderings deur beskuldigde nr.7 getuig het, was die getuie Taho, Gilbert Taho. Ek haal aan uit bladsy 160 van Gilbert Taho se kruisverhoor deur Advokaat Chernin:

"Did you attend every single meeting from August,1960, until your arrest?". Reply: "Well, there were times when I used to miss meetings". "Did this occur frequently or seldom?". ---Seldom.

"Can you say to the court that accused no. 7 Noxa attended meetings regularly from August, 1960, until December, 1964? --- He used to always attend.

"I just want you to answer that question fully and say that he used always to attend meetings from August, 1960, until your arrest in 1964? --- Yes, he did.
By Court: "He did what? --Attend these regularly".
Further cross-examined:

"Is there any room here for mistake? That he could have attended meetings perhaps late in '64 or only early in '60 and not during the years say 1962 and 1961? ---I would not be able to comment on the occasions when he was absent from meetings, but on the occasions when I attended meetings, I saw him".

"And you attended meetings in 1961 and in 1962? --Yes, I did".

Daar is getuienis op hierdie punt gelwer ook deur die getuie Nkosana. Die vrae wat aan hom gestel is(ek haal aan

op bladsy 129 van die getikte rekord):

"Did you see no. 7 at meetings in 1960,1961, 1962 and so on: --I am inaccurate regarding years andI can't say".

"Are you sure all these meetings took place after and not before the banning? ---I am certain they were held after the banning".

"Can you say where the meetings were at which you saw No. 7? ---I can't remember anymore".

Dit blyk dus duidelik uit die getuienis van die getuies Taho en die getuie Ambrose Nogaya dat hulle die geleentheid gebied was om, indien hulle n fout maak met betrekking tot no. 7 daardie fout reg te stel, dog hulle het kategories geantwoord dat nr. 7 gedurende die tydperk ter sake die vergaderings bygewoon het.

'n Paar dae na hierdie voorval en na die verloop van n naweek wat tussenin gekom het, is hierdie twee getuies Taho en Nogaya teruggeroep en het hulle hulle getuienis met betrekking tot beskuldigde nr. 7 teruggetrek en gesê dat gedurende daardie tydperk het hulle hom in Port Elizabeth nie gesien nie. Hulle het gesê dat hulle n fout gemaak het. Die hof kan dit nie aanvaar dat hulle n fout gemaak het nie.

As ek die woorde van Mnr. Chernin reg onthou; aan een van daardie getuies het hy gesê: "I shall bring indisputable evidence that accused no. 7 did not attend those meetings" en die getuie was baie beslis, - ek dink dit was die getuie Nogaya - dat nr. 7 dit wel bygewoon het.

In die saak van Zitha in die saak van Xoswa, in die saak van Yazini en talle ander is dit oor en oor duidelik gestel dat, alhoewel hierdie persone wat in die posisie is van hierdie twee getuies, nie medepligtigers is in die gewone sin van die woord nie, moet hulle getuienis deur die voorskrifte van gesonde verstand met versigtigheid benader word. As ek daardie kardinale reël onthou en as ek dit in gedagte hou dan, afgesien van wat my persoonlike oortuiging en mening mag wees omtrent die skuld van een en almal van die beskuldigdes, dan kleef daar aan die getuienis van daardie twee mense, Taho en

en Nogaya, die kleur van onwaarheid. In ander woorde om dit in Engels te stel "their evidence is tainted". As dit dan die geval is, wat bly oor?

Dan bly die vraag oor: Is daar in hierdie saak enige ander getuienis gelei wat, met die oog op die vereistes wat aan ander getuienis gestel word, waar dit oorweeg word deur 'n hof, voldoende sou wees om die skuld van die beskuldigdes bo redelike twyfel te bewys. En daardie vraag sal ek weldra beantwoord.

Intussen moet ek die volgende sê: Dat met die uitsondering van beskuldigde nr. 2, beskou ek die getuienis wat deur al die beskuldigdes gelewer is as onwaarheid. Met die uitsondering van van die getuienis van beskuldigde nr. 7 ten opsigte van die tydperk van sy afwesigheid uit Port Elizabeth en daar aanvaar ek net die deel van sy getuienis wat op die feit neerkom dat by gedurende daardie tydperk nie in Port Elizabeth was nie, maar 'n meer leuenagtige getuie, 'n meer ontwykende getuie het ek lanklaas gesien. 'n Meer deurtrapte leuenaar as wat by-voorbeeld beskuldigde nr. 8 is, het ek ook lanklaas teëgekom. 'n Man wat meer oortuigend kan lieg as beskuldigde nr. 1, sal ek graag wil sien. As daar 'n skool of 'n universiteit was waaraan hierdie dinge geleer sou kon word, dan kon studente aan so 'n inrigting met vrug klasse neem by nr. 1 en by nr. 8.

'n Ou man met 'n grys baard en 'n grys kop is beskuldigde nr. 10. En hy het net so goed gelieg soos sy makkers, maar hierdie hof en geen hof het nog nooit in my wete beskuldigdes skuldig gevind op hulle eie leuens nie.

In hierdie saak is dit my oortuiging, en ek het weke aan hierdie saak gewerk, en ek het nagte met hom deurgesit, en ek ken sy getuienis uit my kop, daarom dat ek nie eers daardie getuienis vandag opsom nie, is ek persoonlik oortuig van die skuld van elk van die beskuldigdes met die uitsondering van nr. 2. En wat nr. 2 betref, is dit ook maar net 'n redelike twyfel wat ek het. Maar my oortuiging wat voortvloei uit die deurlees van die getuienis en die leuens van die beskuldigdes

is nie die basis waarop hierdie saak beslis moet word nie. Hierdie saak moet beslis word op die aanneembare en die betroubare getuienis van Staatsgetuies wat in n saak soos hierdie, waar die reëls van die gesonde verstand sê: "wees versigting" oorweeg word. Dit skryf voor op watter wyse die saak teen die beskuldigdes bewys moet word en daardie getuienis ontbreek.

Daar is baie gesag aangehaal deur die Aanklaer - en ek is hom daarvoor dank verskuldig - om daarop te wys dat, as n getuie in een opsig leuenagtig is, dan beken dit nie dat hy in alle opsigte leuenagtig is nie. Maar in hierdie saak is ek oortuig dat die foute wat die twee Staatsgetuies gemaak het, so diepgaande is dat ek nie hulle getuienis teen die ander beskuldigdes kragtens reg kan aanvaar nie. Ek beskou nie daardie twee Staatsgetuies as deurgaans leuenagtige getuies nie, maar ons moet onthou ons het te doen hier met n strafsaak; ons het te doen hier met n strafsaak nie alleen waarby gewone getuies getuig nie, maar n strafsaak waar getuies getuig wie se getuienis deur die reëls van gesonde verstand versigtig benader moet word, ingedagtehoudende die baie duidelike voorskrifte van Regter Munnik in die saak wat ek aangehaal het van Zitha asook die ander beslissings wat in daardie saak deur die Regter op so n meesterlike wyse uiteengesit is.

En dit bring my tot hierdie sbtsom: dat daar onvoldoende getuienis teen die beskuldigdes is om n bevinding in die guns van die Staat teen hulle uit te bring. Ek herhaal, hierdie hof en geen ander hof volgens my wete het nog ooit n beskuldigde skuldig bevind op sy eie leuens nie. En al beskou ek die beskuldigdes as van die swakste wat ek ooit teëgekom het, en ek gaan nie op besonderhede in nie want ek wil nie twaalf opsommings lewer nie, moet ek nogtans aanvaarbare en betroubare getuienis hê sonder materiële foute voordat ek n skuldigbevinding kan inbring. Op daardie basis alleen kan hierdie hof n ernstige saak soos hierdie beslis.

Die slotsom waartoe ek geraak is dat al die beskuldigdes

ONSKULDIG BEVIND en [illegible] word.

Daar is een aspek wat ek vergeet het om te handel in die opsomming, en ek wil dit net hier byvoeg as n naskrif. Daar is getuienis beide van Nogaya en Taho dat hulle, kort na hulle arrestasie, verklarings aan die Polisie afgelê het en dat in daardie verklarings gestaan het dat beskuldigde nr. 7 betrek is in A.N.C. bedrywighede gedurende die tydperk waaroor die uitspraak gaan. Ek is gevolglik vas oortuig daarvan, en dit staan verhewe by my bo alle twyfel dat in hierdie saak daan geen blaam hoegenaamd gewerp kan word op die ondersoekwerk wat in hierdie saak gedoen is deur die polisie nie.

(get.)B.P. LOOTS.

Waarnm. Streeklanddros.

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