

he was prepared to receive them as he had received the recruits on the 11th and 18th March. On Lukele's evidence - which we accept - accused No. 9 met him at the fence that night for that very purpose. We reject accused No. 10's version of the incident but we have mentioned it at this stage to show that it hardly contains an answer to the evidence that accused No. 9 went to the border fence on the 25th March to receive recruits for military training. We have no doubt that accused No. 9 did go there for that purpose, that he thought that the people whom Lukele said he had brought were boys recruited for military training, and that he intended to receive and take charge of them when they crossed the border into Swaziland. The next question - to which we must now address ourselves - is whether accused No. 10 went to the border fence that night for the same purpose, whether he conspired with accused No. 9 to receive and take charge of any recruits for military training that Lukele might bring.

Accused No. 10 testified that he obtained employment at Malkerns in Swaziland in January 1965, and that at the time of his arrest he was still working there for a firm called Measured Farming. He met accused No. 9 in 1968 and had quite a lot to do with him over the next few years, until 1972 when accused No. 9 went into a cotton growing venture at a distant place called Esipofanini. They saw very little of each other from then until 1974 when accused No. 9 abandoned the cotton-growing venture and moved back to Moneni Township near Manzini. Accused No. 10 transported his possessions /.....

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possessions from Esipofanini to Moneni for a fee of R20. Thereafter they met frequently. They used to discuss matters reported in the newspapers, including South African politics, and it is clear that they were well acquainted. However, accused No. 10 would have the Court believe that accused No.9, his close acquaintance and fellow refugee from South Africa, never told him anything about his experiences in Russia, Tanzania and Rhodesia.

On Monday the 22nd March 1976 accused No. 10 was working at Measured Farming's office in Manzini when accused No. 9 paid him a visit. Accused No. 9 allegedly drew his attention to a report in one of the previous day's newspapers, to the effect that Joseph Mdluli had died in police custody in Durban on the 19th March. Accused No. 9 went on to say that the deceased Mdluli was the friend of a recent arrival in Swaziland, one Jacob Zuma; that on the 18th March he had gone with Zuma to Hlangano to meet a certain Lukele who was a brother of Mdluli and operated taxis between Durban and Mahlabatini; that they had given Lukele money which he was supposed to hand to Mdluli in Durban that Monday; that Zuma and he had an arrangement to meet Lukele again on the 25th March, but Zuma would not be able to keep the appointment because he was going to Big Bend that Thursday, that he hoped that Lukele would return the money, and therefore wanted accused No. 10 to transport him to Hlangano to meet Lukele on the 25th March. Accused No. 10 agreed to do so, and they duly met in Manzini after work on the 25th March. They drove /

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They drove to accused No. 10's home in a van belonging to Measured Farming, and from there they set off in accused No. 10's private motor vehicle, a Peugeot 404 sedan car. Before they set off accused No. 9 told him that the meeting place was at the border fence, and they agreed on a hire charge of R30 which accused No. 9 paid. On the way he asked accused No. 9 what amount of money they had given to Lukele and was told that it was R1000. He raised the question whether Lukele could be trusted with so large an amount, and whether he would be prepared to hand it over in Zuma's absence. Accused No. 9 assured him that they trusted Lukele, and said that if Lukele refused to hand over the money in Zuma's absence he would arrange another meeting for that purpose. Accused No. 9 went on to say that it was important to keep the appointment because they had arranged to meet Lukele that evening and if they failed to do so they would lose contact with him. Accused No. 10 said that accused No. 9 also informed him that he and Lukele "usually" met between 6 and 7 p.m.

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It is clear from his evidence that accused No. 10 was given a considerable amount of detailed information about Mdluli and Lukele and the dealings that Zuma and accused No. 9 had with them. That is not surprising, for it would have been natural under the circumstances for accused No. 9 to tell him the whole story. Yet, if accused No. 10 is to be believed he did not know why they had sent R1000 to Mdluli and did not even ask accused No. 9 why they had made the /.....

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made the arrangement on the 18th March to meet Lukele at the border fence on the following Thursday. His evidence when cross-examined on this aspect of the matter was inconsistent, unsatisfactory and totally unconvincing. As the arrangement had been made before anything was known of Mdluli's arrest or death it could not have been for the purpose of recovering the money from Lukele, and accused No. 10 obviously realised this. Having stated categorically that the only business to be transacted at the meeting with Lukele on the 25th^{March} was the money, he was constrained to say that he did not know the purpose for which the meeting had been arranged and did not ask accused No. 9 what the purpose was. When Mr. Rossouw pressed him for an explanation for his lack of curiosity he first suggested that he did not ask for details because it was "a continuation of their meeting" - i.e. a continuation of the meeting on the previous Thursday. Eventually he said :

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"The subject we were discussing was money but he did not enter into details about why they were meeting, therefore I had to continue on this subject to be clear on it or about it. I did not ask him when they met what was going on or happening."

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It must be borne in mind that on his own showing accused No. 10 was not simply hired to convey accused No. 9 to Hlangano and back; he was given the detailed information already /.....

already referred to and actually went to the border fence with accused No. 9 to meet Lukele. It is grossly improbable that under these circumstances accused No. 9 did not tell him - and he did not even enquire - why the meeting had been arranged. And it is equally incredible that accused No. 9 should have misled him about the reason why Zuma could not keep the appointment. If accused No. 10 is to be believed he was misled in this respect, because it has been proved that Zuma was arrested on Monday the 22nd March and accused No. 9 knew about the arrest.

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According to accused No. 10 they took a wrong turning which made them late for the appointment, and it was nearly 9 p.m. when they arrived at the meeting place. As they approached he saw vehicles travelling on the road, and one stationary vehicle which flicked its parking lights on and off. When they got nearer the stationary vehicle's headlights were switched on and it started travelling slowly in the direction of Pongola. It had passed the signboard when accused No. 9 flashed his torch twice, and then it stopped at a spot some 30 or 40 yards away from the signboard. Thereafter accused No. 9 shouted "Mbuzi, Mbuzi" and someone in the vehicle responded with the word "Ja". Accused No. 10 then saw someone come from the driver's side of the vehicle and walk towards them. When this person approached he struck a match and accused No. 9 recognised him as Lukele. They met at the fence near the signboard and there was a conversation between accused No. 9 and Lukele. We have already /.....

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already set out accused No. 10's version of the conversation. He specifically denied Lukele's evidence that accused No. 9 said that Zuma had been arrested because the last batch of boys (whom he described as "bad dogs") had escaped and gone to the police, and that they had better change their meeting place to one near the hospital at Tjelijuba. That denial was undoubtedly false. The uncontradicted evidence of Jabulane Mdluli, Sipho Makhubo and Sifiso Mapanza establishes beyond question that the last batch of boys did escape, and the evidence of Jabulane and Sipho likewise establishes that they went to the police and that this led to Zuma's arrest on the 22nd March. Lukele could not have known these facts when he met accused Nos. 9 and 10 on the 25th March, and he could only have received the information from accused No. 9. (The notion that the police obtained the information at a later stage and instructed Lukele to fabricate this part of his conversation with accused No. 9 is so preposterous that it did not even occur to Mr. Muller to suggest it). The fact that accused No. 9 told Lukele about Zuma's arrest in the presence and hearing of accused No. 10 makes nonsense of the story that accused No. 10 was informed that Zuma could not keep the appointment because he was going to Big Bend that day. We have no doubt that that part of the story was fabricated to fit in with the false denial of Lukele's version of the conversation at the fence. As already indicated, we think it is overwhelmingly probable that accused No. 10 was informed of the true purpose of the meeting /.....

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meeting at the border fence, and the fact that he found it necessary to lie about the matter tends to support the conclusion that he went there for the same purpose as accused No. 9.

Accused No. 10's statement that the vehicle was parked some 30 or 40 yards away is refuted by the evidence of Lukele, de Swardt, Pourie and Winter, all of whom testified that it was close to the signboard. The point is a material one because it has a bearing on the question whether the accused were apprehended on the South African or the Swazi side of the fence. The police knew that the meeting was to take place at the fence opposite the signboard, and the object of the exercise was to arrest the men if possible. Lukele was instructed to call them to the Kombi for that purpose. It seems to us that under these circumstances it would have been sheer stupidity for Major de Swardt to have the Kombi parked 30 or 40 yards away from the meeting place, and we do not believe that he did so. The evidence of accused No. 10 is that when Lukele shouted for them the police came piling out of the Kombi, allowing its interior to be illuminated as they did so, and ran in the direction of the signboard before turning towards and climbing over the fence. On that version of the occurrence the chances of the accused being captured in South Africa or Swaziland would appear to have been rather slim - unless, of course, the police had already planted men in Swaziland to cut off their retreat from behind. And that, according to accused No. 10 is

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precisely what the police had done. When he tried to escape he was caught by someone who came from behind him, not one of those whom he saw coming from the Kombi. The person who caught him was joined by a second who also came from behind, and then by two of those who came from the Kombi. There was a fierce struggle in the course of which he bit one of his assailants, but he was eventually overpowered. His hands were tied behind his back, he was gagged and a rope was put round his neck. He was pulled, shoved and kicked to the fence, and when they reached the fence the rope around his neck was handed to policemen standing on the other side of it. They pulled on the rope while his assailants picked him up bodily and threw him on top of the barbed wire fence. His left arm was hooked by the wire, causing a scratch wound in the crook of the elbow. Having pulled him over the fence they manhandled him to the Kombi and forced him into it. It is clear from his evidence that accused No. 9 was also captured on Swazi soil and forced through or over the border fence before being put in the Kombi.

That, in fairly broad outline, is the defence evidence relative to the so-called border incident. In our view it is demonstrably false. It is common cause that accused Nos. 9 and 10 were late for their appointment, and the picture one gets from the defence evidence is that the Kombi was on the point of departing when accused No. 9 flashed his torch. The State evidence is that the police

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waited in the grass across the road for about two hours while Lukele stood near the signboard and signalled as described earlier. Having waited in vain for that length of time the whole party got up and walked to the Kombi, and it is clear that by that stage the police had virtually abandoned the operation. As Fourie put it :

"Ons het besluit dat daar blykbaar niks gaan gebeur nie as gevolg van die tydverloop en ons het teruggegaan na die Kombi toe."

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It was only as a result of a report made by the driver of the Kombi, Sgt. Nduli, that Major de Swardt decided to make a further attempt to spring the trap. The whole party therefore boarded the Kombi and drove back to the signboard, and it was very shortly after they stopped there that accused No. 9 shouted to Lukele. It would have been silly for de Swardt to try to plant men in Swaziland at that stage, even if there was sufficient time within which to do so, because this might easily have given the game away. On the other hand it seems grossly improbable that he already had men on the other side of the fence, having planted them there at some stage before he took his party back to the Kombi. If he had men planted in Swaziland at that stage he would surely have recalled them when he gave up waiting and took his party back to where the Kombi was parked on the far side of the bridge. In any event, if the police had intended to effect the /.....

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effect the arrest on Swazi soil if necessary there was obviously no need to plant men in Swaziland. They were disguised for the purpose of posing as recruits who were going abroad for training as terrorists, and all they had to do was climb through the fence as the boys had done on the 11th and 18th March, and then arrest the accused who would be standing there waiting for them. Under all the circumstances we do not believe that there were any men planted in Swaziland to assist in the capture of the accused, and the defence version of their capture is thus seen to be inherently improbable.

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There are other unsatisfactory features of the evidence which accused No. 10 gave regarding his alleged capture on the Swazi side of the fence. The allegation that accused No. 10 received an injury to the inner aspect of the left elbow when he was forced over the barbed wire is practically refuted by the acceptable evidence of the district surgeon, Dr. Buchan. Accused No. 10 claimed that when Dr. Buchan examined him and took his blood pressure the wound on the elbow was still raw, and that Dr. Buchan actually saw it but made no comment. Dr. Buchan testified that he conducted the examination at Wentworth on the 8th April 1976. It was a thorough examination of the accused's entire body, and he was looking for any recent marks or bruises. He found none and accused No. 10 had no complaints except that he was suffering from constipation. He said that if the accused had sustained the injury alleged on the 25th March any mark which was /...

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which was still visible on 8th April would be described as a recent one and he saw no such mark. Dr. Buchan refreshed his memory from contemporaneous notes which were seen by counsel for the accused, and there can be no doubt that his examination was meticulous and his evidence accurate. At Mr. Muller's request he examined the accused's left elbow again in Court, and observed what he described as two small, old, parallel marks which were just visible in the skin. He said that they were of the type commonly inflicted by African people on themselves over an area which is painful or where they think disease is lodged. He did not think that they could have been caused by scratching on a barbed wire fence. (10

Another of accused No. 10's allegations relative to the border incident has been demonstrated to be false. He said that Lieut. Erasmus was one of his captors at the border, but the evidence of de Swardt, Fourie, Winter, Dreyer and Erasmus himself proves conclusively that Erasmus had nothing to do with the border incident. He was at Island Rock camp on the Zululand coast at the time. If Erasmus had participated in the border incident there was no conceivable reason for them to deny it. Accused No. 10 could easily have been mistaken in his identification of Erasmus as one of his captors, and Mr. Rossouw gave him every opportunity to concede under cross-examination that he might have made a mistake. But accused No. 10 would have none of it. (20

He described /.....

He described the clothing that Erasmus wore and the part he allegedly played in the border incident in some detail, and refused to concede the possibility that he was wrong.

In the result, and notwithstanding the efficiency with which he gave most of his evidence, accused No. 10 emerged as a thoroughly discredited witness. In our view the prosecutor has proved beyond reasonable doubt that his version of the border incident, as testified to by Lukele, de Swardt, Fourie and Winter, is substantially true and the defence version is false. We are satisfied that when Lukele went back to the Kombi for the ostensible purpose of fetching the boys accused Nos. 9 and 10 got through the fence and approached the Kombi themselves, and the only reasonable inference to be drawn from that is that they intended to take charge of the boys and complete their business with Lukele on the South African side of the fence. The fact that accused No. 10 got through the fence with accused No. 9 and approached the Kombi under these circumstances must be viewed in the light of the various other factors mentioned above which bear upon the purpose for which he went to the border to meet Lukele that evening. A conspectus of all the relevant evidence compels us to conclude that accused No. 10 was engaged upon the same business as accused No. 9, that they intended and conspired together to receive and take charge of recruits for military training and assist such recruits to cross the border. We are also satisfied that accused Nos. 9 and 10 were apprehended on the South African side /.. (20

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African side of the border fence.

In arriving at the conclusion stated above we have not overlooked the submissions contained in a memorandum entitled THE BORDER INCIDENT which Mr. Muller handed in as part of his argument. One or two of these submissions are worth dealing with. It was submitted that the accused could hardly have been expecting seven recruits because the Peugeot 404 motor car could only carry five people on the bad road that they had to travel. We only have the word of accused No. 10 for that, and he did say that his car could seat seven people. We have no doubt that an additional two boys could have been squeezed into it if necessary, and we have some difficulty in seeing what the state of the road has to do with the carrying capacity of the vehicle. If the road surface is bad you simply reduce speed and drive more carefully. Another point which Mr. Muller made was that on Lukele's evidence of what occurred on the 11th and 18th March the established procedure was for his contacts to remain on the Swazi side of the fence and receive the recruits there. He submitted that it is improbable that the accused would have departed from the procedure on the 25th March, especially as Lukele admittedly said nothing to induce them to cross the border that night. It is somewhat surprising that the accused chose to get through the fence and go to the Kombi without being invited to do so, but we do not consider that it is sufficiently improbable to affect the findings we have made in the light of the evidence and our impression /...

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impression of the witnesses. Notwithstanding the news of Mdluli's arrest and death the accused were obviously not expecting a trap. Accused No. 9 trusted Lukele and had no reason to think that they ran any risk by making such a brief incursion into South Africa. Moreover, the circumstances were not the same as on the previous occasions when the recruits were across the road and the Kombi was parked on the other side of the bridge at the stage when Lukele met and spoke to Zuma and accused No. 9. It may well be that, emboldened by the success of the previous operations, and seeing that the Kombi was parked at the meeting place, accused No. 9 decided that they might as well go to the Kombi on this occasion.

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We now turn to examine the evidence of accused No. 10 concerning his treatment in detention and under interrogation. He said that the police hit and kicked accused No. 9 into the Kombi and then blindfolded him, but both de Swardt and Fourie denied that either of the accused was blindfolded. Accused No. 10 said that when they arrived at the rendezvous place where Col. Dreyer spoke to them the gags were removed from their mouths and the blindfold was also removed from accused No. 9. After Dreyer had questioned them accused No. 9 was blindfolded again, and accused No. 10 was taken out of the Kombi. He still had the rope round his neck and one policeman held it while he stood and watched the police and Lukele drinking beer and eating boerewors. Thereafter he was put into a car which Lieut. Taylor drove, and they followed /.....

followed the Kombi to the Pongola police station. They were there for about half an hour and then proceeded to the Mbazwana police station where they transferred to landrover vehicles for the rest of the long journey which ended at a police camp called Island Rock. Accused No. 10 was unable to describe the Island Rock camp because, he claimed, he was blindfolded after boarding the landrover and, save for one occasion when he was allowed to wash his eyes in the sea, remained blindfolded until after he had left the camp on the 7th April. The camp was described by Col. Dreyer and Lieut. Erasmus. It consists of two dwellings, one with five rooms and the other with four, and outbuildings consisting of servant's quarters, engine room and pumphouse. It has two braai-places equipped with tables and benches, and there is another building situated about 100 metres away from the main complex. The camp is 25 miles north of Mbazwana and situated very close to the beach. Dreyer explained that he took the accused to Island Rock for interrogation because he and his men were temporarily stationed there at the time on other security operations, including the opening of the Richards Bay harbour on the 1st April. (10)

Accused No. 10 said that they arrived at their destination at about 2 a.m. He was then interrogated until about 8 or 9 a.m. by someone who introduced himself as Col. Dreyer. Thereafter he heard Erasmus telling one Mbonambi to go home that afternoon after work and remain there until they came to fetch him. Then he heard someone say (20)

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"Bring them, I want to start now, I am in a hurry". The man who was guarding him responded by pulling him by the rope which was still round his neck, and leading him in that fashion through a forest to a room or building. On the way through the forest this person (who happened to be Const. Mngadi whom he had bitten during the border fracas) told him they were going to put him in a "machine". Mngadi took him into the room and apparently tied the rope to something above him, because he could feel it alongside his head. He was still blindfolded, of course, and his hands were still tied behind his back with rope. Other people then entered the room and started questioning and assaulting him. They struck him with a stick on the head, knees, ankles and feet. The assault was continuous, in the sense that they would ask a question and then hit him, ask another question and then hit him again, and there was no respite because they took turns in assaulting him. From time to time Mngadi would discard the stick and assault him by twisting his ears or nipples and punching him in the jaw or stomach. According to the accused this treatment commenced at about 8 or 9 a.m. on the Friday and continued unabated until 8 or 9 p.m. on the Saturday when he fell down and apparently lost consciousness. Until then he had been standing throughout, with the rope round his neck tied to something above him, and no food or water had passed his lips since his arrest the previous Thursday evening. When he regained consciousness Mngadi took him back to the main complex. (10)

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Although Mngadi was instructed to keep him in a room there he took him outside, tied him to a tree and placed him in leg irons. Mngadi also ignored an instruction to untie his hands, with the result that he spent an uncomfortable and sleepless night. It rained during the night but Mngadi refused to take him inside. Instead they took shelter under the raised structure of one of the dwellings.

On the Sunday morning accused No. 10 was taken back to the room in the forest and the treatment of the previous two days was resumed. He said that on this occasion (10) the interrogation-cum-assault continued until lunchtime. Then they untied his hands, allowed him to sit down and gave him food and water for the very first time. After eating the food he became drowsy and fell asleep where he was sitting. He was rudely awakened, however, with the police shaking him and pulling the rope taut and threatening to kill him. The interrogation-cum-assault was recommenced and continued unabated until sunset. Then he was given food and provided with a mattress, pillow and blankets. He slept in the room guarded by black policemen. He was not molested (20) on the Monday or the Tuesday. On Wednesday he was taken by Mngadi, Ngobese and other black policemen to the beach to wash himself in the sea. Ngobese removed the blindfold to enable him to wash his eyes, and he saw a boat tied up on the shore. This terrified him because the police had earlier threatened to take him out to sea and throw him overboard.

After washing /.....

After washing in the sea he was clad only in his trousers. He was blindfolded again and they returned to the room in the forest. A short while later many people entered. One of them whom the accused purported to identify as Lieut. Taylor, questioned him about certain matters, and when he could not furnish the required information he was tortured by the administration of electrical shocks. This continued for a long time. When it was over Lieut. Erasmus came and commiserated with him, saying that he was sorely troubled by the manner in which the accused was crying out, and asking him what the "mlungus" (i.e. white people) were doing to him. In answer to his enquiries Erasmus told him that the machine with which they had been "burning" him was known as the "cat", and that they had obtained it from the American F.B.I. Erasmus went on to tell him about another machine they had also obtained from the F.B.I., namely a lie and truth detector which did not cause pain like the "cat".

Some days later, according to accused No. 10, he was taken out by Sgt. Nduli and washed with warm water. Nduli also undertook to wash his clothes, and he was returned to the room in the forest with a blanket around his body. Then Lieut. Taylor and W/O. Schoon came and tortured him again with the "cat". When they had finished Lieut. Erasmus again came and commiserated with him. On this occasion Erasmus gave him a beer to drink and spoke about how the Blacks were being misled by communists while the Government was working towards their upliftment.

Some days /.....

Some days later Erasmus subjected the accused to a test with the lie and truth detector. According to the accused he was seated in a chair and "strings" were tied around his wrists, skull and chest. Erasmus told him to sit quietly and answer the questions calmly, for the guage might otherwise indicate that he was lying, in which event they would burn him with the "cat" once again. Thereafter accused No. 10 was asked the same questions as before. He did not know whether he passed the test, but said that he was not subjected to any more electrical shock treatment. After accused No. 10 had undergone the lie detection test W/O. Schoon allegedly questioned him about members of Prelimo who worked with the A.N.C. in Swaziland. He was not satisfied with the accused's response, and said that he would return and fix him later, but that he was first going to burn accused No. 9. Thereafter he heard accused No. 9 screaming. He sat there dreading the thought of what they would do to him when they had finished with accused No. 9, but they did not return.

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Accused No. 10 said that at one stage another person was brought into the room where he was being kept. Judging by the sound he made as he walked, the man was in chains. Accused No. 10 was then taken to another room where he was kept until he left Island Rock on the 7th April. Mngadi said, with reference to the man who had arrived in chains: "You will be fixed. You will be interrogated right from the bottom, and we have caught your friend Bonginkosi Mngomezulu /.....

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Mngomezulu with whom you recruited". Mngadi also complained that Mngomezulu was not blindfolded and would therefore be able to identify people. In fact accused No. 10 was not interrogated again at the camp, and he never did sign any statement.

The story that accused No. 10 was deprived of food and water for three days and subjected during that period to the assaults described by him is inherently improbable. Dr. Buchan said that a well motivated person in good physical condition could possibly have stood up to such treatment, but not the average person. In deciding where the truth lies we cannot lose sight of the fact that the person who tells this story has deliberately perjured himself on other material issues. And its authenticity is further called into question by the fact that it is inconsistent with the allegations contained in the Particulars of Claim (Exhibit "NN") dated 11th November 1976. This document, issued on behalf of accused No. 10 in an action against the Minister of Police for damages arising out of the same assaults, contains allegations to the effect that the assaults were committed at Mbazwana police station or a camp in the vicinity of Mbazwana, and/or at the Wentworth police station, by one or more of the following: Lieut. Taylor, W/O. Schoon, Capt. Els, Lieut. Erasmus, Const. Ngobese, Sgt. Nduli, Const. Mngadi, Const. Mthiyana and Const. Ndimande. On his own showing the accused was not assaulted by Els /.....

by Els or Erasmus and no assault took place at the Mbazwana or Wentworth police stations.

Col. Dreyer confirmed that they arrived at Island Rock at about 2 a.m. on the 26th March. He said that on their arrival he ordered that accused Nos. 9 and 10 be placed in leg irons and that the ropes binding their wrists be removed. This was done, and he did not see any rope on either of the accused at any time thereafter. He denied that either of them was blindfolded at any time when he saw them. When they arrived at Island Rock he woke up W/O Schoon and Lieut. Erasmus and instructed them to interrogate accused Nos. 9 and 10 respectively. Schoon interrogated accused No. 9 at the braaivleis place to the south of the main building while Erasmus interrogated accused No. 10 at the other braaivleis place on the northern side. These two places are so situated that the accused were out of sight and hearing of each other. Dreyer went to each of them from time to time to see how the interrogations were progressing and to ask certain questions for his own information. The accused were not assaulted in his presence, and he received an answer to each question that he asked. Dreyer left the camp at about 9 a.m. on the 26th March to attend to other duties, and when he returned that afternoon the accused were still at the braaivleis places. He left the camp again the following morning and did not return until the 2nd April. He saw the accused on the 2nd April and did not notice any signs of assault on them. He was away from the camp /.....

the camp again until the 7th April. When he returned to the camp that evening he gave orders for the accused to be removed to Durban.

Erasmus confirmed that Dreyer woke him up at about 2 a.m. and instructed him to interrogate accused No. 10. When he first saw accused No. 10 his hands were tied behind his back with rope but he was not blindfolded. Before the interrogation commenced Dreyer gave him a pair of leg irons which he put on the accused while Mngadi untied the rope and freed his hands. Erasmus confirmed that he interrogated accused No. 10 at the one braaivleis place in front of the pumphouse, while accused No. 9 was being interrogated at the other braaivleis place some 60 metres away. He was assisted by Mngadi, and Col. Dreyer also joined them for short periods to see how the interrogation was progressing and ask questions himself. He said that accused No. 10 was at liberty to sit or stand as he pleased, that the accused answered his questions satisfactorily, and that so far as he was concerned the interrogation as such was completed by the time they had breakfast at about 9 a.m. Accused No. 10 had been given coffee to drink prior to that, and he was given breakfast at about 9 a.m. Thereafter, and for the rest of the day until about 7 p.m. accused No. 10 was questioned from time to time in order to clear up certain things, and was then allowed to sleep in one of the dwellings. He was provided with a mattress and two blankets and was guarded by black policemen. On the following days, according /.....

tied when he saw him seated on the bench, and that accused No. 9 was not blindfolded when he saw him. He was not asked what the position was in respect of accused No. 10.

Erasmus testified that a man called Mbonambi was employed to look after the camp. He admitted that he called Mbonambi and told him that he could go home and remain there until he was told to return. Erasmus explained that he sent Mbonambi away for two reasons : firstly he occupied one of the outbuildings and they needed the accommodation, and secondly, it was not desirable to have him present while interrogation was in progress because he was not a member of the police. Mr. Muller submitted that it is significant and sinister that the accused were taken to the isolated camp at Island Rock and a potential witness in the person of Mbonambi was sent away. In our view Col. Dreyer's explanation of the reason why he took the accused to Island Rock is readily understandable and acceptable. If Erasmus' action in sending Mbonambi home had a sinister significance one would hardly have expected his frank admission that one of the reasons was that his presence was not wanted while interrogations were being conducted. In any event, on the evidence of accused No. 10, Erasmus told Mbonambi to go after work, at "knocking off" time on the Friday afternoon. This not only tends to confirm that it was his sleeping accommodation that was required, but also militates against the notion that the police had anything to hide from him that day. If they wanted him out of the way when they assaulted /.....

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according to Erasmus, the accused was only asked questions occasionally to clear up points. The persons who put the questions were mainly Lieut. Erasmus himself and W/O. Schoon, but Capt. van Zyl, Capt. Els and Lieut. Taylor were also concerned with the investigation and questioned the accused on odd occasions.

The police version of the interrogation and treatment of the accused on the 26th March is corroborated by evidence which Mr. Muller elicited in the course of cross-examining Lukele. Lukele was taken to Island Rock after the border incident and remained there until the morning of the 27th March when he was taken to Durban. No restrictions were placed on his movements while he was at the camp. He confirmed that on their arrival at the camp the accused were taken to separate places which were out of sight of each other because there was a house between them. He was obviously referring to the braaiivleis places for he said that he saw accused No. 9 seated on a bench at a place where there were benches and tables. He went to sleep in the landrover, and when he woke at 8 a.m. he saw the accused still sitting with the police in the same places as before. He went down to the beach during the morning and when he returned to the camp the accused were still there. He last saw them at some time during the afternoon when it rained and he took shelter in one of the huts. Most of Mr. Muller's questions to Lukele concerned accused No. 9. In answering them Lukele stated that accused No. 9's hands were not tied when /.....

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they assaulted the accused, and if they started assaulting accused No. 10 at 8 or 9 a.m. that day as he alleges, they would surely have told Mbonambi to go immediately.

Dreyer said that he did not see Bonginkosi Mngomezulu at Island Rock. However, after consulting his records he confirmed that Mngomezulu was arrested on the 3rd April 1976 and was at Island Rock from the 5th to the 9th April. When Dreyer gave evidence on the 10th March 1977 he said that Mngomezulu was still in detention, and Fourie's evidence is that he was detained in terms of sec. 6 of Act 83 of 1967. Erasmus confirmed that Mngomezulu was brought to Island Rock on the 5th April. He said that a member of the police force came to the camp that morning and asked if Mngomezulu could be accommodated there. Erasmus made the necessary arrangements, which involved moving accused No. 10 from his room in the dwelling which has already been referred to as being situated about 100 metres away from the main complex. Accused No. 10 was moved to that building before Mngomezulu was brought into the camp, and he remained there until his departure on the 7th April. According to Erasmus accused No. 10 and Mngomezulu never saw each other at the camp. He conceded that Mngomezulu was in leg irons, and was unable to dispute that Mngadi told accused No. 10 about Mngomezulu's presence in the camp. He knew from official information that Mngomezulu used to move between South Africa and Swaziland, but he had no knowledge of a suggestion by counsel for the accused that

Mngomezulu /.....

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Mngomezulu had been arrested by the South African police on the Swazi side of the border.

We have dealt with the Mngomezulu episode more fully than would otherwise have been necessary because it formed the basis for some extravagant submissions on behalf of the accused. It is common cause that the accused's representatives requested permission to interview Mngomezulu and that the security police refused permission. In view of the provisions of sec. 6(6) of Act 83 of 1967 the refusal is hardly surprising. However, Mr. Muller submitted that the State, by failing to call any witnesses other than Dreyer and Erasmus in rebuttal of the allegations made by accused No. 10 regarding the assaults, etc., and by denying him the right to call Mngomezulu as a witness, has so tampered with his right to a fair trial that the only inference to be drawn is that his version is the true one. As to the first point, the prosecutor has called two credible witnesses whose evidence, in our opinion, is quite sufficient to establish that the accused's allegations are a tissue of lies. That being so, I consider that he exercised his discretion properly by refraining from calling further witnesses and thereby protracting a trial which had already lasted an inordinate length of time. As to the second point, there is no reason to suppose that Mngomezulu could have given any evidence to support the accused's allegations. According to the evidence of Erasmus, which we accept, Mngomezulu was in no position to witness anything relative to the treatment /.....

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the treatment of accused No. 10. Mr. Muller submitted that the fact that the defence were refused permission to interview Mngomezulu, coupled with the fact that he had been kept in detention for so long, gave rise to the "irresistable" inference that his evidence would have substantiated the accused's allegations. He went so far as to suggest that Mngomezulu had been kept in detention in order to suppress his evidence. And he also sought to draw the inference - as the "only" inference under the circumstances - that Mngomezulu would have testified that the South African police (10) seized him in Swaziland in violation of customary international law. In our opinion there is not the slightest justification for these submissions. There is not a tittle of evidence to suggest that Mngomezulu was arrested in Swaziland, and none to suggest that the police abused their powers in terms of sec. 6 by keeping him in detention.

We have already indicated that we found Erasmus to be a credible witness. That description does not do him justice, for he was in every respect an excellent witness. His evidence was given in the most frank and open manner, (20) and he was not shaken in the slightest degree under cross-examination. It is true that he was not in a position to deal with each and every one of the accused's allegations, but his evidence was sufficient to refute the salient features of the story. The story that accused No. 10 was subjected to the interrogation-cum-assault in the room in the forest from 8 or 9 a.m. on Friday the 26th March is

refuted by /.....

refuted by the evidence of Erasmus, Dreyer and Lukele. Erasmus testified that accused No. 10 was provided with proper meals and washing facilities at all times and denied that he was blindfolded at any time, or that any rope was tied to him after he was placed in leg irons. He denied the alleged conversations with accused No. 10 about "cat" and lie detection machines, and denied subjecting him to a test on any lie detector. He said that there were no such instruments at the camp. At no stage did he hear the accused crying out or screaming, and he did not commiserate with (10) him or give him beer to drink. With regard to the story that the police threatened to take accused No. 10 out to sea in a boat, Erasmus testified that he went to the beach daily and there was no boat there.

We are satisfied that the allegations to the effect that accused No. 10 was assaulted and otherwise ill-treated at Island Rook are devoid of truth. The evidence convinces us that he was properly treated, and that his allegations were fabricated for the purpose of the defence case in regard to the so-called investigational system. (20)

We have already made a brief reference to the evidence of Judson Khuzwayo and Russell Maphanga - in the context of examining the case against accused No. 2. Khuzwayo testified that he was detained at about 4 p.m. on the 5th December 1975 and taken to the offices of the security police at Corsen house by Lieut. McPherson and another white security policeman. There he was questioned by four white

and two black /....

and two black policemen, firstly about his work at the Institute for Social Research, and then about other matters including his alleged activities in connection with a strike at the Natal Cotton Factory. Col. Steenkamp allegedly entered the office and in effect warned him to say what was required of him, using crude language and "knocking" him on the chest with his fist as he did so. Some time later Major Coetzee entered and accused him of reviving the A.N.C. with Osborne Mthunywa in Clermont. He was then asked where Osborne was and his reply was that he did not know. After Coetzee had left the room he was made to assume a squatting position with his buttocks suspended in mid air and his arms outstretched in front of him. In this position he was ordered to flick his fingers at a rate dictated by a black policeman named Mathe. He was forced to continue with this exercise until he fell down exhausted. After a short pause he was told to resume the exercise, which was repeated altogether three times before he became too exhausted to continue. Throughout this period he was repeatedly asked where Osborne was, and warned to "say what they wanted (him) to say".

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We pause here to observe that on Khuzwayo's own showing the ill-treatment in the form of exercises seems to have been designed to extract information rather than to induce him to make a false statement. He did not tell the Court what it was that his interrogators wanted him to say, except that they wanted to know where Osborne was. /.....

was.

Khuzwayo testified that after the exercises he was questioned about Osborne and the A.N.C. and his dealings with Nxasana, accused No. 2 and Zuma. He said that his interrogators alleged that he had met with accused No. 2 and Nxasana at Berea Road to discuss A.N.C. matters, that he had attended a meeting at Nxasana's house with Nxasana, accused No. 2 and Zuma, and that he had met and discussed the A.N.C. with Zuma and Osborne respectively on other occasions. They refused to accept his denial of these allegations and insisted that he agree with what they were saying. At one stage during this interrogation Khuzwayo heard a terrible heartrending cry from somewhere else in the building, whereupon one of the black policemen said "Do you hear what is happening to your friends? This is also waiting for you if you do not want to speak that which we want you to say". Some time later Major Coetzee entered the room carrying a knobstick and enquired how far they had got with Khuzwayo. On being told that he had not yet agreed to co-operate Coetzee said something to the effect that he would be sorry for himself and would remain in detention and in gaol for a long time. Then Coetzee asked him whether he had gone to the house of accused No. 1 in Pietermaritzburg. The questioning at Corsen house continued until 9 or 9.30 a.m. on the 6th December, after which Khuzwayo was taken to the Hillcrest police station where he was kept in solitary confinement until his release on the 19th February 1976.

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On Tuesday/.....

On Tuesday, the 9th December Khuzwayo was taken to see the district surgeon, Dr. Buchan. He was given medicine for an ulcer and a nervous disorder, and was referred to a heart specialist whom he saw the following day. In his evidence-in-chief he said that he told Dr. Buchan of the treatment he had received at the hands of the police, but he watered this down under cross-examination, saying that all he told the doctor was that his ailments had been aggravated by the treatment he had received, without telling him anything about the treatment. He saw Dr. Buchan five or six (10) times during his detention at Hillcrest. Surprisingly, Dr. Buchan was not asked any questions about seeing and treating Khuzwayo.

Khuzwayo also alleged that he complained to Mr. Castell, a magistrate who visited him at Hillcrest, that he had been badly treated at Fisher Street. He said that he gave the magistrate an outline of the treatment to which he had been subjected, and that the magistrate made a written note of the complaint. Neither Mr. Castell nor any other magistrate was called to rebut this evidence. (20)

During the week following his detention Khuzwayo was taken to Corsen House for interrogation, but after that the interrogations were conducted at Hillcrest by Capt. Wessels and Lieut. McDuling. On Khuzwayo's evidence they only visited him occasionally. On the first occasion Wessels indicated that he knew all about his activities and questioned him about the revival of the A.N.C. and his association /.....

association with Osborne Mthunywa. When they left he was provided with a pen and paper and told to write about his activities with Osborne. On the occasion of the next visit Wessels and McDuling were accompanied by a third person whose name Khuzwayo did not know. (In fact it was W/O. Botha). On this occasion he was questioned about a letter he had written to Riot Mkwanazi, and about his association with Riot and Russell Maphanga. He was asked for the notes he had been instructed to write about his activities with Osborne, and when it transpired that he had written nothing they became (10) "very angry". Wessels pointed to a knobstick in the corner of the room and said that he would hit him with a larger stick than that one; and went on to say that in view of his previous conviction it would be easy to have him sentenced to 15 years' imprisonment. Botha advised him to wear boots when next they came because there would be excreta flying around the room. Khuzwayo claimed that he took these threats seriously. On a subsequent occasion he gave the police a written statement explaining why he had arranged for Maphanga to pay a visit to Riot Mkwanazi, but Wessels and Mc- (20) Duling told him that the explanation was unacceptable. On one occasion when McDuling arrived to interrogate him he said that he was the bearer of "very sad news", and then deliberately kept him in suspense for about 20 minutes before telling him that his sister-in-law had died. Eventually he was taken to Corsen House where McDuling informed him that he required a statement about his political activities before he could be released /.....

be released from detention under section 6. Khuzwayo reiterated that he knew nothing about political activities, but he wrote a statement (Exhibit "KK") dated 17th February 1976 and was thereafter released.

Having been released on the 19th February Khuzwayo was detained again on the 10th June 1976. On that day Capt. Wood ^{told} him that he had information that at about the end of February or the beginning of March certain people had visited him to discuss politics. Wood did not name these people but said that one or more of them had come from Swaziland, and he wanted Khuzwayo to tell him who they were. When Khuzwayo denied all knowledge of the matter Wood threatened to keep him in gaol if he persisted in the denial, and indicated that he would be released if he co-operated. Wood also called him a murderer and threatened to treat him callously in detention, without regard to his state of health. There was also, according to Khuzwayo, a childish threat to the effect that he would be the first victim of the "S.S. Act" and would be thrown into the Kalahari to be consumed by vultures. Under cross-examination Khuzwayo claimed - rather naively, we think - that he took the lastmentioned threat seriously. Wood and a black policeman called Twala tried unsuccessfully to persuade Khuzwayo to talk; and Wood eventually tried to convince him that he had the necessary information, by telling him that the persons who had visited him included Zuma and Joseph Mdluli. However, Khuzwayo persisted in his denial and was eventually taken to Wentworth

where he /.....

where he was locked up in a cell. He was taken back to Corsen House for further interrogation by Wood and Twala the next day and again on the 14th June. On the latter occasion Wood lost his temper and punched him once in the stomach, apparently because he was leaning against the wall. Then he was returned to Wentworth where he remained in somewhat insanitary and degrading circumstances until the 26th August 1976. He was removed from there to the Umbilo police station where the conditions were much better, and he was finally released on the 2nd November 1976. At no stage during his second detention did he make any statement whatsoever.

Khuzwayo was not an impressive or satisfactory witness. He gave some manifestly false evidence to the effect that he never discussed the A.N.C. or its activities with any of his fellow prisoners during the ten years he spent on Robben Island. On his own showing he is bitterly opposed to the Government and the security police, and we are satisfied that at least some of his allegations were deliberately exaggerated to vilify the police and support the defence case on the issue of the investigational system. McDuling's evidence satisfies us that there is no truth in the allegation that he kept Khuzwayo in suspense for some 20 minutes over the death of his sister-in-law. He said that he went to Hillcrest to tell Khuzwayo about the death of his sister-in-law. The uniformed police gave him access to Khuzwayo by opening several doors in the cell complex, including the door to a courtyard/.....

be true that Capt. Wood lost his temper and punched him and that he was threatened as alleged during the second detention. It is also possible that his interrogators made allegations about his activities and confronted him with information which was in some respects inaccurate, but even if his evidence is taken at face value we think it falls short of supporting the conclusion that they "fed" him with false information and subjected him to the DDD syndrome for the purpose of concocting evidence. The emphasis throughout, as submitted by counsel for the State, was on his being "asked" about things, and being told that they "wanted to know" about this or that. In fact the police obtained no information from him which could by any stretch of the imagination be regarded as being useful to them. Exhibit "KK" affords ample evidence of this in regard to the first period of detention. It obtains no incriminatory admission, nor any allegation of any kind to incriminate the accused or any other person or persons. Khuzwayo's own account of what occurred during the second period of detention shows that there was very little persistence in the attempt to obtain further information from him.

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Russell Maphanga was detained at 5 p.m. on the 5th December 1975 and taken to Corsen House. He said that he was handed over to ten black policemen who asked him what he knew about the A.N.C., the cell system and related matters, then proceeded to assault him in the manner herein-after described. These policemen included Mhlongo whom he already /.....

to a courtyard adjacent to Khuzwayo's cell. He called Khuzwayo into the courtyard and began telling him that he had news that was not good. At that stage he noticed that the door to the courtyard had been left open, and he interrupted what he was saying for as long as it took for him to tell the uniformed policeman "Gaan sluit daardie buite sel-deur". McDuling frankly admitted that on one occasion Wessels pointed to a knobstick which was on display among other articles in the office in which they were, and said that he would hit Khuzwayo with a bigger knobstick than that. This was in the context of a denial by Khuzwayo that he had any association with Riot Mkwanaazi. Both McDuling and Botha admitted that the latter thereafter made the remark about wearing boots, but it is clear from their evidence that neither the remark nor the reference to the knobstick were intended or taken as serious threats. McDuling said that if he remembered correctly Khuzwayo laughed and asked where he could purchase boots.

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We are not convinced that any of Khuzwayo's allegations of assault, threats and ill-treatment at the hands of the security police are true. But that is not the test. The prosecution bears the onus of disproving his allegations, and it has not seen fit to call any further evidence to rebut them. We must therefore proceed on the assumption that his uncontradicted evidence of ill-treatment in the form of exhausting exercises, browbeating and threats during his first detention may reasonably be true. Likewise, it may reasonably be true /.....

knowledge about what they were asking.

My question to you was, did they say anything about these things they were talking to you about, did they tell you anything? --- Please explain the question.

Were they only asking you what do you know or were they telling you what you should know? --- They were asking me what I knew."

He went on to say, however, that after Wessels had questioned him as aforesaid Col. Steenkamp told him that he might be released if he gave evidence "which would cause people to be sentenced". He said that Steenkamp also referred to the beating he had received at the hands of the black policemen and indicated that he might turn them loose on him again if he did not speak the truth. (10

After Steenkamp had spoken to him Maphanga was given food and taken to the King's Rest police station. He was in great pain, but was left without medical attention the whole weekend. On Monday the 8th December he was taken back to Corsen House for interrogation. This did not last long, for when his interrogator ascertained that he was not going to talk he ordered that he be returned to King's Rest, and told him that he would remain there indefinitely. (20

Maphanga was visited by a magistrate once a fortnight. The first visit was by Mr. Potgieter on the 10th December, the second by Mr. Knoetze on the 30th December, and the third by Mr. Potgieter again on the 14th January.

He said /.....

he already knew, and Khumalo, Mdima, Makhanya and Msimango whose surnames he learnt that day. Khumalo, Mdima and Makhanya were among those who participated in the assault.

Maphanga said that Ndima made him strip down to his shirt, underpants and socks and forced him to assume an unnatural position, as though he was sitting on an imaginary chair. He was forced to maintain this painful and humiliating posture until about midnight. He fell down twice, injuring his left knee on one of these occasions. The questioning continued while he sat on the imaginary chair, and he was repeatedly punched and prodded in the stomach and struck with the open hand. One blow under his chin caused his teeth to clash and resulted in one of them being cracked. At about midnight an unidentified white policeman entered the room and told them to stop hitting him. Mdima then told him to get dressed, and when he was dressed he was allowed to sit on a real chair. He looked at his watch at this stage and saw that it was 1 a.m. Capt. Wessels then came in and asked him what he knew about the A.N.C., the cell system, recruitment of people for military training, and so forth. (10 (20

Maphanga made it perfectly clear that up to that stage the police were only seeking information from him, as appears from the following extract from his evidence-in-chief :

"Were you told anything about these subjects by the police? --- To these questions my reply was that I had no knowledge /.....

He said that on the occasion of the first visit he complained to the magistrate about the food and told him that he was unwell because he had been assaulted. The magistrate said that he would not make any note of the complaint of assault but would tell the security police to take him to a doctor. When he was visited by the second magistrate (Knoetze) he repeated his complaint about the food and his complaint that he had been assaulted (hit) when he was arrested. This magistrate asked whether he had told the first magistrate about the assault, and Maphanga replied in the affirmative. (10) The magistrate said that in that event there was no need to repeat the complaint to him and he would not write it down, that the first magistrate would or should have done so. Maphanga said that on the occasion of the third visit the following occurred :

"I told him (the magistrate) that I had been arrested and that I had been hit and that I had told him about this and that he had not written it down, and I asked him to write it down. ---- He said it would have been better had we written it down on the first occasion. I said that on the first occasion I had told him to write it down and that he had said he would not write it down. He then wrote down the complaint." (20)

The acceptable evidence of the two magistrates concerned refutes this, and goes far towards establishing that Maphanga fabricated the story about the assaults and ill-treatment at Corsen /.....

at Corsen House. Mr. Potgieter testified that on the 10th December Maphanga had no complaints or requests. He made a written note to that effect (Exhibit "AAA.5") which Maphanga signed. Mr. Knoetze denied that Maphanga said anything about an assault on the 30th December. His only complaints on that occasion were that he was not satisfied with the food and did not get enough exercise. Mr. Potgieter said that on the 14th January Maphanga made a complaint which he noted in writing (Exhibit "AAA.6") as follows :-

"The police beat me up on 4/12/75. I do not know their names, but know them by sight. They were African policemen. On 31/12/75 the same people threatened to beat me up again. I also wish to complain about the food. It is too little". (10)

This note was also signed by Maphanga. Mr. Potgieter could not remember whether Maphanga had an opportunity to read the note before signing it, but said that it was his practice to read out the gist of such notes before asking the detainee to sign. (20)

We are satisfied that Maphanga made no complaint about the assault he now alleges at any time before the 14th January 1976, and that his evidence that he complained about it on the 10th and 30th December was perjured. His statement to Mr. Potgieter that he did not know the names of the policemen who assaulted him is inconsistent with his evidence that he knew the names of three of them, and is a further /.....

further indication that the story was fabricated. He made a patently dishonest attempt to explain away the inconsistency by relying on the distinction drawn in Zulu between ^{given} names and surnames (izibongo), saying that when Mr. Potgieter asked him for the names of his assailants he did not think that he wanted their surnames. The interview was conducted in English and Maphanga must have realised that he was being asked to identify his assailants by name. If he knew their surnames it is inconceivable that he would have refrained from mentioning them.

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Dr. Buchan attended to Maphanga on the 19th and 23rd December 1975 and again on the 19th and 21st January 1976. Maphanga said that on the first occasion he was suffering from a headache, the cracked tooth, and pain in his knee, and that he not only told Dr. Buchan he had been assaulted but also explained that the knee had been injured when he fell down. That is refuted by Dr. Buchan's evidence. Maphanga's complaints, as he noted them on the 19th December, were : "headache, one tooth cracked, and left knee painful following a kick (when arrested)". On examination he found that Maphanga was suffering from a gum infection and an inflammatory condition of the left knee, and treated him accordingly. It was not until the 21st January that Maphanga told him that he had been forced to assume the posture already described and had fallen onto the knee; and it was on the same occasion that he first made the allegation that his tooth cracked when he was slapped in the face and his teeth /.....

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teeth clashed together. So far as he could recall, Dr. Buchan did notice a small chip out of one of his front teeth. An X-ray which was taken on the 21st January revealed a crack fracture of the left patella. Mr. Muller submitted that Dr. Buchan's evidence corroborated Maphanga's account of the assault at Corsen House. We do not agree. Dr. Buchan's evidence establishes that the knee was injured and a tooth was chipped, but it in no way supports Maphanga's account of when and how this occurred. On the contrary, his evidence that Maphanga first told him that the knee was injured as the result of a kick supports the conclusion that the story he told later was a fabrication.

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Maphanga spoke about one further trip to Corsen House. He said that on this occasion Lieut. McDuling showed him a statement allegedly written by Judson Khuzwayo and questioned him on its contents. He also said that McDuling threatened to call other people to hit him until he answered his questions. On another occasion McDuling and Capt. Wessels interrogated him at King's Rest. He said that Wessels told him that they had discovered that he had attended a meeting at Nxasana's house at which the revival of the A.N.C., the cell system, recruitment for military training and politicising the masses had been discussed. Wessels wanted to know whether this was true, whether he had attended such a meeting or whether anyone had invited him to do so. When Maphanga denied all knowledge of the matter McDuling allegedly gave him the choice of indefinite detention if he /.....

if he persisted in that attitude or the prospect of an early release if he gave evidence to "get somebody else sentenced". Before leaving they told him to consider the matter carefully, and, if he decided that he had something to tell them, to inform the station commander who would telephone them. He did not do so and they never came back to him. He remained in solitary confinement at King's Rest until the middle of April, and thereafter at Wentworth until his release on the 6th July 1976. He was not allowed anything to read, and sanitation at King's Rest was rather primitive. The food at King's Rest was poor but his diet improved at Wentworth, and he received weekly parcels from home.

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McDuling denied that he showed Khuzwayo's statement to Maphanga or threatened him with any assault. He admitted that Wessels asked Maphanga whether he had attended the meeting at Nxasana's house, but denied that he spoke to Maphanga about giving evidence for the State or threatened him with indefinite detention. We have already indicated the impression that McDuling made in the witness box. Maphanga, by contrast, was the most blatant liar who gave evidence in this case. We have already referred to some of the more obvious falsehoods he told, but there were many more. The story he told about the purpose for which he left the country in 1963 was utterly incredible, and his evidence was in many respects inconsistent with what he had said at his own trial in 1965. And it is not only the content of his evidence that demonstrates his mendacity. His demeanour was such /.....

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was such as to proclaim the fact that he was not telling the truth. Under all the circumstances, and notwithstanding the absence of any evidence from Col. Steenkamp or the black policemen who allegedly assaulted him, we reject Maphanga's evidence as being worthless. In his case we are left simply with the fact that as a detainee under sec.6 he was in a position where he could be influenced by any attempt to get him to make a false statement. There is no credible evidence that any such attempt was made.

The defence led a considerable amount of evidence (10) relative to the death of Joseph (Mkutuzi) Mdluli in police custody on the 19th March 1976. The witnesses who gave this evidence included the late Mdluli's widow, his son Jabulane Thomas Mdluli (hereinafter called Thomas), Dr. van Straaten and Prof. Shapiro. Mdluli was arrested at his home at about 10.30 p.m. on the 18th March and taken to Corsen House. His widow's evidence establishes that at the time of his arrest Mdluli was in good health and had no injuries. Thomas testified that he was taken to Corsen House and questioned briefly on the 19th March. He was not allowed (20) to see his father. However, while he was there between 12 and 1 p.m. he heard someone with an Afrikaans accent repeatedly calling out "Mdluli, Mdluli, Mdluli" in an apparent attempt to arouse or awaken his father, but there was no response.

The pathologist, Dr. van Straaten was taken to Corsen House after 11 p.m. on the 19th March, and saw

Mdluli's /.....

Mdluli's dead body lying in one of the offices there at 12.15 a.m. The police officers present informed him that Mdluli had died at about 9.30 p.m. However, rigor mortis was fully developed at that stage, and Dr. van Straaten's immediate impression was that Mdluli had been dead for "anything up to twelve hours". Dr. van Straaten was not prepared to be dogmatic on the point, and Prof. Shapiro's evidence shows that the time of death could not be estimated with any degree of precision. Our understanding of the medical evidence is that death could have occurred some three hours (10) before Dr. van Straaten first saw the body, but the probability is that it was more than three hours. Dr. van Straaten conducted a post mortem examination of the body the following morning and recorded his observations on Exhibit "00.15". The injuries he found on the body included abrasions over both cheek-bone areas, the left elbow, right upper thigh, both shins, outer aspect of both ankles, side of the right foot, inner aspect of the right calf, and behind the left shoulder; extensive deep bruising of the left frontal, temporal and occipital scalp; deep bruising into the abdominal muscles (20) above the pubic rami; and deep bruising and haemorrhage over the left lower anterior ribcage, with fractures of the 10th, 11th and 12th ribs at the costal margin in the anterior axillary line. The brain was extremely congested, with small subarachnoid haemorrhages over the middle of the left hemisphere and both frontal poles. There were subconjunctival haemorrhages of both eyes. The cause of death was established as /.....

established as "the application of force to the neck". There were three distinct areas of bruising on the neck: one over the right side of the thyroid cartilage, another below the thyroid cartilage anteriorly, and another below the angle of the right side of the jaw. The calcified thyroid cartilage was found to be fractured. According to the medical evidence the neck injuries would have caused death instantaneously or within a very short time.

We are satisfied that Mdluli sustained the injuries described by Dr. van Straaten while he was in the (10) custody of the security police. There is no evidence of how he suffered the injuries or in what circumstances. That is a matter peculiarly within the knowledge of the persons in whose custody he was at the time, and none of them has given evidence. We can only draw such inferences as we can from the evidence before us, bearing in mind that the State bears the onus of disproving the defence allegations relative to the so-called investigational system. Having regard to the nature of the injuries, their diversity and diffuseness, we are satisfied that they were not self-inflicted and that (20) not more than a small percentage of them could have been caused accidentally. The most plausible inference, we think, is that most if not all of the injuries were inflicted by one or more unidentified members of the security police. However, there is simply no basis for drawing any further inferences as to the circumstances in which the injuries were inflicted. One can only speculate about whether they were inflicted unlawfully /.....

unlawfully in the course of an assault, or in circumstances where the use of force was justified, e.g. to prevent an escape. And one ventures even further into the realm of speculation if one tries to determine whether at the time the injuries were inflicted the police were engaged in an interrogation of Mdluli - coercive or otherwise. Bearing in mind the incidence of the onus we do not think that the evidence excluds the reasonable possibility that the police assaulted Mdluli in the course of interrogation, but we cannot make any positive finding in that regard.

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Lawrence Kuny was yet another defence witness whose evidence dealt primarily with the so-called investigational system. He was an accomplice of one Suttner who was convicted in November 1975 on a charge of participating in terroristic activities which included the compilation and distribution of subversive pamphlets such as Vukani and Inkululeko. Kuny gave a detailed account of the manner in which Suttner recruited him into an underground organisation which he thought was the A.N.C., the careful training he received from Suttner and the manner in which they carried on their subversive activities as members of a secret cell. The object of leading this evidence, according to Mr. Muller, was to show how underground activities really are conducted. He contrasted Suttner's professionalism, efficiency and carefulness with the slap-dash approach and careless conduct attributed to some of the accused in carrying on similar activities, and sought to draw the inference that the accused could not /.....

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could not have been engaged in underground subversive activities. We have given due consideration to this point in arriving at the conclusion that on the evidence the accused in question did participate in terroristic activities.

Kuny was arrested at his flat in Durban by members of the security police during the afternoon of Thursday, the 19th June 1975. He was detained in terms of sec. 6 of Act 83 of 1967 and eventually gave evidence for the State in Suttner's trial on the 3rd November 1975. In the course of that evidence he volunteered the following :

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"I would like to point out to the Court that on the day of my arrest not one finger was laid on me and I was absolutely amazed and I was very confused at - that these men were such gentlemen. I thought, and I expected, that these chaps were going to get me, take me into a room and were going to beat me up and get all the information, and the reverse happened. ----- the police behaved like perfect gentlemen right throughout the -----".

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This is borne out by the magistrate who visited Kuny during his detention, Mr. Potgieter. He testified that Kury never had any complaints and always lauded the manner in which he was being treated by the security police.

In his evidence before us Kuny painted a different picture. His evidence was more or less foreshadowed in his affidavit (Exhibit "SS") which Dr. West read and commented upon /.....

commented upon. Dr. West pointed out that most of the coercive methods listed in Table II in Exhibit "PP4" were described in one way or another in the affidavit. Some of the methods that stood out, according to Dr. West, were demonstrating omniscience, enforcing trivial demands, fluctuating attitudes on the part of the interrogators, threats alternating with indulgences, degradation and control of perceptions, especially through keeping the light in the cell on all night. With regard to Kuny's reaction to his treatment, Dr. West drew particular attention to the triad of regression, constriction and identification with the aggressor. On Dr. West's evidence the phenomenon of identification with the aggressor, coupled with the mechanics of dissociative reaction would account for the fact that Kuny had nothing but praise for the police at the time of the Suttner trial but tells a different story now. (10)

Dr. West did not have the advantage of seeing and hearing Kuny telling the tale foreshadowed by his affidavit. He was a most unimpressive witness. He was garrulous, emotional and inclined to dramatise and exaggerate ordinary experiences and events. As we will show, his evidence on some material points was inconsistent and totally unconvincing, and we are convinced that in several respects he was deliberately untruthful. We do not propose to set out and examine his protracted testimony in any great detail. It is unnecessary to do so because even if Kuny was deliberately subjected to the so-called DDD syndrome - and we are satisfied /..... (20)

satisfied that he was not - his own evidence refutes the notion that this was designed to induce him to give false information or evidence, or that it had that effect. He made it clear that at no stage did any policeman try to influence him to say anything but the truth, or to change what he wanted to say. Indeed on one occasion when he said something about a meeting of the Communist Party Capt. Wessels was concerned about the possibility that he might have said it simply to please his interrogators. In his evidence-in-chief Kuny said that the danger of his saying things just to please the police was often referred to, but when cross-examined on the point he maintained that it was only on the one occasion referred to above that he was asked whether he was trying to please them. (10)

In this Court Kuny described several threats and instances of rough handling during the first few days of his detention. The threats started en route from his flat to Corsen House on the Thursday afternoon, when Capt. van Zyl told him that it would be twenty years before he saw another newspaper. On arrival at Corsen House Kuny was taken to a waiting room on the third floor, and going up in the lift they were joined by Major Coetzee who told him "We are your father, your mother, your lawyer and your doctor" - thereby demonstrating omnipotence and omniscience in somewhat dramatic fashion. In the third floor waiting room Kuny was allowed to sit down and was given a cigarette. He described his feelings at that stage as shock, almost total collapse and fear /..... (20)

and fear of being tortured. Then Major Coetzee entered the room and took him upstairs to an office on the fifth floor. His evidence-in-chief as to what occurred on the way up the stairs reads as follows :-

" And then what happened? --- I then went with him - he motioned me out of the door ----- and I was pushed up the stairs by Major Coetzee and I kept on falling over.

Did he only push you? ---- He was behind me and I was going up the stairs and he was sort of running after me and I was scrambling up and then one time he pushed me and I fell down and I got up again and he was behind me and all I could do, I just wanted to get away from him. And I just scrambled up the stairs to the fifth floor.

Was there nothing he did to you beyond pushing you? --- No. I think ---when I say "pushed me", I think I was tripped as well. I remember his foot."

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The same incident is described in para. 17 of his affidavit (Exhibit "SS") in the following terms :

"We then left the room where I had been waiting, and I was pushed upstairs. I tripped and fell on my hands. I was terrified of the man who had pushed me. When I took the next step he kicked me from behind and I fell on my face. I scrambled up and he pushed me again, I fell onto my wrists. They ached. I was terried(sic) and managed to scramble up the stairs."

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When cross-examined/.....

When cross-examined on this aspect Kuny made an unconvincing and patently dishonest attempt to reconcile the apparent inconsistency between his evidence and his affidavit.

When they arrived in the office on the fifth floor, Kuny said, Major Coetzee made a threatening gesture by clenching both his fists and said "Luister jong, jy moet praat", but did not hit him "or anything like that". Then Coetzee produced and dangled a small bunch of keys which, according to Kuny's evidence-in-chief, "were the keys of the garage where the pamphlets were hidden". This description of the incident in the fifth floor office was inconsistent with what Kuny stated in the affidavit and under cross-examination. He said under cross-examination that Coetzee grabbed him by the shirt collar - "grabbing me tight and let me go and then sort of like a second or so later, out with these keys dangling". The description in the affidavit was more dramatic :

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"I looked helplessly at him; the hold on my collar tightened; I was choking, and felt faint from lack of breath. He brought out a set of keys which showed me that our cover had been blown."

It transpired under cross-examination that Kuny did not know that they were the keys to the garage, and his description of them was so vague and confused that we were left in doubt as to whether any keys were dangled before him.

Thereafter, according to Kuny, he was questioned at length /.....

questioned at length about Suttner and the pamphlets, the main interrogators being Capt. van Zyl and Capt. Wessels. At one stage W/O. Botha offered him a glass of water and, when he declined the offer, drank half the water himself to show him that it was not drugged. In his affidavit Kuny made it clear that up to that stage he was still denying everything - which is difficult to reconcile with evidence he gave in the Suttner trial that it was when he got to Corsen House and received decent treatment from the police that he decided to show them where he had hidden the pamphlets. When cross-examined on the point he demonstrated his unreliability once again - attempting to iron out the discrepancy by claiming that he had not "spoken completely" by that stage. Further questioning by the Court revealed that he meant by this that he had not spoken at all, but had indicated that he was about to do so. (10

On his own showing Kuny was "crying all the time", and yet he would have the Court believe that the police found it necessary to handle him roughly and issue various threats to break his resistance. On the Thursday afternoon Capt. Wessels told him in a "very gentle sort of way" that the game was up and it would be best if he co-operated. An Indian policeman called "Cheroot" or "Shroot" also advised him to start talking and emphasised his point by striking the palm of one hand with his fist, which Kuny interpreted as an implied threat that he would be assaulted if he did not co-operate. Lieut. Taylor and W/O. Botha took him to the (20

Amanzimtoti /.....

Amanzimtoti police station where he was locked in a cell that night. On his arrival there he learnt that he was being detained in terms of sec. 6, and it was impressed upon him that he could be held indefinitely if he did not talk. The police repeatedly stressed the fact that they did not resort to torture to extract information, but there was an occasion when he asked Lieut. McPherson what would happen to him if he did not co-operate, and the reply was "Don't ask me that, some of those men at the office, when they get you, Phew!"

According to Kuny he started "spilling the beans" before 6 p.m. on the Thursday and continued doing so when he was taken back to Corsen House for further interrogation the next day. He was left in his cell until about 6 p.m. on the Saturday. Then W/O. Botha came to fetch him. Botha was dressed in casual clothes, carried a firearm in a holster at his side, and spoke brusquely to him. Kuny was frightened when he saw the firearm, and his fear increased when Lieut. Taylor drove them to Corsen House at a "breath-taking" speed. On arrival he was taken to the waiting room on the third floor where he was kept for about half an hour. The offices were a hive of activity ^{that evening} and he detected a note of seriousness which he found ominous. Suddenly Suttner stumbled into the room. His appearance was such that it terrified Kuny : pale face, dishevelled hair and a blank expression as though he was in a stupor. Suttner was grabbed and pulled out of the room, and the police said nothing to Kuny about the incident. Later Kuny was taken to the fifth floor and interrogated /..... (20

interrogated for some time. Then Capt. Wessels took him to Col. Steenkamp's office on the third floor. Col. Steenkamp ordered him to sit on the carpet and, with shaking voice, proceeded to lecture him about communists and their activities and to threaten him ^{with} dire consequences if he refused to co-operate. He stated inter alia that the time for playing was over, that if Kuny did not talk by midnight he would hand him over to the "K.G.B." or "the Blacks", and that he would then regret the day he ever became involved. When this was over a terrified Kuny was taken back to the fifth floor for further interrogation. He was questioned by several men - (10 by some harshly and by others humanely - and they kept on reminding him of the 12 O'clock deadline which Col. Steenkamp had set. They were insisting that he name Suttner's superior and refused to believe that he could not do so. He said that he was very scared and went on to say :

"It was terrible, it is the most frustrating thing in the world, especially when you are in the hands of men that have power. I remember on that night, just to explain the feeling of hopelessness and fear and the power, one of the men said to me 'Look, you know what I think of the rule of law", and he picked up a piece of paper and he tore it in half and he said that is what he thought of the rule of law". (20

W/O. Botha is the person who allegedly demonstrated his contempt for the rule of law in this fashion. As the deadline approached /.....

approached Botha also told Kuny that at 12 o'clock he would be going out of the window like Timol. Then Col. Steenkamp entered with a pamphlet which he ordered Kuny to read. While Kuny was reading it Steenkamp struck him on the chest with "almost like a karate flick of the hand", thereby increasing his terror. However, the 12 o'clock deadline came and went without any further harm befalling Kuny. He was taken back to the office on the third floor where Col. Steenkamp gave him another lecture and accused him of having sentenced his father to death. Thereafter Botha and Taylor drove him back to Amanzimtoti. On the way he asked Botha to give him his gun so that he could "blow his brains out", but Botha spoke kindly to him and urged him not to give in at that stage. (10

On the Sunday morning Wessels and Botha took Kuny to various places where he had left empty trunks, and thereafter to his flat where he had a shower, got fresh clothing and was afforded the opportunity of speaking to his girl friend. On the Monday morning he was taken back to Corsen House for further interrogation, and he went there every morning for the next two months or so to work on his statement. He did so under the supervision of policemen who pointed out errors from time to time and indicated points which were irrelevant or required expansion, but the contents of the statement were his. The security police generally treated him properly from this stage, and the officers who were primarily responsible for him, namely Capt. Wessels and Capt. Wood /..... (20

and Capt. Wood were always kind to him. However, Capt. van Zyl hurt him by calling him "Joodjie" and referring to the alleged fact that Jews were always involved in political trouble. On one occasion Lieut. McDuling asked him whether he believed in God and, shouting at him, accused him of being a mass murderer.

Much of Kuny's evidence was devoted to describing the conditions under which he was detained, at Amanzimtoti for the first six weeks or two months, and thereafter at the Durban North police cells. We were also given detailed, poignant and - we are convinced - exaggerated descriptions of his reaction to solitary confinement. He complained that for the first week or more the light in his cell was kept on all night, and that there were occasions thereafter when the uniformed police forgot to switch off the light or even to bring his food. The cell at Amanzimtoti was not clean and was equipped with an irritating self-discharging cistern. He had to nag the police at Amanzimtoti to take him for warm showers in their quarters, and because of their neglect he went unwashed for five, ten or fifteen days on occasions. However, there was a cold shower available which he did not think of using. As to his reactions to solitary confinement, Kuny spoke in terms of being broken down, losing his sense of reality, becoming paranoic and stupid, living in a world of fantasy, counting the bricks in his cell, feelings of hopelessness, despondency and despair, utter dependence on the police for the

smallest things /.....

smallest things, and so on. He found himself contemplating suicide almost from the beginning, and actually smuggled into his cell various means by which he thought he could end his life.

On his own evidence, however, Kuny had many diversions to relieve the monotony of solitary confinement, and was granted extraordinary priveleges for a detainee under sec. 6. He was allowed to see and speak to his father on the night of his arrest, and within a short while began receiving weekly visits from his father. He made regular visits to the district surgeon, and Capt. Wood frequently took him to public places for tea. There were the daily trips to Corsen House during the first two months, and by about the beginning of July he had his law books to study. He was given every facility and encouragement to study for, write and pass examinations at the end of July and in November. Indeed, when he was due for release after giving evidence against Suttner he remained in detention at his own request until he had completed writing his examinations.

Kuny's complaints about the conditions under which he was kept at Amanzimtoti did not arise from any deliberate action on the part of the security police - except that in the beginning they instructed his guards to keep his light on and watch him because they knew he was contemplating suicide. There was no question of subjecting him to any pattern of degradation or control of perceptions. Although Kuny maintained that he enjoyed the various

priveleges /.....

privileges mentioned as a reward for compliant behaviour he also said that he saw nothing sinister about it. The evidence satisfies us that he was granted privileges and treated with kindness because the police were concerned about his well-being, and certainly not for the purpose of inducing compliant behaviour.

W/O. Botha and Lieut. McDuling gave acceptable evidence to refute or place in true perspective most of Kuny's allegations of rough treatment, threats and intimidation. Botha was one of the party who went to Kuny's flat when he was arrested, and he was involved in Kuny's interrogation until the following Monday when he went on leave. He said that Kuny burst into tears while they were searching his flat, and cried almost incessantly during most of the interrogation. It was quite unnecessary to threaten or put pressure on him. On the contrary, Botha tried to avoid any hint of threats or pressure because, as he put it, "if you just snapped your fingers like this he would start crying, and this would make my task far more difficult because one can't speak to a person or question a person if he keeps on crying - it is impossible". It was because the police were worried about Kuny's emotional state that they arranged for him to see his father that Thursday night. It is perfectly clear from the evidence that Kuny is a weakling, that he behaved as such from the start and offered no resistance whatsoever. Far from threatening and putting pressure on him, the police had their work cut out trying to reassure and calm him so that they could /.....

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that they could get a coherent story from him.

Botha testified that on their arrival at Corsen House on the Thursday afternoon they took Kuny to the third floor and there handed him over to Major Coetzee who was summoned from the fourth or fifth floor. He denied that Coetzee joined them in the lift going up to the third floor, and denied that Coetzee made any remark in his presence to the effect that the police were Kuny's father, mother, doctor and lawyer. Having left Kuny with Coetzee, Botha and Wessels went out to make another arrest. When they returned at about 7.30 p.m. Kuny gave Capt. Wessels certain information and thereafter showed them various places where he had hidden pamphlets. It was on the way to Amanzimtoti that night that Kuny first spoke of committing suicide, and this prompted them to give instructions that his light was to be kept on and that he be very carefully guarded.

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Botha said that when he fetched Kuny from Amanzimtoti at about 5 p.m. on the Saturday he was dressed in casual clothing and was carrying a firearm as he always did when on duty. He denied that the firearm was carried to intimidate Kuny, or that he was brusque with him, or that they drove at "breathtaking" speed to Corsen House. They took Kuny to the third floor waiting room and waited there for a few minutes until Capt. Wessels came and took Kuny into Col. Steenkamp's office. While Kuny was in Steenkamp's office for about 15 or 20 minutes Botha stood outside the door /.....

the door, and when Kuny came out he took him straight up to the fifth floor. Botha flatly denied the story about Suttner stumbling into the waiting room. Of course, he could not say what went on in the Colonel's office, but he did notice that Kuny was slightly more composed when he came out of it. On the fifth floor Kuny was interrogated by Botha and others until about 12.20 a.m. It was a particularly difficult session because Kuny kept on bursting into tears, and when he did so they had to calm him down before returning to the matter in question. Botha recalled that just before midnight Col. Steenkamp came in with a pamphlet which he gave Kuny to read. Although Col. Steenkamp may have shaken his finger to emphasise a point he did not strike Kuny on the chest as alleged. Botha denied that there was any reference to a deadline that evening, and emphatically denied that he tore a piece of paper to demonstrate his contempt for the rule of law, or made any threat to the effect that Kuny would be thrown out of the window. We are satisfied that Botha told the truth about these matters and that Kuny's evidence to the contrary was false.

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McDuling's version of the incident when he is alleged to have called Kuny a mass murderer was, briefly, the following. In the course of conversation he asked Kuny whether he believed in the Almighty. Kuny replied that he did, and McDuling went on to say that in his opinion the A.N.C., for which Kuny professed to have worked, was a front organisation for the Communist Party. He observed that Communists /.....

that Communists did not believe in God, and may also have said that communists were mass murderers. He asked Kuny how he could serve two masters such as the A.N.C. and God, and suggested that his neglect of his religion had led to his downfall. Kuny's reaction was to break down and to weep bitterly. McDuling denied shouting at him or directly accusing him of being a mass murderer.

We think that we have said enough to show how Kuny exaggerated, distorted and invented facts to vilify the police. In our view his evidence - to the extent that it has not been proved to be false - in no way supports the defence case that the security police subjected detainees to a set pattern of treatment to force them to make "satisfactory" statements. On the contrary, Kuny's evidence tends to negate the defence case on this issue.

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That concludes our examination of the defence evidence relative to the alleged investigational system. It remains to consider, in the light of all the evidence, whether the security police employed a set pattern or system of investigation calculated to reduce detainees to a state of debility, dependency and dread; whether they did so for the purpose of inducing potential witnesses to make false statements; and whether there is any factual basis for drawing an inference that apparently truthful and unbiased witnesses have not only given false evidence against the accused but also falsely denied that any ill-treatment or undue influence by the police led them to do so. Leaving aside Kuny's evidence, and the other /.....

and the other evidence on this issue which has been proved to be false, we are left with the following :

- (i) The untested allegations of Michael Bhi Gumede that his statement incriminating accused No. 3 (which he said was true) was extracted by means of assault and torture, and that he was threatened with punitive action if he departed from it.
- (ii) The uncontradicted allegation of Philemon Mokoena that an unidentified Indian policeman punched him in the chest - in circumstances unconnected with interrogation. (10)
- (iii) Accused No. 1, and to a lesser extent accused Nos. 6 and 8, were subjected to a "third degree" form of interrogation to extract information about a crisis which was thought to be impending, but were not subjected to any deliberate degradation or other improper treatment. (20)
- (iv) A possibility - no more - that some of accused No. 3's allegations of assault, etc. may be true.
- (v) A reasonable possibility that to the extent already indicated Judson Khuzwayo's allegations of ill-treatment, assault and so forth may be true.

(vi) /.....

(vi) A reasonable possibility that the police assaulted Mdluli in the course of interrogation.

That hardly adds up to a set pattern or system designed to produce the DDD syndrome and induce detainees to make false statements. On the other hand there is a great deal of acceptable police evidence to refute the allegation that they fed false information to detainees or subjected them to assaults, degradation or any other form of ill-treatment. This evidence is supported by the numerous State witnesses who either denied that the police ill-treated or tried to influence them to give false information, or in respect of whom it was not even suggested that anything of that sort had occurred. In any event, bearing in mind the nature and complexity of the case against the accused, the notion that the police concocted it in the manner suggested is fantastic. (10)

Although there may have been isolated instances of assault or improper treatment of detainees - and we make no positive finding to that effect - the evidence as a whole satisfies us that the police did not follow the set pattern or system of investigation suggested by the defence, and did not employ any such means to induce potential witnesses to make false statements. I consider that the evidence which the defence led to show the existence of such a system was correctly admitted. However, nearly all of it has been demonstrated to be false, and the little that remains does not give rise to the inference that the defence sought to

draw /.....

draw, viz. that the evidence of apparently truthful and unbiased witnesses who denied ill-treatment and undue influence by the police was in fact a product of the so-called DDD syndrome. Nevertheless, adopting the cautious approach indicated earlier in this judgment we have necessarily had to consider, in the case of each witness who was detained or threatened with detention in terms of section 6, whether his evidence was possibly produced or influenced by pressure in one form or another.

We have now reached the stage at which we can summarise our main findings of fact in regard to counts 1 and 2, in order to show the extent to which the various accused participated in the activities alleged in those counts. In our judgment it has been proved beyond all reasonable doubt that :

(1) Those of the accused who attended the meeting on the 10th August 1975 (accused Nos. 1, 5, 6, 7 and 8) conspired with one another to recruit and send people abroad to undergo military training;

(2) Accused No. 1 received subversive literature, in the form of Exhibit "L" and a letter or letters which referred inter alia to the recruitment of youth for training in Mocambique and contained instructions to investigate and report to Dhlomo on the activities and bona

fides of /.....

fides of Cele, Magubane and Nkosi from the Empangeni area;

(3) accused No. 1 caused the said literature to be read out at the said meeting and those present took note of the contents of the literature and discussed some of the matters therein referred to;

(4) In furtherance of the said conspiracy accused No. 1 procured Mandla Sikosana, and through him, Edgar Zondi, Mtu Khumalo, R.M. Hadebe, Vicky Khumalo, Caiphas Nene and George Mkhize to undergo military training abroad;

(5) In furtherance of the said conspiracy accused No. 1, with the assistance of accused Nos. 3 and 4, sent the said recruits abroad to undergo military training;

(6) accused No. 1, with the assistance of accused Nos. 3 and 4, made arrangements and provided transport for a further recruit, Mlungise Mthlane to leave the country, with full knowledge that the said recruit was going abroad to undergo military training;

(7) /

(7) the assistance which accused Nos. 3 and 4 admittedly provided in connection with the departure of the said recruits (assembling them, arranging dates, accommodation, transport and so forth) was given with full knowledge on the part of each of them that the said recruits were going abroad to undergo military training;

(8) accused No. 1 received not less than R3400 from Dhlomo and utilised portion of that money to pay the expenses of recruiting and sending the said recruits abroad for military training;

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(9) accused No. 1 obtained information from Gam-edze and Samson Mkhize about routes into Swaziland, planned a route by which recruits for military training could go to and across the border into Swaziland, and gave Ndubane instructions on the route to follow for that purpose;

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(10) accused No. 5 incited Lawrence Ngubane to establish an A.N.C. cell for the purpose of recruiting people for military training;

(11) accused No. 5 incited Sipho Sokabase, Elijah Buthelezi, Bekumuzi Hlabisa, and Hansford

Madlala/.....

Madlala to undergo military training abroad;

(12) accused No. 6 incited the witness Sishi to recruit boys for military training;

(13) in furtherance of the said conspiracy accused No. 8 incited Stanford Ngidi to undergo military training;

(14) on the 11th March 1976, and again on the 18th March 1976, accused No. 9 (with Zuma) received persons at the border between South Africa and Swaziland, took charge of them and provided them with transport, knowing full well that the said persons were destined to undergo military training abroad;

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(15) on the 25th March 1976 accused Nos. 9 and 10 conspired together to receive persons whom they thought to be recruits for military training, to assist such persons to cross the border into Swaziland and to provide them with transport;

(16) each of the aforesaid acts was committed with intent to endanger the maintenance of law and order in the Republic of South Africa.

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Of course, that is merely a summary of the main findings of fact on these two counts. Details of the activities in

question /.....

question appear from our discussion of the evidence. As ^{that} appears from the summary, we have found-accused Nos. 1, 5 and 8 not only participated in activities covered by count 1 but also procured or incited persons to undergo military training as alleged in count 2. The Deputy Attorney-General fairly conceded that all such acts were committed with a single intent and, to avoid any question of a duplication of convictions, did not ask for a conviction against any accused on more than one of these two counts. Under the circumstances we do not propose to convict accused No. 1 on count 2, or accused Nos. 5 and 8 on count 1. The verdicts will be expressed simply as "participation in terroristic activities" but the nature of the activities in which each accused is found to have participated appears from the summary. In the case of accused No. 1 the activities in question are those referred to in paras. (1), (2), (3), (5), (6), (8) and (9) of the summary; in the case of accused Nos. 3 and 4, paras. (5), (6) and (7); in the case of accused No. 5, para. (11); in the case of accused No. 6, paras. (1), (3) and (12); in the case of accused No. 7, paras. (1) and (3); in the case of accused No. 8, para. (13); in the case of accused No. 9, paras. (14) and (15); and in the case of accused No. 10, para. (15). Our findings of fact in respect of counts 3 and 5 have already been set out.

It is common cause that if in respect of any accused the evidence does not justify a conviction on the main charge laid /.....

main charge laid in count 1 or 2 it does not justify a conviction on the alternative charge either.

In the result the unanimous verdict of the Court is the following :-

On Count 1. (a) Accused Nos. 1, 3, 4, 6, 7, 9, and 10 are each found guilty of participation in terroristic activities in contravention of sec. 2(1)(a) of Act 83 of 1967;

(b) accused Nos. 2, 5 and 8 are found not guilty on both the main and the alternative charges.

On Count 2.(a) Accused Nos. 5 and 8 are each found guilty of participation in terroristic activities in contravention of sec. 2(1)(b) of Act 83 of 1967;

(b) accused Nos. 1, 2, 3, 4, 6, 7 9 and 10 are found not guilty on both the main and the alternative charges.

On Count 3. Accused No. 9 is found guilty of participation in terroristic activities in contravention of sec. 2(1)(b) of Act 83 of 1967.

On Count 4. Accused No. 9 is found not guilty.

On Count 5. Accused No. 10 is found guilty of participation in terroristic activities in contravention of sec. 2(1)(b) of Act 83 of 1967.

With the /.....

With the exception of Sipho Kubheka, Philemon Mokoena and Harold Nxasana, each State witness who was warned as an accomplice in terms of section 254 of Act 56 of 1955 is discharged from all liability to prosecution for the offences mentioned in the indictment.

J. M. M. M. M.
Phillipson

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