

IN THE SUPREME COURT OF SOUTH AFRICA.

(WITWATERSRAND LOCAL DIVISION).

BEFORE THE HONOURABLE MR. JUSTICE BOSHOFF.

JOHANNESBURG, 18th December, 1964.

In the matter of :

THE STATE vs. 1. WILTON MKWAYI;
2. IAN DAVID KITSON;
3. LALOO CHIBA;
4. JOHN EDWARD MATTHEWS and
5. SATHYANDRANATH RAGUNAN MAHARAJ.

CHARGES : SABOTAGE, in contravention of section 21(1)
of Act No. 76 of 1962, (two counts),
Contravening section 11(a), read with
sections 1 and 12, of Act No. 44 of
1950, as amended, and
Contravening section 3(1)(b), read with
section 2, of Act No. 8 of 1953, as
amended.

PLEA : NOT GUILTY, ALL ACCUSED, ON ALL COUNTS.

VERDICT : GUILTY, ALL FIVE ACCUSED, ON ALL 4 COUNTS.

JUDGE'S REMARKS IN PASSING SENTENCE.

At the end of the case for the State the case for the defence was closed, and the Court was asked by the defence not to deal with four specific questions in its judgment and to reserve to the defence the right to lead evidence thereon should the accused be convicted. The questions are the following :

(a). Whether or not accused Nos. 1, 2 and 3 and witness "D" had decided that informers should be killed;

(b). Whether or not they had decided to arm units of

Umkonto/...

Umkonto;

(c). Whether or not any person, and more particularly one Ghangat, was killed, because it was thought that he was an informer, and

(d). Whether or not there was a call to commit sabotage in the proposed broadcast of the 25th June, 1964.

After the five accused were convicted they reconsidered their position and decided not to give evidence under oath. Each one of them has made a statement from the dock in respect of questions (a) and (b). Nos. 1, 2 and 3 accused in their statements in contradiction to the evidence of witness "D" denied that any decision was taken. In respect of question (c) No. 3 accused denied that he had said that one Ghangat was killed because it was thought that he was an informer.

I should mention here that there was no evidence that Ghangat was in fact killed because he was an informer. Witness "D" merely stated that No. 3 accused had reported at a meeting of the National High Command that an Indian informer had been killed. The State at no time made it part of its case that an informer was actually killed by persons connected with or working for Umkonto.

I accept the sworn testimony of witness "D" that No. 3 accused in fact made such a statement. No. 3 accused admits that he may have made a casual remark that Ghangat was killed, but it is difficult to understand what interest the new National High Command could have had in this piece of intelligence if No. 3 accused did not try to relate it to Umkonto activities. However, as I have already stated, there seems to be no truth in the report, and the State is not relying on it.

There was also no evidence that there was a call to

commit/...

commit sabotage in the proposed broadcast of the 25th June, 1964.

There is no acceptable reason why the Court should reject the evidence of witness "D" (a) that a decision was taken that informers should be killed, that it was decided that the decision be referred to the political leadership for its approval and that the political leadership decided that nothing should be done which might prejudice the accused in the Rivonia trial and (b), that a decision was taken to arm units of Umkonto. The Court will, however, not have regard to these decisions in assessing punishment because the decisions in themselves could be considered as acts of sabotage within the meaning of section 21(1) of Act No. 76 of 1962, and the State is bound by its further particulars which do not include such acts of sabotage.

I now come to the difficult task of meting out appropriate punishment. The Court has to consider the nature of the offences, the circumstances under which they were committed, the degree of participation of the respective accused and the circumstances personal to them and should then assess appropriate sentences sufficient to meet the deterrent, preventive, reformative and retributive ends of criminal justice..

2 The five accused in their statements to the Court accepted full responsibility for the part they had in furthering the objects of Umkonto and explained the circumstances and the events which influenced them to be associated with Umkonto and its activities. In stating these circumstances and events they merely repeated in their own words, as applying to themselves, what was referred to in the programme of the Communist Party (Exhibit R.39), as the state of affairs which made it the central and immediate task of the Communist Party to lead/...

2

lead the fight for the national liberation of the non-white people and for the victory of the democratic revolution, and what was referred to in Operation Mayabuye (Exhibit R71) as one of the important ingredients of a revolutionary situation that was present. Such circumstances and events were thus really the reasons advanced for the formation of Umkonto and the basis for commending it to the non-whites and for stirring them into activity in support of the so called liberation movement which was according to the proclaimed objects no less than a insurrection against white rule. The Communist Party regarded Umkonto as a valuable weapon to supplement the work of mass agitation and as a valuable field for the training of militant liberation fighters in the techniques of armed struggle. It referred to its acts as serving to arouse the fighting spirit of the people and as having given the lie to the Government's propaganda image of a peaceful and stable social order in South Africa and as having helped greatly to create and maintain an atmosphere of imminent revolutionary change. According to the Communist Party acts of sabotage were not enough and had never been considered to be enough by themselves to achieve the common aim of Umkonto and the rest of the liberation movement, namely, the overthrow of the white supremacy state.

On the evidence it is clear that all the acts alleged and proved against the five accused on the four different counts were committed by them or persons associated with them in the furtherance of the achievement of the objects of Umkonto. It is thus proper and fair to treat all four counts as one for the purposes of sentence.

The acts alleged and proved were directed against law and order and the safety of the State. Such acts can only be regarded as extremely serious. No State would at any time regard such acts otherwise than serious. Unlawful acts cannot be condoned by the Court and the Court may not impose a sentence which might give the impression that the crimes committed by the accused are not serious.

Nos. 1, 2 and 3 accused served on the new National High Command. In that capacity they directed the activities of Umkonto. They were subject to the political leadership but responsible to keep Umkonto alive as an organisation and to see that its aims were achieved. It was argued on behalf of the accused that at the stage when the National High Command was formed, it was a semi-moribund remnant of the of the old National High Command which attempted to carry on with the functions of the old National High Command and was at no time anything less than a shadow of the old National High Command. That may to some extent be true, but it was intended to revive Umkonto as a militant organisation. Steps were taken to teach persons to make black powder and they were encouraged to build up stocks of explosives. According to reports which No. 1 accused made to the new National High Command there was a substantial increase in the personnel under the new National High Command. Active steps were taken to recruit new members and the Regional Command of the Eastern Province was instructed to step up its activities. The new National High Command expected sabotage activity in that area; and because witness "Z" was thought to be too inactive he was required to surrender his position to one Ngola.² Instructions were/...

were in fact given to regional commands to commit acts of sabotage after the judgment in the Rivonia trial. The new National High Command was admittedly not able to function as smoothly and effectively as the old National High Command, but that was not due to the fault of the new National High Command. It was due to the steps which the police had taken by uncovering the activities of Umkonto and arresting its leaders. The new National High Command was intended to repair the damage the police had done to Umkonto as an organisation and to create the impression that it was still in tact and active.

No. 1 accused is 41 years of age and has on his own account been active in the field of politics for a long time. He held a high position in the African National Congress and was actively engaged on Umkonto activities since his return from China. He denies that he is a communist, but the Court accepts the evidence of witness "D" that he disclosed to him during political discussions that he was a communist. He was closely associated with the old National High Command and served on its logistics committee. He was at Rivonia at the time of the police raid, but managed to evade arrest. He assisted to re-constitute the National High Command and was the link between the National High Command and the African members of Umkonto. The acts committed by him in furthering the achievement of the objects of Umkonto appear from the evidence referred to in the judgment.

No. 2 accused is 45 years of age and has a family with two young children. He has been a communist for many years. He served on the technical committee under the old National High Command and joined the logistics committee when it was formed. He assisted to re-constitute the new/..

the new National High Command and was the link between it and the political leaders. He obtained finance from an undisclosed source for the purposes of Umkonto. The other acts committed by him in furthering the achievement of the objects of Umkonto appear from the evidence referred to in the judgment.

No. 3 accused is 34 years of age and also has a family of two young children. He was the link between the new National High Command and the Indian members of Umkonto. He was already associated with No. 1 accused when No. 1 accused attended to the activities of Umkonto under the old National High Command. The other acts committed by him in furthering the achievement of the objects of Umkonto appear from the evidence referred to in the judgment.

3 No. 4 accused is 51 years of age and has a large family. He served on the technical committee under the old National High Command from early in 1962 until March, April 1963. He admits that he worked for the Congress Alliance by writing articles for them, keeping money for them in his employers safe and storing goods and materials in the cellars under his house. He assisted in the construction of a radio apparatus and made articles and was regarded as a handyman willing to work for the cause of Umkonto. He had no say in policy and held no senior position in Umkonto. He explained his possession of the .303 cartridges, but the Court cannot accept the explanation. He was using his cellars for the storage of the property of banned organisations, and it is difficult to believe that he wanted to bury the cartridges in the ground and forgot about them. He in fact had explosives and ingredients for explosives and parts of

timing/...

3 / timing devices in the cellars. One cellar in which a transmitter and radio parts were kept had a secret entrance through a hole in the wall and he could have hidden the ammunition there if he really intended to hide them. / ^{The other} acts committed by him in further the achievement of the objects of Umkonto appear from the evidence discussed in the judgment. //

No. 5 accused is 30 years of age. He admits that he acted as messenger, made his house available, purchased articles at the behest of others for Umkonto and published articles. He, however, denies that the articles had anything to do with sabotage, but he and No. 4 accused assisted with the publication and distribution of the Freedom Fighter. He assisted with the distribution of a booklet Marxism and also assisted with the duplication work even before June, 1963. Mass agitation was an important part of the campaign for the democratic revolution. It was an essential step in the preparation for guerilla warfare. According to Operation Mayabuye (Exhibit R71), guerilla units would be dependent upon the masses for protection and supplies. Both No. 4 and 5 accused therefore made an important and a valuable contribution towards the furtherance of the achievements of Umkonto with their work in this connection. The other acts committed by No. 5 accused appear from the evidence discussed in the judgment.

Nos. 1, 4 and 5 accused explained their possession of the firearms found with them, but I am not satisfied that their explanations show that their possession was not connected with Umkonto activities and its objects.

Although each accused is liable for the acts committed by the other accused, and their other associates

in/...

inUmkonto, there was a difference in degree in their participation in the acts of Umkonto and it would be fair and proper to make some allowance for such difference in assessing the punishment of each of the accused.

It was strenuously argued on behalf of the accused that the need for fixing a sentence that would give effect to the deterrent aspect of punishment was greatly reduced by virtue of the fact that organised sabotage has now virtually come to an end and that the efficiency of the police force was now the real and effective deterrent for would be offenders. The Court should have regard to the seriousness and prevalence of the crimes in considering the deterrent aspect of the punishment, but I do not think that the Court is called upon to rely on the efficiency of the police in assessing the sentence. On the contrary the Court, I think, should have regard to the difficulties with which the police are confronted in combating this type of crime. I shall not presume to read the accused a homily on the evils and viciousness of their conduct. They stand here unrepentant in the strength of their political beliefs and convictions. All that I need and should say is that in matters affecting law and order and the safety of the State the Courts will apply the provisions of section 21(1) of Act 76 of 1962 with all the rigour of the law. At the same time the Court should bear in mind that there are persons in the community who are wedded to the same ideas as the accused, though they may be unlawful ideas in this country, and the Court should not impose sentences which are vindictive and tend to breed resentment and thus discourage law and order. It had been the history and tradition of our Courts to impose severe sentences to preserve the maintenance of law and/...

and order, but at the same time caution has been exercised not to render any one the unfortunate victim of political dissension by excessive severity.

4 Giving due consideration to the statements of the accused and what has been argued on their behalf and paying due regard to the deterrent, preventive, reformative and retributive ends of criminal justice, the Court has decided that the following sentences would be appropriate and proper sentences for the accused:

- No. 1 accused is sentenced to life imprisonment;
 - No. 2 accused is sentenced to 20 years imprisonment;
 - No. 3 accused is sentenced to 18 years imprisonment;
 - No. 4 accused is sentenced to 15 years imprisonment;
 - No. 5 accused is sentenced to 12 years imprisonment.
-

Collection Number: AD1901

**SOUTH AFRICAN INSTITUTE OF RACE RELATIONS, Security trials Court
Records 1958-1978**

PUBLISHER:

Publisher:- Historical Papers, University of the Witwatersrand

Location:- Johannesburg

©2012

LEGAL NOTICES:

Copyright Notice: All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

Disclaimer and Terms of Use: Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. While these digital records are true facsimiles of the collection records and the information contained herein is obtained from sources believed to be accurate and reliable, Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.

This document is part of a private collection deposited with Historical Papers at The University of the Witwatersrand.