

II AD1901 60-11
Vol II

C. MOSIME
R. MOHATE.

IN THE SUPREME COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

CASE NO.: CC.431/77.

PRETORIA,

26th JANUARY, 1978.

THE STATE VERSUS:

MOSIMA GABRIEL SEXWALE and
ELEVEN OTHERS.

VOLUME 11

(Pages 488 - 505).

COURT RESUMES ON THE 26th JANUARY, 1978, AT 2 P.M.

NEWTON CALVIN MOSIME (Still under oath)

EXAMINATION BY MR. DONEN (Continued): Before the lunch adjournment you had described how you visited the home of no.10 together with Stone and Oupa? --- I did.

Now after that day did you see no.10 again? --- I remember something again. I went to him, he told me that he had friends where he had been working. And he told me that after two years he will then invite his friends to a party.

BY THE COURT: What? --- After two years he would invite the (10 friends to a party.

To a party. Yes? --- So that we may know them. One day he told me that he will look for a place where we will stay, and he said he will give us all we wanted, like books, etc. And anything we wanted he said he will give us. One day when I had gone to visit Vic I found that accused no.10 was busy working, and at that time I did not get Vic. Accused no.10 told me that the houses in which we are living are very small, and that his friends will give him money, that is accused no.10. Accused no.10 then said we will buy petrol and use this for burning. (2

For burning what? --- He did not say that, but I thought ... (intervention).

MR. DONEN: Well, it does not matter what you thought. Did he say anything else? --- After some time when I had gone to see Vic I found Vic that day. Accused no.10 told me to forget all and concentrate on my studies in order that I should pass. And he said that people will start to say he has been doing all these things but at last has failed. This was the last occasion that I saw him.

Now when you spoke about the petrol you said "we should (3 burn /...

burn". Now who was "we" supposed to be? --- He said that we will buy petrol and give it to the school children.

Which school children? --- He didn't mention which school children. It was during the time of the riots.

Now had you ever discussed school children with no.10 before? --- I remember he made mention of sport, that there should be football organised and bioscope and baseball, things that would make children happy. And he said that such sport will encourage children to school.

Now besides what you have already said, did accused no.10(10 ever speak about his friends? --- He only said that he has friends where he once worked.

I have no more questions, My Lord.

CROSS-EXAMINATION BY MR. KUNY: Mosime, did you know or did accused no.10 tell you that he had once been a teacher? --- He told me that he was once a teacher.

And he was obviously a person who was very interested in the whole question of education of children? --- Yes.

And he used to talk to you about your studies? --- Yes.

And he would encourage you to study hard? --- Yes. (20

To go to school and pay attention to your lessons? --- Yes.

And in fact just now in your evidence you said that he mentioned that there should be sport such as football, baseball, bioscope, which would make children happy? --- Yes.

And that this would encourage them to go to school? --- Yes, My Lord.

So his whole attitude was that children should go to school, should study hard, and should learn? --- Yes, that is what he used to tell me.

And he would always talk to you and your friends about that? --- As far as I know he mentioned it just to me. (30

I see. /...

*Spent of witness.
Mr. Wickham
- etc.
a moment!*

I see. Now Buti Zimba was a friend of yours? --- No, not a friend but my relative.

Oh, he is your relative. He didn't go to school, you did go to school? --- Yes, he didn't go to school. I went to school.

And Abel Tsomakae, was he also your relative? --- Yes, he was also my relative.

And in your evidence today you have spoken about two occasions on which you went to accused no.10 together with Buti Zimba? --- Yes. (10)

And one occasion when you went to him with Abel Tsomakae? --- Yes, My Lord.

And one occasion when you went to him with Stone and Oupa? --- Yes, My Lord.

Now let's deal with the first visit that you made together with Buti. That was the day that you were shown certain papers by accused no.10's wife? --- Yes.

And after you were shown the papers, did you leave or did you stay on? --- I left. We left.

You and Buti left together? --- Yes. (20)

So you and Buti had gone there together and you left together? --- Yes.

And for how long were you there altogether? --- I cannot tell how long we stayed there with Buti.

And it was during that visit that no.10 told you for the first time about the cell system that you mentioned? --- Yes.

And you say he didn't tell you what this was all about or why you should have a cell system? --- Yes.

He merely explained a structure of a cell system to you? --- Yes, he told me that Buti shall explain to me what he had told him, Buti. (3)

So he /...

So he didn't explain it to you in any detail? --- He was merely telling me roughly and further told me that Buti shall explain to me.

Did you ask accused no.10 any questions about the cell system? --- No, I didn't ask him any questions.

You just listened to him and then you and Buti left? --- We were merely surprised because we wanted to know where he got all that knowledge from.

But you didn't ask him where he got all that knowledge? --- I didn't ask him. (10)

And apart from explaining this, or telling you about the cell system, that is all that accused no.10 told you on that occasion? --- Yes, because his wife had arrived at that time. And we didn't know whether he would tell us further.

But apart from that he didn't tell you anything else? --- I don't remember him telling us anything else.

And then you went back on a second occasion with Buti? --- Yes, My Lord.

You and Buti went together to his house on that occasion? --- Yes, I and Buti went together on that occasion. (20)

And you and Buti left together? --- I merely accompanied Buti halfway, I came back.

Yes, but - you mean after you had left accused no.10's house? --- We left together, I turned on the way back.

What I am trying to get at while you were at no.10's house you and Buti were together all the time, you arrived there together and you left together? --- That is correct.

And when accused no.10 spoke to you he spoke to you in the company of Buti? --- Yes, on that day Buti was all the time present. (30)

Yes, and you were all the time present when he spoke to Buti?/...

Buti? — Yes, My Lord.

In other words on that day he didn't speak to either of you separately, he spoke to you both together? — Yes.

And again on that day he made mention of the cell system? — Yes.

And he explained it as he had done before? — On the first occasion he did not explain it in a satisfactory manner.

Oh, I see, so on this occasion he explained it better than he had the first time? — Yes.

And did you ask questions or did he just explain? — (10 I did not ask questions.

And Buti? — I don't remember hearing Buti asking questions.

So it would seem that you and Buti sat and you listened to accused no.10's explanations? — Yes, because we wanted to listen and hear all he wanted to say.

And he didn't explain to you why it was necessary to have this cell system? — No, he didn't explain why he wanted the cell system.

Nor did he explain what people who might be working in the cell system would be doing? — He did not. (20

And nor did he say who the people would be who would be working in the cell system? — No, he merely said people.

And in fact I think you said today in your evidence that he said it wasn't something which would take place immediately? — Yes, My Lord.

And he didn't say when it would take place? — He merely said that this might take place after two years.

After two years, it might take place after two years? — It might take place after two years.

He didn't say it would take place, he said it might take (30 place? — He said this will happen after two years.

And having/...

And having explained this cell system to you on that day, that is all that he told you? --- Yes.

And you and Buti then left? --- Yes.

And that was the last time that you and Buti together went to accused no.10? --- Yes.

Now on the occasion that you and Abel Tsomakae went there, he spoke to you about obtaining intelligent people for cells? --- Yes.

And he was - was he suggesting something to you, or was he asking you to do something, or what was he saying? --- He (10 said in those cell systems we must get intelligent people.

And when you said you were afraid to tell older people such things, he said well, it doesn't matter, it will be better - you said - if I called him and they came to him? Who said that, you or he? --- The question again, I did not follow?

Sorry, My Lord, my note is not clear, I am just trying to clarify this. Who was this who said that it would be better if you called the people to come to him? --- I said it.

You said it, and what was his reaction to that? --- He said - don't call them to come here, because he was still (20 serving his banning order.

I see, so when he said the papers didn't allow it, he was referring to his banning orders? --- Yes.

And you in fact never did anything at all about that, about getting people? --- I told my friends.

I see. Which friends? --- Stone and Oupa.

And is that why Stone and Oupa went with you to accused no.10? --- Yes, I asked them to go along with me, but actually we had gone there for the purpose of going to fetch dishes.

So it was just incidental that on that day accused no.10 (3 spoke to them? --- It was incidental.

So apart /...

So apart from telling your two friends, Stone and Oupa, you in fact did nothing and said nothing to anybody else? --- I told nobody else apart from the two.

And there was in fact nothing for you to do? --- (Talking to interpreter).

You didn't regard ... (Court intervenes).

BY THE COURT: Just let him answer, he is still talking to the interpreter?

MR. KUNY: Yes. --- I don't understand the question?

Well, you didn't do anything and you didn't consider that it was necessary for you to do anything? --- I did nothing, I was not interested because I considered all what he said was sheer madness.

Sheer madness, just talk? --- Yes.

And you never took it seriously? --- I didn't take it seriously.

And you had decided that you wouldn't respond to it at all? --- Yes.

Now you mentioned an occasion when the accused spoke about buying petrol? --- Yes. (20)

Were you alone with him on that occasion? --- Yes, and during that occasion we were not sitting down and accused no.10 was busy working.

What sort of work was he doing? --- In the garden.

Oh, he was working in his garden and you were standing with him and you were just talking generally? --- Yes, talking meanwhile busy digging in the garden.

You were talking about all sorts of things? --- Like what?

Well, I am asking you, you were there? --- Question again?

You were there. I asked you whether you were just talking generally about all sorts of things? --- Yes, accused no.10

was a/...

was a talkative man, he used to talk for long.

Did he seem to be a man with lots of knowledge about different things and about what was going on in the world and so on? --- Yes.

And he likes to talk? --- Yes.

And you would listen to him? --- Yes.

And it was in the course of this general talk that he said something to you about having friends who would give him money? --- Yes, My Lord.

And you say he said "we will buy petrol and use this for (10 burning"? --- Yes.

Did you ask him who "we" meant? --- He meant we.

What does that mean, he meant "we"? --- We, because there were no other people.

He meant you and he? --- (Talking to interpreter).

Or did he ... (Court intervenes).

BY THE COURT: Just a minute, he is still talking, Mr. Kuny. --- I thought he meant myself and Elvis, and there were people who sometimes went to his house.

MR. KUNY: You say you thought he meant that, you didn't ask (20 him if that was what he meant? --- There were no other people who used to talk to him except ourselves.

So when he said "we will buy petrol and use this for burning" you thought that he meant you and your friends? --- Yes, My Lord.

But you didn't ask him to explain this? --- I didn't ask him to explain.

You didn't say to him - who is "we"? --- No, I did not.

BY THE COURT: Don't let's worry about the grammar at this stage.

MR. KUNY: And then in the same conversation he told you to (30 forget all about what he said and concentrate on your studies? ---

Yes, /...

Yes, My Lord.

So he wasn't seriously asking you to do anything or telling you to do anything except to go on with your studies?

--- Yes, My Lord.

And that according to your evidence was the last time you saw accused no.10? --- Yes.

Do you remember that accused no.10 was a person who was very concerned about the conditions in which the Black people lived in that township? --- No, I know nothing about that.

Well, didn't he ever mention to you that he would like to (10 see improvements in the standard of living of people in the township? --- I didn't think it that way, I didn't think of it that way.

Well, do you remember that he used to speak about the question of fixing up things like tarred roads and improving unhealthy living conditions? --- No, he merely told me what should be done at schools, bioscopes, football, and all. About things he said nothing.

I am asking you because when you gave evidence last year in this case, you were asked this question : "Did he discuss (20 with you the question of fixing up things like tarred roads in the location or improving unhealthy living conditions", and your answer was : "Yes, he told me about that". - Do you remember that now? --- Yes, I remember that day that all that he told me was about schools, football and the rest of the sports.

Yes, in any event, we will leave that point. Now Mosime, you told His Lordship then all that was said by accused no. 10 during the two visits that you made to him with Buti Zimba?

--- Yes, I think I have told Your Lordship all.

Yes, everything of importance that comes to your mind?

--- If I /...

--- If I have made no mistake I think I have told the court all.

After you were arrested, I think it was in February of last year, were you taken to the Rustenburg police station? --- Yes, My Lord.

Were any of the other youths with you? --- Elvis was with me.

And Buti? --- He came late. We found others at the police station.

But you all were at some time or another together at the Rustenburg police station? --- I was detained with Buti, Elvis (10 and others were sent to other police stations. I and Buti didn't sleep in one cell.

BY THE COURT: But were you and Buti detained at the Rustenburg police station together? --- Yes, My Lord, in different cells.

MR. KUNY: Yes, but at the Rustenburg police station? --- Yes.

On what day of the week were you detained? --- On Friday.

BY THE COURT: Tell me, do you feel much better now? --- I am feeling very much better.

Well, if you are feeling better you can sit up straight in your chair as well. Take your feet off the top of the chair and sit up straight. (20

MR. KUNY: You were detained on Friday and when were you taken from Rustenburg to Pretoria? --- If I remember well it was on a Monday.

The Monday after the Friday? --- Yes.

So you were at Rustenburg police station for three days? --- Yes.

And did you and Buti travel together to Pretoria? --- Yes.

So Buti was also then to your knowledge at Rustenburg police cells for three days? --- They brought us all on the same day to Pretoria. (30

Yes, so /...

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Yes, so if Buti says or Buti said in evidence that he was never taken to the Rustenburg police station that would be untrue? --- Maybe he had forgotten.

Did you ever hear Buti crying while you were at Rustenburg? --- I heard Buti and Elvis. Yes, I heard them crying.

Do you know why they were crying? --- They were being assaulted.

And yourself? --- Yes, very much assaulted.

At Rustenburg? --- Yes, My Lord.

This was before you made your statement? --- Before I made(1) my statement.

BY THE COURT: Did you see the others being assaulted? --- We were in different cells at the time, I couldn't see.

MR. KUNY: So how do you know that they were assaulted? --- At a certain stage I was placed in the first cell at the police station, then Buti entered the police station, meanwhile the door of the cell in which I was was opened. I saw them assaulted. And because I knew their voices I could make out that they are being the people assaulted.

When you say "they" are you talking about Elvis, Buti and(20) Abel? --- I didn't hear Abel crying.

I am sorry, it was only the other two? --- Only the two.

BY THE COURT: Who did you hear crying? --- Buti and Elvis.

MR. KUNY: Mosime, I want to put it to you that accused no.10 has no recollection of talking to you about getting petrol to burn? --- Simply because he is a talkative man, maybe he has forgotten.

You mean he might have said it but because he spoke so much it is something that he might not remember having said? --- He did say it, it is maybe that he has forgotten. (3)

Well, he certainly never as far as he can recall suggested that/...

that you should take part in burning anything? --- As I said it is possible that he has forgotten.

Now Buti Zimba when he gave his evidence went much further. He says that accused no.10 showed him how to make a petrol bomb? I take it he never told you that, or he never showed you that? --- Maybe then that happened during my absence.

It certainly never happened in your presence? --- Not in my presence.

No.10 accused never showed you how to make a petrol bomb?(10) --- No, My Lord.

And if Buti Zimba says that no.10 showed you and he how to do so that would be untrue? --- Then that is untrue.

Yes, and accused no.10 certainly never said anything to you about your becoming a soldier? --- No.

And if Buti Zimba said that accused no.10 said this to both of you together that would also have been untrue? --- That is untrue.

And accused no.10 certainly never said anything to you about your going to burn the Phokeng offices? --- No, he never(20) said that to me.

And if Buti Zimba says he said that to both of you together that would be untrue? --- That is untrue, if he had said it to him Buti, Butzi Zimba would have told me about that. All that he said was that Buti Zimba should come and tell me all that what he, no.10, told him.

And you say if he had said that to Buti, then Buti would have told you? --- Yes.

If Your Lordship will bear with me a moment.

BY THE COURT: While you look at the papers, I just want to (30) ask this witness something. How did it come about that you washed /...

washed the dishes in the house where accused no.10 lived? ---
For instance when I had taken the dishes of food in the
afternoon sometimes I used to leave the dishes there and go
to school, and then late in the afternoon I go to fetch them.

Tell me, how often did you take food to accused no.10?
--- Many times, I can't say how often.

MR. KUNY: My Lord, perhaps I can clarify that ... (Court
intervenes).

BY THE COURT: Just a minute, and when you came there and you
took the food there, did you find accused no.10 there when (10
you took the food to his house? --- Yes, I used to find him
there.

And you never slept there? --- I slept there.

How often did you sleep in the house of accused no.10? ---
Sometimes four days in a week, other times three. During
the two weeks.

Yes, is he related to you in any way, accused no.10? ---
Accused no.10 got married to my uncle's brother's daughter.

MR. KUNY: Until September of last year you never knew accused
no.10 at all? --- Yes. My Lord. (20

BY THE COURT: Is that now September, 1977, Mr. Kuny?

MR. KUNY: September, I am sorry, My Lord, September, 1976?
--- Yes, My Lord.

And the reason why you would go and stay at his house some-
times was because he was otherwise living alone in this
house? --- Yes, I didn't go there on my own. I was asked to
go and stay with him.

Yes, his wife I think worked in Johannesburg and he lived
at this house in Rustenburg? --- Yes.

BY THE COURT: Now while Counsel is looking up the papers, (3
while you were there when you slept there, and you have now
kindly /...

kindly told me that he was a very talkative man, the two of you must have discussed a lot of things? --- Yes.

And you told me this reference to the burning by petrol was at the stage of the riots? --- Yes.

MR. KUNY: Can you remember what month that discussion took place in, about the petrol? --- It was during the month when the examinations were very near.

So it was towards the end of the year in 1976? --- Yes.

And you were going to take your examinations at your school? --- Yes. (10

And did you write that examination? --- Yes, I did write my examinations.

Are you back at school now? --- Not as yet but next week I will go back to school.

To which school? --- The same school.

In Hlabane? --- Yes.

What class will you be going into? --- Form 3.

And will you be going back to stay with your relations in Hlabane? --- Yes.

The time, Mosime, the time that you were at the house of (20 accused no.10 together with Oupa Ebenezer, do you remember that day? --- I do.

Did the three of you speak to accused no.10 together? --- No, he was not permitted, accused no.10 was not permitted to stay with many people.

Because of his banning order? --- I was busy making tea for them.

And where were they sitting? --- In the sittingroom.

So they were in a different room to the room that you were making tea in? --- Yes. (30

And you didn't hear any of their conversation? --- I did not hear/...

not hear any of their conversation.

My Lord, I have no further questions, thank you.

RE-EXAMINATION BY MR. DONEN: Did you ever find out why there was to be a cell system? --- No, I didn't. I didn't find out.

BY THE COURT: Mr. Donen, just repeat that question?

MR. DONEN: Did you ever find out why there was to be a cell system? --- I merely thought that after he had made mention about them, seeing that the safety system will be applied ..(inaudible).

I have no further questions, My Lord.

(10

NO FURTHER QUESTIONS.

RAPHAEL MOHAYE d.s.s. (Through interpreter)

MR. VAN PITTIUS: My Lord, we also consider him as an accomplice, I ask the Court to warn him in terms of Section 254 of the Old Act.

BY THE COURT: Raphael, you have heard the Prosecutor saying to me that he is calling you as a witness and that in his opinion you are an accomplice in these proceedings. --- Yes.

Being an accomplice you will be required to be sworn and to answer all questions which incriminate you in this case. --- (2
Yes, My Lord.

If, however, you fully answer the questions that may be put to you to my satisfaction you will not be prosecuted but will be discharged from criminal liability for these offences. --- I understand.

Your discharge will be considered in due course. --- I understand.

Do you understand your position as a State witness who is also considered to be an accomplice? --- I do.

EXAMINATION BY MR. VAN PITTIUS: Now where are you staying (30
at present? --- At Jonathan, Aasvogelboom.

I think /...

I think the evidence was led before, that is in the district of Brits, is that right? --- Yes.

Now on a certain day during the end of November to the beginning of December, 1976, you were near a shop, is that right? --- Yes.

You were in the company of other people, is that right? --- Yes, My Lord.

Can you remember in whose company you were? --- Solomon Baloyi, Eric Baloyi, Patrick Khoza.

Can you remember what time of the day it was? --- It was (10 approximately 5 o'clock in the afternoon.

Now can you then tell the court what happened? --- We left, took the direction towards Lebowa to the north. We were on our way to certain boys who were playing in the road.

Yes? --- Meanwhile we were walking, we met two Black males.

Yes? --- These two greeted us and went past. After they were a few paces away from us they called us back. We then met each other.

Yes? --- They greeted us by shaking our hands. One of the two said that he would like to meet us the following day. (20

Now what did the two men look like? --- The two men?

Yes, those two men, what did they look like? --- One was tall and slender.

Yes, and the other one? --- Short and physically strong.

Now which one said they would meet you the following day? --- I cannot remember which of the two.

Now can you have a look in court, do you see any of those two men here in court? --- I see only one of the two.

Where do you see him? --- Accused no.4.

BY THE COURT: Is he the long or the short one? --- The short (one.

MR. VAN PITTIUS: Now I will show you a photograph EXHIBIT A. Can you tell the court whether you have ever seen that person before? --- Yes, this is the tall man.

Now you said one of them said that they will meet you the next day? --- Yes.

Did he say why? --- No, he didn't say why.

Now what happened then? --- The tall man I now remember then said that on the following day the short man will meet us at the shop. And he said that seeing that we will be four, one will remain at the shop and the three will go and stand next to a corner. He then said that the short man will buy a liter Pepsi and one of us should follow him the moment he sees him leaving the shop with the liter Pepsi. And when the two come along we will go to a certain place. (10

BY THE COURT: I take it this all took place in the presence of accused no.4?

MR. VAN PITTIUS: I was going to come to that. --- Yes, accused no.4 was present when all this took place.

Yes? --- The tall man then said they will meet us the following day. When two of our friends came to join us accused no.4 and the other man changed the discussion. (20

Just before you get there, when the tall man mentioned all this about the arrangements to meet again, what was accused no.4's reaction, if any? --- I cannot remember what he said.

Did he say anything or can't you remember? ---The person who was doing a lot of talking was the tall man.

Yes, you say then two of your friends came and the subject was changed? --- Yes.

Who was the person who actually changed the subject? --- It is the tall man because he started saying that they had got lost when he saw the two friends joining us. Accused no.4 and/... (30

no.4 and the tall man then left and said we will meet the following day.

Who spoke then, who said then that they would meet you the following day? --- I can't say who, because when they said that we were busy moving away from them.

Yes, now then you left them, is that right? --- Yes, they also left.

BY THE COURT: I take it the next part of the evidence will take some time?

MR. VAN PITTIUS: Yes, My Lord.

(10

COURT ADJOURNS.

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