

IN THE SUPREME COURT OF SOUTH AFRICA.
(WITWATERSRAND LOCAL DIVISION)

BEFORE: The Honourable Mr. Justice LUDORF.

In the matter of :

THE STATE vs. SIRUNDI GOVENOR HASHE.

Charge: SABOTAGE.
Plea: Not Guilty.

28th AUGUST 1964.

- J U D G M E N T -

LUDORF, J:

The accused is charged with the contravention of certain sections of Act 44/1950 (as amended) in that on the 28th February he contravened the section by unlawfully aiding, advising, encouraging and procuring certain named persons and persons to the prosecutor unknown for training outside the Republic. He is also alleged to have arranged for their transport from Krugersdorp to Orlando, for their accommodation at Orlando, and that he encouraged them to undergo training with the object of committing acts of sabotage upon their return.

Evidence was led yesterday by a witness who was Chairman of a branch of the African National Congress until 1961, when that organisation was banned, and that witness said that the accused was at the time he held office a member of the Orlando East Branch of the A.N.C. Objection has been taken to this evidence by Mr. Bizos.

The evidence before me is that of two of the persons named in the indictment to the effect that they were recruited in Port Elizabeth, their train fare was paid for them to Johannesburg; that they were fetched

at Krugersdorp Station and brought by motorcar to the house of the accused in Orlando. There they were fed, and the one witness said that the accused told them about the military training - the other does not mention this, except an oblique reference to sabotage. Thereafter they were housed at the place where their accommodation was paid for by the accused. That was on the Saturday ~~except~~ evening, in February last year.

They were then fetched at midnight on Sunday, and accompanied by 37 others in three Kombis and they left for the Bechuanaland border. They walked across the border and they were met by sympathisers in Bechuanaland and taken to the North where they crossed the Zambesi into Northern Rhodesia, and they were subsequently arrested and returned to South Africa under police escort. They have both been sentenced for leaving the Republic without passports.

There is no allegation in the indictment that this expedition was organised by the African National Congress. The evidence before me discloses that 37 persons left the Republic for military training with the object of returning to commit sabotage, and that two of these persons were members of the African National Congress. There is no evidence before me what the object of the African National Congress is. The one witness said that his cell of this movement indulged in incendiarism and that he had given evidence against an accused who had apparently committed such an act.

In those circumstances I think evidence that the accused is today a member of the African National Congress would be irrelevant, but should the prosecution

cure the defect and prove that the African National Congress did organise this expedition, and that it was in his capacity that the accused assisted, that may also be inadmissible, but an amendment of the indictment might cure that - but even if the State were to lay the foundation before tendering this evidence again, I do not think that this evidence would even in those circumstances be admissible, because of the two presumptions which the State will have to overcome. Firstly, one must presume that until its banning, the African National Congress was a lawful organisation with lawful objects, and one must assume as the law enjoins the accused's innocence until his guilt has been proved, and one cannot assume that because he was a member of a lawful organisation that it is likely that he will continue to be a member of an unlawful organisation.

In those circumstances the objection by Mr. Bizos will be upheld.

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