

ACCUSED NO 5 (GCINUMUZI PETRUS MALINDI)

The allegations against accused No 5 set out in the indictment as amplified by further particulars and better further particulars are as follows:

1. He was a member of the Vaal branch of COSAS.
2. He identified with the aim of the UDF to overthrow or endanger the government by violent means by co-operating with the UDF and as a member of a body affiliated to the UDF and which actively co-operated in the Vaal Triangle against the government and Black local authority to destroy the latter.
3. Accused No 5 was a part of the management structure of the VCA which affiliated to the UDF and thereby it became part of the UDF (Transvaal) and participated in its meetings, planning and organisation.
4. In furtherance of the UDF's campaign to utilise the government's policy and legislation in respect of Black local authorities and the Koornhoff legislation to incite the Black masses to violence in order to render the Republic of South Africa ungovernable and lead to a violent revolution the following steps were taken.

5. Activists of the UDF and VCA (consisting of inter alia accused No 5) co-operated to create a civic organisation in the Vaal to take the initiative to organise the Black masses in the Vaal for this purpose.
6. A mass meeting in the Roman Catholic Church Small Farms was planned and held in September 1983 in which inter alia accused No 5 participated.
7. The VAC listened to ANC Radio Freedom and sang freedom songs.
8. The VAC held a preparatory meeting on 8 October 1983.
9. The VAC held a mass meeting on 9 October 1983 in the Roman Catholic Church Small Farms. Accused No 5 and others were cheer-leaders of freedom songs and ANC slogans and popularised the ANC. The VCA was formed.
10. A training course held by the UDF in November 1983 was attended by activists of the VCA including accused No 5. They met at Esau Raditsela's house, listened to Radio Freedom and sang freedom songs.

11. On 25 August 1984 accused No 5 distributed pamphlets advertising a meeting, which he addressed about the oppression of Blacks, that they should fight for the liberation and on the destruction of councillors and the Black local authority.
12. On 26 August 1984 at a mass protest meeting in the Roman Catholic Church Small Farms accused No 5 spoke on behalf of COSAS saying that COSAS had caused the closure of Atteridgeville school. He ran down the councillors and council system and incited the audience to stay away on 3 September 1984 and participate in the march.
13. On 3 September 1984 accused No 5 was one of the leaders of the march and participated in the attack on councillor Motjeane. Later that day he was part of the rabble that attacked councillor Diphoko.

Accused No 5 was at pains to dissociate himself from all organisations. He alleged he was no longer a member of the management of COSAS. He was never on the committee of the VCA and he did not succeed in getting VAYCO off the ground. This was to be the basis of the later argument that as the state's allegation is that the conspirators were members of management structures, he fell ipso

facto outside the conspiracy set out in the indictment. We have dealt with this approach elsewhere.

It is useful to sketch a profile of accused No 5. He is 28 years old, and grew up in a poor family in Evaton where his parents were illegally residing. They were consequently frequently arrested in the years 1967 to 1974. Their position was regularised in 1974 and they moved to zone 13 Sebokeng. He still bears a grudge about it. He was a good pupil but failed Matric in 1980. For this he blames the education system. He was, however, rather busy that year. He was chairman of the SRC of the school and formed the Vaal branch of COSAS in 1980, of which he became chairman in October 1980. In 1982 he was succeeded by his brother, the former accused No 12, as chairman of COSAS and he became its publicity secretary. He testified that he resigned in May 1982 when COSAS decided that it was open only to scholars and that he then took steps to form VAYCO which did not get off the ground. We have dealt with VAYCO elsewhere in this judgment.

Accused No 5 was a prolific speaker who easily assumed a leadership role and was regarded as a leader of the youth in Sebokeng.

He attended and addressed a rate payers' meeting in Evaton in 1981/1982.

In 1982 the mayor Mr Mahlatsi advised accused No 5 and his brother against COSAS' ideas of violence in the liberation struggle.

In the 16 June 1983 COSAS memorial service he spoke for the formation of a youth group and Masiya, accused No 22 and Esau Raditsela spoke on the formation of a civic. Two days later he attended the meetings in furtherance of these objects and he became member and co-chairman of the Vaal Action Committee which prepared the ground for the founding of the Vaal Civic Association. He worked closely with the Raditsela's in this respect and it is probable that he, like McCamel, there listened to tape recordings of ANC Radio Freedom programmes and revolutionary freedom songs as in exh 35(1) and (2) [transcript V.28(1) and (2)].

Accused No 5 testified that in 1983 he became religious. We have only his word for it. It did not effect his attendance at political meetings, it seems.

He participated in the VAC survey to test public opinion and do the groundwork for the formation of a civic association.

He attended the UDF meeting in the Roman Catholic Church Small Farms on 18 September 1983 where accused No 19 spoke.

He attended the launch of the VCA on 9 October 1983 and though asked to stand for election to the committee declined as he wanted to get his youth organisation launched.

~~He attended the VCA's anti-election rally on 27 November 1983~~ where he supervised the crowd outside at the request of Esau Raditsela, held placards and explained what the meeting was about. The placard he held called town council candidates oppressors. Exh CA.8. He was there arrested for participating in an illegal open-air gathering. The case was still pending in September 1984.

In November 1983 he attended the election meetings of three parties and asked the candidates embarrassing questions from the floor. He did not vote in the election.

He participated in the protest against the 80th anniversary of Evaton on 12 May 1984. He was one of some thirty youths holding placards supplied by Esau Raditsela who was one of the organisers. Some placards referred to the councillors as the disciples of evil.

He spoke at the COSAS June 16 commemorative meetings in 1983 and 1984.

He whole-heartedly supported the UDF and worked for affiliation of organisations to the UDF. He is an adherent of the Freedom Charter.

~~Accused No 5 testified that on becoming aware of the rent~~
increase on 10 July 1984 he asked Edith Letlaka if the VCA was going to do anything about it.

He attended the meeting of 25 August 1984 in zone 13 where he took the minutes.

He addressed the ERPA meeting on the morning of 26 August 1984 in the Roman Catholic Church Small Farms at the request of Esau Raditsela. He spoke on behalf of the youth and promised their assistance. He helped accused No 6 explain the masterplan of Evaton to the audience.

Accused No 5 also addressed the afternoon meeting of the VCA at the Roman Catholic Church Small Farms on 26 August 1984 as speaker for the youth where he introduced the resolutions of the meeting of 25 August 1984 and proposed that they be accepted. He played a leading role in answering objections to the proposal. He called the councillors sell-outs and puppets. He dealt with the question of the taxi owner about stoning of taxi's and with a question about people leaving secretly for work. He also fielded Masenya's question on the arrest of marchers.

In fact had Raditsela been there, he could not have done it better himself.

The acknowledgement of accused No 5's leadership and that ~~accused No 5 was regarded as knowledgeable on the concept of a~~ stay-away and march is evident from the fact that accused No 8 was asked by accused No 10 to let accused No 5 explain it to the meeting, according to the reverend Mahlatsi.

On 3 September 1984 accused No 5 participated in the march. The witness ic.8 testified that accused No 5 played a leading role in the march, was in the vanguard and was present at the attack on Motjeane. He stands uncorroborated on these points. The reverend Mahlatsi was not asked about accused No 5's role in the march. Accused No 5's own evidence is unsatisfactory as indicated in annexure Z. We can make no finding on this aspect of the case.

A reference to the documents found in possession of accused No 5 is apposite.

Accused No 5 had two copies of Speak of January 1984 [exh W.69 (second document) and exh AU.7] in his possession. It has a special focus on 1983. It contains a message from Frank Chikane. The theme

is "Unity in Action". His call is "to organise and mobilise the oppressed masses in South Africa and create such structures and networks that will enable the liberation movement to break this system of Apartheid. That shall be the time when it will not be the leaders calling people into action but the masses taking it up themselves. That is a peoples struggle towards a peoples victory, giving birth to a peoples government."

Accused No 5 also had in his possession UDF literature, the million signature campaign signature forms and DESCOM literature on detentions. A Saspu Focus of December 1982 (exh AU.6 p.8) under the headline "Rent hikes spark riot" reports on the violence that flared after the rent increase in Sobantu, Pietermaritzburg. The report further states that on 29 October 1982 a crowd gathered near the main entrance of the township and was warned by the police to disperse as the gathering was illegal. Thereafter they were forcibly dispersed. A rent boycott was in effect.

Saspu National of November 1983 (exh AU.8 p.6) under the caption "The Story of an Uprising" sets out on two pages a detailed history of the Soweto riots in 1976. A peaceful demonstration on 16 June was turned into a riot when confronted by the police. This led to attacks on government buildings and beerhalls. Barricades were set up in the main road to prevent the police from entering the township. Youths manned the barricades. The months of June and July saw

demonstrations and violence spreading throughout the Transvaal to the Orange Free State and Natal. The newly created SSRC set 4 August 1976 as the date for its first offensive. They planned to coincide a massive student march from Soweto to the centre of Johannesburg with a call for a workers stay-away on that day. To make the stay-away a success the students had to resort to extensive pickets and even the sabotage of the Soweto railway line to prevent workers from going to work. The students' attempt to march to Johannesburg ended in blood-shed. For three successive days the students gathered in different parts of Soweto and set off for Johannesburg. Each time they were confronted with the police who opened fire and dispersed them. The anger that this created was enormous. Soweto residents once again manned the barricades to keep the police out of the townships as the homes of Black security policemen and "collaborators" were set alight.

This is a very important document. Whether its facts are correct is immaterial. It shows the media perception of the Soweto riots and the causes thereof and how an uprising can be started and its momentum retained. These facts were widely disseminated in the Black community. Accused No 5 knew them. So would all intelligent activists.

Two facts are apparent. A stay-away has to be enforced to be effective. This is done by violence. A march leads to confrontation with the police which probably is followed by violence.

To ensure an audience that the buses and taxi's will not run, | *letter sent*
 means that they will be forcefully prevented from doing so. To
 ensure an audience that a march on 3 September 1984 is legal and that |
 they will not be arrested is to mislead them.

It is significant how closely the events on and after 3
 September 1984 resemble the pattern of 1976. The barricades were
 built in advance. The stay-away was called for. It was enforced by
 violence. A march was held in disregard of the law. It ended in
 confrontation and chaos. Those involved were greatly angered.
 Momentum of the uprising was maintained by political funerals. The
 violence spread country-wide.

We find that accused No 5 throughout the period of the
 indictment was recognised as leader of the youth of Sebokeng. He was
 a leader together with Esau Raditsela and others of the VAC which
 formed the VCA and of which he was a member. Though not on the
 committee of the VCA he closely associated with its leadership and in
 the organisation of the stay-away and march he played a leading role.
 // He knew throughout that the stay-away could only be effective if
 enforced by violence. He knew that the march would be illegal and
 that it would lead to violence. He fully endorsed this course. //

His aim was to create chaos and to bring about the resignation of the councillors of Lekoa in order to illegally terminate the existence of the Lekoa town council. The actions of the organisers of the stay-away and march consist of an intentional defiance of the authority of the government.

Accused No 5 did not attend any UDF general council meetings and we cannot find beyond reasonable doubt that he intended to act in furtherance of the UDF's campaign against Black local authorities or to overthrow or endanger the government. There is not proof of the requisite hostile intent for a finding of treason.

As sedition is a competent verdict on a charge of treason, accused No 5 could be found guilty of sedition.

The state has, however, chosen to charge the accused in the alternative with terrorism under section 54(1) of the Internal Security Act 74 of 1982.

We find that accused No 5 with the intent to induce the Lekoa town council to resign or at least to repeal the rent increase, organised the stay-away and march which were aimed at bringing about and contributing to violence and that he encouraged others to participate. Consequently he is guilty of contravening section 54(1)(c)(ii) and (iv) read with section 54(8) of the Internal

Security Act read with section 84(1)(f) of Act 32 of 1961. This offence is called terrorism in the Act.

It is not necessary to deal with the alternative charges under the said Act. ~~In passing we wish to refer to the murder counts.~~

There is inadequate evidence for a finding that accused No 5 intended the death of the deceased or that he foresaw it. Would a reasonable man have foreseen it and is accused No 5 therefore guilty of culpable homicide? A reasonable man in the position of accused No 5 would have known that in the hostile climate against councillors which was greatly furthered by the speeches at meetings of the VCA, the violence accompanying the enforcement of a stay-away and the frustration and violence necessarily flowing from a confrontation between marchers and the police, would probably spill over into violence against the councillors and their property in which circumstances the death of the councillors at the hands of the angered mob would be a possibility. The organisers of the stay-away and march, including accused No 5, could therefore be found guilty of culpable homicide.

Accused No 5 is found guilty of terrorism in terms of section 54(1) of the Internal Security Act No 74 of 1982.

DELMAS TREASON TRIAL 1985-1989

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