

IN THE SUPREME COURT OF SOUTH AFRICA.

NATAL PROVINCIAL DIVISION.

CASE NO. CC 108/76.

In the matter of :

THE STATE versus

- 1. THEMBA HARRY GWALA.
- 2. WILLIAM PANO KHANYILE.
- 3. ANTON NDODA XABA.
- 4. JOHN VUSIMUSI NENE.
- 5. VUSIMUSI TRUMAN MAGUBANE. (10)
- 6. MATTHEWS MOKHOLEKA MEYIWA.
- 7. AZARIA NDEBELE.
- 8. ZAKHELE ELPHAS MDLALOSE.
- 9. JOSEPH NTULISWE NDULI.
- 10. CLEOPAS MELAYIBONE NDHLOVU.

J U D G M E N T.

Delivered
on
14/15 July 1977

HOWARD, J.

The accused stand indicted upon charges (20
under the Terrorism Act, No. 83 of 1967 and alternative
charges under the Internal Security Act, No. 44 of 1950.
There are five counts in all. Counts 1 and 2 charge all
ten accused with participation in terroristic activities
in contravention of sec. 2(1)(a) and (b) of Act 83 of 1967,
with alternative charges of contravening sec. 11(c) and
sec. 11(b) ter of Act 44 of 1950. Counts 3 and 4 contain
further/.....

further charges of participation in terroristic activi=
ties by accused No. 9, and count 5 alleges a further con=
travention of sec. 2(1)(b) of Act 83 of 1967 by accused
No. 10.

There is a general preamble to all of the
charges, containing allegations to the effect that :-

- (a) by virtue of certain proclamations and
statutory provisions : (i) the Commu=
nist Party of South Africa (or the South
African Communist Party) and the African
National Congress (the A.N.C.) are unlaw=
ful organisations; and (ii) the body
known as Umkonto Wesizwe (or Spear of the
Nation) is and was at all times subse=
quent to 15th December 1961 in fact the
A.N.C. : (10)
- (b) on or about 16th December 1961 Umkonto
Wesizwe and/or the South African Commu=
nist Party commenced, and have since then
carried on, an armed struggle aimed at
the overthrow of the government of the
Republic of South Africa by violence or
means which envisage violence, and/or by
means which include strikes, industrial
disruption or disorder, guerilla warfare
and sabotage. (20)

The Communist Party of South Africa (hereinafter called
the Communist Party) has been an unlawful organisation
since it was declared to be such in terms of sec. 2(1)
of Act 44 of 1950. The A.N.C. has been an unlawful
organisation since 8th April 1960, by virtue of Procla=
mation No. 119 of that date which was made in terms of
sec. 1(1)

sec. 1(1) of Act 34 of 1960 and amended by sec. 22 of Act 93 of 1963. In terms of Proclamations 93 and 94 of the 10th May 1963 the State President, exercising the powers vested in him by sec. 1(3) of Act 34 of 1960, declared that the organisation known as "Umkonto Wesizwe" or "Spear of the Nation" was in fact the A.N.C. and had been such at all times subsequent to 15th December 1961. The effect of this, in terms of sec. 1(3)(a) of Act 34 of 1960, is that in these proceedings the organisation in question (hereinafter called Umkonto Wesizwe) must be deemed to be the A.N.C. and to have existed as such since 16th December 1961. In terms of sec. 1(3)(d) the Court has no jurisdiction to pronounce upon the validity of Proclamations 93 and 94.

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By virtue of the provisions of sec. 1(3)(b) of Act 34 of 1960 any act or omission proved in these proceedings with reference to Umkonto Wesizwe "shall be deemed to have been proved" with reference to the A.N.C. Counsel for the accused, Mr. Muller argued that the word "deemed" in this context does not bear its general (and conclusive) meaning of "considered" or "regarded", but a meaning which is purely presumptive, in the sense that it is only until the contrary is proved that any act or omission of Umkonto Wesizwe is deemed to have been proved with reference to the A.N.C. In support of this argument Counsel referred inter alia to Chotabhai v. Union Government & Anor. 1911 A.D. 13 at p.33; R. v. Haffejee 1945 A.D. 345 at pp. 352/3; R. v. Mawena 1961(3) S.A. 362 (S.R.)/....

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S.A. 362 (S.R.) at p. 364; S. v. Voight 1965 (2) S.A. 749 (N) at p. 752; and Steel v. Shanta Construction (Pty) Ltd. & Ors. 1973 (2) S.A. 537 (T) at p. 539 - 542. In my opinion the argument is devoid of substance. The same word "deemed" appears in each of the sub.-paras. (a), (b) and (c) of sec. 1(3). In sub.-para.(a) it manifestly bears its literal meaning, the effect being that Umkonto Wesizwe is conclusively deemed to be the A.N.C., and there is no reason to suppose that the legislature intended it to bear a different meaning in sub.-para.(b). As Umkonto Wesizwe has been declared in fact to be the A.N.C., and must be regarded as being the A.N.C., it is only logical to regard any act or omission of Umkonto Wesizwe as an act or omission of the A.N.C. I therefore think that it would be inconsistent with the aim, scope and object of sec. 1 (3) to construe the word "deemed" in sub-para.(b) thereof as being qualified by the words "until the contrary is proved".

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With regard to the activities, policies and aims of Umkonto Wesizwe (the A.N.C.) and the Communist Party, as alleged in the preamble, the State relies on the direct evidence of persons who were members of these organisations, and also on a large number of leaflets, pamphlets and other documents which have been produced as exhibits. In addition to handing in the originals the prosecution produced photostatic copies of these documents or portions thereof in the form of Exhibit "D" (a bound book) and Exhibits "E", "F" and "H".

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Certain of /.....

Certain of the documents were handed in by Major Dirker, a retired member of the security police who for many years was concerned with the investigation of sabotage cases and the activities of certain organisations including the A.N.C. and the Communist Party. He attended a conference in Kliptown, Johannesburg on 25th and 26th June 1955, at which the A.N.C. and other organisations such as the Congress of Democrats, the South African Coloured Peoples Organisation and the South African Congress of Trade Unions (SACTU) adopted "The Freedom Charter". He identified this document (Exhibit "H") and described it as a declaration of policy. The Freedom Charter speaks for itself and there is no need to set out its provisions in extenso. In terms thereof "the people of South Africa" pledge themselves to strive for certain democratic changes, including the right of every man and woman to vote for and stand as a candidate for all bodies which make laws, the repeal of all apartheid laws and all laws which discriminate on grounds of race, colour or belief, the ending of racial restrictions with regard to ownership of land, and the enjoyment by all persons equally of human rights such as freedom of speech, association, worship and movement.

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Major Dirker testified that during the night of the 16th December 1961 many buildings in Johannesburg were damaged by means of bombs, and that at the same time the manifesto of Umkonto Wesizwe was distributed in the city./.....

in the city. He produced a copy of this document (Exhibit "D" pp. 25-26) which on the face of it was issued by command of Umkonto Wesizwe. The opening paragraph reads :-

"Units of Umkonto We Sizwe today carried out planned attacks against Government installations, particularly those connected with the policy of apartheid and race discrimination."

The document goes on to introduce Umkonto Wesizwe, to set out its objectives and to indicate in general terms the method by which such objectives will be achieved. It refers to the policy of non-violence pursued by the main national liberation organisations in this country, claims that the Government has interpreted this as weakness, and states :

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"The methods of Umkonto We Sizwe mark a break with the past. We are striking out along a new road for the liberation of the people of this country. The government policy of force, repression and violence will no longer be met with non-violent resistance only!"

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Major Dirker also produced one of the originals of an A.N.C. poster (Exhibit "D" pp. 27 - 28) which, he said, was distributed in great numbers in Johannesburg during May 1963. This document contains statements to the following effect,

inter alia /

inter alia :-

"UMKHONTO WE SIZWE

- ARMY OF THE LIBERATION MOVEMENT -

UMKHONTO IS FOR ACTIVISTS

We have struck against the White state more than 70 times (boldly yet methodically). We are trained and practised. We shall be more so.

UMKHONTO TRAINS THE YOUTH.

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We are ceaselessly, thoroughly, training an Army of Liberation.

THE A.N.C. SPEARHEADS REVOLUTION.

The South African people are at war with Verwoerd

TO DESTROY VERWOERD WE MUST DESTROY THE INSTRUMENTS OF WHITE POWER.

WHAT ARE THE INSTRUMENTS OF WHITE POWER?

They are the army, the mines, the railways, the docks, the factories, the farms, the police, the whole administration.

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HOW ARE WE TO SMASH THEM?

With planned, strategic violence ...

ORGANISED VIOLENCE WILL SMASH APARTHEID!

On 11th July 1963 the security police carried out a raid on Lily's Leaf Farm at Rivonia, Johannesburg. Major Dirker was a member of the raiding party, and he produced two documents which were found in and removed from the Lily's Leaf premises on that occasion. He testified that these premises were

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used as the /.....

used as the headquarters of the Communist Party, the A.N.C. and Umkonto Wesizwe. The documents are "OPERATION MAYIBUYE" (Exhibit "D" pp. 1 - 6) and "ORGANISATIONAL PLAN FOR THE PREPARATION OF ARMED REVOLUTION" (Exhibit "F" and Exhibit "D" pp. 7 - 23). OPERATION MAYIBUYE advocates the overthrow of the State by force and violence, discusses the feasibility of achieving this through guerilla operations leading to a general uprising, and outlines a plan of campaign which envisages guerilla warfare on a grand scale. The ORGANISATIONAL PLAN covers, inter alia, reconnaissance, communications, engineering, propaganda, training of troops and logistics.

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Two other security policemen, Major Stadler and W/O Bouwer, handed in a selection from leaflets, pamphlets and other documents which were issued and widely distributed in the Republic on behalf of the A.N.C. and the Communist Party during the period from 1967 to July 1976, mainly through the post or by means of leaflet bombs. These include six issues of SECHABA which, according to Major Stadler, has been distributed monthly since 1967. It describes itself as the official organ of the A.N.C. There are also two issues of AMANDLA-MATLA which made its first appearance in 1975 as the "Newsletter of the African National Congress", and various other leaflets and documents ostensibly published by or on behalf of the A.N.C. It is unnecessary to quote extensively from these documents. One of their main themes is to exhort the people to organise and prepare themselves for participation in guerilla warfare aimed at the overthrow of /.....

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overthrow of the white State. A leaflet which was distributed in August 1967 (Exhibit "D" p. 30 -31) contains the following statement :

"From underground we launched the new fighting corps, Umkhonto we Sizwe, which made dynamite attacks on government buildings, pass offices and power lines. We sent youth abroad to train as the people's soldiers, technicians and administrators."

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Other documents, notably the October 1967 issue of SECHABA (Exhibit "D" p. 36) and the transcript of an A.N.C. "freedom broadcast" sent to the editor of the Natal Mercury on 14th November 1969 (Exhibit "D" pp.55-58) make it clear that Umkonto Wesizwe forces engaged in hostilities in Rhodesia are destined to carry the fighting through to South Africa. A leaflet which was distributed in 1970 (Exhibit "D", pp. 60 - 63) contains instructions on how to make a simple hand grenade. It also advocates properly organised strikes in the factories and incites the youth to acquire firearms and hide them "until the time for action comes". The May 1975 issue of SECHABA (Exhibit "D" pp.78 - 83) reports on a spate of workers' strikes that have hit the South African economy and, with reference to these strikes and similar actions amongst professional men, youth and students, churchmen and sportsmen, states :-

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"This indeed is a great challenge to the leadership and organisational capacity of the /.....

of the A.N.C. - to galvanise all these new emerging democratic and revolutionary forces and lead them through the revolution to freedom".

In the August/September 1975 issue of SECHABA (Exhibit "D" at p.95) it is stated that the armed struggle for the destruction of fascism in South Africa should be combined with other forms of struggle such as workers' strikes and political demonstrations. This issue of SECHABA reproduced the first issue of AMANDLA-MATLA (Exhibit "D" pp. 98 - 101) which referred to the M.P.L.A. victory in Angola and urged its readers to form A.N.C. cells or units for the purpose of political discussion, receiving and distributing A.N.C. literature, organising, leading and guiding mass action, strikes, bus boycotts, etc., and organising the youth to resist the system of Bantu education and demand free, compulsory and proper education, with the right to choose the medium of instruction.

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Subject to proof that any accused is or was a member or active supporter of the A.N.C., the documents to which I have referred are admissible against him as prima facie evidence of their contents, by virtue of the provisions of sec. 2(3) of Act 83 of 1967. OPERATION MAYIBUYE and the ORGANISATIONAL PLAN are so admissible because of the unchallenged and acceptable evidence of Major Dirker that they were found in and removed from premises occupied and used by the A.N.C.; and the other documents because they have on the face of them /.....

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face of them been compiled, used, issued or published by or on behalf of the A.N.C. However, this does not apply to all of the documents which were tendered as A.N.C. documents. Mr. Muller contended that three of those reproduced in Exhibit "D" (viz. the pamphlets entitled "WE ARE AT WAR!" at pp. 37 - 40, "THESE MEN ARE OUR BROTHERS" at pp. 50 - 53 and "VUKANI" at pp. 69 - 71) do not appear on the face of them to have been compiled, used, issued or published by or on behalf of the A.N.C. In our view the contents of the pamphlet entitled "WE ARE AT WAR!" show clearly enough that it was issued on behalf of the A.N.C., but we think that Mr. Muller's contention with regard to the other two pamphlets (at pp. 50 - 53 and 69 - 71 of Exhibit "D") must be upheld. Exhibit "D" also contains copies of or extracts from other pamphlets which on the face of them have been compiled, used, issued or published by or on behalf of the Communist Party. These pamphlets are admissible in terms of sec. 2(3)(c) of Act 83 of 1967 against any accused in respect of whom there is satisfactory proof that he is or was a member or active supporter of the Communist Party. They tend to support the conclusion that the Communist Party has been involved in the armed struggle alleged in the preamble, but otherwise take the matter no further than the A.N.C. documents already referred to.

As will hereinafter appear, there is adequate proof that during the period alleged in count 1 all of the accused except accused No. 2 were active supporters of the A.N.C., but no evidence that any of them except accused

No. 10 was /.....

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No. 10 was at any relevant time a member or active supporter of the Communist Party. The evidence on count 5 establishes that accused No. 10 was a member or active supporter of the Communist Party during 1964. It follows that the A.N.C. documents which are admissible in terms of sec. 2(3) of Act 83 of 1967 are so admissible against all of the accused except No. 2, while the Communist documents are only admissible against accused No. 10.

Turning to the direct evidence relative to the preamble, the witness B.M. Hlapane testified that he was for many years a member of both the A.N.C. and the Communist Party. From about 1957 or earlier he was a member of the Transvaal executive of the A.N.C., and for a few months during 1960 he served on a temporary committee which took over the functions of the National Executive of that organisation. In the Communist Party he graduated from membership of a cell to an area committee, thence to the Transvaal district committee, and finally to the Central Committee which is the highest organ of the party. He became a member of the Central Committee in 1962. When the leaders of the A.N.C. and the Communist Party were in hiding at Lily's Leaf Farm, Rivonia he acted as a messenger between them and the lower echelons of the organisations. He thus held important offices in the A.N.C. and the Communist Party and had an intimate knowledge of their affairs. He was first detained from 24th June to 13th December 1963, after which he was politically inactive

until the /.....

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until the end of May 1964 when he was again co-opted onto
 Central
 the Communist Party-Committee. He was detained
 for the second time from 2nd September to 28th October 1964,
 and again in January 1966. He finally severed his con-
 nection with the A.N.C. and the Communist Party when he gave
 evidence at the trial of Bram Fischer in about 1966.

According to Hlapane the aims and objects
 of the A.N.C. were simply to obtain democratic rights for the
 African People as spelt out in the Freedom Charter. The
 Communist Party subscribed to the same policy, but, unlike (10
 the A.N.C., its ultimate object was to replace capitalism
 with socialism in this country, and it therefore regarded
 the "democratic changes" of the Freedom Charter as stepping
 stones towards achieving that ultimate object. The Commun-
 ist Party accordingly made common cause with the A.N.C.,
 and so infiltrated the A.N.C. that it was able to control
 the organisation's policy. Thus there were leaders such
 as Walter Sisulu, Duma Nokwe, J.B.Marks, Moses Kotane and
 Govan Mbeki who were simultaneously members of both the
 National Executive of the A.N.C. and the Central Committee (20
 of the Communist Party and, as Hlapane put it, the A.N.C.,
 the Communist Party and Umkonto Wesizwe "worked as one
 organisation, practically."

Hlapane said that prior to 1961 the A.N.C.
 set out to achieve its aims by peaceful means. In that year
 there was a change of policy and it was decided to resort to
 violence. The decision was implemented by forming Umkonto
 Wesizwe to /.....

Wesizwe to commit acts of sabotage, and the first of such
 acts by Umkonto Wesizwe were committed on 16th December 1961.
 According to Hlapane, Umkonto Wesizwe was the brainchild of
 the Communist Party. At a conference of the Communist
 Party which was held in October or November 1962 Joe Slovo
 stated that the acts of sabotage committed by Umkonto
 Wesizwe had not had the desired effect, and proposed that
 the stage had been reached to move on to the "second phase"
 of the struggle which envisaged guerilla warfare. Hlapane's
 evidence is that the conference accepted the idea in princi- (10
 ple, in the sense that it referred the matter to the Central
 Committee to draw up a plan, with a mandate to the Central
 Committee to "go ahead" with the second phase if it approved
 of its plan. In other words the final decision whether or
 not to embark upon guerilla warfare, and the manner in which
 this was to be done, were left to the Central Committee.
 At a meeting of the Central Committee the principle of em-
 barking upon the second phase was accepted and Joe Slovo
 (as the representative of Umkonto Wesizwe) was instructed
 to have a plan drawn up. Hlapane could not remember (20
 whether this occurred at the first Central Committee meeting
 held after the conference, or at a subsequent meeting. In
 any event a plan called OPERATION MAYIBUYE was submitted
 to the Central Committee at a later meeting, discussed,
 amended and finally approved or adopted by the Central
 Committee before the date of Hlapane's first detention.
 In his evidence-in-chief Hlapane said that the first
 document in /.....

document in Exhibit "D" was similar to the plan thus approved by the Central Committee, but cross-examination revealed that he was not certain whether he had ever seen OPERATION MAYIBUYE in its final form and was not able positively to identify it. He was adamant, however, that the plan was adopted, although sub-committees were appointed to investigate the feasibility of various aspects of it. The Central Committee decided to send two persons abroad to seek support for the plan, and Hlapane learned at a later stage that Joe Slovo and J.B.Marks had been chosen for this mission.

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Under cross-examination Hlapane emphasised that the National Executive of the A.N.C. was a puppet of the Communist Party, because all but two or three of its members were communists serving on the Central Committee. There was a lengthy debate on whether the National Executive acted constitutionally in taking the policy decisions which Hlapane claimed it took, and on whether OPERATION MAYIBUYE was actually adopted by the Central Committee while Hlapane was a member of it. It emerged that Hlapane did not really have the necessary direct knowledge to testify positively that the National Executive was a party to the formation of Umkonto Wesizwe or actually decided to change the policy of the A.N.C. so as to achieve its aims by violent means; and if the National Executive did take such a decision it seems clear that it acted unconstitutionally. However, there is other evidence to prove that Umkonto Wesizwe (which is deemed to be the /.....

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to be the A.N.C.) did embark upon a campaign of violence which was initially limited to sabotage and later expanded to include preparation for guerilla warfare very much along the lines envisaged by OPERATION MAYIBUYE. Hlapane claimed that the ordinary members of the A.N.C. were informed of the change of policy, and that as from 1961 they were in favour of achieving their aims by violence, but it was clear that this had reference to the organisation in the Transvaal. He could not say what the position was in Natal.

Hlapane was cross-examined at great length on a variety of topics. There were constant references to evidence which he gave at the trial of one Carneson in 1966, and it would appear that some of his evidence in that case was unsatisfactory. There were many matters of detail which the witness could no longer remember and there was some inconsistency between his evidence in this Court and what he is recorded as having said at the Carneson trial. Although he was not a particularly reliable witness we gained the impression that he had told us the truth to the best of his recollection.

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The next witness, Bruno Mtolo joined the A.N.C. in 1957. He joined SACTU in 1960 when the A.N.C. was declared an unlawful organisation, and in 1961 he became a member of Umkonto Wesizwe and the Communist Party. He was on the Natal Regional Command of Umkonto Wesizwe and a member of its technical committee, in which capacity he trained sabotage groups in the manufacture of petrol bombs and Molotov /.....

and Molotov cocktails and the use of dynamite. He claimed responsibility for planting a bomb at the Bantu Administration offices in Ordinance Road, Durban, as part of a plan to announce the birth of Umkonto Wesizwe by bombing government buildings throughout the country. He said that in 1963 he went to Rivonia to receive instructions from the High Command of Umkonto Wesizwe, represented by Govan Mbeki and Walter Sisulu. They gave him OPERATION MAYIBUYE to study and informed him that they were now entering the "second phase" of the struggle, that Natal had been divided into seven zones and that the Natal Regional Command was required to recruit 2000 volunteers to be trained as saboteurs, as well as boys who would be sent abroad for military training. On his return to Natal he gave effect to these instructions by training sabotage groups which were recruited and formed by Solomon Mbanjwa, a fellow member of the Natal Regional Command of Umkonto Wesizwe. He also recruited young men to join Umkonto Wesizwe and go out of the country for military training abroad.

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Under cross-examination Mtolo readily conceded that most of the members of the A.N.C. in Natal were opposed to Umkonto Wesizwe and its activities. He said, in effect, that Umkonto Wesizwe used the A.N.C. as a front, by posing as its military wing, whereas in truth it was a communist organisation unconnected with the A.N.C. It must be appreciated, however, that he was speaking of his experiences up to/.....

experiences up to the time of his arrest on 3rd August 1963 and had no personal knowledge of any subsequent developments in the relationship between these underground organisations. Counsel for the accused showed the witness a copy of OPERATION MAYIBUYE and put it to him that this was not the document which he had identified in the Rivonia trial as Exhibit R.10 - a document which he had seen one Kathrada stencilling at Lily's Leaf Farm. Mtolo said that the language of Exhibit R.10 was similar to that of OPERATION MAYIBUYE but the heading was different. This particular line of cross-examination was irrelevant and futile. It is significant that the cross-examiner did not challenge any of the material statements contained in Mtolo's evidence-in-chief. In particular, it was never put to him that he was not given OPERATION MAYIBUYE to study, and there was no challenge of his evidence regarding the instructions which he received from Mbeki and Sisulu and the steps which he took to give effect thereto. The nature of the instructions which he received clearly indicates that it was OPERATION MAYIBUYE that was being put into effect : Part IV, para. 1 of that document provides for the recruitment and training of 2000 men in the Natal/Zululand area; and Part VI, para. 1 charges the National High Command with certain immediate duties, including (a) mapping out "regions" in each guerrilla area, and (d) recruiting and arranging for the external training of at least 300 men in the next two months.

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Mtolo is an intelligent and experienced witness who /.....

witness who gave his evidence in a relaxed, confident manner. In the absence of any serious challenge of his evidence we have no reason to doubt its truth.

Another member of the Natal Regional Command of Umkonto Wesizwe called as a State witness was Stephen Mtshali. He joined the Kwa Mashu branch of the A.N.C. in 1962 and before very long was a member of the ad hoc committee for the whole of Natal. He acted as the liason man between the A.N.C. and SACTU and was also a member of the Communist Party. He said that Bruno Mtolo (10) taught him how to use explosives, and that in or about 1963 he took part in blowing up a signal box with dynamite. He said that Umkonto Wesizwe was the military wing of the A.N.C., whose function was to topple the government by force, more specifically by committing acts of sabotage and recruiting persons to be sent abroad for military training. He confirmed Mtolo's evidence about Natal being divided into seven zones, stating that on instructions emanating from the High Command of Umkonto Wesizwe a regional organiser was appointed for each of (20) seven such areas. In Natal the A.N.C. itself was organised in accordance with what he called the Mandela plan, with a hierarchy headed by the ad hoc committee. From that Committee the chain of command passed down through branch committees to zone leaders to street leaders and finally to cell leaders, streets in each zone being divided into cells consisting of four houses.

The witness /.....

The witness confirmed under cross-examination that there was considerable opposition to Umkonto Wesizwe amongst the members of the A.N.C. in Natal, and he was not prepared to dispute Mtolo's evidence that Umkonto Wesizwe was not controlled by the A.N.C. but by the communists. He too was speaking about the position prior to his arrest in August 1963. He said that the name of accused No. 1 was proposed at a meeting of the Natal Regional Command as one of the organisers for the seven zones, but he made it clear under cross-examination that he did not approach (10) accused No. 1 about the matter and could not say that he had accepted any such appointment. His evidence with regard to the appointment of organisers for the seven zones was not otherwise challenged. He seemed to be an honest witness.

There is further evidence to establish that OPERATION MAYIBUYE and the ORGANISATIONAL PLAN have been implemented at least to this extent, that since about 1963 the A.N.C. (or Umkonto Wesizwe) have caused considerable numbers of men to be recruited and trained abroad as (20) guerilla fighters, for the avowed purpose of overthrowing the government of the Republic by violence. This is the evidence of Leonard Nkosi, John Ndima and Karl Kleinbooi who were called primarily to testify in connection with counts 3 and 4. It will be set out and analysed in greater detail when we deal specifically with counts 3 and 4. As will hereinafter appear, much of the State evidence relative to counts 1 and 2 also tends to confirm the allegations in the preamble.

The defence /.....

The defence led no evidence to refute the allegations contained in the preamble. The State evidence on that aspect of the case accordingly stands uncontradicted, and it establishes that the allegations in the preamble are substantially correct. However, in deciding whether the accused are guilty of the offences charged we have - for the reasons which follow - entirely disregarded the evidence tendered in support of the allegations contained in the preamble. Counsel for the State, the Deputy Attorney-General Mr. Rossouw conceded, correctly in my opinion :-

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(a) that the only possible relevance of the evidence in support of the preamble was to prove a conspiracy or common purpose between the accused and the A.N.C. or the Communist Party to commit various acts alleged in the indictment, or to throw light on the intention with which the accused committed such acts;

(b) that if in respect of any accused there is proof that he actually committed or attempted to commit the act or acts in question it is irrelevant to consider whether he also entered into a conspiracy or was party to a common purpose to do so;

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(c) that if in respect of any accused there is proof that he conspired with other natural persons (e.g. his co-accused) to commit the act or acts in question
it is /.....

it is unnecessary to consider whether he also conspired with the A.N.C. or the Communist Party to do so;

(d) that in deciding whether any accused who committed or attempted to commit the act or acts in question did so with the intention alleged (viz. to endanger the maintenance of law and order) it is unnecessary to have regard to the preamble or the evidence led to prove it.

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As will be seen when we deal specifically with the various counts, it has proved irrelevant, or at least unnecessary, for us to consider and decide whether any of the accused conspired with the A.N.C. or the Communist Party to commit any act alleged in the indictment, or acted in concert with either of those organisations in furtherance of any common purpose. It is therefore unnecessary for me to express an opinion on Mr. Muller's contention that in the absence of a constitutionally valid change of its policy the A.N.C. could not have been party to a conspiracy or common purpose to commit the acts alleged.

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Before dealing specifically with the various counts I think it appropriate to make some general observations about the approach we have adopted in considering and evaluating the evidence. Many of the State witnesses were accomplices, many were detained by the security police at some stage, and many were kept in solitary confinement /.....

confinement and subjected to interrogation in terms of sec. 6 of Act 83 of 1967. The length of the period of detention and the intensity of the interrogation differed from case to case. In many cases the witnesses were still in detention at the time they gave evidence in this Court, although we have the assurance of counsel for the State that those witnesses were no longer being detained in terms of sec.6.

As was stated by the Appellate Division in S. v. Hassim & Ors. 1973(3) S.A. 443 (A.D.) at p. 454, the Court does not have to be satisfied with evidence acquired in this manner :

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"The Court retains its normal power and function, which it will exercise with vigilance and scrutiny, to pronounce upon the evidence placed before it, bearing in mind, inter alia, in any particular case, the question whether the circumstances under which the evidence was obtained has affected its credibility".

Certain of the factors which necessitate the exercise of caution in evaluating such evidence are mentioned in the judgment of the trial Judge in Hassim's case, supra (JAMES, J.P.) the relevant portion of which is quoted in the judgment of the Appellate Division, at pp. 404/5. Thus the circumstances of his detention and interrogation could make a witness receptive to suggestions and induce him to depart from the truth when making the statement required of him by the police; and, having made the statement, his continued detention /.....

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detention or the threat of a prosecution for perjury might operate to dissuade him from departing from any false statement contained therein. Another possibility, suggested by some of the evidence we have heard in this case, is that the apparent accuracy and reliability of testimony may be due to the fact that the witness has frequently been reminded of the contents of his statement and, having little else to occupy his mind while in detention, has learnt it by rote.

In this case the defence led evidence from most of the accused, and from certain other persons who had also been detained in terms of sec. 6 of Act 83 of 1967, in order to show that they were subjected to a concerted modus operandi on the part of the security police : a so-called "investigatory system" which depended primarily on solitary confinement but included other forms of pressure designed to reduce them to a state of debility, dependency and dread and thereby force them to make statements which satisfied the police. This evidence, together with that of an expert witness, Dr. West, was tendered to lay the foundation for an inference that seemingly truthful and unbiased State 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. The evidence relative to the investigatory system was admitted provisionally in terms of a ruling which I made on 3rd December 1976, and the prosecution was permitted to lead evidence in rebuttal of the allegations thus made by the defence. All of this evidence has been /.....

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has been carefully considered with a view to arriving at the truth and deciding finally on its relevance. Our approach to factual issues raised by the introduction of evidence relative to the investigatory system is that no onus rests on the accused to prove anything. The onus remains throughout on the prosecution to prove the guilt of the accused beyond reasonable doubt, and this includes the refutation of any relevant evidence which tends to cast doubt on the credibility of State witnesses.

Mr. Muller referred to Rossouw v. Sachs (10 1964(2) S.A. 551 (A.D.) at p. 561 D - F and Gosschalk v. Rossouw 1966(2) S.A. 476 (c) for the self-evident proposition that it is unlawful for the police to maltreat detainees. In Gosschalk's case, supra, at pp. 492/3 GORBETT, J. (as he then was) said :-

"Obviously they are not entitled, in order to induce a detainee to speak, to subject him to any form of assault or to cause his health or resistance to be impaired by inadequate food, lack of sleep, living conditions or the like. Nor may they resort to methods of interrogation commonly referred to as the "third degree"..... (20) In this context I understand the term "third degree" to refer to a severe and prolonged cross-questioning designed to overcome the powers of resistance of the person being interrogated."

Various/.....

Various American decisions were cited to show the attitude adopted by the courts of that country towards the use of coerced confessions or testimony for the purpose of securing convictions in criminal trials : Chambers v. Florida (1939) 309 U.S. 227; Turner v. Pennsylvania (1948) 338 U.S. 62; Miranda v. Arizona (1966) 384 U.S. 436; Bradford v. Johnson 354 F.Supp. 1331 (1972); and LaFrance v. Bohlinger 365 F.Supp. 198 (1973). The coercion in these cases took various forms, ranging from physical torture to protracted questioning of a prisoner held incommunicado. The following (10) extracts from the report of the LaFrance case, supra, at p. 205, are illustrative of the American attitude towards coerced testimony :-

"One of the basic underpinnings of a fair trial is the concept that testimony which is unreliable or untrustworthy must be rejected Given the proposition that a coerced confession is unreliable and must therefore be excluded, it is illogical to permit the use of evidence coerced from a witness. Such evidence is no more reliable or trustworthy than is a coerced confession. As a practical matter it may well be less reliable. So-called key witnesses are often potential defendants as well. Their interest in self-preservation may motivate them to avoid or reduce the likelihood of direct involvement by laying the blame elsewhere. (20) Even a /..... (30)

Even a witness not faced with potential prosecution may be less motivated toward resisting coercion than would a target defendant. He may succumb to undue pressure for no other reason than to be left alone and allowed to go on his way Coerced testimony from any source is inherently unreliable and therefore suspect beyond redemption. Such testimony merits no consideration in the judicial process."

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In support of his submission that detention or the threat of detention in terms of sec. 6 of Aot 83 of 1967 constitutes coercion sufficient to render the evidence of a witness suspect, Mr. Muller referred us to a judgment delivered by THERON, J. in the Cape Provincial Division on 18th March 1977, in the matter of S. v. Hoffmann & Ors. (Case No. KS. 475/76). Dealing with the evidence of an accomplice named Haupt, the learned Judge stated, inter alia :-

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"In this connection I feel compelled to remark that while one's sympathies are with the police, where they are working at high pressure and find themselves faced with prospective witnesses who are reluctant to talk, the mere possibility that a witness - and especially one falling into the class of accomplices - may have been threatened with detention if he does not produce a satisfactory statement, is sufficient to tarnish him from the /....."

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from the point of view of a Court required to do justice according to our practice in a criminal case It is ^{too} possible that Haupt might have decided to take an easy way out by telling the police what he thought they wished to know or would be prepared to believe. Accused No. 3 might even have been substituted for someone whom he preferred to protect. I am not criticising the police, and I am not criticising Sergeant Geldenhuys or his methods in this case, but this is one of the unfortunate results of having and invoking a provision such as section 6 of the Terrorism Act. It may be necessary to invoke these provisions, but it does have the effect of tarnishing the witness' image for the Court and maybe making it impossible for the Court to proceed with confidence on the basis of his evidence."

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I respectfully agree with those remarks, but I do not understand the learned Judge to have meant to convey more than that evidence obtained by using the provisions of sec. 6 requires even more careful scrutiny than is usual before the Court can accept it as truthful and reliable.

The direct evidence relative to the so-called investigatory system will be discussed in due course, but it is convenient to deal at this stage with the expert testimony of Dr. West.

Dr. West is an eminent American physician and psychiatrist who was fully qualified by virtue of his learning /....."

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learning and experience to give expert evidence on this aspect of the case. His curriculum vitae (Exhibit "PP 1") makes impressive reading and he was an impressive witness. He described the nature, causes and effects of debility, dependency and dread (the DDD syndrome), deriving mainly but not exclusively from his study of a group of American airmen who had been prisoners of the Chinese Communists during the Korean conflict. DDD summarises the essential elements of the techniques used by trained Chinese interrogators to force these prisoners to make false confessions and give false evidence at "show" trials in support of propaganda to the effect that the United States was conducting bacteriological warfare against the civilian population of North Korea and Manchuria. As appears from Table 1 in Exhibit "PP 4", 59 airmen were subjected to this technique for the purpose of extorting confessions, 48 of them being clearly involved in a centrally directed and co-ordinated programme. Confessions were extracted from 36 of them, and 23 of the confessions were used in a propaganda campaign which included films and tape recordings of the show trials at which the deponents testified in accordance with their confessions. According to Dr. West these U.S.A.F. officers, many of whom had distinguished war records, not only gave the false evidence required of them but claimed that they had been well treated and were testifying voluntarily as a matter of conscience. Moreover, the films showed them to be in apparent good health, with no obvious signs /.....

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obvious signs of having been subjected to the DDD syndrome.

Table II in Exhibit "PP 4" analyses the various methods employed by the Chinese Communists to produce the DDD syndrome, as follows :-

<u>METHOD</u>	<u>VARIANTS</u>	<u>EFFECTS</u>
1. ENFORCING TRIVIAL DEMANDS	Enforcement of minute rules and schedules. Forced writing.	Develops habit of compliance.
2. DEMONSTRATING "OMNIPOTENCE" & "OMNISCIENCE"	Confrontations. Pretending to take co-operation for granted. Demonstrating complete control over victim's fate. Tantalizing with possible favours.	Suggests futility of resistance.
3. OCCASIONAL INDULGENCES	Unpredictable favours. Rewards for partial compliance. Promises of better treatment. Fluctuation of captor's attitude. Unexpected kindness.	Provides positive motivation for compliance. Reinforces learning. Impairs adjustment to deprivation.
4. THREATS	Of death or torture. Of non-repatriation. Of endless isolation and interrogation. Against family or comrades. Mysterious changes of treatment. Vague but ominous threats.	Cultivates anxiety, dread and despair.

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5. DEGRADATION /

<u>METHOD</u>	<u>VARIANTS</u>	<u>EFFECTS</u>
5. DEGRADATION	Prevention of personal hygiene. Filthy, infested surroundings. Demearing punishments. Various humiliations. Taunts and insults. Denial of privacy.	Makes continued resistance seem more threatening to self-esteem than compliance. Reduces prisoner to concern with "animal" values.
6. CONTROL OF PERCEPTIONS	Darkness or bright light. No books or recreations. Barren environment. Monotonous food. Restricted movement. Absence of normal stimuli.	Fixes attention on predicament. Posters intrusions. Frustrates all actions not consistent with compliance. Eliminates distractions.
7. ISOLATION	Complete physical isolation. Solitary confinement. Semi-isolation. Isolation of small groups.	Develops intense concern with self. Deprives victim of social support. Makes victim dependent on interrogator.
8. INDUCED DEBILITATION AND EXHAUSTION.	Semi-starvation. Exposure. Exploitation of wounds. Induced illness. Prolonged constraint. Prolonged standing. Sleep deprivation. Prolonged interrogation or forced writing. Overexertion. Sustained tension.	Weakens physical and mental ability to resist.

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Dr. West said that most of these methods were used on the airmen from whom the Chinese wanted confessions /.....

confessions, although it was not always possible to identify all eight methods in each individual case. Dr. West elaborated upon some of the methods or their variants and their effects upon the prisoners. With regard to forced writing he said that every prisoner was required to write something, though not necessarily a confession, and once he got started with the writing process his statement would gradually grow longer and more elaborate until, with the other pressures upon him, he would find himself writing falsehoods to please his interrogators. With regard to sleep deprivation he produced a paper (Exhibit "PP 3") which he had prepared in collaboration with other experts, and explained that if an individual is deprived of sleep, acutely for three or four days and nights, or chronically over longer periods, certain personality changes occur which render him more suggestible, less able to test reality and more likely to comply with demands from without. Chronic sleep deprivation induces certain changes in the biological function of the brain which are not perceptible to the victim who may only experience a sense of apathy or fatigue. As to the effect upon the prisoner of indefinite isolation and related pressures and anxieties, Dr. West added : (a) regression, resulting from the prisoner's complete dependence on his captor; (b) constriction, characterised by a great pre-occupation with bodily functions and a narrowing of his awareness down to very small details of his immediate surroundings, e.g. counting objects in his cell over and over again; and (c) identification with the aggressor, which is an unconscious adjustment to /.....

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adjustment to the intolerable sensation of powerlessness in a frightening situation. To overcome his sense of complete impotence the prisoner tries to share in his captor's power by becoming more like him, seeking his approval and eventually even adopting his ideas and views.

Exhibit "PP 5" is a copy of a chapter on Dissociative Reaction which Dr. West contributed to the Comprehensive Textbook of Psychiatry by Freedman and Kaplan (1967). It describes certain psychological mechanisms and "biological underpinnings" which can cause people to distort, misremember or forget things associated with trauma at the time they were experienced. Dr. West cited instances of dissociative reaction in the case of American airmen and others who had been subjected to the DDD syndrome, repressing or putting out of their minds some of the worst things that were done to them or the worst things they did, such as signing a false confession of bacteriological warfare. In a few instances, according to Dr. West, the repatriated prisoners admitted the possibility that when they signed the false confessions they actually believed they were true, and in one or two instances they were still uncertain whether the confessions were true or false. However, he said under cross-examination that the initial and subsequent belief of the men who signed the confessions was that they were false. Although some of the men may have come to believe the statements for a time the dissociative mechanisms which could preclude them from recognising that they had made /.....

they had made false statements would wear off within a matter of days or weeks after repatriation.

As further support for his conclusion that the DDD syndrome is extremely effective in inducing compliant behaviour Dr. West cited a recent experiment conducted in a Californian university and also referred to survival training exercises for combat personnel in the American military services. In the university experiment a group of healthy, young, white, male, adult volunteers were subjected to a comparatively mild form of DDD, involving a degree of physical and psychological isolation and threats of physical abuse. The experiment was scheduled to last a fortnight but had to be interrupted after the sixth day when more than half of the volunteers had to be released for medical or psychological reasons. The survival training exercises for the military services include mock interrogations and the employment of mock coercive persuasion techniques, and many thousands of personnel have undergone them. According to Dr. West it has been found that even in these exercises a certain number of the "captives" will comply with the demands of their interrogators. The exercises show that it is possible for officers even of field rank to comply after only two or three days of being in a state of confinement where they are totally dependent upon their "captors" and subject to any depredations the "captors" might carry out on them, notwithstanding that it is only pretended that such threats might be carried out. However, Dr. West emphasised that the capacity /.....

the capacity of different individuals to resist the effects of solitary confinement and associated pressures designed to produce DDD varies greatly. Exhibit "PP 4" states that 15% of all the U.S.A.P. prisoners who were subjected to these pressures agreed to confess after one month or less, whereas nearly 25% still refused to confess after 24 weeks of intense pressure and two held out for almost a year.

Dr. West expressed the opinion that detention under sec. 6 of Act 83 of 1967, permitting as it does indefinite confinement with a considerable degree of isolation from outside contact, and interrogation until the detainee has satisfactorily replied to all questions, could create conditions similar to those he had been describing (i.e. the DDD syndrome). He went on to say that anybody who was in solitary confinement for more than a few days would be likely to show the phenomena he had described, given uncertainty about the ultimate duration of the confinement, a total dependence on the captor and no significant contact with outside sources of support. It is not clear precisely which phenomena he was referring to, and in our view this statement cannot be accepted without considerable qualification. He could hardly have meant that a full-blown DDD syndrome was likely to be produced by the circumstances he mentioned, without any additional ill-treatment or pressure being exercised. With reference to Exhibit "PP6", which shows the length of time various witnesses in this case were kept in detention, he said :-

"I would /.....

"I would not consider a month an insignificant experience. Let's remember that it took two weeks with Cardinal Mindzenty and he was a man of great moral power and strength of character. The time is only a part of it. The circumstances, the type and amount of the pressure, the individual's orientation, the contrast with his previous circumstances, all these things enter into it."

The reference to the celebrated case of Cardinal Mindzenty indicates the sort of treatment the witness had in mind, for he had earlier stated that judging by the Cardinal's autobiography he had been subjected to very much the same sort of treatment as the American airmen received at the hands of the Chinese communists. Dr. West said that "the effects" (presumably the DDD syndrome) would be expected to obtain in those witnesses who were detained for more than five months, but recognised that many of them may have made their statements during the early stages of their detention, possibly without coercion, and have been kept in detention thereafter for other reasons.

Dr. West was invited to comment on extracts from the evidence of various witnesses, apparently to lay the foundation for a submission that their evidence was the product of DDD. In some instances he recognised methods of coercive persuasion or symptoms of the DDD syndrome, and these will be discussed when we deal with the evidence of the witnesses /.....

the witnesses concerned. In most instances he indicated that it was impossible to tell from the extract of the evidence whether it was true or false or the product of DDD. He emphasised, however, that under conditions of duress it is possible to get people to say anything, sometimes without the interrogator deliberately contriving to extract a false statement, especially if he thinks he knows the truth; and that in the absence of external factual validation it is impossible to decide whether the statement is true or false.

When I indicated the approach which the Court adopts in evaluating the evidence of witnesses who have been subjected to detention and interrogation in terms of sec. 6, Dr. West said :- (10)

"That seems like a very reasonable orientation for a Court to hold towards such evidence, and if my evidence would add anything I think it would only be to acquaint the Court with the excess to which, beyond what common sense and ordinary experience might project, individuals can be led to make statements that they will not quickly disavow, statements that may seem in harmony with the statements of a number of ^{other} people who made statements under similar conditions to the same interrogators, and statements which even those who extracted them may believe to be true, and yet it may all be false" (20)

That seems to us to place the evidence of Dr. West in its proper perspective /... (30)

proper perspective. The reference to statements that may seem to be in harmony with those of other witnesses made under similar conditions to the same interrogators seems to be based on his study of the 48 Air Force prisoners who were victims of a centrally directed propaganda effort. Although more than 30 different interrogators were assigned to these prisoners, the polemic to which they were exposed, the procedures used by the interrogators and the statements they were told to make, were the same throughout. The similarities were so extraordinary that Dr. West and his colleagues assumed that the interrogators had worked to a book or manual as part of a centrally directed propaganda campaign. (10)

Quite apart from the circumstances under which it was obtained, the evidence of accomplices requires particular scrutiny, because of the cumulative effect of the factors mentioned by HOLMES, J.A. in S. v. Hlapezula & Ors. 1965(4) S.A. 439 (A.D.) at p. 440 D - H. In a case such as this, where an accomplice is detained or threatened with detention under sec. 6 of Act 83 of 1967, the possibility of his falsely implicating one or more of the accused to save his own skin or shield the real culprits is obvious. Like any other accomplice, his inside knowledge of the relevant events equips him to blend fact with fiction in a convincing manner. (20)

In considering the evidence of witnesses who are accomplices and/or have been in detention or threatened with /....

threatened with detention we have been acutely aware of the problems mentioned above. In no case have we accepted the evidence of a witness where there is a reasonable possibility that the circumstances of his detention or interrogation have materially affected his reliability - unless, of course, his evidence is otherwise demonstrated to be reliable. Where the evidence of an accomplice has been in issue we have not resolved the issue against the accused without first satisfying ourselves that the dangers inherent in accepting the accomplice's evidence have been eliminated - in most instances (10) by satisfactory corroboration directly implicating the accused in the commission of the offence. In cases where such corroboration is afforded by another accomplice we have examined all the relevant circumstances to ensure that on the totality of the evidence it is safe to convict. (cf. S. v. Hlapezula & Ors., supra at p. 440 H - P 441 C; S. v. Hassim & Ors. supra, at p. 461 B - D).

With that prelude we proceed to examine the evidence relative to the individual counts, dealing (20) firstly with counts 3, 4 and 5 in that order, and thereafter with counts 1 and 2. In count 3 accused No. 9 is charged with a contravention of sec. 2(1)(b) of Act 83 of 1967, which provides inter alia that any person who -

"in the Republic or elsewhere undergoes....
 or incites, instigates, commands, aids,
 advises, encourages or procures any other
 person to undergo any training which could
 be of use /....."

be of use to any person intending to endanger the maintenance of law and order, and who fails to prove beyond a reasonable doubt that he did not undergo or incite, instigate, command, aid, advise, encourage or procure such other person to undergo such training for the purpose of using it or causing it to be used to commit any act likely to have any of the results referred to in sub-section (2) in the Republic or any portion thereof;

shall be guilty of the offence of participation in terroristic activities

The results referred to in sub-section (2) are many and varied. For present purposes it is only necessary to mention that they include causing, encouraging or furthering an insurrection or forcible resistance to the Government, bringing about any social or economic change by violence or forcible means, and causing serious bodily injury to any person. The salient facts alleged in count 3 are that -

during the period 1st January, 1963 to 30th June 1967 and at or near Dar-es-Salaam and Kongwa in Tanzania and Odessa in Russia accused No. 9, being at all relevant times a member and/or active supporter of the A.N.C. and/or the Communist Party, unlawfully underwent training which could be of use to any person intending to endanger the maintenance of law and order in /.....

order in the Republic, to wit training in communism, methods of bringing about a revolution, subversive propaganda, guerilla warfare, the preparation and/or manufacture and/or use of explosives, the use of different firearms and communication by means of radio and signals.

Bruno Mtolo said that accused No. 9 was one of the persons whom he recruited to the ranks of Umkonto Wesizwe for the purpose of being sent abroad for training. Leonard Nkosi testified that he and accused No. 9 were members of a group of five which left Durban in May 1963 and travelled by train to Germiston on the first leg of a journey which was to take them to Dar-es-Salaam. They were accommodated in Orlando East for a fortnight and then joined others to form a group of nineteen which crossed the border into Botswana and eventually made its way via Zambia to Dar-es-Salaam. Nkosi and accused No. 9 became separated from each other as a result of action taken by the Zambian police, but they met again at the Luthuli Camp at Dar-es-Salaam. They were welcomed to the Luthuli Camp by one Joe Modise who introduced himself as the commander-in-chief of Umkonto Wesizwe and explained, for the benefit of those who laboured under the misapprehension that they had come there to study for careers, that the first priority was to liberate the Black people of South Africa from White oppression, and that to achieve this they would receive military training so that they could return home /.....

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return home and fight for the liberation of their people. I should mention at this stage that when Nkosi left South Africa he thought that he was going to a medical school. In the event he and his fellow recruits at Luthuli Camp, including accused No. 9, received physical training and political lectures concerning national liberation movements and the history of the A.N.C. Joe Slovo and Nimrod Sejake were two of the lecturers whom Nkosi remembered. He estimated that there were more than a hundred recruits at Luthuli Camp at that time.

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In August 1963 Nkosi and 29 other recruits from Luthuli Camp travelled by air to Moscow. This group (which did not include accused No. 9) was taken to a camp outside Moscow and remained there for a year, undergoing training in guerilla warfare, topography, gunnery and radio communication. Then they returned to Tanzania and, after spending a few days in the Mandela Camp at Dar-es-Salaam, were transferred to the Kongwa Camp about 250 miles west of Dar-es-Salaam. Nkosi said that accused No. 9 arrived at Kongwa some time after he did, possibly in 1965. According to Nkosi they received no further instruction at Kongwa but exchanged information with other camp inmates who had received their training at places other than the Moscow camp. Accused No. 9 informed Nkosi that he had undergone training at Odessa. They remained at Kongwa until June 1967.

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Nkosi and others were taken from Kongwa to the Kaluwe Camp outside Lusaka in Zambia. He lost contact with accused /.....

with accused No. 9 at this stage but met up with him again at Kaluwe. At this camp, according to Nkosi, "we were finally told that we would go to fight against Rhodesia and then through to South Africa". A force of 70 men was mustered and divided into three groups, the first of which was to operate in the northern part and the second in the southern part. The third group, consisting entirely of South Africans, was to assist the second group in the southern part of Rhodesia and then carry its guerilla operations through to South Africa. Joe Modise issued instructions that after reaching the Republic the members of the third group should make their way to their respective home provinces and operate according to their discretion in the light of the circumstances prevailing on their arrival. Nkosi said that he and accused No. 9 were members of the third group. The commander of the entire force was a Rhodesian named John Dube and Nkosi was his Chief-of-Staff.

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Early in August 1967 the force which I have described crossed the Zambesi River and entered Rhodesia from Zambia. Before doing so they were provided with weapons, rations and maps. Nkosi was given an A.K.47 Russian sub-machine gun and a pistol, but he could not remember what weapons accused No. 9 received before entering Rhodesia. Having crossed the river the force re-grouped in the bush on the Rhodesian side and a detail was sent forward to reconnoitre a route for the force to take to the Wankie Game Reserve. According to Nkosi this reconnaissance patrol consisted /.....

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patrol consisted of eight or ten men drawn from all three groups, was led by one Wilson Mzwele and had accused No. 9 as one of its members. Each member of the patrol was issued with an A.K.47 sub-machine gun, and accused No. 9 was in possession of such a weapon on the last occasion when Nkosi saw him - when the patrol set off on the reconnaissance mission. The patrol naturally had orders to re-establish contact with the main force after reconnoitring the route, but none of them returned and as far as Nkosi was concerned the patrol was lost. The force proceeded on towards the Wankie Game Reserve and the first group detached itself before reaching the Reserve. The others crossed the Reserve and were thereafter engaged in skirmishes with the Rhodesian security forces. At that stage Nkosi and two of his comrades from Natal lost heart and deserted, eventually making their way back to Natal. He arrived here in 1968 and was arrested. Since 1972 he has been a member of the Special Branch of the South African Police, in which he now holds the rank of sergeant.

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It was put to Nkosi in cross-examination that the reconnaissance patrol under Wilson Mzwele was not destined to go through to South Africa but was to remain and "work" in Rhodesia. Nkosi refuted the suggestion, explaining that as Chief-of-Staff he was privy to the Commander's orders and knew what the position was. He made it clear that after carrying out their reconnaissance duties the members of the patrol would rejoin their groups and carry on /.....

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carry on with the campaign. It was also put to him that the "Luthuli detachment", although it consisted of South Africans, was intended to "work" in Rhodesia, but he reiterated his evidence that the third group (i.e. the South Africans) were to operate in Rhodesia and then continue into the Republic. For the rest, the evidence of this witness, as summarised above, was hardly challenged. In particular, there was no suggestion that Nkosi's account of his experiences in Tanzania and Russia was untruthful, inaccurate or exaggerated, and it was never put to him that accused No. 9 was not a member of the force of 70 guerillas which entered Rhodesia from Zambia during August 1967, or that he was not a member of the reconnaissance patrol under Wilson Mzwele, or that he was not armed with an A.K.47 sub-machine gun when he joined that patrol. Nkosi was an excellent witness.

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John Ndima is another terrorist-turned-policeman. He described how he and two other persons left the Republic at the beginning of 1964 and made their way to Dar-es-Salaam via Botswana and Zambia. They were taken to the Luthuli Camp where Ndima remained until towards the end of 1964, at which stage he and others travelled by air to Odessa. At the Luthuli Camp Ndima underwent physical training, including the art of hand-to-hand combat, and received political instruction in the form of lectures on Marxism and Leninism. When his knowledge of political science was tested under cross-examination it transpired that all he could

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remember /.....

remember about Marxism and Leninism was that the capitalists were to be killed and the workers were to take over the government of the country. He identified the capitalists as persons in the Government of this country. When it was put to him that he did not really understand what Marxism was about he replied, with chilling candour, that he was not concerned with whether he understood it well or not, that he was only concerned with killing.

Ndima testified that while he was at the Luthuli Camp in 1964 other persons who had already undergone some training arrived there from the Mandela Camp, and that accused No. 9 was one of them. It was put to Ndima in cross-examination that he did not meet accused No. 9 at the Luthuli Camp, but he remained adamant that he did. Significantly, there was no challenge of Ndima's account of what occurred after he left the Luthuli Camp. He said that accused No. 9 went with him to Odessa and that they returned to Tanzania together a year later. At Odessa they received training with firearms and instruction in guerilla warfare tactics, topography and political science. Accused No. 9 specialised as a Group Commander of infantry while Ndima's specialty was military engineering. After returning to Tanzania they were taken to the Kongwa Camp where for some time they refreshed their memories about their fire training and exchanged information with persons who had undergone training in Moscow and China. In due course Ndima was transferred to the Mandela Camp at Dar-es-Salaam, leaving accused No. 9

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at Kongwa. /.....

at Kongwa. That was the last that Ndima saw of accused No. 9. After a brief sojourn at the Mandela Camp he was taken to the Morogoro Camp, and from there he went to camps in Zambia preparatory to entering Rhodesia. He was arrested in Rhodesia.

Ndima gave his testimony convincingly. As already indicated, he was not cross-examined on the important aspects of his story. Accepting his unchallenged evidence that he and accused No. 9 went together to Odessa and underwent training there as alleged, it seems to be quite immaterial whether he met accused No. 9 at the Luthuli Camp or at some other place. Nor do we think that it matters whether he really understood the political indoctrination or remembers much about it now. (10

Ndima mentioned in the course of his evidence that he met Leonard Nkosi at Kongwa, and Karl Kleinbooi on his arrival at Odessa. Kleinbooi is now a constable in the security police. He testified that in February 1962 he left South Africa and went to Dar-es-Salaam in order to undergo training for the overthrow of the South African Government. He left South Africa under the auspices of the Pan-Africanist Congress (P.A.C.) but switched his allegiance to the A.N.C. after arriving in Dar-es-Salaam. At Dar-es-Salaam he was accommodated at the Luthuli Camp which he described as an Umkonto Wesizwe camp for recruits who were to be sent to various countries for training. He was a member of the first group of fifty recruits which the A.N.C. sent to Odessa /.....

to Odessa for military training. He went to Odessa in 1963 and spent some ten or eleven months there, during which time he specialised in military engineering and received instruction in political science. He said that while he was at Odessa other groups of South African recruits arrived there for training, and he confirmed that John Ndima and accused No. 9 were in one such group which arrived there in 1964, as he was about to complete his course. He also confirmed that accused No. 9 received specialised training at Odessa as a commander of infantry. After completing his training at Odessa Kleinbooi returned to Tanzania where he was accommodated firstly at the Mandela Camp and thereafter at Kongwa, where he was eventually joined by John Ndima and accused No.9. He said that at Kongwa they revised the training which they had undergone overseas and pursued their studies of political science and the history of the A.N.C. and the Communist Party. He made it clear that they received both instruction and practical training at the Kongwa Camp. (10

Kleinbooi was cross-examined at some length on his knowledge of the A.N.C., the P.A.C., the Communist Party and other organisations, the history of the A.N.C. and the Communist Party and their political aims. The cross-examination revealed that he had forgotten a good deal of what he was taught about these matters, and it also drew attention to the contradiction between his evidence on the one hand, and that of Nkosi and Ndima on the other, as to whether accused No. 9 received any further instruction or training at /..... (20

training at Kongwa. However, his evidence to the effect that accused No. 9 underwent military training at Odessa was not even challenged. He was a confident, emphatic witness who appeared to be telling the truth to the best of his recollection and ability.

As accused No. 9 gave no evidence in his defence the State evidence, relative to count 3 stands uncontradicted. It establishes beyond any doubt that during the period from about June to August 1963 at Dar-es-Salaam, and from about the end of 1964 to the end of 1965 at Odessa, accused No. 9 underwent the sort of training envisaged by sec. 2(1)(b) of Act 83 of 1967, viz. physical training and political indoctrination at Dar-es-Salaam and training in guerilla warfare (including radio communication and the use of firearms) at Odessa. As to the allegation in the indictment that he underwent similar training at Kongwa from about November 1965 to June 1967, it seems highly unlikely that all he did during that period was to compare notes with persons who had been trained elsewhere. We are inclined to accept Kleinbooi's evidence that at Kongwa they continued with their political education and practised the martial arts which they had learnt elsewhere. Ndimu was not asked what they did at Kongwa to refresh their memories about "fire training", and it is possible that what Nkosi intended to convey was that they learnt nothing new at that camp. In any event the evidence substantially proves the allegations in count 3, and Mr. Muller conceded that accused No. 9 must be found guilty on /.....

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guilty on this count.

The State relies on the same evidence, particularly that of Leonard Nkosi, to prove its allegations in regard to count 4. Accused No. 9 is charged in count 4 with a contravention of sec. 2(1)(a) of Act 83 of 1967, which provides that any person who -

"with intent to endanger the maintenance of law and order in the Republic or any portion thereof, in the Republic or elsewhere commits any act or attempts to, or conspires with any person to aid or procure the commission of or to commit, or incites, instigates, ^{commands} aids, advises, encourages or procures any other person to commit, any act:

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shall be guilty of the offence of participation in terroristic activities

Sub-section (2) provides that in any prosecution for an offence contemplated in sub-section 1(a) the accused shall be presumed to have committed or to have attempted or conspired, etc. to commit the act alleged in the charge with intent to endanger the maintenance of law and order in the Republic, if the commission of such act had or was likely to have had any of the results there set out in the Republic or any portion thereof - unless it is proved beyond a reasonable doubt that he did not intend any of such results. I have already mentioned some of the results set out in sub-paras. (a) to (1) of sec. 2(2).

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The act which /.....

The act which accused No. 9 is alleged in count 4 to have committed is that

"during the period 1st July 1967 to the 31st August 1967(he) illegally entered Rhodesia from Zambia bearing arms"

The charge also alleges that he committed this act with intent to endanger the maintenance of law and order in the Republic, and that he did so

"in order to participate in fighting against the Rhodesian security forces with the intention of making his way through Rhodesia into the Republic in order to assist in the overthrow of the Government of the Republic by violence or forcible means." (10)

It will be noted that the latter allegations merely state the intention with which accused No. 9 committed the single act alleged in count 4, viz. illegally entering Rhodesia bearing arms. (20)

The evidence already discussed proves beyond doubt that accused No. 9 underwent training in guerilla warfare for the purpose of assisting, eventually, in the overthrow of the Government of the Republic by violence. The evidence of Leonard Nkosi likewise establishes that during August 1967 accused No. 9 illegally entered Rhodesia from Zambia in order to conduct guerilla operations, including /

including fighting against the security forces, in the southern part of Rhodesia. There is no direct evidence that accused No. 9 was bearing arms when he set foot on Rhodesian soil. However, we consider that this may safely be inferred from Nkosi's evidence that the members of the force were provided with their weapons before they crossed the Zambezi River, and that accused No. 9 was armed with an A.K.47 sub-machine gun when he set off on the reconnaissance patrol shortly after the crossing. There can be no doubt, in the light of Nkosi's evidence, that when he entered Rhodesia accused No. 9 was a member of the third group which was under orders to make its way through to South Africa and assist in the overthrow of the Government, but only after participating in the guerilla campaign in the southern part of Rhodesia. The question which remains is whether accused No. 9 himself actually had that intention when he entered Rhodesia :whether he went into Rhodesia - not South Africa - with the intention of assisting in the overthrow of the South African Government by force. In my opinion the presumption created by sec. 2(2) cannot be invoked for the purpose of deciding this question, for I do not think that it can possibly be held that the act alleged in the charge had or was likely to have had in the Republic or any portion thereof, any of the results specified in sec. 2(2). The onus accordingly remains on the prosecution to prove beyond reasonable doubt that accused No. 9 entered Rhodesia from Zambia with intent to endanger the maintenance of law and order in /..... (10) (20)

order in the Republic.

It seems probable that when he entered Rhodesia accused No. 9 knew of and intended to obey the order that his group was to make its way through to South Africa after fighting in Rhodesia, but we are not satisfied that this has been proved beyond all reasonable doubt. Accepting that Nkosi, as the Commander's Chief-of-Staff, was privy to this order, it does not necessarily follow that it was communicated at that stage to accused No. 9. And even if the order was communicated to accused No. 9 it does not necessarily follow that he intended to obey it. The fact that the reconnaissance patrol failed to re-establish contact with the main force raises some doubt as to whether its members had any intention to do so. In any event we find it difficult to credit that the act of entering Rhodesia bearing arms was accompanied by any intention other than the immediate and obvious one of engaging in hostilities in that country.

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In the result the guilt of accused No. 9 on count 4 has not been proved to our satisfaction, and he must therefore be acquitted on that count. This conclusion renders it unnecessary for me to express any opinion on the submission that his conviction on both of counts 3 and 4 would have resulted in a duplication of convictions.

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Count 5 charges accused No. 10 with a contravention of sec. 2(1)(b) of Act 83 of 1967, the salient allegations being that -

during 1964 and at or near/.....

during 1964 and at or near Durban, accused No. 10, being at all relevant times a member and/or active supporter of the A.N.C. and/or the Communist Party, underwent training which could be of use to any person intending to endanger the maintenance of law and order in the Republic, to wit training in guerilla warfare, the preparation and/or manufacture of explosives, methods of bringing about a revolution, communism and subversive propaganda.

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It is alleged in further particulars to the indictment that accused No. 10 received this training from one Jethro Sillilo Ndlovu.

The State called two witnesses on count 5 : James Ngwenya and Herbert Mgobozi. The two witnesses, Jethro Ndlovu and accused No. 10 worked in the same factory and all belonged to the same trade union, which Mgobozi identified as the Textile Workers Union. Ngwenya was unsure of the name of the union but thought that it was SACTU. Jethro was an organiser for the Union, and Ngwenya said that he assisted Jethro in union work at the factory. It was put to Mgobozi that accused No. 10 was working for SACTU, and his reply was that he would not deny it. In any event these four men became well acquainted with each other through their work and common interest in trade union affairs, and it was against this background that Jethro invited the other three to visit /.....

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to visit him at his home at Happy Valley, Wentworth for the purpose of a discussion. There were many such visits over a considerable period of time, but neither witness could be definite about the date of the first visit or the period for which they continued. Ngwenya said that Jethro first invited them to visit him in 1964 - "somewhere around there"- and that the meetings continued during 1964 for maybe a year. This was not challenged. Mgobozi thought that the meetings at Jethro's home were held from 1961 to the beginning of 1964, but it seems that in this respect his memory was at fault. It was put to him that in 1966 he gave evidence to the effect that he had only known Jethro since 1963. The witnesses also contradicted each other regarding the day of the week upon which the meetings at Happy Valley took place. Ngwenya said that they only met on Sundays whereas Mgobozi claimed that it was usually on Tuesdays.

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As to what occurred at these meetings, both witnesses testified that Jethro told them and accused No. 10 about the Communist Party, invited them to join that organisation and work under it to achieve freedom for the people, and explained the methods by which such freedom could be won. As to the methods, Jethro taught them how to manufacture bombs for the purpose of damaging Government buildings, and lectured them on guerilla warfare as employed in other countries such as Cuba. Mgobozi said that they also received instruction on how to make dynamite explode. Not surprisingly in view of the time which has passed since the events /.....

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events in question, their present knowledge of bomb manufacture is somewhat sketchy and they remember little of what they were taught regarding guerilla warfare. But there is no reason to doubt that they did undergo training and instruction in these fields, for the express purpose of bringing about change by violence or forcible means. Mgobozi also claimed that Jethro lectured to them on communism, but his knowledge of the subject was shown to be so rudimentary that it can hardly be held that they underwent training in communism. Nor does the State evidence afford a sufficient basis for finding that any training undertaken by accused No. 10 included instruction in subversive propaganda or methods of bringing about a revolution.

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Both Ngwenya and Mgobozi stated that they accepted Jethro's invitation to join the Communist Party, although Mgobozi did not consider that he ever became a member, inasmuch as he never received a membership card. Neither of them said that accused No. 10 formally agreed to join the Communist Party. When asked whether Ngwenya and accused No. 10 agreed to become members Mgobozi said "I do not remember whether they agreed verbally but we were all together". However, it is clear from their evidence that if accused No. 10 participated in their activities he did so as a member, or at least as an active supporter, of the Communist Party. This is demonstrated by their evidence to the effect that they were allocated different areas in which to do organisational work on behalf of the Communist Party, such /.....

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Party, such work consisting of recruiting small groups of their own and teaching them what they had learnt from Jethro. The area allocated to accused No. 10 for this purpose was the North Coast, according to Ngwenya. Mgobozi said that it was the North Coast "and also towards Ladysmith". Both witnesses testified that at one of their meetings at Happy Valley accused No. 10 reported that he had managed to form such a group.

It was put to Ngwenya in cross-examination that accused No. 10 received no training or instruction in the manufacture of bombs, that he was never present when bombs were made; and it was put to Mgobozi that accused No. 10 was not present on the occasion when gunpowder was made. Mgobozi could not remember whether accused No. 10 was present on that one occasion but maintained that he was present at many other meetings when Jethro gave him instruction in guerilla warfare and the manufacture of bombs. Ngwenya emphatically rejected the suggestion that accused No. 10 was absent when they were taught how to make bombs. It was also suggested that when the four of them met at Jethro's home their discussions were confined to trade union matters, and it was specifically put to Ngwenya that accused No. 10 never said that he had recruited or obtained any group of persons. However, there was no specific challenge of the evidence that accused No. 10, the two State witnesses and Jethro held numerous meetings at Happy Valley over a considerable period of time. In so far as it could be discovered from the /.....

from the cross-examination, it seemed that the defence case on count 5 was that the meetings which accused No. 10 attended at Jethro's home were concerned exclusively with trade union matters.

Under these circumstances another aspect of the evidence on count 5 - concerning the taking of a so-called blood oath - assumes a measure of importance. Ngwenya testified that at his suggestion the four of them (i.e. Mgobozi, accused No. 10, Jethro and Ngwenya himself) agreed that blood be taken from each of them and kept to ensure that if any of them should fall into the hands of the police he would not speak about their discussions or activities. It was understood that if any of them did speak to the police about these matters his blood would be used to kill him by means of "Zulu medicine", and the services of a medicine man (or witch doctor) would be engaged for this purpose. Ngwenya's girl friend Agnesia Mthlane (who had been a nurse but was then employed in the SACTU office) extracted blood from the four of them with a syringe, and the blood was put into four separate receptacles. Ngwenya called these receptacles bottles, but his description of them indicated that they were probably phials or stoppered test tubes. He said that there were four bottles in all and that each one was labelled with the first name of the person whose blood it contained. Thus the label on his bottle had "James" written on it. Ngwenya said that this operation was performed one evening /

evening in Agnesia's room in Clermont, but he could not remember the day of the week. He said that he took possession of all four bottles and kept them until the police net began closing in, at which stage he threw them onto the main road in Umlazi to be destroyed by passing traffic. Under cross-examination Ngwenya remained adamant that there were only four blood donors, that one of them was accused No. 10, and that Agnesia did not take the oath or have anything to do with them beyond contributing her professional skill to extract the blood.

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Mgobozi's account of the blood oath differed in several respects from that of Ngwenya. According to Mgobozi the bloodletting operation was performed during a weekend afternoon, and the bottles were labelled with the donor's initials only, e.g. "J.N." in Ngwenya's case. He first stated that Jethro took the bottles and left with them, and thereafter claimed that he could not remember whether it was Jethro or Ngwenya who kept them. These discrepancies are easily explicable on the basis that the witnesses were attempting to recollect details of an event which occurred some twelve years ago, but there is a further contradiction which cannot be attributed to faulty recollection. Mgobozi testified that there were five bottles, one of them contained blood which Ngwenya extracted from Agnesia. This is something which Ngwenya could not have forgotten, and the obvious inference is that he lied in order to protect Agnesia. Under these circumstances one cannot ignore the possibility that

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he falsely /.....

he falsely implicated accused No. 10 in the blood oath - though it is difficult to imagine why he should have done so, unless he was put up to it by the police.

Ngwenya was detained by the security police in April or May 1966 and kept in solitary confinement for five or six months. He denied that he was ill-treated in detention or that he was compelled to make a statement, but said that solitary confinement exhausted him. He therefore "raised his hands" and decided to tell the police the truth. Mgobozi was also detained by the security police and kept in solitary confinement from May 22nd to at least the 13th September 1966. He likewise denied that he was ill-treated, and claimed that he made a statement to the police because he realised the error of his ways. Ngwenya said that he gave evidence in the trial of Jethro Ndlovu, which he thought was in 1966. There is nothing on record to show whether or not he was granted an indemnity from prosecution at the end of that trial, but in this case the prosecutor did not ask that he be warned as an accomplice in terms of sec. 254 of Act 56 of 1955. Mgobozi gave evidence of the same events in the trial of one M.D.Naidoo in 1966 and was duly granted an indemnity from prosecution. Neither Ngwenya nor Mgobozi was in detention at the time he gave evidence in the present trial, and there is nothing to suggest that either of them has been in detention at any time since 1966. It was not put to either witness that the police had suggested any part of their evidence implicating accused No. 10.

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In considering /.....

In considering the evidence of these witnesses we must bear in mind the circumstances under which they came to make their statements in 1966, as well as the fact that they are accomplices. As already indicated, a comparison of their evidences reveals several contradictions, but in view of the time which has passed since the relevant events we consider that all except one of these contradictions are probably due to lapses of memory. The exception concerns Agnesia's blood, and the motive for that particular lie is fairly obvious. As to the impressions which these witnesses made on us, Ngwenya gave his evidence in a resigned fashion. Although he was not shaken under cross-examination he probably did try to mislead the Court in regard to Agnesia. He did not appear to be dishonest but he was not a very impressive witness. Mgobozi, on the other hand, was a forthright witness who seemed to be honest and reliable.

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Accused No. 10 testified that he joined the African Textile Workers' Union in 1958 when he was working at the Consolidated Textile Mills, Jacobs. By 1962 he was a shop steward and a member of the Union's executive. Ngwenya and Mgobozi were members of the same union, and Jethro Ndlovu was a shop steward. Ngwenya did organisational work and helped with the collection of union subscriptions. The African Textile Workers' Union was affiliated to SACTU which had offices in Lakhani Chambers, Durban. During 1962 Jethro lost his employment at Consolidated Textile Mills, but accused No. 10 did not lose contact with him for long. They

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met up /.....

met up with each other again at the SACTU offices when accused No. 10 attended classes to broaden his knowledge of the trade union movement.

In or about April 1963 accused No. 10 attended a SACTU conference in Johannesburg, as a delegate representing the African Textile Workers' Union. At this conference one Stephen Dhlamini was elected as president - general of SACTU. However, from about May 1963 most of the leading SACTU and African trade union officials were arrested and detained or served with banning orders. Dhlamini was arrested and eventually convicted and sentenced on a charge involving A.N.C. activities. As a result of the bannings and detentions the SACTU office in Durban was left without anybody to run it. Accused No. 10 stopped working for Consolidated Textile Mills in October 1963. He met Jethro and two other interested persons one day and they discussed the plight of SACTU in Durban. They decided that someone would have to be engaged to keep the Durban office going, and the upshot was that accused No. 10 arranged for Agnesia Mthalane to man the office, try to see the workers and collect subscriptions. He put Agnesia into the office in November 1963.

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At the beginning of December 1963 the SACTU head office in Johannesburg sent one Edmund Cindi to try to revive the organisation in Durban. Accused No. 10 arranged accommodation for him at Clermont and he stayed until the end of December. Cindi held meetings with accused No. 10, Jethro and Agnesia during this period. He told them how SACTU had /.....

SACTU had been reorganised in the Transvaal, with one Doverren as general secretary and a new national executive which included Don Mateman, John Gaetsewe and George Monare. He also gave them directives to the effect, inter alia, that : - (a) Agnesia and accused No. 10 were to be employed by SACTU, Agnesia to collect subscriptions and attend to the office routine and accused No. 10 to attend to workers' complaints and do organisational work; (b) Jethro was to be the organiser of the African Textile Workers' Union, on the basis that his wages would be subsidised by the registered Textile Workers' Union; (c) they should try to form a local committee of SACTU, open a trust account with an attorney and arrange trade union classes for the training of organisers. According to accused No. 10 they commenced operating SACTU in accordance with Cindi's directives at the beginning of January 1964, the first step being the formation of a local committee with himself as chairman and Jethro as secretary. In view of police harrassment the committee decided to operate "semi-underground", in the sense that its association with the SACTU office would only be maintained through a contact man. Another decision was that Jethro and accused No. 10 should recruit people for training as trade union organisers. Jethro mentioned Ngwenya and Mgobozi as suitable candidates for such training and was instructed to get in touch with them. As Agnesia had been trained as a nurse and not as a typiste or secretary, Jethro was instructed to teach her typing and general office work.

Jethro duly /.....

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Jethro duly gave Agnesia typing lessons and instruction in office routine at her home on Sundays. On an occasion in February 1964 he informed accused No. 10 and Agnesia that he had approached Ngwenya and Mgobozi and they were willing to undergo training as organisers. Jethro cut stencils and duplicated a set of SACTU lecture notes which Agnesia had in the office. He kept one set for the purpose of instructing Ngwenya and Mgobozi, and handed another set to accused No. 10 with the request that he recruit and teach his own candidates. Jethro instructed accused No 10 to find educated people who could be employed in administrative work, because he realised that Ngwenya and Mgobozi had not ^{had} sufficient education for that kind of work. Accused No. 10 said that he found two suitable trainees, namely Hennie Kubheka and Muntu Mngadi. Their level of education was Std. 8 and Std. 9 respectively, they spoke English very well and could read and write. Under the circumstances accused No. 10 found it unnecessary to lecture to them. He gave them the set of lecture notes to study for themselves and then held discussions with them to test their understanding of the subject. He also gave them practical instruction by taking them with him when he did trade union work.

In the meantime, according to accused No. 10, Jethro was giving instruction in trade unionism to Ngwenya and Mgobozi at his home at Happy Valley. Accused No. 10 used to visit Jethro to discuss SACTU affairs, and

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on some of these occasions he found Ngwenya and Mgobozi attending classes there. The lecture notes were in English and Jethro had to translate them into Zulu before Ngwenya and Mgobozi could understand them, and on the occasions when he was present accused No. 10 assisted him by acting as interpreter. Accused No. 10 denied that these meetings at Jethro's house were in any way concerned with the Communist Party or that he underwent any training as alleged in count 5. He denied that he was ever a member or active supporter of the Communist Party or the A.N.C., and also denied any knowledge of the blood oath described by the State witnesses. (10

During September 1964 accused No. 10 organised and addressed a mass meeting at the Y.M.C.A. Hall in Fischer Street, Durban, the object of which was to inform the people that SACTU was still in existence. He thereby attracted the attention of the security police and they started hounding him. They confiscated his reference book and made it impossible for him to continue working for SACTU or obtain any other employment. To avoid being arrested and detained he fled to Swaziland in November and was granted political asylum there in December 1964. (20

The story that accused No. 10 told about his involvement with SACTU was corroborated in some respects by the evidence of Don Mateman. This witness was a foundation member of SACTU and most of his evidence dealt with the history of the trade union movement generally and the history and /.....

history and vicissitudes of Black trade unions and SACTU in particular. We have not ignored this evidence, but it adds little to other evidence which will be discussed later, and is only remotely relevant to the question whether accused No. 10 underwent training in guerilla warfare, etc. as alleged in count 5. Mateman confirmed that accused No. 10 once attended a SACTU conference in Johannesburg as a delegate from Durban. He also confirmed that after the banning of the SACTU leaders in 1963 Doverren became general secretary. Mateman himself was a member of the National Executive at that time, and he recalled that they sent Edmund Cindi to Durban to make an assessment of the situation there. (10

There is no reason to reject the evidence that accused No. 10, Agnesia and Jethro were working for SACTU during 1964, and it may well be true that accused No. 10 gave Kubheka and Mngadi instruction in trade union matters as alleged. However, that does not rule out the possibility that during the same period accused No. 10 underwent the training alleged in count 5. Indeed, it does not render it in the least degree improbable that he did so. The main issue on count 5 is clear-cut and simple : when they were together at Jethro's place were accused No. 10, Ngwenya and Mgobozi undergoing training in guerilla warfare, etc. as alleged by the prosecution, or were Ngwenya and Mgobozi being trained as trade union organisers as alleged by the accused? That being so, it is strange that counsel for the accused never /..... (20

accused never put it to Ngwenya or Mgobozi that they were receiving instruction or training as trade union organisers when they met at Jethro's house. Moreover, it seems improbable that Ngwenya and Mgobozi, who could not even understand English, would have been selected for training as organisers to revive SACTU in Durban. Granted that organisers engaged in field work as distinguished from administrative work need not be well educated, accused No. 10 conceded that they should at least be able to read and write. Granted also that Ngwenya had assisted with union work at Consolidated Textile Mills, his evidence is that he had virtually no formal education and was not even capable of making notes when Jethro instructed them on guerilla warfare, etc.

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Accused No. 10 was a clever witness and on the whole he gave his evidence well. Although his evidence on count 5 contained one or two unsatisfactory features it was not demonstrated to be false in any material respect. Nevertheless, for reasons which will appear when we deal with his evidence on count 1 we are satisfied that he was an untruthful witness. Of course, the fact that he lied on count 1 does not mean that he also lied on count 5, but it does mean that he is prepared to lie under oath. Confining our attention to count 5, the story told by Ngwenya and Mgobozi was either the truth or it was concocted in 1966 to frame Jethro and/or Naidoo and/or accused No. 10. Mr. Muller submitted that either the witnesses themselves or the police

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must have /.....

must have fabricated the story. There is no reason to believe that the witnesses had any motive to do so, and they could hardly have got together for that purpose while detained in solitary confinement. The suggestion that the security police concocted the story involves the notion that the witnesses told it in 1966 because they were subjected to pressure such as the DDD syndrome, and have repeated it now for fear of being prosecuted for perjury if they deviated from it. In the first place, there is not the slightest justification for stating that Mgobozi was suffering from the DDD syndrome when he made his statement to the police in 1966, and none for disbelieving Ngwenya's statement that he gave in and told the police the truth. We cannot imagine why the police should have induced the witnesses to implicate accused No. 10 at a time when, on his own showing, he was safely out of the country. The suggestion that the police concocted the story, including the refinement about taking a blood oath, credits them with a degree of ingenuity and cunning that is beyond belief. And, having gone to such lengths to fabricate the evidence it seems incredible that the police would have overlooked the elementary precaution of schooling the witnesses to ensure that they told the same tale when they gave their evidence in this case. The various contradictions and discrepancies between them, and particularly the material contradiction about Agnesia taking the blood oath, demonstrate that the witnesses were not parroting a fabricated story to frame accused No. 10.

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Ngwenya /.....

Ngwenya and Mgobozi corroborated each other on material points directly implicating accused No. 10, and the part about the blood oath (including the contradiction about Agnesia taking it) convinces us that they and Jethro and accused No. 10 were engaged in subversive activities, and not merely trade union activities as the accused would have us believe.

Our conclusion in regard to count 5 is that it has been proved beyond all reasonable doubt that during the period and at the place alleged accused No. 10 underwent training in guerilla warfare and the preparation and/or manufacture of explosives, for the purpose of bringing about social change by violence or forcible means. This training could obviously be of use to a person intending to endanger the maintenance of law and order in the Republic, and accused No. 10 has failed to prove that he did not undergo it for the purpose of using it to commit any act likely to have any of the results referred to in sec.2(2) of Act 83 of 1967. He must therefore be found guilty on count 5.

Counts 1 and 2 are directed against all of the accused. The gist of the allegations relative to the main charge laid in count 1 is that during the period from 1st November 1973 to 25th March 1976, at various places in Natal and Swaziland, the accused, being at all relevant times members and/or active supporters of the A.N.C., unlawfully and with intent to endanger the maintenance of law and order in the Republic, committed or attempted to commit /.....

attempted to commit a series of acts, or conspired with one another and/or the A.N.C. and/or the persons mentioned in Annexure "A" to commit such acts. The specific acts alleged in the charge are :-

- (i) Sending and/or conveying messages to and/or receiving and/or conveying messages from members and/or representatives of the A.N.C., in Swaziland, and/or
- (ii) Receiving subversive literature from members and/or representatives of the A.N.C., in Swaziland and/or distributing and/or discussing and/or studying and/or taking note of the contents of the said literature, and/or
- (iii) Receiving money from divers persons, including members and/or representatives of the A.N.C., in Swaziland and/or utilizing and/or distributing the same, and/or
- (iv) obtaining information in connection with, and/or planning, routes by which persons recruited for training of a political and/or military nature could be transported up to the border and/or sent across the border of the Republic into Swaziland and/or issuing instructions on routes to be followed for this purpose, and/or
- (v) Establishing and/or assisting in the establishment of, and/or inciting and/or instigating and/or commanding/.....

commanding and/or aiding and/or advising and/or procuring divers persons, including those whose names appear in Annexure B, to establish secret cells or groups of the A.N.C. for the purpose, inter alia, of recruiting persons to undergo training as aforesaid, and/or

(vi) Inciting and/or instigating and/or commanding and/or aiding and/or advising and/or encouraging and/or procuring divers persons, including those whose names appear in Annexure C, to recruit persons to undergo training as aforesaid, and/or (10

(vii) Assisting persons who had been recruited for training in the Republic to cross the border into Swaziland illegally, receiving them and/or providing transport for them, and/or (20

(viii) Building a room on premises in Clermont for the purpose of housing terrorists returning to the Republic upon completion of their training and for storing arms, ammunition and explosives, and/or

(ix) Obtaining and/or storing medical supplies for use by terrorists. (30

The main State/.....

The main State witnesses whose evidence covered sub-para.(i) to (iv) of count 1 were Peter and Sylvia Gamedze, husband and wife who farm at Vuvulane, near Manzini in Swaziland. I shall refer to them as Gamedze and Sylvia respectively. Gamedze is a Swazi who worked in Pietermaritzburg from 1950 to 1961, during which period he met accused No. 1. Sylvia is a Zulu by origin and her mother still lives at Edendale, Pietermaritzburg. They supplement their farming income by purchasing and selling handicrafts. They met accused No. 1 again during 1974 when they came to Pietermaritzburg to visit Sylvia's mother and sell handicrafts. They contradicted each other regarding the place at which they first met accused No. 1 on that occasion, and there were slight discrepancies between them as to precisely what occurred after they met him, but none of this is material or reflects adversely on their credibility. Before they returned to Swaziland accused No. 1 and his daughter had undertaken to sell certain handicrafts on their behalf. Gamedze said that he sent accused No. 1 a letter about the handicrafts in February 1975. (10 (20 (30

During May 1975 two persons who introduced themselves as Dhlomo and Mbeki came to the farm at Vuvulane and had a discussion with Gamedze. According to Gamedze they asked him to deliver a letter to Gwala (i.e. accused No. 1). Gamedze demurred, telling them in effect that he was afraid of falling into the hands of the police. However, he persuaded his wife to undertake this mission, his reasoning being /..... (20

reasoning being that as an original inhabitant of Pietermaritzburg she could deliver the letter without attracting suspicion. After ascertaining that Sylvia was prepared to undertake the mission the two men left. They returned to the farm some days later, accompanied by a third person whom Dhlomo introduced as Mabizela. On this occasion Dhlomo gave Sylvia a roll of cotton-wool, after showing them that there was a piece of toilet paper with writing on it concealed between the layers of the roll. He instructed Sylvia to unroll the cotton-wool in Gwala's presence, and gave her R50 in cash to cover her travelling and subsistence expenses.

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Sylvia testified that she travelled to Pietermaritzburg and duly delivered the piece of toilet paper to accused No. 1 on Friday the 9th May 1975. She had sent for accused No. 1 to come to her at her mother's home, and she unrolled the cotton-wool and extracted the toilet paper in his presence. She told him that she had been sent by Dhlomo and Mbeki and that one Moses (Boet) Mabhida was with them. Accused No. 1 said that he would send his daughter with a letter for Sylvia to take back for him, and the daughter did bring a piece of toilet paper to her on the following Sunday evening. Sylvia went back to Swaziland with this piece of toilet paper concealed in the roll of cotton-wool, and on the following Tuesday she handed the roll to Dhlomo in Mabizela's house in Manzini. Dhlomo unrolled the cotton-wool, extracted the piece of toilet paper and said that he would read it later. At the same time Sylvia gave him a letter which she had

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received in /.....

received in Pietermaritzburg from Mabhida's daughter. It was put to Gamedze and Sylvia that the letter which she conveyed to accused No. 1 in the roll of cotton-wool was not written on toilet paper as they said but on thin foolscap paper which had been folded. For the rest, their evidence regarding this first mission in May 1975 was not seriously challenged in cross-examination.

Sylvia undertook her second mission for Dhlomo in June, 1975. Dhlomo and Mabizela arrived at Vuvulane on Monday, the 16th June with a blue suitcase, Exhibit 1. An extra lining had been pasted inside the suitcase to create a false bottom. Dhlomo requested Sylvia to put her travelling clothes in Exhibit 1 and take it to accused No. 1. He gave her instructions on how to remove the false bottom when she opened the suitcase in the presence of accused No. 1. She was to tell accused No. 1 that the suitcase contained all that he had wanted. She was given another R50 for her expenses and was instructed by Dhlomo to burn the suitcase after removing the articles concealed in it. This last instruction was the only one which Sylvia failed to carry out, for she liked the suitcase and decided to keep it. She arrived in Pietermaritzburg on the 18th June and accused No. 1 came to see her the following day. In his presence she cut away the false lining from the suitcase and removed the contents, which she described as money in the form of R10 notes, books, printed matter in the form of papers stapled together, one white envelope and several larger brown envelopes which were

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which were /.....

which were new but had been sealed and appeared to contain something. Accused No. 1 took possession of all these articles. Before leaving he gave Sylvia two messages to convey orally to Dhlomo, and said that his daughter would come later with a letter. According to Sylvia the first of the oral messages concerned money which was needed to build a dwelling for Mabhida's wife, and the second was an instruction to Dhlomo to send certain letters or papers. Before Sylvia left for Swaziland the daughter of accused No. 1 handed her a letter sealed in an airmail envelope. She left that Sunday afternoon, and soon after her arrival at Manzini delivered the letter and the verbal messages to Dhlomo.

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Counsel for the accused put it to Sylvia that the contents of exhibit 1 consisted of money, one letter in an envelope, a packet of envelopes and certain booklets, and that the second of the verbal messages which accused No. 1 gave her was to tell Dhlomo that he must reply to the letter written by Mabhida's daughter. Apart from that there was virtually no challenge of the State evidence relative to Sylvia's second mission.

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The third mission was in September 1975. On this occasion Sylvia took a brown suitcase (Exhibit 2) to Pietermaritzburg, arriving there on 3rd September. This suitcase had been fitted with a false bottom in the same way as Exhibit 1, and when Dhlomo gave it to Sylvia his instructions to her were similar to those he had issued on the preceding occasion. He again gave her R50 for travelling expenses /.....

expenses. After arriving at her mother's home Sylvia sent for accused No. 1, removed the items concealed in Exhibit 2 and wrapped them in a newspaper which accused No. 1 handed to her. According to Sylvia the items were money in the form of R10 notes, an envelope and books. Before leaving with the money, envelope and books wrapped in the newspaper accused No. 1 asked for a jersey to take away, in order that people might think that he had collected it for dry-cleaning. He also gave her two oral messages to convey to Dhlomo, one concerning a payment of R600 to Gamedze and the other to the effect that accused No. 1 had sent Dhlomo's message to Lamontville. Before Sylvia left for Swaziland on the following Sunday accused No. 1's daughter handed her an envelope, and also an amount of R38 on account of the proceeds of the sale of handicrafts. Sylvia took the train to Piet Retief where she was met by Gamedze, and they travelled back to Manzini in their motor vehicle. Sylvia gave Gamedze the letter which she had received from accused No. 1's daughter, and Gamedze left the letter with one Duma, whom he described as Dhlomo's relative who works for a firm of attorneys in Manzini.

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It was put to Sylvia in cross-examination that the brown suitcase (Exhibit 2) contained money and an envelope but no papers or books, and that accused No. 1 denied asking her to tell Dhlomo that he had sent Dhlomo's message to Lamontville. The rest of the cross-examination on the third mission was concerned with trivial issues such as the circumstances under which accused No. 1 took the jersey away /.....

jersey away for dry-cleaning, whether he returned the jersey on the Thursday or the Friday, and whether Sylvia received the R38 during her visit in September, as she claimed, or during the previous visit in June.

Gamedze and his wife motored to Pietermaritzburg on 16th October 1975 and stayed at her mother's home until 25th October when they returned to their farm at Vuvulane. Accused No. 1 visited them during this period and had discussions with Gamedze. Sylvia was not present at these discussions. Gamedze testified that accused No. 1 asked him to take a letter to Dhlomo when he returned, and said that he wanted to send certain boys to Dhlomo in Swaziland. He referred to the boys as "parcels" and stated that they would be sent in batches of six at a time. When he returned to Swaziland Gamedze took a letter from accused No. 1 and delivered it to Dhlomo. He also told Dhlomo about the "parcels". Counsel for the accused asked Gamedze a few random questions about this October trip but did not suggest that his account of what transpired on that occasion between accused No. 1 and himself was inaccurate or false.

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Sylvia undertook her last mission for Dhlomo in November 1975. She said that on Saturday, the 8th November she went with her husband to visit relatives, and that when they returned to the farm the following day they found a note from Dhlomo addressed to Gamedze. On Tuesday the 11th November, while Gamedze was away, Dhlomo and Mbeki arrived at the farm on foot and Dhlomo gave her a black

briefcase to /.....

briefcase to take to accused No. 1. He told her that the briefcase contained envelopes, books and money concealed under a false bottom, and explained how she was to remove the false bottom with a pair of pliers. He gave her R50 for this trip. Gamedze confirmed that when he arrived home Sylvia was in possession of R50 and a holder with a false bottom, but he described it as a woman's bag which was different to a man's briefcase. They travelled to Pietermaritzburg by car and took the bag or briefcase with them. Sylvia said that this was on the following Saturday (which would have been the 15th November) whereas Gamedze thought that this trip was completed and they were back in Swaziland by the 6th November. In any event, after their arrival at the home of Sylvia's mother Gamedze sent for accused No. 1 who came and took delivery of the items concealed in the bag or briefcase. According to Sylvia these items comprised R10 notes, an envelope and books. Gamedze confirmed that the bag contained R10 notes but could not remember whether there was anything else. He said that accused No. 1 counted the money before taking it, and his somewhat uncertain recollection was that it amounted to R2000. During the course of the discussion they had on this occasion Gamedze complained to accused No. 1 that the amount of R50 was insufficient to cover his travelling expenses, and accused No. 1 offered him another R50. He refused this offer saying that he would rather get the additional money from Dhlomo. Accused No. 1 then enquired about routes by which "parcels" could enter

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Swaziland /.....

Swaziland without passports, and Gamedze proceeded to tell him about a place near Hlangano where there is a shop on the South African side of the border fence and the kraal of one Samson M^hkize on the other side, and how people were in the habit of crossing the border fence by means of a stile at that place. Some days later accused No. 1 returned with a map and had Gamedze explain to him, by reference to the roads on the map, how to get to the shop where the stile was. Gamedze said that before he returned to Swaziland on this occasion accused No. 1 gave him a letter for Dhlomo, and requested him to meet the parcels at Samson's M^hkize's kraal and take them to Dhlomo at Manzini. (10)

After returning to Swaziland Gamedze and his wife went to the market at Manzini on Thursday, 6th November to purchase handicrafts. Gamedze testified that he left Sylvia at the market and went to Mabizela's house where he found Dhlomo and handed him the bag with the false bottom and the letter from accused No. 1. He told Dhlomo that he was going to meet the parcels and suggested that Dhlomo should pay for his petrol, and he also complained about the expenses of the trip to Pietermaritzburg. Dhlomo told him that his complaint would be discussed after he had met the parcels. On returning to the market Gamedze met Samson M^hkize's wife there, and arranged with her to direct him to her kraal near Hlangano. Gamedze, Sylvia and Mrs. M^hkize drove to Samson's kraal that afternoon, and remained there from 4 p.m. to 8 p.m. Accused No. 1 had told Gamedze that the parcels /..... (20)

that the parcels would be arriving at 4 p.m., but as nobody had arrived by 8 p.m. he returned with his wife and Mrs. M^hkize to Manzini. As they were entering Manzini they came upon Dhlomo, and Gamedze told him that the parcels had not arrived. By arrangement with Dhlomo they returned to Samson's kraal the next day, after Duma had given Gamedze R5 for petrol and reimbursed him for the cost of servicing his motor vehicle. Gamedze again waited at Samson's kraal until 8 p.m., but no parcels arrived and he took Sylvia back to Manzini. He thereafter had further discussions with Dhlomo and Duma about his travelling expenses and eventually received an amount of R150. (10)

Gamedze testified that he and Sylvia travelled to Pietermaritzburg once again on 15th November 1975, primarily for the purpose of selling handicrafts. From Pietermaritzburg they went to Butterworth to deliver handicrafts to the Rev. Hashe. They returned to Pietermaritzburg on Wednesday, 19th November and on the following day Gamedze sent for accused No. 1. Gamedze gave accused No. 1 a verbal message from Dhlomo to the effect that the parcels had not arrived, and accused No. 1 explained that they had gone as far as Piet Retief but had returned to Pietermaritzburg because they lost their way. Then the two of them went to town where accused No. 1 arranged for Gamedze's motor vehicle to be serviced at his expense. Leaving Gamedze's vehicle at the garage, they went in accused No. 1's car to McCarthy Chickens at Chase Valley to get a catalogue for Gamedze /..... (20)

for Gamedze, after which they returned to town because accused No. 1 wanted to see someone. According to Gamedze they picked this person up in Pietermaritz Street near the Fire Station and he introduced himself as Kubheka. After picking up accused No. 1's daughter at the corner of Pietermaritz and Chapel Streets they went out to Edendale. They stopped at the Edendale Hospital where Gamedze alighted and went to the toilet, after which he got back into the vehicle and accused No. 1 dropped him at his mother-in-law's place. Gamedze said that while he was in their presence accused No. 1 and Kubheka were talking about "Sobantu and parcels" but he did not listen to their conversation.

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Accused No. 1 had promised to call for Gamedze at 1 p.m. in order to go and fetch his car from the garage. However, he did not come and so Gamedze and Sylvia went to town by bus to fetch the vehicle. Gwala came to the house on Friday, 21st November and gave Gamedze a building society card on which six names were written. He explained that these were the names of the "parcels" whom he wanted Gamedze to meet at Samson's kraal on his return to Swaziland. He instructed Gamedze to hand the card to his wife in the meantime and then, when he met the parcels at Samson's kraal, to check their names against those on the card. Thereafter he was to hand the card to Dhlomo. Accused No. 1 gave him R30 to cover his expenses in meeting the boys and transporting them to Manzini, and they went to a nearby/.....

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to a nearby filling station where Gamedze's car was filled up with petrol for which accused No. 1 paid. Accused No. 1 told Gamedze that he would send his daughter around the following morning with another list of boys who would arrive in Swaziland on the 26th November. In the event no further list was delivered.

Gamedze and Sylvia travelled to Samson Mkhize's kraal on 22nd November 1975, via the border post at Mahamba. On discovering that the parcels he was supposed to meet there had not arrived, Gamedze proceeded on to Manzini, handed the building society card to Dhlomo and told him what had happened. Some days later Gamedze accompanied Dhlomo and Duma to Samson Mkhize's kraal to find out whether the parcels due on 26th November had arrived. The parcels had not arrived and they accordingly returned to Manzini. Thereafter Gamedze read a newspaper report of the detention of accused No. 1 and others. He and Sylvia were arrested by the security police at Pietermaritzburg on 31st December 1975.

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The foregoing account of the events which took place during November 1975 is based mainly on Gamedze's evidence. Sylvia was not privy to Gamedze's discussions with accused No. 1 concerning parcels and routes into Swaziland, and it does not appear from her evidence that she knew the purpose of their visits to the kraal of Samson Mkhize. However, she corroborated Gamedze's evidence on nearly all of the other material points in respect of which she had the necessary /.....

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necessary personal knowledge. For example, she confirmed that on 21st November accused No. 1 gave Gamedze R30, and that Gamedze handed her a card which had six names written on it. As already indicated, Sylvia's evidence as to when they took the black bag or briefcase to Pietermaritzburg is inconsistent with that of her husband; and he had spoken of two separate trips to Pietermaritzburg whereas according to her evidence it was a single trip which included both the briefcase episode and the journey to the Rev. Hashe at Butterworth. The discrepancy is obviously due to confusion or faulty recollection on the part of one of them, and we do not consider that anything of importance turns on it. Counsel for the accused put it to Sylvia and Gamedze that all that was contained in the false bottom of the bag or briefcase was money. Counsel also got Gamedze to repeat a good deal of his evidence about the events in November, without suggesting that any of it was false or inaccurate.

Sylvia testified that on the occasion of one of her missions to Pietermaritzburg - she could not remember which one - she gave accused No. 1 an oral message from Dhlomo to the effect that Dhlomo had received two letters quickly or timeously and accused No. 1 should send another six letters before Friday. She said that she asked accused No. 1 how he would send all these letters, and he explained to her that they were not letters but boys. She asked what the boys were going to do and he said that they would be taken by train and thereafter by taxi to a certain shop, that they /.....

shop, that they would pretend to make purchases at the shop and then go over the fence to Mkhize. He said that Dhlomo would then take them over and they would go to Lourenco Marques to learn fighting. It was put to Sylvia that this alleged conversation with accused No. 1 was a fabrication on her part. She rejected the imputation with emphasis and dignity, and attempted to substantiate her story by reference to something that Gamedze had learnt from Dhlomo and repeated to her. We do not think that Sylvia was consciously fabricating, but it does seem possible that she gleaned this information from her husband and erroneously attributed it to accused No. 1. It appears from Gamedze's evidence that accused No. 1 was only informed of the route via the shop and Samson Mkhize's kraal on the occasion when the black bag or briefcase was opened, and it does not appear that Sylvia had such a conversation with accused No. 1 on that occasion or any subsequent occasion.

Both Gamedze and Sylvia are accomplices whose names are mentioned in the indictment as co-conspirators. They were in detention from the beginning of January 1976 until after the close of the State case, and Sylvia admitted that the police had reminded her from time to time of the evidence which she was expected to give.

We shall have more to say later about attempts to coach witnesses by frequently reminding them of the contents of their statements. Although Sylvia seems to be blessed with a marvellous memory we do not think that it would be /.....

would be entirely safe, under the circumstances, to prefer her evidence to that of accused No. 1 on matters of detail in respect of which her memory might not have served her correctly if she had not been coached. As to the circumstances of their detention, Gamedze was kept in solitary confinement but Sylvia was allowed out during the day to do domestic work for the Station Commander or walk about the police station yard. Dr. West said that although this was not solitary confinement she was cut off from her usual sources of support, and that being allowed out during the day might have enhanced her sense of gratitude or loyalty towards her "captor". Gamedze said that he wrote one statement and had not since been reminded of its contents. (10

As already indicated, Gamedze and Sylvia corroborated each other in numerous respects which directly implicate accused No. 1, and for the most part their evidence went unchallenged. The foregoing summary of their evidence, lengthy though it is, omits a wealth of detail which gave it the stamp of authenticity. They impressed us as patently honest witnesses whose evidence we could safely accept as being substantially true. Of course this is subject to the reservations already expressed in regard to the alleged conversation between Sylvia and accused No. 1 about sending boys through Swaziland to learn fighting in Lourenco Marques, and in regard to matters of detail such as the precise contents of the two suitcases and the bag or briefcase. (20

Another /.....

Another person whom accused No. 1 used as a courier was the witness Catherine Mkhize. This woman lives in Pietermaritzburg and has a son at the Swaziland High School at Matsapa near Manzini. She saw Peter Gamedze at Manzini when she took her son to school in February 1975, and accepted a letter from him for delivery to Harry Gwala. (This is the letter which Gamedze wrote about the handicraft transaction). Mrs. Mkhize duly delivered the letter and thus got to know accused No. 1. When next she went to Manzini, on 25th May 1975, she took with her two letters which accused No. 1 had instructed her to hand to Bafana Duma at the Manzini Refugee Camp. One envelope simply had "B. Duma" written on it, while the other was stamped and addressed to someone at P.O.Box Manzini. She looked for Bafana Duma in Manzini and was eventually directed to a double-story building where she met a man who introduced himself as Abion Alfred Duma and took delivery of the letters. She later met Mabizela who offered to show her Swaziland by night and arrange for her to sleep at Dhlomo's place. She declined the invitation. When she left for home A.A.Duma gave her a letter addressed to accused No. 1, and this she delivered to the accused's wife at Edendale on 31st May. Early in July, 1975 accused No. 1 asked her to assist him by undertaking another trip to Swaziland, and overcame her initial reluctance by agreeing to pay her fare and hotel expenses. She left on 6th July with a letter addressed to A.Duma, and she delivered the letter to Abion (10 (20

Alfred Duma /.....

Alfred Duma in Manzini on 7th July. He took her to a school where they found Mabizela, and he and Mabizela proceeded to read the letter. When they had done so they went off to make a phone call, and on their return Mabizela told her to inform accused No. 1 that they would send another person, that Mabhida and someone else (whose name the witness had forgotten) had been arrested but were out and well. Mrs. Mkhize conveyed this message to accused No. 1 on 12th July 1975. During August 1975 accused No. 1 came and asked her to describe the situation of the double-storey building in Manzini where Duma worked, saying that he wanted to send another person there. Apart from putting it to her that she was not persuaded to go to Swaziland in July as she was going in any event, and disputing the amount which accused No. 1 allegedly paid towards the expense of that trip, counsel for the accused did not challenge Mrs. Mkhize's evidence. She was an innocent courier with no possible motive to misrepresent the facts, and we are satisfied that she spoke nothing but the truth.

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Samson Mkhize works in Pietermaritzburg and did not visit his kraal in Swaziland during the relevant period. He testified that Gamedze visited him at his place of employment during October 1975, and that this was followed by a visit from accused No. 1 who asked him to "explain the way to Swaziland". Samson described two routes to Swaziland, one via Piet Retief and the other via Golela. As he was not cross-examined we take it that the facts to which he testified are common /.....

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are common cause.

There is more evidence relative to sub-paras. (i) to (iv) which will be discussed shortly. Of course it is part of the case for the State that the persons who participated in these activities from the Swaziland side of the border were at all material times members and/or representatives of the A.N.C. Major Stadler testified that Albert Dhlomo was a member of the A.N.C., that he was convicted and sentenced to three years' imprisonment in 1967 for A.N.C. activities, and that he left the Republic after serving his sentence. Stephen Mtshali said that Dhlomo was a member of the regional secretariat of the A.N.C. Both Mtshali and Mtolo gave unchallenged evidence to the effect that Bafana Duma was a member of Umkonto Wesizwe in 1963. Major Dirker and Hlapane knew Thabo Mbeki as the son of Govan Mbeki. Hlapane said that Thabo was a member of the A.N.C. Youth League, and Dirker said that as far as he knew Thabo had left the country. Dirker also knew Moses Mabhida, and described him as a person from Natal who was a member of the A.N.C. as well as a trade union.

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The evidence of Sipho Kubheka was mainly concerned with sub-paras. (v) and (vi) of count 1, but was also relevant to sub-paras. (i) and (iii). Kubheka has known accused No. 1 for many years but seems to have had little to do with him until about March 1975 when, according to the witness, they met by chance at the Market Square in Pietermaritzburg /.....

Pietermaritzburg. Kubheka said that on this occasion accused No. 1 spoke about reviving the A.N.C. organisation and asked him to form cells for that purpose, each cell to consist of three persons. Accused No. 1 explained that each cell should have a leader whose function would be to give the other two members political education on the basis of the Freedom Charter and thereafter persuade them to go abroad for military training for the purpose of overthrowing the present regime. Kubheka understood that the ordinary members of a cell were not to know each other's identity. (10

As an A.N.C. sympathiser he agreed to do what he could, and at some later date which he did not specify he allegedly discussed the matter with accused No. 5. As a result of this discussion accused No. 5 and he approached Moses Bhengu at his home in Sobantu Village and spoke to him about reviving the A.N.C. by forming cells. According to Kubheka this occurred at the beginning of 1975 and it was the only occasion on which he discussed the matter with Bhengu. He was vague as to precisely what he said to Bhengu about reviving the A.N.C. and forming cells, but he made it clear (20 that Bhengu would have nothing to do with the proposal and that there was no question of him joining them in any cell.

Kubheka's account of the approach to Bhengu and what transpired between them thereafter hardly bears comparison with what Bhengu himself said about the matter. Bhengu testified that he joined the A.N.C. in 1958, was also a member of SACTU, and had been served with restriction /.....

restriction orders in 1963. He said that during the latter part of 1975 his neighbour, accused No. 5 told him that he had attended a meeting at Edendale at which the discussion had centred around the resurrection of the A.N.C. and SACTU. After discussing these matters between themselves Bhengu and accused No. 5 agreed to invite Sipho Kubheka to join them in forming a cell. A few days later the three of them met at Bhengu's home and agreed to form a cell amongst themselves as a first step towards reviving the A.N.C., the organisation to be expanded into a network of similar cells (10 through the expedient of having each individual cell member form another cell in his own area. He said that cell members were instructed to recruit boys who would be sent abroad to undergo army training with the object of returning to fight against the Government. This was an instruction emanating from accused No. 1 which was passed on to their cell by accused No. 5. As to the activities of this particular cell, Bhengu spoke of an occasion when they met and agreed that Kubheka should travel to Swaziland to deliver a written message for accused No. 1. He also said that accused No. 1 (20 lent him R20 for the expenses of the cell, but confessed that he had spent all but R6 of this amount on his personal expenses. He did not claim that his cell actually recruited any boys, but he recounted a conversation which he had with accused No. 5 in a bus towards the end of 1975, in the course of which accused No. 5 told him that some boys who were to have gone out of the country had been detained.

It was put /.....

It was put to Bhengu in cross-examination that no cell was formed by him, Kubheka and accused No. 5, that the A.N.C. was never discussed, that any conversation he had with Kubheka or accused No. 5 concerned trade unions, that the alleged agreement of the cell members that Kubheka should take a message to Swaziland was a fabrication, and that accused No. 5 never told him about the detention of any boys who were to have left the country. It was also put to him that accused No. 1 lent him the amount of R20 for his household expenses, not for A.N.C. activities. Bhengu (10) was certainly not discredited, but he was not subjected to the sort of cross-examination which might have revealed any flaws in his evidence. He is an accomplice who was detained from 4th December 1975 until he entered the witness box, and he stated that he had found solitary confinement difficult for his mind. In view of the serious contradictions between them it can scarcely be claimed that his evidence is corroborated by that of Sipho Kubheka. He was not an unsatisfactory witness but there was nothing about his demeanour or the content of his evidence to demonstrate that he was (20) speaking the truth.

Reverting to Kubheka's evidence, he said that towards the end of August 1975 he approached his friend Gerald Mdlalose with the proposal that he assist in forming A.N.C. cells, but Mdlalose told him that he was too busy to do so. Mdlalose was called as a witness to corroborate Kubheka on this aspect. He confirmed that the

approach was /.....

approach was made and that he refused to co-operate, but there were material inconsistencies between his evidence and that of Kubheka, and he appeared to be concerned more with minimising his part in the affair than giving a complete and accurate account of it. For instance, although he understood from Kubheka that the cells would be engaged in politicizing able-bodied young men to be sent abroad for military training, he pretended that he did not learn or even enquire what organisation was behind that campaign or what its ultimate object was; and, having made it perfectly (10) plain that what was involved was military training, he was inclined to accept a suggestion made in cross-examination that Kubheka may have been speaking of sending people abroad for political training. He was a thoroughly unsatisfactory witness and very little reliance can be placed on his evidence. He stated under cross-examination that he had initially refused to talk to the police about Kubheka, but eventually did so when they confronted him with information they had obtained from Kubheka and told him that he really ought to know about the matters thereby disclosed - which in (20) fact he did. When invited to comment on this passage Dr. West stated the obvious, namely that it was an example of suggestive questioning. He added that there was no way of telling from the passage whether the information was true and the object was to get Mdlalose to tell the truth, or whether it was simply a device to suggest the response they wanted from him.

Mdlalose /.....

Mdlalose testified that at some time in 1975 accused No. 5 lent him a book entitled "Guerilla Warfare". However he was too busy with his studies to open the book and therefore could not dispute the suggestion of counsel for the accused that in fact it was an account of guerilla struggles round the world called "The War of the Flea". He was in the habit of exchanging reading matter with accused No. 5, and in the absence of any proof that the book in question was subversive this aspect of Mdlalose's evidence has no bearing on the case. (10

Mdlalose gave the foregoing evidence on 8th September 1976 and was thereafter released from detention. He had been detained at the Thornville police cells since 7th December 1975. On 24th February 1977 counsel for the accused applied for his recall for further cross-examination, on the strength of an affidavit by one Morrison to the effect that on an occasion in or about October 1976 Mdlalose had told him that he had been ill-treated while in detention. The application was granted and Mdlalose was recalled for further cross-examination. (20

He was extremely cautious in his replies to questions about his alleged conversation with Morrison, but eventually stated inter alia that a certain white lieutenant whom he could not identify forced him to talk by putting pebbles in his shoes and making him run and rock from heel to toe. This happened on only one occasion, but on more than one occasion the same policeman also shook his head from side to side in a violent/.....

in a violent fashion. He was vague as to how often his head was shaken, and it is by no means clear from his evidence whether it was the unidentified lieutenant only or other policemen as well who shook his head. The alleged reason for the assaults was his initial refusal to admit that he knew anything about the matter, but he eventually did make the statement that the police wanted, after they spoon-fed him with information. After alleging that the statement was only partly true he stated categorically that it was exactly the same as the evidence he gave on 8th September 1976 and that his evidence had been the truth. He said that the person who commenced the interrogation was Sgt. Gold (incorrectly called Gould by this and other witnesses). Gold never laid a finger on him and, indeed, was very good to him, but he was present and did not protest when the mysterious lieutenant assaulted him by putting pebbles in his shoes and shaking his head. (10

Mdlalose's performance when recalled for further cross-examination was as unsatisfactory as it had been when he first gave evidence. He could not be declared a hostile witness and was therefore not cross-examined by the prosecutor on his allegations of assault. However, Sgt. Gold was one of the witnesses who gave evidence in rebuttal of the defence allegations relative to the so-called investigatory system, and he refuted Mdlalose's allegations. Gold confirmed that it was he who interrogated Mdlalose at Thornville, and emphatically denied that Mdlalose was ever assaulted /.....

assaulted, threatened or bullied in his presence. Gold struck us as being a particularly decent sort of a person, and we are quite satisfied that he would not stoop to assaulting a defenceless prisoner or tolerate such conduct on the part of anyone else. It is true, as he conceded, that he could not have ordered a superior officer to refrain from assaulting a prisoner, but we believe him when he says that he would not have allowed it without protest. In giving his evidence he was articulate, intelligent, careful and frank, and we are convinced that he told the truth. (10

We are not impressed by the cynical suggestion that under the circumstances Gold could never have admitted that the alleged assaults were committed. He was such a good witness, and Mdlalose such a poor one, that we have no hesitation in rejecting the allegations of assault as false. Of course, even if there were some truth in these allegations Mdlalose's evidence does not support the submission that the police forced witnesses to make false statements.

The next person whom Kubheka approached about the formation of cells was Mazwi Msimang. Kubheka (20 said that he spoke to Msimang about the matter at the home of Msimang's in-laws at Sobantu Village during October 1975. He asked Msimang to form a cell of three persons for the purpose of giving the other two members political education and eventually requesting them to go and learn soldiering. He informed Msimang that this was for the purpose of reviving the A.N.C. and told him to act cautiously as the matter was secret. /.....

secret. Msimang refused. As in the case of Mdlalose, Msimang was called to corroborate what Kubheka said about the approach to him. He confirmed that Kubheka visited him and asked him to form a cell with boys who would be sent out of the country to undergo military training, but his account of the matter differed from Kubheka's on several points. His recollection was that Kubheka told him to get three or four boys to form a cell and that their ages should range from 16 to 20 years, whereas according to Kubheka he said that the cells were to comprise three (10 persons and made no mention of their ages. Msimang said that Kubheka spoke to him about the matter on two subsequent occasions, urging him to recruit boys for military training and enquiring what progress he had made in that direction. However, he did nothing about the matter because he never took Kubheka seriously. He paid little attention to the proposal and was not interested to find out more about it because he thought that Kubheka was somewhat deluded. Some time after the approach about the formation of cells Kubheka gave Msimang Exhibit 3 to read - Marx, (20 Engels and Lenin on Scientific Socialism. Msimang said that he read only about 8 to 10 pages of this work but did not understand it. He passed it on to the witness Mkreso in whose possession the police found it on 8th December 1975.

Msimang was not an accomplice but, like Mdlalose, was in detention from 7th December 1975 until he gave evidence /.....

gave evidence in this Court. He admitted that the police had difficulty in getting answers from him and had indicated what they wanted him to tell them, viz. everything referring to Sipho Kubheka. In addition to the circumstances under which it was obtained we were inclined at first to think that his evidence was also suspect because it seemed improbable that he did not find out more about the nature of the secret cells and the purpose of the military training which Kubheka proposed. However, this was satisfactorily explained in the course of a cross-examination which had the effect of establishing him as an apparently truthful and reliable witness. Of course the value of his evidence is limited, for he merely corroborated Kubheka in a general way on matters not directly implicating any of the accused.

Kubheka testified, and it is common cause, that during the last week of September 1975 he travelled to Swaziland with one Tsi Phungula, taking with him a message which No. 1 accused had written on a piece of toilet paper and asked him to deliver to Bafana Duma in Manzini. (20) It is also common cause that accused No. 1 gave him R50 towards the expenses of the trip. Kubheka was cross-examined at length on the reasons for the trip to Swaziland and on various details concerning the trip, and this served to show that he was an untrustworthy witness who was prepared to lie when it suited him. Accused No. 1 had told him where to find Bafana Duma in Manzini, and had instructed him to use /.....

him to use a password "wayithala", to which Duma was expected to reply "wayibambezele". When he did eventually find Duma the latter took him to a house where he met a youngish man who introduced himself as Thabo. Thabo instructed him to tell accused No. 1 that there were no funds, and that he should use "those dates" and the route used by the Durban people. Kubheka said that he duly relayed this message to accused No. 1 during the first week of October 1975, and that accused No. 1 had then told him that Thabo was the son of Govan Mbeki. Kubheka did not know the contents of the (10) written message which he handed to Thabo, and he denied that accused No. 1 had asked him to deliver the message because he wanted Bafana Duma to ask Moses Mabhida for money. It was put to him that the only oral message he gave to accused No. 1 on his return from Swaziland was that Thabo said it was "okay" and they would reply. In view of Kubheka's unreliability as a witness, and the lack of corroboration of his evidence on this point we do not think that his version of the message can safely be accepted as the true one. The State called Tsi Phungula to (20) confirm that he took Kubheka to Manzini - a fact which was not in dispute. The only noteworthy contribution he made to the case was to contradict what Kubheka said about the purpose of the trip.

Kubheka's evidence was that he relayed Thabo's message to accused No. 1 at the latter's house in Edendale. On that occasion accused No. 1 told him not to remain there /.....

remain there for long as the police were in the vicinity, and also mentioned that there were two young men from Port Elizabeth who would have to go to Swaziland. Thereafter accused No. 1 came to his place of employment and arranged to meet him in Edendale on a Friday morning during the third week of October. They met as arranged and went to accused No. 1's house where accused No. 1 gave him a sealed letter and told him that he was to accompany the two young men to Swaziland. Kubheka said that he could not go to Swaziland and accused No. 1 did not insist that he do so. They proceeded to another house in Edendale where Kubheka met the two Port Elizabeth boys and, at the request of accused No. 1, gave them directions on how to find Bafana Duma's place of employment in Manzini. Accused No. 1 also instructed him to hand the sealed letter to one of the young men. Then they left the house separately and took different routes to the Edendale Main Road, Kubheka and accused No. 1 taking one route and the Port Elizabeth boys another. They met again on the Main Road and a Valiant car with an ND registration number arrived. After accused No. 1 had spoken to the driver the Port Elizabeth boys got into this vehicle and were driven away. Accused No. 1 had already informed Kubheka that the young men would go to Swaziland without travel documents, and when the car arrived he said that it would be taking them to Swaziland. Under cross-examination Kubheka reiterated the substance of his evidence concerning this episode and remained quite unshaken on its details.

Kubheka /.....

Kubheka confirmed that he gave Msimang Exhibit 3 to read. He said that he had obtained the book from accused No. 5. The version put to Kubheka in ~~cross-examination was that~~ accused No. 5 never gave him Exhibit 3, that what really happened was that Kubheka mentioned that he had lent a book called Scientific-Socialism to Msimang and undertook to get it back and lend it to accused No. 5. Kubheka testified that during October 1975 accused No. 5 came to the Edendale Hospital where he worked and informed him that a person by the name of John would like to meet him. Later that day John Nene (accused No. 4) came and introduced himself to Kubheka, saying that accused No. 1 had instructed him to introduce himself so that Kubheka would know who he was.

The next person whom Kubheka approached about forming A.N.C. cells was Buhle Mthalane. He said that on a morning during the last week of October 1975 he met ~~Mthalane in the street near his place of employment,~~ told him about the revival of the A.N.C. and asked him to try to form a cell for the purpose of giving the other members political instruction and eventually sending them abroad for military training. Mthalane agreed to try and form such a cell. During the first week of November Kubheka approached Mthalane again and enquired what progress he had made. On this second occasion, according to Kubheka, Mthalane told him that he had a prospective candidate for his cell but that the young man was in gaol and bail would have to be

found for /.....

found for him. They parted on the understanding that Kubheka would return the following day to find out what amount of bail was required. The next day Mthalane told him that bail had been fixed in an amount of R30. Kubheka thought that it was on this occasion that Mthalane asked him who he was working for and where the cell members would be sent for their training. His reply was that he did not know where the young men would go for training, but that he would report to accused No. 1 for whom he was working. That weekend Kubheka reported to accused No. 1 on his dealings (10 with Mthalane. He said that accused No. 1 instructed him to pay the R30 for bail out of his own pocket and promised to reimburse him. Shortly thereafter, about the 11th to 13th November, he accompanied Mthalane to the Regional court and gave him R30 for bail. It was on this occasion that Mthalane informed him for the first time that the person for whom the bail was required was his son.

The next occasion covered by Kubheka's evidence was that on which he met Peter Gamedze. Kubheka was vague about the date, but the other evidence indicates (20 that it was either the 20th or the 21st November. According to Kubheka he was picked up at the Imbali bus stop in Pietermaritz Street, about half a mile away from the spot where Gamedze said they met him. He confirmed that accused No. 1 thereafter picked up his daughter at the corner of Pietermaritz and Chapel Streets and that they proceeded to Edendale, but he was adamant that Gamedze alighted from the car at
 Daya Store /.....

Daya Store, not at the home of his mother-in-law. He was equally emphatic that Gamedze did not go to the Edendale Hospital in the course of this journey. It will be recalled that Gamedze said that he went to the toilet at the hospital and was thereafter dropped at his mother-in-law's home. In any event, Kubheka's evidence is that after dropping Gamedze they drove to the house of accused No. 1. Then he accompanied accused No. 1 to town for the purpose of checking on Gamedze's car, and on the way to town they picked up accused No. 4 at a bus stop. In the course of the (10 journey accused No. 1 instructed Kubheka and accused No. 4 to visit Anton Xaba (accused No. 3) at his place of employment to enquire whether there were any young men available to go to Swaziland. Kubheka said that he and accused No. 4 met accused No. 3 in Greyling Street and duly conveyed accused No. 1's "message" to him, but it is not clear from his evidence what accused No. 3 said about the matter. Then Kubheka and accused No. 4 met up with accused No. 1 at the corner of Commercial Road and Greyling Street and reported on their discussion with accused No. 3, and Kubheka finally (20 parted from accused No. 1 at the Market Square. Kubheka testified that at some stage while he was in the company of accused Nos. 1 and 4 on this occasion he told accused No. 1 that there was one young man from Imbali available to go to Swaziland, and that No. 4 accused said that he had about two or three young men. The version of this episode which was put to Kubheka on behalf of the accused was that on 20th
 November he /.....

20th November he told No. 1 accused that he had heard from a boy at Sobantu that there would be boys leaving for Swaziland that coming weekend, and that he asked No. 1 accused whether there would be a spare seat for a friend of his from Imbali who wanted to go and work in Swaziland because the police were hounding him for vagrancy. It was put to Kubheka that accused No. 1 had replied to the effect that the boys who were going to Swaziland would meet at the house of accused No. 4 that night, and that Kubheka should ask accused No. 4 whether there was room in the car and whether he would be required to pay anything. (10

Kubheka testified that he went to the house of accused No. 1 at 7 p.m. on 21st November and told accused No. 1 that Mthalane's son, Mlungise was ready to go. He then went to Imbali in accused No. 1's car (driven by his son Linda) and fetched Mlungise Mthalane. They took Mlungise to the house of accused No. 4 in Edendale, and left him there with accused No. 4. Mlungise had a suitcase full of clothing. Accused No. 4 told Mlungise that he could not take that quantity of clothing, and the upshot was that Kubheka took the suitcase away with him when he left. Before he left accused No. 4 asked him to tell accused No. 1 that accused No. 3 had not yet arrived. Kubheka then went back to accused No. 1 and passed on the message about the non-arrival of accused No. 3. He left Mlungise's suitcase at accused No. 1's house, telling accused No. 1 that he would fetch it the next day. Then Linda drove him to the hospital, and from there/..... (20

and from there he took the hospital transport to his home. At 7 a.m. the next morning, on his way to fetch the suitcase, Kubheka met accused No. 4 who informed him that the trip to Swaziland scheduled for the previous evening (21st November) had not taken place because of "petrol" and the fact that there had not been enough young men available for it. Kubheka proceeded on to the house of accused No. 1 to collect the suitcase. On his arrival there accused No. 1 confirmed that the trip to Swaziland had not taken place, and told him that the next trip would be on 26th November. After arranging to meet accused No. 1 at his home on 26th November Kubheka took the suitcase and Linda drove him to Mthalane's place at Imbali where he left it. (10

Kubheka's evidence is that he went to the house of accused No. 1 on the morning of the 26th November as arranged. Accused No. 1 drove him to accused No. 4's house where they picked up accused No. 4 and proceeded to a house at Mount Partridge. On the way there accused No. 1 told him that the young men who were going to Swaziland would be accommodated at this house overnight. They met a young woman at the house and accused No. 1 informed her that Kubheka and accused No. 4 would be returning that evening. After leaving the house accused No. 1 drove a short distance and stopped. He gave Kubheka R50 and certain instructions. The instructions were that Kubheka was to pay R40 to the taxi driver who would transport the young men, and use the balance of the R50 for food for the young men /..... (20

young men and his own transport back to his home at Sobantu. Accused No. 1 told him to choose a leader from amongst the young men and to instruct the leader that after crossing the border he should look for the house of "Simon Mkhize" where they would be accepted. He was also instructed to give the leader the necessary directions to enable him to find Bafana Duma when they reached Manzini. Finally, accused No. 1 told Kubheka to get in touch with accused No.3 who was making the arrangements for the transport.

Kubheka went to the home of accused No.3(10 at 6 p.m. There he met accused No. 3 and a young man named George Mkhize, and the three of them took a bus to the Market Square where they expected to meet the taxi driver, Mdubane. As they did not find Mdubane there they took another taxi to Mballi to collect Mlungise Mthalane. From there they went to the house of accused No. 4 at Edendale, and Kubheka paid the taxi driver R2 50 from the money which accused No. 1 had given him that morning. They found accused No. 4 at his girl-friend's place, and he said that he was going to look for transport to take them to Mount Partridge. According to Kubheka he then went with accused No.3, Mlungise and George to various places in the neighbourhood. They went at the request of accused No. 3 and Kubheka did not know what his purpose was. At one stage accused No.3 and another young man who had joined them went into Msibi's house and emerged with a second young man. (Kubheka did not know either of these young men but it appears from the evidence of /.....

evidence of accused No. 3 that the first was Joseph Dhlamini and the second Stanley Msibi.) Then they went back to the house of accused No. 4's girl-friend. Before they arrived there accused No. 3 tried to send these two young men on some other errand but they refused. When they arrived there both of the young men disappeared and Kubheka did not see them again. He said that the second one (Msibi) disappeared after saying that he was going to pass water. Thereafter they went to the Macihisa main road with accused No. 4 to look for a taxi, and while they were standing there a group of young people approached. Accused No. 4 spoke to one of these young men and then said that he was going off to look for Mdubane. He returned about 20 minutes later in Mdubane's taxi and they all got in and went to the house at Mount Partridge. By this stage the party comprised accused Nos. 3 and 4, Kubheka, George, Mlungise and the other young man whom accused No. 4 had met and spoken to on the main road. (According to the evidence of accused Nos. 3 and 4 this young man was Douglas Nide). After arriving at Mount Partridge they chose George Mkhize as the leader of the group and Kubheka gave him instructions and directions as he had been told to do by accused No. 1. Kubheka paid Mdubane R40 and gave accused No. 4 a parcel of food for the young men. Accused No. 4 remained with the young men at Mount Partridge, and that was the last Kubheka saw of him. Mdubane took Kubheka and accused No. 3 back to their respective homes at Sobantu, for which service Kubheka paid him another R5.

According /.....

According to Kubheka the arrangement was that Mduhane would transport these young men to Swaziland the following day. He never saw them again. On an earlier occasion, he said, accused No. 3 had told him about another group of young men who had got as far as the border and then returned. This group, according to what accused No. 3 told him, had comprised or included Edgar Zondi, Mandela Sikosana and Kayi Nene. This was not challenged in cross-examination, and neither was it suggested that Kubheka's evidence regarding the events of the 26th November was false in any material respect. (10

Buhle Mthalane was another witness called by the State for the purpose of corroborating Kubheka's evidence. He confirmed that Kubheka approached him during October 1975 with the proposal that "groups of three" be formed, but his account of the matter differed from Kubheka's in many material respects. For example, he understood that the groups were to look for boys who would undergo training of a military nature in Rhodesia, and he said that on the occasion of their second meeting he told Kubheka that (20 he intended to do nothing about forming groups. He said that on the same occasion he told Kubheka that he had a son who had been causing a lot of trouble, and suggested that this boy might be sent away for training. He did not know his son's whereabouts at that stage. Some days later, when he learnt that Mlungise was in gaol awaiting trial on a charge of assault, he saw Kubheka again and discussed the question of /.....

question of bail. He confirmed that Kubheka provided him with R30 for Mlungise's bail, and that after Mlungise's release Kubheka came and took him away. Here again there were discrepancies between them, but Mthalane's evidence broadly corroborated Kubheka's story about fetching Mlungise from Mbali on the two occasions in November. Mthalane has neither seen nor heard of his son since he left with Kubheka on the second of those occasions.

Mthalane was a forthright, enthusiastic witness who seemed to be quite devoid of guile. Although (10 he made a favourable impression on us it seems that he drew upon his imagination about military training in Rhodesia, and his evidence does not corroborate that of Kubheka regarding the revival of the A.N.C. and the purpose for which cells were to be formed. A further reason for treating his evidence with caution is the fact that he had been in solitary confinement for some ten months, during which time he was frequently reminded of the contents of his statement to the police. He denied that the police ill-treated him, but said that he was not allowed any reading matter whilst in (20 detention, that being kept alone was not "nice" and that it affected his mind. In any event, as his evidence does not implicate any of the accused it hardly advances the case for the prosecution, save for providing some measure of corroboration of Kubheka's evidence relative to the recruitment and departure of Mlungise.

The last person whom Kubheka allegedly approached /

approached to form an A.N.C. cell was Arthur Majola. He went with accused No. 5 to see Majola at his place of employment, and spoke to Majola about reviving the A.N.C. by forming cells for the purpose already described. He made it clear, however, that accused No. 5 was not present and did not hear what he said to Majola. The proposal was rejected. Majola's version of this incident was quite different. He said nothing about the A.N.C. or the formation of cells, but claimed that Kubheka's proposal was simply that they should look for boys to undergo military training outside South Africa. He also stated that accused No. 5 was present and actually took part in the discussion, and denied a suggestion put to him in cross-examination that Kubheka had approached him to discuss the revival of SACTU. Majola was not an accomplice and there is no reason to believe that his detention (which lasted four days) influenced his evidence. Dr. West did not consider that this period of detention in solitary confinement would have been sufficient to bring about the full DDD syndrome in Majola's case, but observed that it was sufficient to get him to make a statement. He explained some people were so apprehensive that they would comply immediately, as soon as they knew what was required of them. Dr. West clearly had no grounds for the observation that it was the detention that induced Majola to make a statement. For all that the evidence discloses he could have made it freely and voluntarily or even enthusiastically for reasons quite unconnected with detention or the fear of detention. Majola was too softly spoken to impress as a witness, but he appeared to be giving a fair and /....

a fair and accurate account to the best of his ability. Nevertheless, in view of the material contradictions between him and Kubheka his evidence hardly corroborates that of Kubheka with regard to the formation of A.N.C. cells, and cannot be relied upon to implicate accused No. 5.

It was put to Kubheka on behalf of the accused that none of them ever spoke to him about the formation of A.N.C. cells or military training, that in fact accused No. 1 had tried to interest him in the revival of SACTU and had spoken about the desirability of sending people out of South Africa to be trained for that purpose. He denied this suggestion. As already indicated, he was in several respects an unsatisfactory witness. He apparently lied about the reason for his trip to Swaziland, and it is therefore possible that he lied about other matters. He was contradicted on many points by other witnesses, and his demeanour was not such as to inspire confidence. Moreover, he was an accomplice who was subjected to intensive interrogation during his detention, which lasted from 30th November 1975 until some time after he had entered the witness box. He stated under cross-examination that when he was taken into custody he was not keen to make a statement but was persuaded to do so by being questioned "in many ways on many days". He was even awakened at night for questioning but was not deprived of sleep. He denied a suggestion that his interrogators fed him information by telling him what others were supposed to have said. Dr. West's comment on this was that under the /.....

under the circumstances there was no way of telling whether the resistance which the interrogation broke down was resistance to revealing the truth or resistance to making a false statement. Nevertheless, Kubheka's evidence cannot simply be dismissed from consideration. It has to be evaluated in the broad context of all the evidence bearing on the activities of the accused and the object behind such activities. It suffices to state at this stage that in various important respects Kubheka's evidence was not seriously challenged, and that despite a searching cross-examination he did not contradict himself or display any other signs of hesitancy or equivocation on any material point. Kubheka's evidence to the effect that accused Nos. 1, 3 and 4 were actively engaged in sending young men or boys to Swaziland is substantially corroborated by that of the taxi driver Alson Nzama. He is also known as Mdubane and we will refer to him by that name. He testified that during August or September 1975 accused No. 1 paid him R100 in R10 notes to convey five boys from Pietermaritzburg to Nyamane River on the road between Pongola and Piet Retief. At six o'clock one morning he collected the boys and conveyed them to Nyamane River. They refused to alight there and he proceeded on to the border post at Mahamba. Mdubane stopped near the border gate, alighted from his car and spoke to the police at the border post for about ten minutes. Then he drove back to a place where there was a large house, where the Mahamba road joins the road to Piet Retief. The boys alighted there and went to make /.....

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to make enquiries about how to find Mkhize's place. When they returned to the car Mdubane indicated that he could not wait any longer while they tried to find their destination, and the upshot was that he brought them back to Pietermaritzburg. This group of boys included three who were known to Mdubane; namely Mandla Sikosana, Ntombela's son and Zondi, which ties up with Kubheka's evidence that accused No. 3 told him about a group of young men (including Mandla Sikosana, Edgar Zondi and Kayi Nene) who had gone as far as the border and then returned. Mdubane saw accused No. 1 the next day and told him what had happened. Some days later accused No. 1 came to Mdubane's home with a book of road maps (Exhibit "V") and showed him where the boys should have alighted. The next morning accused No. 1 gave him R120, being R20 extra which he required for the previous trip and R100 for another trip which he agreed to undertake. On this occasion Mdubane collected six boys and transported them to a spot not far from the Mahamba border post. He left them there and returned to Pietermaritzburg. According to Mdubane this group comprised Mandla Sikosana, Zondi, Ntombela's son, another of the boys who had been on the earlier abortive trip, and two additional boys whom he did not know. He said that they took no luggage with them.

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Mdubane confirmed that he took accused Nos. 3 and 4 and others to the Mount Partridge area during the evening of the 26th November 1975. He said that accused No. 4 came to his house at 9 p.m. that evening accompanied by a little /.....

by a little boy whom he did not know. On the way to Mount Partridge they picked up accused No. 3 and another person whom he later learned was Kubheka. He was shown the place where he was to pick up some passengers the next morning, and then he drove accused No. 3 and Kubheka to Sobantu. He returned to the house at Mount Partridge the next morning and, after some haggling, agreed with accused No. 4 to convey "the boys" to a place near Pongola for R80. Accused No. 4 gave him the R80 plus another R20 to pass on to "the boys". Then two young men and a boy got into the car and Mdubane (10) drove off with them. They had no luggage. He stopped at the Maqinase Store and thereafter at a garage in Pietermaritzburg, and when he was at the garage he discovered that one of the passengers had disappeared. He took the other two to Pongola and left them there. Mdubane confirmed that Kubheka paid him R5 for the trip from Mount Partridge to Sobantu, but denied receiving R40 from Kubheka for conveying the young men to Pongola. This is yet another instance of Kubheka being contradicted, and confirms his unreliability. Mdubane's evidence that he only picked up accused No. 3 and (20) Kubheka on the way to Mount Partridge is also inconsistent with the tale that Kubheka told. Counsel for the accused did not cross-examine Mdubane because, he explained, his evidence "in the main" was correct.

There is further evidence to show that the batch of six "boys" that Mdubane left near the Mahamba border post /.....

border post included Mandla Sikosana, Edgar Zondi and Ntombela's son. Vera Sikosana testified that her son Mandla, aged 30, left home on 18th November 1975 and that she had neither seen nor heard of him since then. She said that he was a plumber by trade, and a friend of Edgar Zondi. The father of Edgar Zondi testified that he disappeared on or about the 19th November 1975, though he was not certain of the date. Edgar was born on 30th June 1949 and was a bricklayer. Jane Ngcobo testified that she had an illegitimate son called Raynold Madodo Hadebe whose father was John (10) Ntombela, that her son was born in August 1952 and had passed Std. V at school. She said that he left home on a certain Sunday in the company of Mtu Khumalo and Victor Khumalo and had not been seen since that day. Although she stated in her evidence-in-chief that the day on which he left was the 15th November it became clear in the course of cross-examination that she had no personal knowledge of the date.

Philemon Mokoena was one of the five boys whom Mdubane took to the border and then brought back to Pietermaritzburg on the first of his trips for accused (20) No. 1. The sister of accused No. 3 ran a shebeen at their house and Mokoena was one of her customers. He did not have the necessary permit or residence qualification to work in the Pietermaritzburg area and was about to be "deported", and it is common cause that he discussed these problems with accused No. 3. In his evidence-in-chief he said that the discussion took place in September or October 1975 at the house /.....

at the house of accused No. 3, and that the latter told him inter alia that he could get work in Swaziland or, for that matter, could undergo training abroad as a soldier and then return to fight in this country. He said that he would be glad to do so, and accused No. 3 undertook to let him know when the people would be leaving. Under cross-examination, however, he agreed with the suggestion that the discussion had in fact taken place at the Sobantu Beer hall, that he had expressed a wish to go to Swaziland to work for one Panana Ngubane, and that accused No. 3 had offered to try to get him a lift to Swaziland for that purpose. In any event, accused No. 3 got in touch with him about the matter on or about the 13th or 14th November, and he went with accused No. 3 and four other boys to a place at Edendale. The other boys were Mandla Sikosana, Edgar Zondi, Mtu Khumalo and "Madi" Ntombela. They spent the night drinking at this place in Edendale. At daybreak, by which stage Mokoena was drunk, accused No. 3 took them to a garage where they boarded Mdubane's car and set off for Swaziland. According to Mokoena this was a Wednesday. (The 12th November 1975 was a Wednesday). He confirmed the evidence of Mdubane to the effect that they travelled as far as the border and eventually returned to Pietermaritzburg the same evening, but he claimed that they had spent two hours waiting at the border post. He said that after returning they went and told accused No. 3 that they had not found "those people", to which he replied "It doesn't matter - we'll go on

another day /.....

another day if there is a way out for us to go". That was the last occasion on which Mokoena saw accused No. 3, and he never did get to Swaziland. On the following Monday he was arrested for a pass offence and he had been in custody ever since. He thought that the Monday was the 18th November, but in fact that date fell on a Tuesday.

In addition to being an accomplice Mokoena had been detained in solitary confinement since the beginning of December 1975, and he was a thoroughly unreliable witness. He admitted under cross-examination that while in detention at the Howick police cells he told accused No. 5 that an Indian policeman had assaulted him, that he had told the police that his reason for going to Swaziland was to work for Panana Ngubane, but that they had insisted upon his saying that accused No. 3 had recruited him for military training. He later contradicted his statement that the police had insisted that he say that accused No. 3 had recruited him for military training, and it is significant that when accused No. 5 himself gave evidence he failed to mention that Mokoena had made such a statement to him at Howick. As to the alleged assault, Mokoena said that he was intoxicated at the time of his arrest, that an Indian policeman said that he was "naughty" and punched him in the chest about three times. He could not say why this unidentified policeman punched him, and if any such assault did take place it seems clear that it was quite unconnected with his interrogation. Mokoena :

complained bitterly /.....

complained bitterly about being kept in detention and claimed that it had affected him very badly, both physically and mentally.

Mokoena's evidence regarding the reason for his going to Swaziland is contradictory and quite unacceptable, and cannot justify a finding that accused No. 3 recruited or attempted to recruit him to undergo military training as alleged in count 2. However, the rest of his evidence was corroborated in material respects by that of Mdubane and was hardly challenged by the defence. (10 Unsatisfactory though it was, his evidence affords additional confirmation of the fact that accused No. 3 participated in sending young men to Swaziland, whatever the object of that exercise was. Mr. Muller submitted that the evidence that on this first trip Mdubane waited at the border post and spoke openly to the police there is inconsistent with the notion that his passengers were going to Swaziland for military training. We do not agree. Whatever the object of the exercise the boys intended to enter Swaziland illegally, without passports or travel documents, but there is no suggestion that they tried to enter via the border post. They had arrived at the border post while searching for Mkhize or his kraal, and it was only Mdubane who got out and spoke to the police. He did not know why the boys were going to Swaziland, and he did not say what he spoke to the police about.

It will be recalled that according to Mdubane /.....

Mdubane the group of six that he left near Mahamba on the second trip included Mandla Sikosana, Edgar Zondi, Ntombela's son and one other member of the first group of five. On Mokoena's evidence this other boy must have been Mtu Khumalo. This accords with Jane Ngcobo's evidence that Ntombela's son left with Mtu and Victor Khumalo, and is further supported by the evidence of Mtu's guardian, Emily Zimu. She said that Mtu lived with her at Sobantu, that he disappeared during November 1975 and that she has not seen or heard of him since. He was about 27 years old when he disappeared (10 and was unemployed at that time. He had passed Std. VI at school. It seems clear that the person whom Jane Ngcobo called Victor Khumalo is in fact Vikelasizwe Colin Khumalo. His mother, Lydia Khumalo testified that he was born on 24th November 1952, passed Std. VI at school, and was called Vicky by his friends, amongst whom were Mandla Sikosana, Mtu Khumalo, Edgar Zondi and George Mkhize. She saw him for the last time on 17th November, 1975.

The evidence of Michael Bhi Gumede is also relevant to the question whether Mtu and Vicky Khumalo (20 went to Swaziland. It is therefore convenient to discuss his evidence at this stage, even though it was mainly concerned with the allegations in count 2. He lived near accused No. 3 at Sobantu and frequently visited him. He said that on one such occasion towards the end of 1975 accused No. 3 showed him two reference books which he recognised as being those of Mtu and Vicky Khumalo, both of whom he knew. /.....

knew. When he remarked on this accused No. 3 said that they would not need the reference books any longer because he had sent them away. He then proceeded to tear up and burn the reference books in Gumede's presence. Gumede went on to say that on another occasion, when he was chatting with Sipho Kubheka and accused No. 3 on the verandah of the latter's house, accused No. 3 asked him whether he would like to go for military training. Although accused No. 3 did not say where, for how long or for what purpose he should undergo the military training, Gumede allegedly agreed then and there that he would do so. A few days later Gumede went to the house of accused No. 3 with George Mkhize and two other persons. They were drinking in the house when Kubheka arrived. Gumede said that he was called out to the verandah at this stage and had a discussion there with accused No. 3, Kubheka and George Mkhize. Accused No. 3 said that if they were ready they could go there and then (for training). Gumede had had second thoughts about it, and told accused No. 3 that he no longer wanted to go because he was expecting a bonus and intended to get married. That was the end of the matter so far as he was concerned. He went back into the house and was joined later by accused No. 3 and George Mkhize. In due course he took his leave of them and went home.

Under cross-examination Gumede made allegations to the effect that in the course of being interrogated at the Loop Street police station on the day of his arrest /.....

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arrest he was tortured by an unidentified white policeman. He admitted that while they were detained in the Howick police cells during December 1975 he told accused No. 5 that in order to make him agree with what they were saying the police filled his shoes with stones and gravel and tied a brick to his testicles with string. He eventually made the required statement and was released from detention after three weeks, but he was warned that he would be re-arrested if he departed from the statement. Questioned by the Court, he claimed that it was only one white policeman who assaulted him, both in the manner described above and by slapping and punching him. Thus it was that he was forced to tell the police that accused No. 3 had tried to recruit him for military training, which was the truth. At the request of the Court the Deputy Attorney-General undertook to have Gumede's allegations of assault investigated, and in due course he called Lieut. Smit of the C.I.D. to testify regarding the investigation. Lieut. Smit said that when he approached Gumede for a statement the latter told him that he was not interested in laying a charge against anyone. He ascertained that Gumede had been arrested and interrogated by W/O Ferguson, Sgt. Bezuidenhout and Const. Sithole. He administered the customary warning to each of them and they declined to make any statement beyond admitting that they arrested and interrogated Gumede and denying that they assaulted him.

Under the circumstances the Court is not in a position /.....

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