

IN THE SUPREME COURT OF SOUTH AFRICA.
(SPECIAL CRIMINAL COURT - PRETORIA.)

In the matter of the application of

FARRID ADAMS and 90 OTHERS, Applicants

-and-

THE CROWN, Respondent.

R E A S O N S F O R J U D G M E N T .

When the indictment was served on the accused in this matter, a request for further particulars was made by the defence to which the Crown replied. Thereafter the defence filed a Notice of Exception and an Application to Quash the indictment. When the case was called, the Crown asked for an amendment of the indictment and of the Further Particulars already supplied. This was granted. The Exception and the Application to Quash then proceeded against the amended indictment. In the course of the argument the Crown asked for a further amendment of the particulars supplied and the defence for an alternative order on the Crown directing further particulars to be supplied in the event of the exception and the application to quash not being upheld.

On the 27th of August the Court made an order on the exception and the applications before it, and indicated/1106.

and indicated that its reasons would be filed in due course. The reasons are set out herein.

The terms of the order made on the 27th of August are as follows:-

- "C. 1. On the application to quash the Main Charge in the indictment, the Court makes no order.
11. The exception to the Main Charge is dismissed.
111. The application by the Crown to amend the indictment is granted.
- D. A. The first alternative charge is quashed.
- B. (1) On the application to quash the second alternative charge, no order is made. "

The Court also ordered the Crown to supply the following particulars to the accused in respect of the Main Charge.

- "B. 1. Each accused is to be informed in respect of which alleged overt acts committed by a co-accused he is not to be held liable.
11. Inasmuch as the Crown alleges that the objects of the alleged concert and common purpose referred to in Parts C, D and E of the Main Charge are the same...../1107.

are the same as the objects of the alleged conspiracy in Part B of the Main Charge, ^{and} inasmuch as the Crown seeks to rely on the same facts to prove the alleged conspiracy and concert and common purpose, the Crown is directed to supply the accused with particulars informing them what it avers the difference to be between the alleged conspiracy and the concert and common purpose, and in what manner such difference affects the liability of each accused;

111. The Crown is ordered to supply particulars to each accused so as to indicate from which document, from which speech and from which resolution (or from which portions thereof, if the Crown relies on portions only) referred to in Schedule 1 and Schedule 11, as amended, and in paragraphs eleven, twelve(c) and fifteen of the Summary of Facts contained in the Further Particulars the existence of the conspiracy is sought to be inferred and the adherence to the conspiracy of each accused is sought to be inferred.
- 1V. The Crown is ordered to supply the

particulars requested in the following paragraphs of the Request for Further Particulars dated the 4th July, 1958:

Paragraphs: 13(a), 14, 15(a) 16(a), (b), (c), 17, 18(a), 21(a), 22, 23(a), 24(a), (b), (c), 25, 26(a)."

In respect of the second alternative charge, the Crown was ordered to supply the following particulars:

"B. (2)(a) Indicating whether the allegation "all acts taken together" appearing in paragraph 5(b) and 6 of its further particulars to this charge refer to the totality of acts of an individual accused or the totality of all the acts of all the accused;

(b) If the words aforementioned refer to the totality of acts of each individual accused, the Crown is directed to inform each accused in respect of which act performed by a co-accused, he is not to be held liable.

(c) The Crown is directed to give full information of that doctrine or those doctrines or the relevant portions thereof enumerated in section 1(1) (ii) of Act 44 of 1950 on which it relies...../1109.

it relies for the purposes of securing a conviction against each of the accused.

- (d) The Crown is directed to inform each accused in what manner the performance of his act was calculated to further the achievement of the doctrine or doctrines relied upon."

In regard to the Main Charge and the second alternative charge, the Court made the following remarks of a general nature:-

- "(1) Should the Crown decide not to furnish the particulars as ordered or not to amend the Main Charge or second alternative charge to avoid any embarrassment, the defence is, of course, entitled to renew the exception and the application to quash the indictment.
- (2) It is not presently within the Court's powers to assess whether or not prejudice may be suffered by any of the accused solely by virtue of a joint trial. If, during the course of the trial, it should transpire that such would be the case, the possibility of a separation of trials is, of course, not excluded."

The Main Charge of the indictment, one of High Treason...../1110.

of High Treason, is divided into Parts A, B, C, D, E and F.

In Part A the allegation is that the accused are guilty of High Treason in that they, in their individual capacities or as members of associations of persons mentioned in Schedule A, during the period 1st of October, 1952 to 13th of December, 1956, with hostile intent acting in concert and with common purpose, inter alia, disturbed the independence or the security of the state, each accused committing certain hostile and overt acts against the State, 'namely the hostile and overt acts laid against him or her in parts B, C, D and E of this indictment'.

During the period alleged in Part A, the accused are alleged in Part B to have conspired with each other and with a number of persons set out in Schedule B, inter alia, to subvert the State and/or make active preparation for a violent revolution against the State. These and other related objects of the alleged conspiracy are set out in paragraphs 1(a) to (f) of Part B.

In Paragraphs 2 and 3 of Part B it is alleged that it was part of the conspiracy that the objects listed in Paragraph 1 were to be attained by the accused in their individual capacities and/or as leaders or members or adherents of the associations or corporate bodies set forth in Schedule A, and were to be attained through the instrumentality and activity of the said associations.

In Paragraph 4 it is alleged that it was part...../1111.

was part of the conspiracy that the objects of the conspiracy were to be attained, inter alia, by the organizing of a gathering of persons known as the Congress of People for the adoption of a Freedom Charter; by taking active steps for the establishment, ' as an immediate object, of a Communist State in the form of a so-called Peoples' Democracy or Peoples' Republic or some related form of State'; by the organizing of a special militant corps of Freedom Volunteers; by instigating each other and others to make use of extra-parliamentary, unconstitutional and illegal methods, including the use of violence; by organizing various campaigns against existing laws, more particularly the Native Resettlement Act 19 of 1954, the Bantu Education Act 47 of 1953 and Act No. 67 of 1952; by promoting feelings of discontent or unrest amongst or hostility between the various races of the Union; by advocating the adoption of a Marxist-Leninist doctrine in the Union and the necessity of establishing a Communist state; by advocating the establishment by illegal and unconstitutional means of a state intended to replace the present state and by inciting the population of the Union to take part in and support by mass action the activities set out above.

The means summarized above are set out in paragraph 4(i) to (viii) of Part B. Not only are these sub-sections (i) to (viii) successively joined by the use of the words 'and/or', but this so-called 'bastard conjunction' appears also in some of these sub-sections. In fact, the whole indictment bristles with this type of conjunction.

Part C alleges...../1112.

Part C alleges that 'in furtherance of the said conspiracy or alternatively, acting in concert and with common purpose' the accused 'in order to achieve the aims, purposes and objects enumerated in Part B', attended and addressed certain meetings and made or associated themselves with speeches and resolutions calculated to incite the people to do substantially what is set out in paragraph 4(i) to (viii) of Part B. The alleged effects of the speeches and resolutions^{are} specifically set out in sub-paragraphs (a) to (c) of Part C. The contents of the speeches and resolutions are to be found in Schedule C to the indictment. Schedule C, a printed document of 178 pages, has five columns on each page. Column one sets out the date on which the speech was made or the resolution adopted. Column two sets forth the meeting at or the occasion on which the speech was made or the resolution adopted and, when known to the Crown, the association which convened the meeting; Column three sets forth the name of the speaker who made the speech or the fact that a resolution was adopted. Column four sets forth the particulars of the portion of the speech or resolution material to Part C and the particulars reflect either the actual words of the speaker or resolution or the gist and purport thereof. Column five sets forth the names of the accused who were present at the meeting or on^{the} occasion referred to in column two and the persons who associated themselves with the speeches made and the resolutions adopted.

In Part D of the Main Charge it is alleged that in pursuance and furtherance of the conspiracy or, alternatively, acting in concert and with common purpose, the accused wrote, published, distributed, possessed for distribution...../1113.

for distribution books, articles, pamphlets, letters, resolutions etc. calculated to induce the readers thereof to support in various ways the campaigns sponsored by various organizations for convening a Congress of People, to support the aims of the Freedom Charter adopted at the said Congress on the 25th and 26th days of June, 1955, and generally to do things referred to in paragraph 4 of Part B. These matters are specifically set out in subparagraphs (1) to (5) of Part D. In addition, Part D refers to Schedule D, a printed document of 204 pages. Each page has four columns. Column one sets forth the name of the accused connected with the document and opposite each name, in the other columns, are the date and description of the document, the nature of the overt act in relation to the document, e.g. 'caused to be printed' or 'did distribute' etc., and the portion of the document material to Part D.

In Part E of the Main Charge certain of accused are alleged to have attended a gathering known as the Congress of the People on the 25th and 26th June, 1955, for the adoption of a Freedom Charter and they are alleged on that occasion to have pledged themselves to campaign for the achievement in their lifetime of the aims set forth in the Freedom Charter, a copy of which is attached to the indictment, marked Schedule E. The accused who are alleged to have attended this Congress are accused numbers 1, 2, 4, 5, 6, 7, 8, 9, 13, 15, 16, 17, 18, 21, 22, 24, 26, 27, 28, 30, 31, 33, 34, 35, 36, 37, 39, 41, 42, 43, 44, 45, 46, 47, 48, 53, 54, 55, 56, 62, 63, 64, 69, 79, 80, 81, 82, 87, 88 and 92.

In Part F it is alleged that further to the common law liability to which the accused may be subject, accused numbers 52, 57, 58 and 59 are guilty of the crime of High Treason in terms of section 381(5) of Act No. 56 of 1955 in that certain directors of the corporate bodies mentioned in Schedule F committed High Treason by printing or publishing certain newspapers in furtherance of the conspiracy set out in Part B of the indictment.

In order to appreciate the argument advanced by the defence against the Main Charge, it is necessary briefly to refer to some of the answers given by the Crown in reply to the request for Further Particulars by the Defence.

With reference to the allegation in Part A of the charge that the accused acted as members of associations and corporate bodies, the Crown supplied a document, Schedule 1. The pages of this document contains four columns - the first contains the name of the accused. In column two and opposite the name of each accused the Crown sets out the names of the organizations with which each accused was associated and the period of such association. The defence also wanted to know, with reference to the allegation that the accused were acting in concert, if the Crown intended to allege that in committing the alleged overt acts each of the accused was acting as agent of all the other accused, and with reference to 'common purpose' if it was intended to allege that each accused was acting in ^{performance} performance of an agreement (express or implied) with each of...../1115.

plied) with each of the other accused. To this the Crown answered that it did not intend to allege that each accused, in committing the overt acts, was acting as agent of all the other accused, neither did it intend to allege that each of the accused was acting in pursuance of an agreement (express or implied) with each of the other accused.

With reference to Part B of the Main Charge, the defence asked for full particulars concerning the alleged conspiracy, alternatively, the facts from which the existence of the conspiracy was sought to be inferred and the facts from which the adherence to the conspiracy of each of the accused and each of the persons mentioned in Schedule B was sought to be inferred.

In reply the Crown stated that it alleged that throughout the period set forth in the indictment, there was a conspiracy afoot which embraced the achievement of the objects set out in paragraph 1(a) to (f) of Part B. The exact date on which each accused and each co-conspirator entered the conspiracy, was to the Prosecutor unknown, but each of the accused and each of the co-conspirators mentioned in Schedule B were in the conspiracy at a date not later than the date set opposite each of their names in column (d) of Schedule 1 and each remained in the conspiracy up to the 13th December, 1956. In terms of this Schedule the accused were 'in the conspiracy' at various dates, ranging from October, 1952 to June 1955.

The Crown also replied as follows:

"2 (d)(i) The Crown intends to prove the existence of the conspiracy by way of inference from all the facts set out in the record of the preparatory examination, including the documents handed in as exhibits at the...../1116.

the Preparatory Examination, as well as from the facts contained in the statement of certain BOCHENSKI, copies whereof have been served on the accused. The Crown will allege that it is implicit in the said evidence and documents that the accused, the co-conspirators mentioned in Schedule B and the other persons to the Prosecutor unknown, conspired with each other as alleged in Part B of the Main Charge.

(ii) It is wholly impracticable for the Crown to set forth in detail, particulars of each and every fact from which the existence of the conspiracy and the participation therein of the accused and the co-conspirators is sought to be inferred or to give more than the following summary of facts upon which the Crown relies as establishing the existence of the conspiracy as averred in the indictment, namely:-

Summary of Facts.

(1).....

In this Summary of Facts the Crown gave

organizations, including that of the National Action Committee and the National Volunteer Board. It sets out the alleged policy of organization and how this policy was sought to be implemented. In Paragraphs eleven and twelve (c) of the Summary of Facts it referred to documents in possession of certain of the organizations mentioned.

Paragraphs 13, 14 and 15 of the Summary read as follows:

- "13 (a) The Crown repeats all the facts averred against the accused and co-conspirators in the Main Charge and Schedules thereto.
- (b) Each of the accused and co-conspirators was a member of such associations of persons and/or corporate bodies as are set out against each of their names in column (b), read with column (a) of Schedule 1 hereto, for the period set out in the said column (b). At all material times each of the accused and co-conspirators had full knowledge^{of} and supported the policies and activities of the associations aforesaid.
- (c) Each of the accused and co-conspirators held the positions and/or participated in the activities set out against...../1118.

out against the names of each of the said accused or co-conspirators in column (c) read with column (a) of Schedule 1 hereto, for the period set out in the said column (c).

(d) The accused and co-conspirators were in possession of the documents set out against the names of each of the accused or co-conspirators in column (e) read with column (a) of the said Schedule 1.

14. The Crown will also rely on the facts set out in Schedule 11 hereto, and on the speeches made and resolutions adopted at each of the said meetings, particulars of which are set out in the Preparatory Examination record.

15. The possession ^{by}/delegates (whose names are to the Prosecutor unknown) to the Congress of the People at Kliptown on the 25th and 26th June, 1955, of the following documents, referred to by the numbers allocated to the said documents at the Preparatory Examination, namely:

H.1 - H. 60."

In response to questions with reference to paragraph 2...../1119.

to paragraph 2 of Part B concerning the alleged membership of the accused of alleged organizations, the Crown gave the following answer:

"3. AD PART B. PARAGRAPH 2

- (a)(i) The accused were leaders and mem-
~~and~~ bers of the associations of persons
or corporate bodies;
- (ii) set out against their names in column
(b) read with column (a) of Schedule
1 hereto.
- (iii) For the purpose of the conspiracy,
~~and~~ the accused were all supporters and
adheren~~ce~~^{ts} of
- (iv) the associations of persons or cor-
porate bodies set out in Schedule A
to the indictment.
- (b) The particulars are set out in
column (a) read with column(b) of
Schedule 1 hereto.
- (c) Each accused took an active and
leading part in the activities of
the associations of persons or cor-
porate bodies of which he or she
was a member, as will appear more
fully from paragraphs 2(c) and (d)
above. Each accused also supported
for the purposcs...../1120.

for the purposes of the conspiracy the activities of such other associations of persons of which he or she was not a member, inter alia, by attending and/or speaking at meetings convened by such other associations of persons or corporate bodies, and/or attending and/or speaking at and/or by sending fraternal messages to conferences convened by such associations of persons or corporate bodies. "

In reply to questions concerning the 'common purpose' referred to in Part D of the Main Charge, the Crown stated as follows:

"12. AD PART C.

(c) (i) The Crown does not intend to allege that in committing the said overt acts each of the accused was acting as agent of all the other accused.

(ii) The accused had a common object, namely to achieve and bring into effect and implement the aims, purposes and objects enumerated in Part B of the indictment by concerted action, namely as set out in Part C of the indictment.

(d) (i) The Crown does not allege that on each of the...../1121.

on each of the occasions specified in Schedule C the respective accused persons mentioned in columns three and five thereof were acting in pursuance of an agreement with each of the other accused. The Crown does allege, however, that on each occasion specified in Schedule C the respective accused persons mentioned in columns three and five thereof were acting in concert and with common purpose with such of the other accused persons as had up to and including the date of the said occasion formed the said common purpose. Each of the accused had formed the said common purpose by a date not later than the date set forth against the name of such accused in column (d) read with column (a) of Schedule No. 1 hereto.

- (ii) The facts on which this allegation is based are set out in paragraph 2(d) hereof. "

The first point argued by the defence in its attack against the general framework of this indictment, was that the indictment disclosed an apparent and serious contradiction. It was suggested that the Crown in Parts C, D and E...../1122.

Parts C, D and E of the Main Charge (Part A need not be referred to for purposes of this argument) indicted the accused on the basis of concert and common purpose, (as an alternative to the liability based on conspiracy), that the concept of concert and common purpose implied an agreement (express or implied) and that, in the further particulars, the Crown expressly disavowed any agreement although it still relied on a conspiracy.

^{We}
I do not think that the answers given by the Crown give rise to any real embarrassment. What presently appears to us as a possible cause of embarrassment is the introduction by the Crown of the allegation 'concert and common purpose' as an alternative to the alleged conspiracy. The further particulars clearly show that the Crown intends to prove both the conspiracy and the common purpose by inference from the same facts. ~~For these reasons we have ordered the Crown to supply particulars to the defence informing them what the Crown avers the difference to be and in what manner such difference affects the liability of each accused.~~

As far as the expression 'acting in concert and with common purpose' is concerned, and however much one may criticise the use of the word "mandate" in connection therewith, the law is clear that persons may be held liable for the acts of each other if they act in pursuance of the same purpose and have agreed, or are deemed to have agreed, to share that purpose. Although persons may pursue the same purpose, it is not a common purpose until there has been...../1123.

until there has been an agreement. In R. vs Kahn,
1955(3), S.A.P.R. at p. 184 CENLIVRES C.J. said:

"The words 'common purpose' are wellknown in the criminal law and connote that there is a purpose shared by two or more persons who act in concert to do something. There may be an express agreement between such persons to achieve some object or there may be an ^{agreement} implied to the same end."

From a perusal of the questions asked by the defence and the answers given, it is apparent that the Crown did not disavow an agreement as such. One of the questions referred to above reads:

"With reference to the allegation that the accused were 'acting with common purpose', is it intended to allege that in committing the alleged overt acts, each of the accused was acting in pursuance of an agreement (express or implied) with each of the other accused?"

The answer was:

"The Crown does not intend to allege that in committing the said overt acts each of the accused was acting in pursuance...../1124.

in pursuance of an agreement
(express or implied) with each
of the other accused."

This answer, read with the answer given in paragraph 12(d)
(i)(supra), does not purport to deny an agreement as such.
It intended to state that each accused was acting in concert
and with common purpose with ~~some~~^{such} of the other accused as
had up to the date specified in Schedule C in respect of
each accused formed the said common purpose.

As the ~~further~~ particulars suggested
that the conspiracy alleged in Part B of the Main Charge
is an implied agreement and that the alleged 'concert and
common purpose' in Parts C, D and E of the Main Charge
is also an implied agreement, both being sought to be in-
ferred from the same facts, the Crown was ordered to inform
the accused what it avers the difference to be between the
conspiracy and the concert and common purpose and in what
manner such difference affects the liability of each
accused.

The next ground of attack against the
main charge was that it lacked such particularity in regard
to the existence of the conspiracy and the adherence of
each accused to the conspiracy, that it was not only em-
barrassing but disclosed no offence. It was argued that
no fact was alleged which showed that the accused had con-
tracted with one another directly or indirectly and that,
if anything, the particulars alleged that the accused and
other persons...../1125.

other persons were instruments of the organizations whereas the indictment suggested the reverse.

We do not think that the indictment and the further particulars fail to inform the accused of the case which the Crown seeks to prove. In its answers to the Request for Further Particulars the Crown indicated that it intended to prove the existence of the conspiracy from all the facts set out in the record of the Preparatory Examination including the documents which were handed in at the Preparatory Examination. This bald reference to the record of the Preparatory Examination was the object of an attack with which we shall deal presently.

In addition the Crown gave the accused a summary of the facts which it would seek to prove. As we read this summary of facts, the Crown informed, ^{each of} the accused that he or she was, over a stated period, actively associated as an office-bearer or otherwise with certain named organizations, that he or she attended meetings at which speeches were held or resolutions taken, that the organizations sought to co-ordinate their activities, that part of the policies of the organizations was to achieve what is set out in Part B(i) of the main charge by the means set out in Part B(iv) thereof, that many of the accused and some of the organizations possessed documents on which the Crown would rely and that the accused and the co-conspirators had full knowledge and supported the policies and activities of the organizations. In Schedules C and D the Crown gave each accused a reference to the relevant speeches and documents affecting him or her.

On these facts...../1126.

On these facts, if proved, the accused might be found to have acted in pursuance of the same purpose and be deemed to have agreed to share that purpose.

We have referred to the fact that the defence objected to the general reference by the Crown in its summary of facts to the record of the Preparatory Examination. In the course of the argument the Crown asked for the amendment of the further particulars by deleting sub-paragraphs 2(d)(i) and 2(d)(ii) and substituting therefore the following new paragraph 2(d)(i):-

"The Crown intends to prove the existence of the conspiracy and the participation therein of the accused and co-conspirators by way of inference from the facts set out in the summary of facts in sub-paragraphs (1) to (15) hereunder, which said facts are more fully set out in the Preparatory Examination record, and in the statements of certain BOCHLENSKI, copies whereof have been served on the accused."

In our opinion the criticism by the defence of the Crown's wide reference to the record of the Preparatory Examination was justified.

In view of the large number of accused and the size...../1127.

and the size of the record (41 volumes of about 200 pages each) this reference, not being limited in any way to the summary of facts, was wholly inadequate.

The proposed amendment sought to narrow the scope of the reference and the application to amend the particulars in this respect was granted.

Although the Crown gave the accused a summary of facts, it stated in the summary (paragraph 14) that it would also rely on the facts set out in Schedule 11 and on the speeches made and resolutions adopted at each of the said meetings, particulars of which are set out in the preparatory record. Schedule 11 is a typed document of thirty-seven pages. It has five columns on each page. Column one contains dates. In the other columns, opposite each date, are the following: the place of the meeting; the organization sponsoring or convening the meeting; the number of accused who attended and/or spoke at the meeting and in column five the number allotted at the preparatory examination of each co-conspirator who was an accused in the Court below and who attended and/or spoke at the meeting. The number ~~number~~ of meetings which appear in Schedule 11 is more than five hundred and forty.

In the result each accused is expected in order reasonably to understand what the charge against him or her is (in respect of himself and his 90 co-accused) to study the evidence given at the preparatory examination concerning the speeches and resolutions at five hundred and forty meetings.

In addition...../1128.

In addition the Crown, in the Summary of Facts, alleged that the accused and co-conspirators mentioned in Schedule 1 were in possession of the documents set out in Schedule 1 and that a number of organizations and certain delegates to the Congress of People at Kliptown were in possession of documents, all of which were handed in at the Preparatory examination. The number of documents handed in is about nine thousand.

In the result, in addition to the Summary of Facts, each accused is referred to hundreds of speeches and thousands of documents to find out what the case against him is and against many of his co-accused for whose acts he is sought to be held liable. A reference to the speeches and documents disclose that many speeches and portions of speeches might be considered to be innocuous. These speeches and documents are relied upon by the Crown to establish a conspiracy and the adherence to the conspiracy by each accused.

It seems to us that the accused will not be in a position to prepare their case unless the Crown particularizes the speeches and documents upon which it relies. It is a wellknown principle in our law that an accused person is entitled to such particulars as he properly requires for the purpose of preparing his case before he is called upon to plead and enter upon his defence, and he is entitled to such particulars even if it entails a disclosure of Crown evidence. The judgment of MALAN J. in R. vs Heyne, 1958(1) S.A.L.R., 607, to which we referred is not in...../1129.

is not in conflict with this principle. The judgment of MALAN J. must be looked at in the light of the nature of the charge and the particulars supplied in that case. *We* need only draw attention to what the learned Judge said at page 610 of the report to indicate what the position in that case was. He says:-

"The attack which has been made on the want of particularity in the present case, constitutes a criticism rather of the practice of charging a person with a course of conduct over a long period than of any actual inadequacy in the particulars supplied. Not only have such particulars as may be within the knowledge of the prosecution been supplied to the accused in the present case, but in addition they have received the assurance that it is not proposed to travel beyond the four corners of the record of the preparatory examination. "

Although the Crown does not, in the case before us, intend to travel beyond the record of the preparatory examination (save in so far as the defence has been notified), the position here is quite different. Here, for instance, the Crown has information which it refuses to give...../1130.

fuses to give. Here, as far as the reference to speeches, resolutions and documents is concerned, the position is analogous to that in which the Crown refers an accused to a voluminous preparatory examination record to discover what the case against him is, cf. R. vs The City Silk Emporium (Pty.) Ltd., 1950(1) S.A.L.R. at p. 825.

We have come to the conclusion that in order fairly to inform each accused what the case against him is, the Crown should be ordered to indicate from which speech, document or resolution (or portions, if the Crown relies on portions only) referred to in Schedule 1 and Schedule 11 and in paragraphs eleven, twelve (c) and fifteen of the Summary of Facts the existence of the conspiracy and the adherence to the conspiracy of each accused is sought to be inferred.

The same difficulty arises as far as the speeches and documents are concerned which are mentioned in Schedules C and D. In Parts C and D of the main charge the Crown alleges that these speeches and documents incited or were calculated to incite the people attending the meetings and the readers of the documents to commit some twenty different classes of acts. Many of these classes of acts are prefaced by the conjunction 'and/or'. Some of the speeches and documents refer specifically to a particular class of act, and some might be said to refer to more than one class of act. Some do not refer to any class of act. Unless the Crown tells the accused what class of act it ascribes to each of the speeches and documents, it is difficult to see how the accused are in a position to know what case..../1131.

what case they have to meet on this part of the charge.

The Crown is in a position to supply this information to the accused and consequently it was ordered to reply to the following paragraphs of the Request for Further Particulars: Paragraphs: 13(a), 14,^{15(a)}16(a), (b), (c), 17, 18(a), 21(a), 22, 23(a), 24(a), (b), (c), 25 and 26(a).

As far as the general framework of the indictment is concerned, the defence drew attention to the fact that the accused were charged not only in their individual capacities, but also as members of organizations and corporate bodies. It was submitted that one does not commit 'high treason nomine officio' and that the allegation that the accused committed high treason in their capacities as members of organizations, was embarrassing.

We do not think that this allegation gives rise to any embarrassment. Although the Crown refers to a number of organizations, their policies, reciprocal support and their alliance, a feature which has been referred to in argument as the 'organizational conspiracy', the indictment and the further particulars indicate that each accused is sought to be held liable by reason of his own overt acts committed personally and in support, and with full knowledge of the policies and activities of the organizations.

The defence also complained about the extravagant use...../1132.

extravagant use of the conjunction 'and/or'. It was suggested that if all the 'and/or's' are added together, the number of combinations possible under paragraphs 1, 2, and 4 of Part B of the main charge is 498,015. While not wishing to condone this type of conjunction, I think it is necessary to state that the total number of combinations looks more menacing than it really is. For instance, in paragraph 1 of Part B it is alleged that the conspiracy had six aims. These six aims are joined by the conjunction 'and/or'. Each aim is, however, closely related to the other. They are:

- "(a) to overthrow the State, and/or
- (b) to make active preparation for a violent revolution against the State, and/or
- (c) to disturb, impair, or endanger the existence of the State; and/or
- (d) hinder, hamper or coerce the state, and/or
- (e) oppose and resist the authority of the state and in particular the power of the State to make and enforce laws, and/or
- (f) establishing a communist state or some other state in the place of the existing State. "

Similarly, in paragraph 2 of Part B
it is alleged...../1133.

it is alleged that it was part of the conspiracy that the aims were to be attained 'by the accused in their individual capacities and/or as leaders and/or as members and/or supporters and/or adherents of the said associations'. Obviously it was unnecessary for the Crown to have put in all these alternatives. They are, however, of such a similar nature in each case that an actual assessment of the number of combinations may be of interest to an actuary, but does not necessarily prove embarrassment to the accused.

This also becomes apparent when it is considered that the Crown in Schedule 1 has set out not only of which organizations each accused was allegedly a member, but also any office which each accused occupied in the organizations, e.g. secretary, treasurer, president etc., and the period of such office.

The use of the particle 'and/or' in Part C and Part D of the main charge, however, ~~did~~ increased the need for the further particulars ordered in respect of these parts. It is obvious that by joining the classes of acts set out in Part C and Part D by this conjunction, it became almost impossible for the accused to ascertain in respect of which speech the Crown would rely to establish a particular class of act.

We now turn to consider paragraphs 1(a)(ii) and 2 of the Notice of Exception and the Application to Quash. These paragraphs claim that the facts averred by the Crown do not support the allegation that all the accused conspired with each other and other persons referred to during...../1134.

to during the periods set out in the indictment, and that, in any event, for reasons set out in paragraph 2 of the Notice prejudice and embarrassment was occasioned to the accused in the conduct of their defence. In support hereof Mr. Maisles presented the following argument:-

The answer supplied by the Crown in paragraph 2(c)(i) at page two of the further particulars, namely, -"The Crown alleges that throughout the period set forth in the indictment, there was a conspiracy which embraced the achievement of the aims, purposes and objects set forth in sub-paragraphs (a) to (f) of paragraph one of Part B" - (which, for the sake of brevity, we shall refer to as 'aims to overthrow the State'), makes it clear that the Crown is relying on a single conspiracy, the terms of which remained constant and static throughout the whole period, and that the only variable element was confined to various persons joining the conspiracy at various times, which he said was to be inferred from paragraph 2(c)(ii) of the Crown's Further Particulars. But, so continued the argument, the concept of a single conspiracy, least of all one which remained constant in its terms for the period mentioned, was not supportable on the further information which the Crown furnished, and from which a conclusion that there must have been more than one conspiracy is to be drawn. By way of example Counsel referred to the allegation in paragraph 4(1) of Part B of the indictment to the effect that it was 'part of the conspiracy' that the aims, purposes and objects should be achieved by organizing the holding of a Congress of People to adopt the Freedom Charter. That congress...../1135.

That Congress in fact took place on the 25th and 26th of June, 1955. The accused, however, were not only charged with conspiring with each other, but also with persons mentioned in Schedule B to the indictment, a number of ~~whom~~ ^{whom} ~~which~~, according to the Further Particulars, were not in the conspiracy until well after the 25th or 26th of June, 1955 - which in the result meant, so Counsel urged, that the accused could not so have conspired with these persons, or alternatively, that a further conspiracy with these people was now introduced by the Crown. As a further example of the indictment, so it was said, alleged that the accused conspired to participate in campaigns against the enforcement of laws which could not then have been in existence and in respect of which the accused must have had 'considerable foresight' to have been able to anticipate the passing of such laws. In this connection counsel pointed to paragraph 4(iv) of Part B of the indictment which claimed that it was part of the conspiracy that the aims should be achieved by organizing campaigns against existing laws, and the administration and enforcement of such laws, inter alia, Acts No. 19 of 1954, 47 of 1953, 29 of 1955, 28 and 48 of 1956. The 'bold allegation' by the Crown that from 1952 there was a conspiracy afoot to resist these laws, counsel said, could not be supported unless there were various conspiracies at various times and with different terms. So too, counsel said, the indictment alleged 'as part of the conspiracy' the achievement of its aims through the instrumentality of associations or bodies which were non-existent in 1952.

In the/1136.

In the final result, it was said, if one conspiracy is claimed by the Crown, an apparent contradiction exists on the face of the charge and results in embarrassment to the defence; if, on the other hand, these were separate conspiracies varying from time to time in their terms and membership, these should, on the authority of the case of Rex vs West, [1948] K.B. 709, be charged separately as separate overt acts and, said counsel, possibly at separate trials.; and in any event, so/^{it}was argued, a conspiracy to contravene future laws or laws not yet in existence could not, on the authority of West's case (supra) be the subject matter of an indictable conspiracy, since such a conspiracy would at the most amount to but an expression of an intention to commit in future, should the occasion arise, any acts which might by then have become unlawful.

Mr. Trengove, for the Crown, not only agreed with the interpretation placed by Mr. Maisles on paragraph 2(c)(i) of the Further Particulars, but indeed emphasised the fact that the Crown alleged and sought to rely on a single conspiracy, the aims of which, -namely to 'overthrow the **S**tate', - remained constant throughout the period in question. As far as paragraphs 2, 3 and 4 of Part B of the indictment are concerned, he said that, although they open with the words 'it was part of the said conspiracy', they do nothing more than to proclaim or make known the means whereby the fixed and constant aims of the conspiracy, namely to 'overthrow the **S**tate', were to be achieved. Indeed, every one of these paragraphs, so he argued, stated as much...../1137.

argued, stated as much in express terms and clear language. The fact that new members joined the conspiracy after it came into being, did not change the conspiracy or make it a new one; nor did any different result follow because, with the passage of time, members found it more convenient to change these means, e.g. by campaigning against various laws as and when they came into being; the contravention of laws, he said, was not the aim or object of the conspiracy but merely the means to be used to achieve the object of the conspiracy averred by the Crown; these considerations applied with equal force, he said, to the other examples held out by Mr. Maisles, namely that the indictment sought to allege the achievement of the objects of the conspiracy through, as at 1952, non-existent bodies; if the members thought the time ripe or appropriate to employ such bodies as and when, or after, they came into existence, as the means for the achievement of their aims to overthrow the State no new conspiracy came into being; the original conspiracy still remained unchanged and unaltered.

In support of this contention Mr. Tregrove referred to a number of authorities, some of which should perhaps be mentioned. In Hardy's Case, New State Trials Vol. 1 p. 626, the jury was instructed as follows:-

"It is now proper for me to add what, however, is probably known to you all, that in treason there are no accessories; All who become partakers of the traitorous project, whether.../1138.

project, whether at an early
or a late stage of it, whether
as leaders or followers, whether
they engage for the whole plot or
only to execute a particular part
of it, are guilty of trea-
son, provided that the part^{which}/they
do undertake, relates strictly
and properly to the forwarding
and accomplishing the grand
object in view by the rest of the
conspirators."

Roscoe on Evidence at page 489 was next referred to for the
following passage:

"~~Where~~ the act itself, which is the
object of the conspiracy is illegal,
it is not necessary to state or
prove the means agreed on or pur-
sued to effect it."

Again in East, Pleas of the Crown, Vol. 1 at page 98, the
following is stated:-

"But suppose a conspiracy to levy
war and a plan of operation settled,
and those to whom the execution of
them is committed afterwards see
occasion to vary in certain parti-
culars from the original plan,
which is accordingly done unknown
to some of...../1139.

to some of the conspirators: yet I conceive that if the new measures were conducive to the same end, and that in substance the original conspiracy were pursued, they all remain responsible for each others acts. "

These passages support the contention that as long as the conspiracy remains constant in regard to its aims, and as long as the aims are unlawful, the particular or varying means adopted by any one of the conspirators are attributable to the others, provided that they were employed for the purposes of achieving the so-called 'grand object'; also, that the means whereby this object is to be achieved are of no real moment. Indeed, Roscoe(supra) points out that they need not be alleged or proved.

If therefore paragraphs 2, 3 and 4 of Part B are to be read in the sense that they merely make known 'the means' and no more, there is in our view of the matter no escape from the conclusion that the contention advanced by Mr. Maisels stands to be dismissed.

The matter is, however, not altogether free of difficulty. The wording in Part B of the indictment to the effect that 'during the period mentioned the accused conspired with each other' and with the persons mentioned in Schedule B, might give rise to an impression that there was constant and continuous conspiring going on amongst all the persons...../1140.

the persons mentioned. But, as Mr. Trengove pointed out, even if some joined the conspiracy at a later date than others during the period mentioned, it would not grammatically be incorrect to state that 'during the period' they conspired with each other, and that, whatever doubt there might have been on the true meaning of the wording of the indictment, the Further Particulars set the position at rest by showing that the conspiracy with its constant aims was entered into by the accused, and other persons mentioned, at varying specified dates.

The next difficulty is occasioned by the use of the opening phrase - occurring in each of paragraphs 2, 3 and 4 of Part B - viz:- 'it was part of the said conspiracy that the aims were to be achieved' in the manner stated. It leaves unanswered^{the}/question: when did it become part of the said conspiracy, as from the inception of the conspiratorial period or at a subsequent date? If the phrase is to be construed as meaning from the inception of the period, the anomalous and absurd results outlined by Mr. Maisie remain, for in such event the Crown would have to justify, as part of that conspiracy, a term under which the aims were to be achieved through the instrumentality of as yet unknown and non-existent bodies, and which was agreed to by persons who ex facie the Further Particulars only joined after 1955.

Any suggestion that the phrase should be thus construed must of necessity ignore a number of considerations, which support and lead us to a conclusion that the means to be adopted for the achievement of the object of the alleged...../1141.

of the alleged conspiracy, varied as time went on. The period which this indictment covers, commencing as at October, 1952, is four years, during the course of which various people are said to have entered the alleged conspiracy at different dates. Whilst the Crown has stated that the objects of the conspiracy remained static throughout that period, it makes no such claim with regard to the means to be employed for the achievement of those objects. Nor was the Crown specifically asked what the 'agreed' means were as at the date of entering of each accused to the conspiracy. In the result therefore, it seems to us that where the Crown alleges for example in Part B (iv) of the indictment that the aims of the conspiracy were to be achieved by organizing a campaign against 'existing' laws, and in this context refers to laws placed on the statute book in 1954 and even as late as 1956, it is implicit in the allegation that the campaign was launched when the ^{particular} law came into existence and not before. The same may be said with reference to Part B (iii) of the indictment in so far as it alleges that the aims were to be achieved through the instrumentality of associations which only came into existence after October, 1952. If we are correct in our conclusion, ~~then~~ the phrase cannot be construed to mean that these means were agreed upon in 1952, but, that when the particular law mentioned first came into existence, or, when the association ^{mentioned} saw the light of day, it was decided to campaign against that law or to make use of that association.

In any event, this much is clear: the Crown has averred a conspiracy, the aims of which remained static for the whole of the period; paragraphs 2, 3 and 4 of Part B, in...../1142.

of Part B, in express terms, make known and proclaim the means whereby the aims of that conspiracy were to be achieved. Even if the terms vary from time to time or are made to vary in consequence of a decision amongst some or all of the conspirators, the concept of a single conspiracy with its static aims is left untouched, and no fresh or additional conspiracy is thereby created. For this reason Mr. Maisles' contention that a single conspiracy set up by the Crown is not supportable by the further facts, is to be dismissed.

With reference to West's case (supra) the mere fact (apart from other considerations mentioned by Mr. Trengove) that the aims of the conspiracy in the instant case were 'to overthrow the state' and the opposition to as yet non-existent laws was not the aim, but the means for the achievement of the aims, renders the case distinguishable.

In the result we have accordingly come to the conclusion that the attack, based on these paragraphs of the Notice failed and we now pass on to consider the submissions and contentions advanced by Mr. Maisles in support of paragraph 8 of the Notice, which is presented in the following terms:-

"8. The Main Charge, read with the Further Particulars, does not comply with the provisions of section 315 of Act 56 of 1955 and is calculated to prejudice or embarrass the accused...../1143.

the accused in the conduct of their defence, in that it does not set forth the offence with which the accused are charged in such manner and with such particulars as are reasonably sufficient to inform the accused of the nature of the charge, and more particularly in that the Crown has failed to furnish a proper and sufficient reply to the Request for Further Particulars which was made on behalf of the accused."

The attack, based on the foregoing, concerned Parts B, C and D of the indictment. ^{In} Part B(4) the Crown sets out in sub-paragraphs (i - viii) means whereby the objects of the conspiracy were to be achieved. Parts C and D alleged that the accused, in their endeavour to achieve these objects, made speeches and wrote or produced documents; the Crown grouped or classified these speeches and documents in sub-paragraphs corresponding substantially in language and in terms, with the contents of sub-paragraphs (i - viii) of Paragraph B(4) of the indictment. In this manner, phrases such as 'extra-Parliamentary', 'unconstitutional' and many others, on the meaning of which the Crown refused to supply particulars, become common to Parts B, C and D of the indictment, with the result that the attack made by Mr. Maisels, based on the refusal of the Crown to supply these particulars covered the same ground...../1144.

these particulars, covered the same ground in respect of all three parts of the indictment. We now turn to consider this attack.

It was argued that the accused were entitled to, a clear statement of the terms of the agreement implicit in Part B(4) and of their acts in Schedule C and D, because if one co-conspirator went beyond the terms of the agreement, the others would not be liable. So, for example, if it was said that under the heading 'extra-parliamentary methods' a co-conspirator conceived it his duty to murder an official of the Native Re-Settlement Board, it could hardly be said that he would be acting within the terms of the conspiracy. For these reasons, so the defence continued, it desired clarification of the terms of the agreement and the acts which the accused are said to have performed, for which purpose it sought the following information:

Who was to take steps to establish a communist state; what and when were the steps to be taken; what is the distinction between a "Peoples' Democracy" and a "Peoples' Republic" -(terms which counsel said were not to be found in any dictionary); - what was meant by the term 'semi-military'; what was meant by the expression 'extra-parliamentary', 'unconstitutional and illegal methods'; what was meant by 'campaigns'; in what manner and by what means were feelings of discontent and unres. or hostility/^{respectively}to be promoted; what was meant by 'mass-action' and so forth. We do not think we need mention all the further questions...../1145.

Collection: 1956 Treason Trial
Collection number: AD1812

PUBLISHER:

Publisher:- Historical Papers, The Library, University of the Witwatersrand

Location:- Johannesburg

©2011

LEGAL NOTICES:

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

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

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