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IN THE SPECIAL CRIMINAL COURT
CONSTITUTED IN TERMS OF GOVERNMENT NOTICE
NO. 1701 OF 1958:

THE STATE

vs.

F. ADAMS AND OTHERS.

REASONS FOR JUDGMENT : RUMPFF J.A.

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REGINA v. F. ADAMS AND OTHERS.

REASONS FOR JUDGMENT.

RUMPFF, J:

The accused in this case were found not guilty of treason on the 29th of March 1961.

Certain essential findings of fact were given with the verdict and the Court indicated that written reasons for its decision would in due course be handed to the Registrar.

The reasons which now follow, are accompanied by a volume containing schedules consisting of copies of documents or portions of documents to which reference is made in these reasons. Schedule No. 1 is a copy of the Court's judgment and the findings of facts announced on the 29th March.

The evidence that has been led presents a picture of the activities of a number of organisations who made it their object to organise the masses of non-Europeans in South Africa to coerce the government to deviate from its policy of apartheid and to grant a general franchise irrespective of any educational qualifications.

The evidence indicates that it was the policy of these organisations to establish a new form of state possessing the qualities set out above and appearing in the so-called "Freedom Charter", that over a long period of time leaders, and also publications issued or supported by these organisations, had attacked the Government of the Union in intemperate terms, that the need for mass action against the Government had been stressed and that mass resistance against

the implementation of laws had been organised.

The evidence furthermore indicated that the international policy of the so-called Western Countries, particularly that of the United States of America and of Great Britain, had been condemned and that of Soviet Russia and China consistently lauded, that the non-European masses were being educated along leftist lines, that the necessity for "sacrifice" was stressed on almost every occasion, that the prospect of an inevitable "clash" between the suppressed masses and the State had on occasions been mentioned and that certain of the leaders on occasions had advocated violence.

As a result of these activities the State apparently contemplated taking action against the organisations and in November 1956 there were rumours among the members of the organisations that a large number of leaders were going to be arrested. To discuss this action by the State a special meeting of representatives of branches of the African National Congress on the Witwatersrand was held on the 22nd of November 1956.

At this meeting, which was private, a number of speeches were made and part of the proceedings was recorded on a tape recorder which the police had installed without the knowledge of those present at the meeting.

One of the speakers was the accused Resha who was at the time, inter alia, a member of the National Executive Committee of the African National Congress and the Volunteer-in-Chief of the Freedom Volunteers in the Transvaal.

His introduction by the chairman of the meeting and portions of the recorded speech which he made read as follows:

"CHAIRMAN: So the one I am going to call upon to speak now is the Volunteer-in-Chief. You know that some time ago we said we want 50,000 volunteers, I think today we still want those volunteers, we want those volunteers to be there. The one I am going to call upon to speak now is the Volunteer-in-Chief. He is just going to speak in his capacity as a volunteer-in-Chief. (I am very sory because I've got no means), if I had the means I would be taking you and showing you what actually we mean when we say a man is a volunteer. When I was at P.E. I saw exactly what is meant by a volunteer, by saying so I wouldn't like to waste his time. So Mr. Resha as the Chief Volunteer is going to address you, and he is the last speaker'.

RESHA: 'Afrika! (Audience - Mayibuye) Afrika! (Mayibuye) Afrika! (Mayibuye) Afrika! Mr. Chairman, sons and daughters of Africa, war has been declared, war has been declared, your leaders have spoken to you, but you must not be afraid. When war has been declared it is the duty of those to whom war has been declared against not to panic. War has been declared. The Government has decided not only to oppress the African people but to exterminate them from the surface of this earth, their mother country.

Your leaders have told you what the position is. Your leaders have told you that among other things the Government of this country, the Strijdom, Swart and Verwoerd clique, want to arrest yet another 200.

....

....

The time has come for Congress to take the offensive. We are tired of the bluff of Strijdom and others, time has come now for Congress to tell Strijdom and others what to do. Time has come for Chief Luthuli, for Moretsele and for Rev. Gawe to say who must be arrested, who is this wanted. It must be Congress which must give those wanted, not these fools to come and choose amongst us who is to be arrested. How can that be done? How can Chief Luthuli decide who must be arrested and when?

Only when Chief Luthuli has...50,000 volunteers, then 200 will be a simple matter, out of 50,000 volunteers he can give Swart 200 and that will cost Swart the whole of the Union of South Africa.

Friends, my task this afternoon or this evening is not to speak to you about what is happening in this country, but my task is to give you duties. War has been declared and we must be ready.

....

....

Volunteers are those people who do and die.

Volunteers are those people who - who when they are given leaflets to do they go out and distribute those leaflets. Volunteers are those people who don't ask questions. A Volunteer is a person who has pledged himself to carry out the work of the African National Congress whatever is involved without questioning. A volunteer is a person who had dedicated his entire life to the liberation of his African people during the whole time. A volunteer is a person who is disciplined. This is the key of the volunteer - discipline.

When you are disciplined and you are told by the organisation not to be violent, you must not be violent. If you are a true volunteer and you are called upon to be violent, you must be absolutely violent, you must murder! murder! That is all.

....

....

Your leaders have told you that the Government of this country, amongst other things, is planning to arrest 200 leaders and is attacking every day today leaders of the people. My directions to you is, if this Government in its madness does one day arrest 200 leaders then - then 200,000 Congress members must emerge from those who are remaining in this country.
You can only do that my friends if you are going to tell your brother.

The first thing that you are called upon to do today is, that every Congress branch from tonight must form or revise its volunteer corps.

The next thing you must do friends, it is the duty of every one of you who is a field worker, who is a volunteer never to go to bed unless you have reported to your volunteer chief in your area. When you go to your area in the evening, go to your volunteer-in-chief and say 'I have come, is there any work to do?' It is the duty of you all who are here tonight to tell the people what you have been told. I want to say to you once more that the main thing in a volunteer - the thing in a volunteer is discipline. The second thing in a volunteer is to be vigilant. You must be sensitive towards anything that is happening to the African people. The third qualification of a volunteer is madness, and you can never be a volunteer unless you are mad. Because if you are a gentleman, or if you are a lady, you can never get into the train and speak about Congress, you can never get into the bus and speak about Congress, only mad people and only volunteers can do that because they are mad, and we need mad people to get our freedom in this country.

....

....

Well, friends, Mr. Nkadimeng has said 'We are meeting here this evening at a most critical time in the history of South Africa

and, in explaining that, Mr. Duma Nokwe said: 'We are meeting at a time when it is in our hands to destroy or build our freedom'.

Mr. Masina showed us the way out when he said: 'Do unto your enemies as you would them do unto you'.

When you are a worker, the duty of an employer is to exploit you, and your duty to your enemy is to refuse the labour. If your leaders are going to be arrested it becomes the task of the volunteers, the task of those who are going to remain, what you are going to do with those who are remaining and those who have arrested our leaders. That becomes the task.

....

....

Friends, war has been declared, and I call upon you today to become volunteers, every one of you must go and sign in his branch, and I say to the leaders, that before you leave this meeting, please see the Provincial Secretary and tell him when you want me to get there. I will not be going there to discuss politics, I will be going there to find soldiers. I think we are called upon in this country to do direct the opposite of what is taking place in Egypt today. In Egypt it is the imperial forces that are moving into Egypt, but in South Africa we want the freedom forces to eradicate evil

in this, our mother country South Africa.".

A replay of the tape recording indicates that the injunction to Volunteers to murder if called upon to be violent was received with a roar of approval by those present.

It may be inferred therefrom that the audience fully endorsed the sentiments of Resha on that occasion. Shortly after the meeting referred to above a large number of persons were arrested in various parts of the Union. After a protracted preparatory examination the Attorney-General indicted ninety-two of those arrested on a charge of high treason, in the alternative with a contravention of Section 11(b), of the Suppression of Communism Act, No.44 of 1950.

The allegations in the indictment covered a multitude of facts and events over a period of four years, from October 1952 to December 1956, and, inter alia, alleged a conspiracy involving the ninety-two accused and one hundred and fifty-two named co-conspirators.

Before the accused pleaded to the indictment a series of attacks was launched against it by the defence with the eventual result that the Prosecution withdrew the indictment.

Thereafter the original accused were split up into three groups and a new indictment was framed in respect of each group, charging treason only.

One of these groups which consisted of thirty accused appeared before this Court. One of the accused in this group absconded and one died during the trial.

The indictments against the other two groups were set aside on technical grounds.

The present indictment, as amended, is found in Schedule No.2. With it must be read certain further particulars. The most important of these is a 'Summary of Facts', supplied by the prosecution, from which the existence of a conspiracy to overthrow the State by violence is to be inferred, (Schedule No.3) and a 'Policy Schedule' which lists the documents and reports of speeches on which the prosecution intended to rely for its allegation that violence was contemplated. This 'policy schedule' is not reproduced in the schedules.

In the indictment, read with the further particulars, the prosecution brings together a number of accused who belong to various organisations.

They are brought together on the basis that they entered into a conspiracy to commit treason in that they are said to have actively supported the policy of their organisations with the knowledge that this policy was one of overthrowing the State by violence.

The present indictment differs from the previous one mainly in that it specifically alleges that the accused intended to overthrow the State by violence. It covers the same period of four years and alleges, inter alia, a conspiracy by at least one hundred and fifty-nine persons including the accused.

The task which the prosecution set itself was to prove that over the period of the indictment the organisations that it had cited in the indictment had a policy to overthrow the State by violence, and that each of the accused and each of the co-conspirators actively supported that policy.

The particulars supplied by the prosecution indicated that the Court would be asked to return a finding that such was the policy mainly by way of inference from what had been published in thousands of documents consisting of bulletins, newspapers, minutes of meetings and other publications and from what had been said in hundreds of speeches, allegedly made by the accused and others, over a period of at least four years, from 1952 to 1956.

In addition, the Court would be asked, also by way of inference from all the facts, to find that the organisations had a policy of propagating communism, inherent in which is the theory of violent revolution, and that each of the accused with knowledge thereof supported that policy and intended thereby to achieve a violent overthrow of the State.

To anybody with a little knowledge of trial work the manner in which the indictment was framed and the contents of the further particulars foreshadowed a long and wearisome trial.

The true nature of the charge appears from Parts A and B of the indictment, which as a whole is reproduced in Schedule 2.

Parts A and B read as follows:

PART A.

"During the period 1st October 1952 to 13th December, 1956, while owing allegiance to Her Majesty Queen Elizabeth the Second and her Government in the Union of South Africa (hereinafter called 'the State') and at or near Johannesburg, Pretoria,

Bloemfontein, East London, Port Elizabeth, Durban, Cape Town, Uitenhage, Queestown, Cradock, Kimberley, Ermelo, Evaton and other places within the Union of South Africa, the accused, acting in concert and with common purpose and in breach and violation of such allegiance, wrongfully, unlawfully and with hostile intent against the State, namely, to subvert and overthrow the State or to disturb, impair or endanger the existance, or security of the State, did

(a) disturb, impair and endanger the existence or security of the State, or

(b) actively prepare to subvert and overthrow the State, or to disturb, impair and endanger the existence or security of the State each accused committing certain

hostile and overt acts against the State, namely the hostile and overt act laid against each of the accused in paragraph 1 of Part B of this indictment, the hostile and overt acts laid against him or her in Part C of the indictment, the hostile and overt act laid against him or her in Part D of this indictment and the hostile and overt act laid against him or her in Part E of this indictment.".

PART B.

"1. During the period and at the places aforesaid the accused did wrongfully, unlawfully, and with the hostile intent aforesaid conspire with each other, with the persons

mentioned in Schedule A hereto, and with other persons to the prosecutor unknown, to:-

(a) subvert and overthrow the State by violence, and to substitute therefore a Communist State or some other State;

(b) make active preparation for the achievement of the objects set out in sub-paragraph (a) hereof.

2. It was part of the said conspiracy that the objects set forth in paragraph 1 of Part B above, were to be achieved by the accused in their individual capacities and/or as members, or supporters of the associations and/or corporate bodies set forth in Schedule B hereto:

3. It was further part of the said conspiracy that the objects aforesaid were also to be achieved through the instrumentality and activities of the said associations and corporate bodies.

4. (a) It was part of the said conspiracy that whilst the objects set forth in paragraph 1 hereof remained constant throughout the whole period as aforesaid, the means for achieving such objects would be determined from time to time.

(b) During the subsistance of the said conspiracy and at various times during the said period and at places to the prosecutor unknown it was

agreed that the said objects should be achieved, inter alia, by the following means:

(i) sponsoring, organising, preparing for and convening a gathering of persons known as the Congress of the People for the adoption of a Freedom Charter containing, inter alia, the demands set forth in Part E hereafter, and thereafter propagating the achievement of the said demands of such Charter, adopted at Kliptown, in the district of Johannesburg, on the 25th - 26th June, 1955 which said demands the accused intended to achieve by overthrowing the State by violence;

(ii) recruiting, enlisting and preparing for acts of violence, a special corps of Freedom Volunteers, being a semi-military and disciplined body whose members were obliged to take an oath or solemn pledge to carry out the instructions, legal or illegal, of the leaders of the associations of persons and/or corporate bodies set forth in Schedule B hereto

and administering the said oath or solemn pledge to Freedom Volunteers;

(iii) advocating and propagating unconstitutional and illegal action, including the use of violence as means of achieving the aforesaid objects of the conspiracy;

(iv) organising and participating in various campaigns against existing laws and inciting to illegal and violent resistance against the administration and enforcement of such laws and more particularly -

(a) The Native Resettlement Act, No.19 of 1954;

(b) The Bantu Education Act, No.47 of 1953;

(c) Native (Abolition of Passes and Co-ordination of Documents) Act, No.67 of 1952;

(v) promoting feelings or discontent or unrest amongst and hatred or hostility between the various sections and races of the population of the Union of South Africa for the purpose of the ultimate violent overthrow of the State;

(vi) advocating, propagating or promoting the adoption and implementation in the Union of South Africa of the Marxist-Leninist doctrine in which doctrine there is inherent the establishing of a Communist State by violence;

(vii) preparing and conditioning the population of the Union of South Africa, and more particularly the non-European section thereof, for the overthrow of the State by violence, and inciting it to carry into effect the means hereinbefore set out.".

The "Summary of Facts", contained in Schedule 3 states that the existence of the conspiracy and the adherence thereto by the accused are to be inferred from the facts set out in the "Summary".

Paragraphs 5, 7 and 8(a) of the "Summary" contain the following facts:

"5. The existence prior to the 1st October 1952 and during the whole period of the indictment of the following associations or corporate bodies, including all their local and provincial branches within the Union, (hereinafter referred to as 'organisations') namely:

The African National Congress, with its

various sections.

The South African Indian Congress.

The Natal Indian Congress.

The Transvaal Indian Youth Congress.

The Natal Indian Youth Congress.

The South African Society for Peace and Friendship with the Soviet Union (formerly known as the Friends of the Soviet Union or F.O.S.U.)

The Transvaal Peace Council.".

7. The formation and existence of the following associations of persons or corporate bodies, including all their local and provincial branches and organisations within the Union, (hereinafter referred to as 'organisations') as from the dates set opposite their respective names, namely:

The South African Peace Council - 21.8.'53.

The South African Congress of Democrats. - 8.9.1953.

The South African Coloured Peoples Organisation. - Oct.195[illegible]

The South African Indian Congress. - Dec. 1953

The Federation of South African Women. - April 1954

The South African Congress of Trade Unions. - 6.3.1955.

8(a) It was part of the policy of each of the organisations mentioned in paragraph 5 and 7 above to achieve any one or more of the following objects, namely:

(i) to subvert and overthrow the State;

(ii) to make active preparation for a violent revolution against the State;

(iii) to disturb, impair or endanger the security or authority of the State;

(iv) to hinder and hamper the State in the enforcement of laws and the maintenance of peace and order;

(v) to oppose and resist the authority of the State, and in particular the power of the State to make and enforce laws;

(vi) to support the 'Liberation Movement' (hereinbefore described) and more particularly the 'National Liberatory Movement' in the Union of South Africa;

(vii) to establish a communist state or some other state in the place of the present state;

(viii) to form a so-called 'United Front' with the other organisations for the purpose of co-ordinating the activities of the said organisations and their members, and to enlist, as far as possible, the support of any other organisations or persons, in furtherance of their policies set out herein."

Before the evidence was heard and in the course of an argument on the indictment, the prosecution stated explicitly that the indictment did not charge each accused with the overt acts of the other accused

The Court subsequently indicated that it regarded itself bound by the attitude of the prosecution,notwithstanding the form of the indictment.

At this stage I wish to refer very briefly to some aspects of the law of treason.

The crime of High Treason (Perduellio, Hoogverraad) is committed by those who with a hostile intention disturb, impair or endanger the independence or safety of the State or actively prepare to do so. (South African Criminal Law and Procedure, Lansdown, Hoal and Lansdown, Sixth edition, Volume II, page 987).

An investigation of the history of this crime and a consideration of its essential features are to be found in the judgment of Innes C.J. in the case of Rex v. Erasmus, 1923 A.D., p.70.

The hall-mark of this crime, and the important feature which distinguishes it from lesser crimes against the State, is the existence of a hostile intent against the State.

An intention is of course a state of mind and can only be proved by inference from the acts and expressions of the accused and the surrounding circumstances.

In dealing with the question of proof Innes C.J. at p.80 of the case quoted above states as follows:

> "Obviously however the question of proof of a hostile mind may sometimes present difficulties. In time of external war the matter is comparatively simple. Assistance rendered to the enemy would be

conclusive evidence of hostile intent. But perduellio may be wholly unconnected with external war (See Rex v. de Wet, 1915, O.P.D. P.157) and in such a case the test of intention to assist a foreign enemy would not be available. Under such circumstances another test is suggested namely the existence of a definite intention to overthrow the Government."

In this connection the learned Judge of Appeal also stated:-

"Boehmer (Med. Const. Crim Car. Art. 124.5) has some very practical remarks upon the point. Deeds, he thinks, speak for themselves, and it will not avail an accused person, who has set on foot a movement which necessarily tends to the subversion of the State, to set up the defence that he did not contemplate its overthrow; such acts he says amount to perduellio because they are pregnant with danger and cannot be undertaken without the idea of imperilling the State, whatever intention the accused may profess."

The learned Judge also came to the conclusion that the concept of a hostile intent should not be confined to an intent to change the form of the constitution or the personnel of the Government. He emphasised;

"There is no authority which approves that exact principle and it would be most inadvisable to adopt it. For the whole structure of society might be shaken by the

> violent action of a body of men whose object was not to alter the constitution or change the Government, but to compel the latter to obey their behests."

Kotzé J.A. also delivered a judgment in the case quoted above. After a full and detailed analysis of the Roman and Roman Dutch Law he came to the conclusion that armed attacks upon the state or Government perpetrated with a hostile mind or intent constitute treason and that it is not necessary that the hostile mind of those who commit an act of treason should contemplate the total subversion or overthrow of the State or Government. He added:

> "The principle of our law in regard to treason is not based on an antiquated notion but is founded in reason and justice, and in its main feature is in accordance with the English law, which depends largely upon statute."

In Rex v. Viljoen and others, 1923 A.D. p.90, Innes C.J. considered the crime of sedition, and in comparing the qualities of sedition and high treason indicated how the existence of hostile intent might lift an act of sedition into the category of treason. At p.93 of the report he states:

> "I do not propose to go further into the authorities, because they were carefully considered in Rex v. Endemann and I agree with the conclusions reached by de Villiers J.P. in that case, that to constitute the crime of sedition there must be a gathering in defiance of authorities and for an unlawful

purpose. Those who incite and lead such gatherings and those who take part in them are both punishable, but the former more seriously than the latter. Sedition is a species of the crimen laesae majestatis, for it is committed in defiance of the authorities and against the public peace. But it does not imply the existence of a hostile intent against the Government as such. When that intent exists, the disturbance or the rising becomes high treason; it passes into a more serious category. A sudden rising or tumult accompanied by no hostile intent against the Government as such - no intent to treat the latter as an enemy - would be sedition, merely. But if it could be shown that such a gathering was accompanied by hostile intent, then it would become high treason. A local rising for the rescue of prisoners, for instance, would prima facie be sedition only; but it might be part of a wider and more general attack against the Government and be undertaken with hostile intent against the State. In that case it would amount to high treason."

In considering the nature of a hostile intent it is necessary to have regard to the position of a person who acts against the Government or the State in the belief that what he does is in the best interests of the State.

It will not avail him to suggest that because he honestly thinks that a new government or a different

form of state will be in the interests of his country he is entitled to subvert the existing state to achieve his end.

In a case in which the accused was found to have broadcasted propaganda from Germany to South Africa during the last war, Rex v. Strauss 1948 (1) S.A.L.R. p.934, at page 940, Watermeyer C.J., in dealing with such a suggestion remarked as follows:-

> "I come now to counsel's second point, that there was nothing in the evidence from which the Special Court could arrive at the conclusion that the 'hostile intent towards the State', which is a requisite element in the crime of treason, accompanied the commission of the overt acts.
>
> It was argued that the Appellant, so far from being animated by hostility towards the Union, was animated by a desire to benefit the Union by furthering what in his judgment were its best interests, that he thought the best interests of the Union lay in taking no further part in the war and consequently his purpose was to persuade the people of the Union to bring about a change in Government by constitutional means and thus put a stop to the war against Germany by the exercise of their legitimate rights.
>
> The Special Court was not satisfied that this was his real or only purpose, but if it was, the ultimate end which the accused desir to bring about was the motive for his conduc and was not the decisive, or only factor

to be taken into consideration in determining whether 'hostile intent' accompanied the performance of the acts complained of.
I agree with that view. Though the ultimate end which an actor has in view is often spoken of as his motive, it is perhaps more correct to say that the desire or wish for that end is his motive, because it is the desire or wish which moves him to act.
But if, in yielding to that desire, the actor takes steps to achieve his end which as a reasonable man he must know or foresee are likely to cause some forbidden effect, other than the one desired as his ultimate end then in law he intends that effect and is responsible for it.
The requirement in the definition of treason that the actions complained of must have been done with hostile intention against the State does not mean that the accused must have been animated by feelings of hatred or ill-will towards the State but merely that he was intentionally antagonistic towards it. In time of war, if the subject of one state intentionally gives direct assistance to the enemy in his war effort he must necessarily, in ordinary circumstances, act with hostile intent towards his own country, because he must know, as a reasonable man, that such assistance to the enemy is an act which tends to hamper the cause of his own country in however small a measure, and therefore is an act hostile

> or antagonistic towards it, in the cause for which it is fighting. He therefore intends to do a hostile act and consequently acts with hostile intent."

In the course of its argument the prosecution referred the Court to a dictum in the judgment of Schreiner J., as he then was, in the case of R. v. Leibbrandt, Special Court, 1943, where he said -

> "Now in South Africa there is a lawful method of getting constitutional changes effected, that is by Act of Parliament, and there is a lawful method of changing the Government, that is by gaining a parliamentary majority through victory at the polls. These are the lawful, the constitutional methods and the only ones. No other method exists which does not rest upon the use of illegal force.
> There is no intermediate course between constitutional action through the ballot box and treasonable action through the illegal use of force. Members of an organisation may not themselves desire to use bombs or other weapons. But this will not avail them if their purpose is to act outside the constitution to achieve their ends."

The above dictum gave rise to a submission by the prosecution in the present case that any action outside the constitution amounting to pressure on or coercion of the Government or the electorate, with the intent to change the Government or the

constitution, would be an illegal act and would be treason, even for example, a sit down strike embarked upon with that intent.

The suggestion was made in the following words:

> "My Lords, you can't hold a pistol to a man's head and say I am giving you an option, you can either change your heart or you can take the consequences. And if he then changes his heart, that is not a change of heart. And that is why, My Lords, that is why His Lordship makes it quite clear that if your object is to use unconstitutional means, if you intend to act outside the constitution you are using a form of pressure, a force which is not permissible. And nobody, no voter, no government, no authority is expected to tolerate it. My Lords, I think it is quite clear when once free scope is given to unconstitutional action to change the Government, to change the constitution there is no end My Lord to the danger, the instability and the insecurity of the State in which that type of action were to be tolerated. I don't say My Lords that a strike or a passive resistance campaign, in itself, is treason - is in itself unlawful. But, My Lords, if that action is embarked upon with the object of coercing the Government with the object of overthrowing the Government with the object of bringing it to its knees, then it is treasonable.".

Interesting, and important, as the suggestion may be, it is not the Court's duty to consider it because the entire case for the Prosecution was brought and conducted on the basis of a conspiracy to commit violence against the State. In this respect the record reads:

> "MR. JUSTICE BEKKER:
>
> This really isn't the Crown case on the Indictment, is it?
>
> MR. TRENGOVE:
>
> That is not our conspiracy.....
>
> MR. JUSTICE BEKKER:
>
> You are wedded to violence.
>
> MR. TRENGOVE:
>
> We have said, My Lords, that they wanted to overthrow the State by violence and they wanted to prepare the people for that. That is what we have said."

Turning to the nature of the evidence which was adduced before the Court by the prosecution, it must be mentioned that the bulk of the evidence consisted of the contents of documents and notes of speeches.

The notes were mostly taken down by non-European members of the Police in ordinary hand writing when the speeches were being made and the witnesses were allowed to refresh their memory from these notes. In the case of some meetings the proceedings were reported in shorthand and on two or three occasions a tape recording was made.

Certain admissions were made by the defence on two occasions during the trial and they are to be

found in Schedule No.4. The prosecution also called Prof. Andrew Murray, of the University of Cape Town to give evidence as an expert witness in political science, including communism. Some of the accused gave evidence under oath on their behalf and on behalf of the other accused, and some leaders like Luthuli, Matthews and others were called by the defence to support the case for the defence, more particularly to prove that the policy of the African National Congress and of the Congress Alliance was one of non-violence.

After all the evidence had been led the prosecution argued its case on the basis that whatever the constitution of the African National Congress contained and whatever had been formally decided by the Congress or publicly announced by it or its leaders on its avowed non-violent policy, should be tested by what the Congress had done by way of propaganda, instruction and campaigns over the period of the indictment.

It argued that such a test would show that irrespective of what it proclaimed, the policy of the African National Congress was to prepare the politically immature non-European masses for a struggle to achieve a new state and that the struggle which the African National Congress wanted was an unconstitutional struggle in which ultimately the masses would be brought into a violent conflict with the forces of the State. The prosecution submitted that because of its policy to bring about a violent conflict between the masses and the State the official declarations of the African National Congress, and its protestations that it was a non-violent organisation, were a ruse and should be rejected..

On the question of when the African National Congress intended violence to be used the argument for the prosecution can be summed up as follows.
It was the object of the African National Congress to organise the masses of non-Europeans against the State. By a process of campaigns, strikes or stay-at-homes the African National Congress would through the masses make its demands, and finally, if those demands were not met, and if the circumstances were favourable, in the sense that the masses were sufficiently politically conscious, they would organise a nation wide strike which would be the final clash between the people and the State. The African National Congress expected the State to repress the attack on it by force and it intended the masses to use violence.

The prosecution indicated that its case was not that the African National Congress wanted violence to be committed in the indictment period. It's case was that in the final result the African National Congress wanted a clash and violence. In the case of the campaign to oppose the removal from the Western Areas it was not suggested that the campaign was planned as the final insurrection. The argument on that issue was that the African National Congress was reckless as to whether violence ensued or not. On the issue of the "Freedom Volunteers" the case for the prosecution was not that they were intended to commit violence in the period of the indictment, but that they were being prepared to lead the people into violence at the final clash.

The argument for the prosecution, as put forward at the end of the case, required the Court to consider whether it had been proved beyond a

reasonable doubt that the African National Congress had a policy of ultimate violence as suggested by the prosecution, and if so, whether the case argued by the prosecution was the case set out in the indictment, and therefore the case which the defence had to meet.

In its judgment of the 29th of March the Court held that the prosecution had failed to prove that it was the policy of the African National Congress to overthrow the State by violence.

This alleged policy of the African National Congress was the cornerstone of the case for the prosecution and failure to prove such a policy of violence on the part of that organisation inevitably meant a collapse of the whole case.

The Court arrived at its decision after the prosecution had addressed it on all the issues and after the defence had made general submissions on the policy of the African National Congress and on the issue of communism.

The Court made no findings of fact on the policy of the organisations other than the African National Congress or on the positions of the individual accused and consequently those issues will not be considered in the reasons that follow.

In view of the Court's finding that the prosecution failed to prove a policy of violence it was not necessary to decide whether the case of violence as argued by the prosecution was the case set out in the indictment.

As indicated above the prosecution approached the evidence on the basis that although the African National Congress purported to have a policy of non-violence this policy should be compared with what

it published and taught and with the manner in which it conducted its campaigns.

In dealing with the meaning of word "policy" in this context the defence quoted the constitution of the African National Congress, which provided that the national conference should be the supreme body of Congress and should determine it's general policy and programme; the defence contended that the Court, in enquiring whether the allegation that "it was the policy of the African National Congress to overthrow the State by violence" had been proved, was confined to an enquiry whether the consitution had been amended to that effect.

In support of this contention dicta in the cases of Wilkens v. Brebner and others, 1935 A.D.175 and Kahn v. Louw N.O., 1951 S.A.(2)194. were cited.

In the former case Wessels C.J. said at p.183:

> "....When we consider that we are dealing with the constitution of a political party it seems clear from the constitution that the individual member has abdicated to various committees and to Congress his individual right of determining what ought and what ought not to be done to further the political programme of the party. He has left it to the yearly Congress to say what the party thinks the political conditions of the country require the party to do...."

The defence accordingly argued that when the prosecution bases its case on the policy of any organisation it is not enough to establish the policy

of a member of individuals no matter how many there may be, or how influential they may be, in the councils, of the organisation. The policy of the African National Congress can only be proved, so it was argued, by showing the constitution and either a duly passed amendment of the Constitution or by the concurrence of all the members or a majority of members. As the members are bound only by the terms to which they have agreed the terms can only be varied by consent of all the parties to the agreement, Kahn's case, supra, and mere silence on the part of members cannot amount to consent to an unconstitutional alteration.

The prosecution submitted that where one is concerned with a political organisation which seeks to impose its demands by the use of illegal or unconstitutional methods different considerations applied. In such a case the real policy of the organisation is best gleaned from utterances of its leaders, its publications and propaganda. It would be unrealistic to turn to its constitution in an endeavour to ascertain its true policy and, if it is a treasonable policy, to expect any mention thereof to be made in its constitution.

I do not think that the meaning of the word policy raises any real difficulty. The policy of a political organisation or party is always a question of fact. One obviously looks to the constitution first, if there be one, with its amendments. One looks at resolutions taken at conferences, at declarations of responsible leaders and at any other relevant fact.

If responsible leaders or publications issued by the Party regularly or over a lengthy period of time

proclaim or announce a certain policy, directly or indirectly, and the Annual Conference or General Meetings of the Party confirm such policy, either expressly or tacitly, the policy so proclaimed will be held to be the policy of the party.

In order to draw a comparison between the professed policy of the African National Congress and its conduct it is necessary to consider briefly what the organisation claimed its policy to be.

In 1946 it formally decided that its objects would be the realisation of the demands contained in a document called "Africans' Claims". In essence this document demands a general franchise and the removal of every form of discrimination based on race or colour.

In 1949 a programme of action was adopted which, inter alia, described the methods or "weapons" to be employed to achieve its objects as being "immediate and active boycott, strike, civil disobedience, non-co-operation and such means as may bring about the accomplishment and realisation of our aspirations." According to the defence evidence the African National Congress took up the attitude that it was compelled to use these methods because petitions and protests had proved ineffective.

The evidence also disclosed that the African National Congress in applying those methods, did not exclude the possibility of laws being breached and that it envisaged the possibility of the State using force to maintain law and order.

Neither the constitution of the African National Congress, Exh. MWS.34, rec. p.11426, Sched. No which contains in broad outlines the objects of the

organisation set out above, nor "Africans' Claims" nor the "Programme of Action" makes any reference to violent means or methods, and the evidence showed that on many occasions, at conferences and in declarations by leaders and at meetings it was stated that the African National Congress was a non-violent organisation.

In his reasons my brother Bekker gives a short history of the African National Congress and quotes some of the evidence to indicate how this policy of non-violence was referred to.

It is with this background in mind that the argument for the prosecution has to be assessed.

In presenting a picture of what the African National Congress had propagated and had done over the period 1952 to 1956 the prosecution firstly confined itself to evidence other than the speeches of which members of the police had taken manuscript notes.

It referred to the "Summary of Facts" and commenced to deal with the so-called "Liberatory Movement" and the position of the African National Congress in relation thereto, the attitude of the Congress to the international situation and the form of the new state Congress wanted.

Thereafter the prosecution briefly referred to the so-called "Defiance Campaign", and then proceeded to deal with the evidence concerning the "Western Areas Campaign" and the "Freedom Volunteers."

The evidence about the speeches reported by the police on manuscript was dealt with separately as also the evidence concerning the allegation made in the indictment that the Congress Alliance had propagated the establishment of a communist state.

In these reasons it is proposed to follow more or less the same sequence except that at the outset it will be explained why the Court decided not to attach weight to the evidence of witnesses who made notes in "long hand". My brother Kennedy deals in detail with this branch of the case. My brother Bekker, in his reasons, considers in separate chapters the history of the African National Congress, the "Defiance Campaign", the "Western Areas Campaign", the campaign for the "Congress of the People" and the "Freedom Volunteers".

Save for questions of admissibility and interpretation, the documents put before the Court afforded no difficulty. Their contents could not be disputed.

The few speeches which were recorded by competent shorthand writers or on a tape recorder could not seriously be challenged.

The evidence however concerning the speeches recorded by members of the Police in ordinary hand-writing, stood on quite a different footing.

The majority of these speeches were recorded years before the trial, and at the trial neither the witness who made the notes, nor the speaker who made the speech, could possibly be expected to remember what had been said. In the circumstances, the witness could only give evidence by reading the notes and the speaker, if he disputed the correctness of the notes, could only make a bare denial.

The majority of speeches which were put before the Court were recorded by non-European members of the Police in the English language, although the speeches were not made in English but in a Bantu language. In most cases the witness made his own

translation into English as the speaker spoke. This he would do even if there happened to be an interpreter supplied by the organisation to interpret to the meeting. The evidence was that on a few occasions there might have been two interpreters, one to translate into English and one into another Bantu language. The presence of an interpreter naturally would give the recorder a little more time to record what the speaker said but the fact that he wrote in "long hand", and translated what he heard, inevitably caused him to miss most of the speech. In the result, only a fraction of the speech appeared in the notes.

The ability of the various police officers to take down accurate notes varied considerably, as did their knowledge of the English language.

In many cases full sentences were taken down, but in other cases what was taken down made no sense at all. In these circumstances, the Court considered it dangerous to accept on their face value, words, alleged to have been spoken by a speaker at a meeting.

There is a further factor which limited the value to be put on the speeches from which the prosecution sought to draw inferences in its favour on the issue of a violent policy.

Although the Court was referred to a considerable number of speeches, made over the period of the indictment, the actual number was extremely small compared to the total number of speeches which, according to the evidence, must have been made over this period, throughout the country.

According to the evidence, about fifteen thousand meetings were called by the various branches of the African National Congress over the period of the

indictment. The prosecution led evidence of what was said by some speakers at about two hundred and twenty-five meetings called under the auspices of the African National Congress. At eighty-five meetings of a total of two hundred and forty-nine meetings relied on by the prosecution for all purposes, it was suggested something was said from which violence could be inferred.

Of the eighty-five meetings, fifty-five were held in the Transvaal, mostly in the Johannesburg area, and thirty in the Eastern Cape, in the Port Elizabeth area. On the issue of violence no evidence was led in regard to meetings held in Natal, the Free State and in the Cape Province, other than the Port Elizabeth area.

If one considers that at some meetings a speaker either contradicted himself or was contradicted by other speakers and if one realises that the prosecution was in possession of evidence concerning what had been said at most of the other meetings, held throughout the country, one cannot decide that the notes made at the relatively small number of meetings are representative of African National Congress views or may safely be used to determine the policy of that organisation over the period of the indictment.

For these reasons and others, more fully set out in the reasons prepared by my brother Kennedy, the Court decided not to rely on the reported speeches in so far as the issue of violence was concerned.

The case for the prosecution as set out in the "Summary of Facts" was that before October 1952 and during the period of the indictment there existed in non-Communist colonial or semi-colonial countries an international movement known as the "Liberatory Movement" and that it was the object of this movement to achieve independence for the "oppressed peoples" and full political rights for its members, by the overthrow of those colonial and semi-colonial states; it was the duty of communists, whose primary object. it is effect a world revolution, actively to support and participate in this "Liberatory Movement" and for many years before October 1952 the communist supporters of the movement supported the growth of liberatory movements in colonial or semi-colonial countries, particularly in Asia and Africa, such as the Union of South Africa, Kenya, China (before it became the People's Republic of China) Korea, Vietnam, Malaya and Indo-China. With the support of communists, national liberatory movements were formed in those countries, with the object of bringing about the violent overthrow of the existing regimes, and, such a national liberatory movement in fact existed in the Union of South Africa.

The "Summary of Facts" also refers to the establishment in 1949 of the World Peace Council and its executive Council, the Bureau of the World Peace Movement, which controls the policy of the World Peace Council, under the direction of Soviet Russia. It is stated that the object of the World Peace Council is to propagate policies and interests of Soviet Russia and to emphasize the indivisibility of the struggle

for peace and the struggle for liberation and to support the national liberatory movement in South Africa. The World Peace Council has sought to achieve its object through the activities of peace councils throughout the world, including South Africa, inter alia, by convening world peace congresses and by the publication and dissemination of pamphlets, brochures and magazines, and through the activities of international and communist sponsored organisations, such as the World Federation of Trade Union, the World Federation of Democratic Youth and the Women's International Democratic Federation.

The "Summary of Facts" also states that there existed a communist party in South Africa before 1950, with the object of overthrowing the State and establishing a communist state, that this party was dissolved in 1950, and that thereafter a number of its members infiltrated into the African National Congress and the other organisations mentioned in the indictment, and were appointed to executive positions in the associations.

It also states that in 1951 the Executive Committees of the African National Congress and the South African Indian Congress formed a Joint Planning Council to co-ordinate the efforts of the African National Congress and the South African Indian Congress to organise support for the "National Liberatory Movement" in South Africa, by mass action, and that it was part of the policy of the African National Congress, and the other organisations referred

to in the Indictment, to support the"International Liberatory movement" and more particularly the national liberatory movement in the Union of South Africa and to establish a communist state in place of the present State.

The "International Liberatory Movement", as described in the "Summary of Facts", was considered by the prosecution as the origin of the alleged treasonable conspiracy.

In its opening address the prosecution concluded by saying:

> "In conclusion the Court will be asked to arrive at the following overall picture: There existed over the period of the indictment and for some time before, a country-wide conspiracy...to overthrow the State by violence and to substitute therefore another form of State. This conspiracy had its origin in the so-called Liberatory Movement, an international communist inspired and supported movement, pledged to overthrow by violence all Governments in non-communist countries where sections of the population did not have equal political rights. The Liberatory Movement had its counter part in South Africa where it sought to attain its objects inter alia by the communist method of stirring up trouble in disputes of national and local importance; it was inspired by communist fanaticism, Bantu

nationalism and racial hatred in various degrees. In June 1955 the Liberatory Movement led to the holding of the Congress of the People which formulated as a programme of action its less culpable objects. All the organisations unequivocally and emphatically supported the liberatory movement but the most blatant violent speeches were made by members of the African National Congress....."

The point of emphasis in the aforegoing statement is the allegation that the alleged conspiracy had found its origin in an international and communist inspired movement, pledged to overthrow certain governments, including that of South Africa, by violence.

At the outset it must be stated that no direct evidence was led by the prosecution of the existence of an international liberatory movement. The evidence did disclose that the African National Congress considered itself part of the liberatory movement in South Africa, that it accepted that liberatory movements existed in other countries and that it had expressed solidarity with such movements.

Professor Murray, who gave expert evidence on communism for the prosecution, stated that he knew of no such "international" movement. Whilst he agreed that such a movement might be regarded, according to the tenets of communism, as an international phenomenon, the "liberation" (and not "liberatory") movements were separate and not part of any one movement

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