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IN THE SUPREME COURT OF SOUTH AFRICA

(SPECIAL CRIMINAL COURT - PRETORIA)

In the case of

R E G I N A

vs

FARID ADAMS AND OTHERS.

JUDGEMENT AS READ OUT TO COURT BY THE
PRESIDING JUDGE, MR. JUSTICE F. L. H.
RUMPF ON WEDNESDAY 29TH MARCH, 1961.

We have considered the evidence put before the Court and the arguments addressed to us on behalf of the Defence.

The further arguments to be addressed to us by the Defence on the contents of a number of reported speeches and on the policy of the organisations other than the African National Congress do not appear to us to affect materially the consideration on the question whether or not the prosecution has discharged the onus which rests on it in connection with policy of violence attributed to the African National Congress and which alleged policy is the cornerstone of the case for the prosecution.

If the case failed against the African National Congress it must fail against the other organisations.

The policy of the African National Congress has been urged fully by the prosecution and by the Defence, and we do not think it necessary for the defence further to address us.

We also wish to announce that after full consideration of the issues in this case, we have arrived at a unanimous verdict; in the normal course of events we would not have delivered our verdict without at the same time fully setting out our reasons therefore, but in view of the mass of evidence with which we have to deal, the formulation of our reasons will of necessity take a considerable time.

This consideration, and the fact that this case has already consumed some years of hearing, have induced us to announce our verdict together with such essential findings

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of fact as have been arrived at by us on the evidence in the case.

Written reasons for our verdict will in due-course be handed to the registrar of this Court.

The accused are charged with Treason. They have pleaded Not Guilty.

The first overt act of Treason laid against all the accused in the indictment is a conspiracy to overthrow the State by violence.

Against each accused further overt acts are laid and these acts are said to have been committed in pursuance of the conspiracy.

The case for the prosecution is not that the accused came together and entered into a treasonable agreement. The case for the prosecution is that during the indictment period, i.e. from 1st October, 1952 to 13th December, 1956, a period of about four years, a number of organisations in South Africa, including the African National Congress, South African Indian Congress, South African Congress of Democrats and the South African Coloured People's Organisation, had a policy to overthrow the State by violence, that these organisations co-operated with each other to achieve their common object and that for that purpose an alliance was established, which for convenience sake has been referred to as the Congress Alliance, with the African National Congress as the senior and dominant partner.

The accused are said to have conspired because they took an active and leading part in the activities of the organisations of which he or she was a member, with full knowledge of and support for the policy of such organisations.

In order to prove the existence of the treasonable conspiracy the prosecution had to prove the violent policy of the Congress Alliance. It also had to prove the adherence of each of the accused to the conspiracy.

It is conceded by the prosecution that if it fails to prove the treasonable conspiracy there is no case against any of the accused.

In regard to the alleged policy of violence the indictment alleges that the intention was to overthrow the State by violence and to substitute for it a Communist State or some other State and that the means by which the overthrow would be achieved were agreed to be the following :

1. The convening of a gathering of persons known as the Congress of the People, for the adoption of a Freedom Charter containing certain demands, which demands the accused intended to achieve by overthrowing the State by violence ;
2. By recruiting and preparing for acts of violence a special corps of Freedom Volunteers ;
3. Advocating and propagating unconstitutional and illegal action including the use of violence ;
4. Organising, and participating in, various campaigns against existing laws and inciting to illegal and violent resistance against the administration and enforcement of such laws, more particularly the Native Resettlement Act, No. 19 of 1954, the Bantu Education Act, No. 47 of 1953 and the Natives (Abolition of Passes and Co-ordination of Documents) Act, No. 67 of 1952.;
5. Promoting feelings of discontent or unrest amongst and hatred or hostility between the various races of the Union ;
6. Propagating the adoption in the Union of the Marxist-Leninist doctrine in which doctrine there is inherent the establishing of a Communist State by violence.;
7. Preparing and conditioning the population of the Union more particularly the non-European section for the overthrow of the State by violence and inciting it to carry into effect the agreed means.

The indictment and the further particulars supplied suggest (in the main) a policy of incitement to violence during the period of the indictment.

After all the evidence had been heard, and at one stage during the argument in reply to questions put by the Court, the prosecution specifically stated that on the evidence its case against the African National Congress was that it intended to organise the masses against the State, and

that through a process of campaigns, stay-at-homes and strikes it would make its demands; that if those demands were not acceded to and if the circumstances were favourable in the sense that the masses were sufficiently politically conscious it would organise a nation-wide strike which would be the final clash between the people and the State; that the African National Congress expected violence from the State to suppress the attack against it and that the African National Congress intended at that stage actively to retaliate.

The prosecution also state that in regard to the removal from the Western Areas its case was that the African National Congress was reckless in regard to whether violence ensued or not and that as regards the Freedom Volunteers the case against them was not that they were expected to commit violence during the period of the indictment but in the ultimate end when the order would be given to be violent

It was submitted by the Defence that the case thus described was not the case set out in the indictment; that the indictment and the further particulars suggest a policy of direct violence and that the case described by the prosecution during argument was a case of contingent retaliation.

We shall return to the submissions made by the prosecution later, but because of the view we take of all the evidence put before the Court it is not necessary to consider whether the indictment covers the case suggested by the prosecution nor is it necessary to deal with the arguments addressed to us by the Defence on the two witness rule and on the legal nature of an overt act of treason.

The evidence proves the following :

1(a). That the African National Congress and all the other organisations mentioned in the indictment as well as the present accused were working together to replace the present form of state with a radically and fundamentally different form of State, based on the demands set out in the Freedom Charter which included, inter alia, the following :

- i. "Every man and woman shall have the right to vote for and to stand as candidate for all bodies which make laws" ;
- ii. "The national wealth of our country, the heritage

of all South Africans shall be restored to the people" ;

- iii. "The mineral wealth beneath the soil, the banks and monopoly industry shall be transferred to the ownership of the people as a whole" ;
- iv. "Restriction of land ownership on a racial basis shall be ended, and all the land redivided amongst those who work it, to banish famine and land hunger".

1(b). That prior to the adoption of the Freedom Charter the Congress Alliance sought to obtain from its members and others "demands of the people" which were presented at the Congress of the People on the 25th and 26th of June, 1955, and which formed the basis of the Freedom Charter.

1(c). That as part of its campaign to obtain the necessary demands from the people and also to raise the political consciousness of the people, the Congress Alliance through its member organisations, arranged for the holding of meetings whereat various members addressed the public; it also made use of various lectures and lecture notes; the general trend of the speeches made and of the propaganda and the lectures and lecture notes, was to condemn the system of Government in South Africa and to extol the virtues and advantages of a State described in varying terms as a Peoples Democracy or true democracy; and to place the need for the recognition of the principle of general and unqualified franchise in the forefront. The defence conceded in argument that some of these lectures referred to, contained traces of Communist influence.

1(d). That it has not been proved that the form of state pictured in the Freedom Charter is a Communist State.

1(e). That after the adoption of the Freedom Charter, the Transvaal Executive of the African National Congress propagated the view that "The African National Congress aimed to replace this government of the few with a Government of Peoples' Democracy, in a Peoples' Democratic State, the power of State will be exercised by the people. That is by the working people of all colours, together with all other democratic classes who will work for the changes set out in the Freedom Charter. This will be a government of the people as a whole, of the present oppressed and exploited classes

used to achieve their maximum well-being, and to prevent the "few" exploiters from regaining state power.

1(f). The contention of the Defence that the State advocated by the Transvaal Executive of the African National Congress is not a dictatorship of the proletariat is rejected and we are of the opinion that the type of State as seen by the Transvaal Executive of the African National Congress is a dictatorship of the proletariat, and accordingly is a Communist State, known in Marxism-Leninism as a 'peoples' democracy.

1(g). That it was the policy of the African National Congress that Communists and anti-Communists could freely become members of the African National Congress, provided they subscribed to the policy of the African National Congress, and that some responsible executive leaders of the African National Congress were members of the Communist Party before it was banned in 1950. There is no evidence to support the allegation of the prosecution that there was infiltration by members of the former Communist Party into the ranks of the African National Congress.

1(h). That the African National Congress took up the attitude that Communists were free to spread their ideologies amongst the members of the African National Congress provided they honoured the policy of the African National Congress.

1(i). That in the indictment period a strong left-wing tendency manifested itself in the African National Congress.

1(j). That it has not been proved that the African National Congress had become a Communist organisation.

1(k). That the issue of Communism is relevant in this case to the issue of violence and that on the evidence as a whole the prosecution has failed to prove that the Accused had personal knowledge of the Communist doctrine of violent revolution or that the accused propagated this doctrine as such.

2. That the means to be employed for the achievement of the new state were those decided upon by the African National Congress in its duly adopted and official 1949 Programme of Action.

3. The preamble to the Programme of Action reads:

"The fundamental principles of the Programme of Action of the African National Congress are inspired by the desire to achieve National Freedom. By National Freedom we mean Freedom from white domination and the attainment of political independence. This implies the rejection of the conception of segregation, apartheid, trusteeship, or white leadership which are all in one way or another motivated by the idea of white domination or domination of the white over the blacks. Like all other people, the African people claim the right of self-determination."

In regard to methods of achieving its objects it makes provision for the following :

"2(c) The regular issue of propaganda material through :

- i. The usual press, newsletter or other means of disseminating our ideas in order to raise the standard of political and national consciousness ;
- ii. Establishment of a National press;
- iii. To employ the following weapons :
 - immediate and active boycott, strike, civil disobedience, non-co-operation and such other means as may bring about the accomplishment and realisation of our aspirations.
 - b Preparations and making of plans for a National stoppage of work for one day as a mark of protest against the reactionary policy of the Government."

4. The evidence shows with reference to the methods set out in the Programme of Action that :

1. The successful outcome of these methods depended on the non-European masses presenting an organised and united front to coerce the Government or the electorate through mass action ;
2. That the African National Congress in its endeavour to raise the political consciousness of the masses caused to be published a bulletin called "Congress Voice" ; in addition it encouraged its volunteers and members to read and support other publications such as 'The African Lodestar', 'Afrika', 'New Age', 'Fighting Talk', and a number of other publications all containing propaganda material ;
3. That the methods set out in paragraph 3(a) of the Programme of Action envisaged the use of illegal means.

With reference to the illegality of these methods, Luthuli, the President-General of the African Congress said,

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during the course of his evidence :

- i. That the application of the methods laid down could, with reference to 'strike' action when used as a political weapon, lead in certain circumstances to a direct clash between the African people - the working class on the one hand, and the ruling class on the other.
- ii. That in the breaking of the laws of the land, the State in pursuance of its duties to maintain law and order, as it saw the position, might be forced to adopt certain measures such as calling out the forces.

He added however, that in the event of violence and bloodshed ensuing, the African National Congress would not regard or visualise such violence or bloodshed as emanating from it "because the African National Congress would carry on its struggle on a non-violent basis, even in the face of a clash, if there should be one. It would in such event not be a clash of the African National Congress."

5. With reference to the propaganda material used or recommended by the African National Congress and the other organisations for consumption by their members, the systems of government in the Western democracies such as the United States of America, the United Kingdom and South Africa were condemned and were described as belonging to the war-mongering, imperialistic and oppressor camps, whilst Eastern Democracies such as the United State of Soviet Russia and the Chinese Republic and others received admiration and adulation and were described as belonging to the peace and freedom loving camps.

Apart from such material, the leaders of the Congress Alliance verbally endorsed such views at various meetings.

6. With reference to the Defiance Campaign against what was termed "unjust laws", launched by the African National Congress and the South African Indian Congress in 1952, the outcome thereof was the prosecution and imprisonment of some 8,000 people who were persuaded by these organisations to break certain laws; in the case of the 1954/1955 Western Areas Campaign, directed at preventing the Government from removing the inhabitants from Sophiatown and

environs to Meadowlands, the National Executive Committee of the African National Congress claimed that the Government was obliged to declare a State of Emergency in the affected areas for a period of three weeks as a result of the campaigning of the African National Congress, and that the presence of about 2,000 police was required whilst the initial removal of some 150 families was being under-taken.

7. Notwithstanding the above, and the further campaigns, viz, the Anti-Pass Campaign and the Campaign against the Bantu Education Act and the Campaign for the Congress of the People, no violence ensued. In fact, in its further particulars, the Crown made it clear that it was not alleged that violence resulted from the activities of the various organisations.

8a. The Crown, in order to prove the violent policy of the Congress Alliance, laid before the Court innumerable documents and reports of speeches held at hundreds of meetings -- all in support of the liberatory movement.

The documents in the main consisted of :

- i. Official reports and minutes of different organisations ;
- ii. Official publications of the organisations ;
- iii. Documents of which leaders of the organisations were authors ;
- iv. Literature such as bulletins and magazines published by well disposed persons or bodies, and which the Congress Alliance recommended its members to read.

8b. The speeches, of which reports were produced, were made mainly in Johannesburg and its environs, in Port Elizabeth area, in Cape Town, and a few in the Eastern Transvaal; the number of speeches on which the Crown relies represents a minute percentage of the total number of speeches made during the indictment period of four years, and the Court is uninformed as to the nature of the majority of speeches so delivered; the reports of the speeches, with some exceptions, were made by officials who took them down in longhand, and only a small selected percentage of what was said at such meetings was recorded, and in general these reports are open to grave criticism.

8c. Insofar as a number of official documents of the African National Congress is concerned, the African National Congress stated that its policy was non-violent, consonant with

what was said by many speakers at various meetings.

9. The general trend of speeches made by various members of the African National Congress and of the other organisations, the propaganda and other documentary material relied upon was to lay stress upon the importance of presenting a united front against the 'Fascist' government and its 'oppressive' laws, coupled with repeated warnings that the government would harden and become more 'brutal' not hesitating to create a 'bloodbath' as the liberatory struggle progressed. The people were warned that in the struggle many hardships would have to be endured, and that they might have to pay with their blood, and even make 'the supreme sacrifice' to gain freedom; constant references were made to the struggles of 'oppressed' people against imperialist oppressors in other parts of the world such as Korea, Kenya, India and elsewhere and the people were told that final victory would eventually come to the struggling masses. During the course of these various campaigns, some of the leaders of the African National Congress made themselves guilty of sporadic speeches of violence which in our opinion amounted to an incitement to violence, but having regard to the total number of speeches made, these outbursts form an insignificant part thereof.

10. With reference to the Freedom volunteers, the indictment alleges that its objects would be achieved inter alia by,

".....4(b) ii. Recruiting, enlisting and preparing for acts of violence, a special corps of Freedom Volunteers."

The accused Resha, then the volunteer-in-chief for the Transvaal admittedly, in addressing a meeting of the African National Congress delegates on the 22nd November 1956 in Johannesburg, inter alia said :

"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 are called upon to be violent, you must be absolutely violent, you must murder, murder."

The replay of the tape recording of this speech revealed that there was thunderous applause from the assembled delegates immediately after Resha had concluded this sentence. On the other hand the trend of many speeches made by various leaders of the African National Congress and also the documentary evidence reveal that volunteers were required to carry out

the policy of the African National Congress, to be disciplined, and not to become violent even in the face of provocation.

It is impossible therefore for the Court to find that the above allegation in the indictment has been proved by the prosecution.

11. On all the evidence presented to this Court and on our findings of fact it is impossible for this Court to come to the conclusion that the African National Congress had acquired or adopted a policy to overthrow the State by violence, that is in the sense that the masses had to be prepared or conditioned to commit direct acts of violence against the State.

12. Mr. Trengove however, presented a further argument based on all the facts but with special reference to the Programme of Action and which proceeded on the following lines :

The African National Congress realised that their struggle and illegal methods employed would bring them into conflict with the State, and they realised that it would lead to a violent clash, at least from the side of the State; he submitted that the African National Congress, by constantly condemning the system in the 'other camps', indicated a powerful desire or fostering of a mental attitude which would not balk at the overthrow of this government, or any other violent action directed towards the downfall of the State as presently constituted. He added that if with such a Programme and a State of mind, the African National Congress deliberately provoked the Government into taking measures to maintain law, it was not only responsible for the consequences but that the African National Congress also intended violence and bloodshed through the application of their illegal methods in order to achieve their freedom. He explained the essence of the Crown case was not only that the African National Congress expected violence from the State, but that it also intended the masses actively to retaliate.

13. We have set out Counsel's argument in some detail because it has to be analysed in the light of the allegations contained in the indictment, the evidence as a whole and the general probabilities.

Insofar as the indictment as read with the further particulars is concerned, we are of the opinion :

i. That although the means whereby the conspirators planned to overthrow the State by violence were set out in the indictment and were elucidated in the further particulars, nowhere was it alleged specifically that the conspirators, planned to provoke and compel the State, by means of the application of methods under the Programme of Action, to resort to the use of force as a result whereof the masses would retaliate and so bring about the violent overthrow of the State.

ii. We do not think that it was the intention of the prosecution to rely on any such plan. If this had been the case, we would have expected some reference in the indictment, or at least in the further particulars, to the Programme of Action, and at the very least, proof forthcoming from the Crown, of the existence of such a Programme of Action (a matter which was proved by the Defence and not by the Crown).

14. In any event on the facts we find :

That though Defence witnesses have stated that they foresaw the possibility of the State being compelled to use violence in certain contingencies, there is insufficient evidence to find that the African National Congress had adopted a plan which revealed a general expectation of violence by the State and in intention to use the masses in retaliation.

15. Whilst therefore, the prosecution has succeeded in showing that the Programme of Action contemplated the use of illegal methods and that its application in fact resulted in illegal action during the Defiance Campaign, and that the African National Congress, as a matter of policy, decided to employ such means for the achievement of a fundamentally different State from the present, it has failed to show that the African National Congress as a matter of policy intended to achieve this new State by violent means.

THE ACCUSED ARE ACCORDINGLY FOUND NOT GUILTY AND ARE DISCHARGED.

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