

The penultimate straw!

Laudm

NAL DIVISION OF SOUTH TRANSVAAL  
PUBLIC PROSECUTOR  
29-5-1961  
BLIEKE AANKLAER  
DEELING VAN SUID-TRANSVAAL

ON RESUMING 24. 5. 1961.

DEFENCE CONTINUES ADDRESSING COURT:

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BY COURT TO UNDEFENDED ACCUSED:

Accused No. 1, do you wish to address any argument to me?---No, I do not.

Are you satisfied that you put your case fully before me, both as to evidential matter and to argument?---Yes.

Accused No. 4, do you wish to address any argument to me?---I'm also satisfied that I presented my case.

Accused No. 8?---I'm also satisfied.

Accused No. 38? ---I am also satisfied.

Accused No. 39?---Yes.

ACCUSED No. 39 ADDRESSES COURT:

With greatest respect, Your Worship, at this stage I find it very difficult, being a layman, it is quite obvious, Your Worship, that, being a man not vested with the law, as a man who does not know very much about the law, it is very difficult to present this argument, especially when you appear for the first time in Court.

Now Your Worship, some of the things which we may say, we may be afraid of some of these things which may be credited to him in this Court because of the fear on his part that there may be something that is wrong. In that respect, Your Worship, I have a good feeling that I actually may not do of my best in trying to present my argument before the Court here. Without wasting my time, I would like to refer particularly to those witnesses who gave evidence against me, I mean the Crown witnesses.

In the first place, Your Worship, Mr. Labuschagne gave evidence against me here. I have already mentioned, when

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I was making an application for discharge, that Mr. Labuschagne was not actually sure as to whether he saw me on the 21st of March at the Police Station, or not, because it was at a moment when almost everybody was confused. And at the time that he told the Court that he saw me roundabout 12 o'clock on that day, the very same day of the shooting. Now, at that stage, Your Worship, it was a time when the people were going up and down at the Police Station, and as I say, it was during a moment of confusion. If a man sees a man in such a crowd, when everybody is confused, it explains that he cannot mistake him for anybody else, he just definitely knows that particular individual. Because, Your Worship, he has already told the Court in his evidence in chief that he once found me at accused No. 4's place when he took us to his office, at the Municipal offices, down in Sharpeville, and again at one time, as I put it to him, he went to my home and he can have no mistake at all when he sees me the next time. Now, Your Worship, here is the evidence of a man who goes to an identification parade after seeing me at the Police Station on the 21st of March, but he fails to point me out at the parade, on the day of the parade, which was held at Boksburg, Stoneyard Prison. Now, Your Worship, it is quite obvious at this stage that the man did not actually see me on the 21st of March. Perhaps he was mistaking me for somebody else, and I have already placed before the Court here that the clothes which I was wearing on that day was not a blue-grey jacket as he described it, but it was in fact a blazer which I was wearing, and a white shirt. He has gone further to explain that - on page 356 - it was accused No. 39 and not accused No. 8 who was at the home of accused No. 4 during a certain incident in February, but again in page 458.

No. 38 who was at the home of accused No. 4, and not accused No. 39". There is much conflict in this statement because it is obvious that he is not sure of whom he actually saw at accused No. 4's home, and then again on page 525, he says "I thought the person was accused No. 39". There alone it explains that the witness is not actually sure of myself, of my identification.

Now, Your Worship, I would like again to put the evidence which was put by Mr. Malakia Maetong, who says that he saw me at the Police Station on the 21st of March, and I was about 15 to 16 paces away from him, and that I was in front of the crowd, controlling the crowd. I have already explained to the Court that roundabout that time, 12 o'clock, when he says he saw me, I was not at the Police Station, I was in fact at Evaton. He says here "Accused No. 39 - page 1263 - Whilst I was at the Police Station - I saw accused No. 39 at the Police Station, calling people, indicating they must follow him. I saw him going up and down among the crowd. He was in front of the crowd. He had a badge with P.A.C. on it". Your Worship, I mean, if a man goes up and down at a distance of 15 paces, he is not standing still, you can't be able to see the letters P.A.C. on the lapel of his jacket. On 15 - 16 paces you can't see the letters, small as they are, in fact, you will have difficulty in seeing the letters at a distance of about from here to the door alone, but at that moment I think he was concentrating particularly on that badge with the letters P.A.C. on it. Why he concentrated on it, I cannot say, when he should in fact concentrate on my activities. There I cannot say much, but Your Worship, as I say, in my opinion it is very difficult for any man to read the letters P.A.C., especially when they are so small, in such a big crowd of

people at Sharpeville Police Station. I mean, I am expressing my opinion, I do not know how Your Worship will take it. He goes on further to say that I was never closer to him than 15 to 16 paces, and then he goes on further, on page 1270 - I'm sorry, on page 1336, he says: "accused No. 39 was walking up and down in front of the crowd, between them and the fence". It was still at that very same distance when he says he saw that badge.

Now Your Worship, evidence has been given that at that stage the people were closer to the police who were in Zwane Street, and they were jeering and shouting "Africa Iswe Lethu", but here the witness says that I was in fact in front of the people, and evidence has also been given in Court here that the people were pressing against the fence. How I was between the people and the fence, that I cannot see, because the people were pressing against the fence. I ask the Court to reject the evidence of this witness and to find me not guilty.

I do not wish to enter too much on the evidence of Mr. T. White, but I will just mention it in passing, - Constable T. White. On page 1709 he says "I pointed out accused No. 39 at the Beksburg parade", when in fact he did not point me at all. Evidence has been given in Court here by Mr. Lawrence, and Mr. Lawrence has told the Court that Mr. T. White has not in fact pointed me out at the Beksburg Parade.

BY COURT:

Your point is that he was contradicted by the man in charge of the parade?

BY ACCUSED No. 1:

Yes. He goes on further to say, on page 1710, that "I cannot remember exactly where I saw accused No. 39, and what/..

what he was doing. He was in the neighbourhood of the Police Station". It is quite probable that he may have mistaken me for any other person who was at that time at the Police Station, and the very fact that he failed to point me out at the parade shows very well that he was not sure whether I was there or not. He goes on further, on page 1713: "I cannot remember if he was inside or outside the ground. I cannot say if I pointed him out at the Boksburg Parade". It was put to the witness that he did not point the accused out. The witness agreed that it is possible. As I say, Your Worship, it may be possible that he in fact has mistaken me for any other people who was at the Sharpeville Police Station when in fact I was at Evaton. In that respect I'll ask the Court to reject the evidence of the witness and find me not guilty.

I again refer the Court to evidence that has been given, F.J. van Nickerk. He is also a Police Constable. He says, on page 2275 that "I pointed out accused No. 39 at the Vereeniging parade on the 19th of May", when he in fact did not point me out at all. In fact, this again is contradicted by the evidence of Mr. Lawrence, that he did not in fact point me out at the parade. And he, like Mr. T. White, may have mistaken me for somebody else on that day, and in that respect, Your Worship, the Court must reject the evidence of Mr. van Nickerk and find me not guilty.

Again on page 2275, he goes on to say "I saw him long after 10 a.m. Immediately I saw him, I saw him. He tried to incite the Africans, he shouted "Africa" and "Gate Manor", and the crowd allowed him to move amongst them. The group whistled to him by becoming unruly." But Your Worship, on page 2280, he says this was at a distance of 25

He could have mistaken me for somebody

else, like Mr. T. White, and at a distance of 25 yards away from the fence, I must have been very far from him for him to hear the words which I shouted, in fact, in such a crowd of people where the crowd is shouting and the people making such a lot of noise as they were making at the Police Station.

I do not wish to detain the Court too much on the evidence that has been given against me as I have already <sup>pointed</sup> ~~pointed~~ out to the Court during my application for discharge, that there is no evidence at all upon which a reasonable man can convict an accused person. Well in fact these people who said that they saw me at the Police Station, may have mistaken me for some other people when in fact I was not at the Police Station but at Evaton.

Your Worship, in the copy of the indictment the Crown has alleged that - on page 3 of the indictment - where it reads "By printing or causing to be printed, distributing, assisting in the distribution, causing to be distributed, circulating or assisting in the circulation or causing to be circulated, pamphlets, leaflets, bills, circulars or similar documents". Now Your Worship, there is no evidence in this Court that I in fact did all these things as the Crown has alleged in the Charge Sheet here, "or by commanding or procuring or causing to be commanded or procured the said natives to surrender themselves for arrest by the Police or authorized officials, the purport meaning an intent of the said pamphlets, leaflets, bills, circulars and other documents and the command being to incite, institute, command or procure the said natives". There is nothing in evidence, in fact, there is no evidence on these things. In that respect I'll ask Your Worship to consider this argument and to find me not guilty.

It is also said here that "At all such times relevant/..

relevant to the charges, it is alleged that accused and others acted together and in concert and in furtherance of a common purpose or acted together and in concert and in furtherance of a common purpose with persons who are members of the association of persons known as the Pan Africanist Congress". . Now, Your Worship, I have already explained to the Court that in fact there is no evidence at all to prove that we acted in concert, in fact, the Crown has not proved that all the accused in fact acted in furtherance of a common purpose. With all that, Your Worship, I think I'll conclude my argument by in fact thanking the Court for the amount of patience that it has given us, and in fact assisting us in advising on how to conduct our application for discharge and in many other things, and that, in fact, I appreciate what the Court has done for us, and I'll go on further to say that I thank the Crown with the task it has undertaken, to be patient, by giving us a certain way of making our application for a discharge and how to argue our case, etc., and I will conclude then in saying I thank the Court in general for the amount of assistance that it had given us. Thank you.

P.P. HAS NO REPLY TO MAKE ON ANY QUESTIONS OF LAW.

COURT ADJOURNS:

COURT PROCEEDS:

BY THE COURT:

Now, before adjourning I want to put on record that I have now, in the presence of the accused, just had another look at three Exhibits, Nos. 36, 37 and 40. There was really more than three Exhibits, there were some others that were extracted from the Exhibits and Exhibited separately. Exhibit 36 is a drum which contains roughly some 70 stones of various sizes. Now, there is one particularly large

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one, several that one can still call large, and smaller and smaller until there were some very small stones there, small stones of about half an inch or an inch in diameter, and so forth. Exhibit 37 consist of about fifty articles, mostly wooden sticks. I noticed in particular one pick handle, quite a few metal rods, apparently solid metal rods, a sjambek, two loaded sticks, one loaded with a belt and another loaded with a bicycle chain. Exhibit 40 consists of twelve wooden sticks, eight metal rods, two axes, two hammers, a chisel, two knives, a bicycle pump and two umbrellas. I am now going to reserve judgment in this case. I am going to take with me to Johannesburg the written record and the documentary Exhibits, but I have looked at these other Exhibits because obviously it is not practicable to take them with me, but now, having looked at these three groups of sticks and so forth, I would just like to know whether you, Mr. Unterhalter, would like to add anything to what I've just said?

MR. UNTERHALTER: No thank you.

ACCUSED No. 1: 4; 8; 39 and 39: HAVE NOTHING TO SAY.

BY COURT:

Now, it is obvious that I cannot deliver a judgment in this very lengthy case without my having done my very best to go through the evidence very thoroughly. I will have to go through some 3400 pages of record, over a hundred documentary Exhibits, and I will have to compare the evidence of many witnesses with the evidence of many other witnesses, and I will have to consult a very large number of legal authorities. So, the accused, who are naturally anxious to know their fate, one way or the other, must please be patient. I shall deliver judgment as soon as I can, but I do not think I will be able to do so in less/..

less than about four weeks from today, and then I might not even be ready, but I am going to postpone the hearing of the case until the 21st of June, 1961. That is a Wednesday, that is four weeks from today. Now I hope that suits everybody. Bail is extended and they must be here at 9.30 a.m. that morning. Ordinary and full bail conditions, as in the past, will apply till then.

MR. UNTERHALTER:

I wonder if I can ask the indulgence of the Court. I have no work for that day, but over this large number of months work has been offered and obviously have not been undertaken. I wonder if it is at all possible and convenient to the Court to appreciate the date for the 22nd or the 23rd for only one reason. The Motion Court in the Supreme Court is on a Tuesday or a Wednesday and the Wednesday is usually a carry-over application from Tuesday, and it may be that work will be offered and I'll not be available. As I say, I have nothing at all on on that day at the moment, but - as Your Worship pleases.

BY COURT:

I already had an earlier date in mind, but on account of the position as presented to me by the Control Officer in Johannesburg, I had to put it down for a day or two later. I don't suppose one more day will make any difference. I am as anxious as everybody else to have the matter behind my back. You are suggesting rather the 22nd?

MR. UNTERHALTER:

Rather the 22nd, if it were at all possible.

BY COURT:

Have any of the accused got any views on that?

P.P. NO OBJECTION.  
ACCUSED NO OBJECTION.

REMAINED TO 22. 6. 1961.