

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

CASE NO: 336/89

In the appeal of

PETER MALETA

FIRST APPELLANT

VICTOR MAMOBOLO

SECOND APPELLANT

EVANS MAROKANI

THIRD APPELLANT

and

THE STATE

RESPONDENT

Coram: HOEXTER, F H GROSSKOPF JJA et GOLDSTONE AJA.

Date heard: Friday 31 August 1990

Transcript of extempore judgment delivered by Goldstone AJA

and concurred in by Hoexter and F H Grosskopf JJA on Friday

31 August 1990.

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J U D G M E N T

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GOLDSTONE AJA:

The three appellants were convicted of public violence in a Regional Court sitting in Pietersburg. They were each sentenced to imprisonment for six years of which three years' imprisonment was conditionally suspended. Their appeal to the Transvaal Provincial Division against both the convictions and sentences was dismissed. With leave of the Court a quo, the appellants appeal to this Court and also apply for an order permitting them to adduce further evidence.

The State's case consisted of the evidence of two witnesses,

Johannes Ramaifa and Edward Lekganyane, who were, at the time of the incident, security guards on the campus of the University of the North. On Wednesday 20 November 1985 they were patrolling the grounds of the campus on foot, together with a third security officer, Peter Modeba. At about 12h30 they received a radio report. Their assistance was required in the vicinity of gate No 2 on the University campus. At the gate, about 300 students had gathered to protest against the presence of the South African Police on the campus. The Police had allegedly entered the campus, searched the room of a student, and arrested that student. The campus was apparently quiet apart from that incident. The security guards were approximately 40 paces from the gate when they were approached by the group. The students bid the guards to go back. A portion of Ramaifa's evidence was not on tape but it appears from the magistrate's judgment that the following dialogue ensued. The guards said "as julle ons beveel om terug te gaan dan moet julle ophou

om die ander mense seer te maak want ons is op pad om hulle te gaan help". The students apparently responded by saying "julle het die polisie toegelaat om in te kom". Ramaifa testified that the students then partially surrounded the guards in a semi-circle formation and began stoning them. He then fired a volley of 4-5 warning shots but to no avail. The students moved closer. The guards turned and tried to run away. Ramaifa testified that he tripped over a brick and fell down. A stone hit him on the right side of his head above his ear. He also received two wounds on his right leg as a result of being hit by stones. He later received three stitches. The students were now very close. Ramaifa got up and fired another warning shot. The group retreated. He found himself alone and in the vicinity of the kitchen. He saw some students run behind the kitchen to cut him off and so he ran in the direction of the office. He fired another warning shot at a group of students he encountered there and

they moved back. He ran on.

Ramaifa testified that he could remember some of the people he saw in the group just before the stone throwing began.

He identified amongst them the three appellants by name.

The first appellant he identified by his nickname, Mogabe.

Second appellant, he said, had a broom and a notebook in his hands. He did not see any of the accused throw any stones nor did he see them in the group which pursued him.

Edward Lekganyane, the second security guard, also gave evidence for the State. After Ramaifa fired the warning shots, first, one or two of them, then a few minutes later, one or two more, the guards fled the scene. Lekganyane said that he was pursued and cornered by a group of students. They began throwing stones at him. He was punched in the face and began to bleed. They robbed him of his watch, two-way radio and cap.

Lekganyane could not identify any of the students who assaulted him. He recognised one of the students who hit him but it was not one of the appellants. Just before the initial stone throwing began, Lekganyane identified the second appellant amongst the group. The latter was carrying a broom and a notebook. He saw some of the students picking up stones but he did not see second appellant either pick up or throw any stones.

That evidence concluded the State's case. After an unsuccessful application for the discharge of the appellants, their case was closed without any testimony having been led.

The regional magistrate, in convicting the appellants, referred to the facts that they had failed to give an exculpatory version during the stage of plea and that no such version was put

to the State witnesses during their cross-examination. They were put on the scene by the evidence adduced by the State.

An answer from the appellants was called for, held the magistrate. In the absence thereof, he found that the only reasonable inference was that they had acted with common purpose with those members of the crowd who attacked the security guards. The Court a quo supported that finding.

In my judgment the State failed to establish a prima facie case of guilt against the appellants. The evidence of the State witnesses goes no further than to place them on the scene at a time before the unlawful conduct began. At the time when they were observed in the front section of the crowd there is no evidence that any person was armed with a stone let alone that one had been thrown. There is no evidence suggesting that members of the crowd had previously agreed upon any course of unlawful conduct. The appellants were

students at the University and lawfully present on its campus.

That presence there at the time they were seen by the State witnesses was equally consistent with innocence as with guilt.

There was no prima facie case which they were called upon to meet and their silence therefore took the State case no further.

The appeal against the convictions is upheld. The convictions and sentences are set aside.



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R J GOLDSTONE