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IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

JUDE FRANCIS First Appellant

BAFO BAWANA NGUQU Second Appellant

and

THE STATE Respondent

CORAM: SMALBERGER, STEYN, JJA, et PREISS, AJA

HEARD: 2 NOVEMBER 1990

DELIVERED: 26 NOVEMBER 1990

J U D G M E N T

SMALBERGER, JA :-

Twelve accused, including the two appellants, were arraigned in the Natal Provincial Division before THIRION J and two assessors on a main count of terrorism in contravention of section 54(1) of

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the Internal Security Act 74 of 1982 ("the Act"). In addition there were various alternative counts against all but two of the accused. The appellants were respectively accused 5 and accused 10 at the trial. For the sake of convenience I shall refer to them individually as such. At the end of the State case accused 7 and 8 were discharged; accused 1 was acquitted at the conclusion of the trial. The remaining accused were all convicted on the main count and sentenced to varying terms of imprisonment. The appellants were subsequently granted leave by the court a quo to appeal to this Court against their convictions only. Hence the present appeal.

Section 54(1) of the Act provides:

"(1) Any person who with intent to -

(a) overthrow or endanger the State authority in the Republic;

(b) achieve, bring about or promote any constitutional, political, indus= trial, social or economic aim or change in the Republic;

(c) induce the Government of the Republic to do or to abstain from doing any act or to adopt or to abandon a particular standpoint; or

(d) put in fear or demoralize the general public, a particular population group or the inhabitants of a particular area in the Republic, or to induce the said public or such population group or inhabitants to do or to abstain from doing any act,

in the Republic or elsewhere -

(i) commits an act of violence or threatens or attempts to do so;

(ii) performs any act which is aimed at causing, bringing about, promoting or contributing towards such act or threat of violence, or attempts, consents or takes any steps to perform such act;

(iii) conspires with any other person to commit, bring about or perform any act or threat referred to in paragraph (i) or act referred to in paragraph (ii), or to aid in the commission, bringing about or performance thereof; or

(iv) incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about or perform such act or threat,

shall be guilty of the offence of terrorism and liable on conviction to the penalties provided for by law for the offence of treason."

At the time of the the alleged conduct giving rise to the appellants' convictions, the African National Congress ("the ANC") and its so-called military wing, Umkhonto We Sizwe ("MK"), were unlawful organizations in terms of the provisions of section 1 of the Act. The preamble to the main count in the indictment alleged that at all relevant times "the aims

of the ANC included inter alia the overthrow or coercion of the Government of the Republic and/or the endangering of the State authority in the Republic by means of violence or threats of violence or by means which include or envisage violence and/or threats of violence", and that the accused, being members or active supporters of the ANC, "associated themselves with the aims, objects and activities of the ANC and furthered or attempted to further the aims, objects and activities of the ANC". The gravamen of the main count was that the accused, acting alone or in furtherance of a common purpose with each other, and with intent to achieve one or more of the objects set out in section 54(1)(a) to (d) of the Act, unlawfully conducted themselves in one or more of the respects listed in section 54(1)(i) to (iv) of the Act. Details were furnished of the specific conduct alleged

against each accused.

The indictment sets out, in certain annexures thereto, the acts of accused 5 and 10 on which the State relies to prove their guilt. It is not necessary to detail these. Nor is there any need to analyse the indictment and further particulars thereto. At the hearing of the appeal it was common cause that the convictions of accused 5 and 10 were dependent upon proof, against each personally, of their alleged conduct. That conduct will in due course become apparent when I deal with the evidence against them. The conviction of accused 5 was based on the acceptance by the trial court of the evidence of an accomplice referred to at the trial as D (to whom I shall continue to refer as such). The conviction of accused 10, on the other hand, was based on inferences drawn by the court from certain pointings out which it accepted had

been made by accused 10. Neither accused 5 nor accused 10 gave evidence in his defence. Because their respective convictions were based on totally different facts and considerations I propose dealing separately with the appeal of each.

The appeal of accused 5

The gist of D's evidence, insofar as it relates to accused 5, is as follows. He (i e D), a recognised political activist, was recruited as a member of the ANC and MK by accused 3. The latter was a doctor at the King Edward VIII Hospital ("the Hospital") in Durban. After joining MK (which had been described by accused 3 as the "underground structure" of the ANC) D was told by accused 3 to recruit a cell of "reliable people". He considered accused 5 a suitable candidate, and approached him in a

bus when returning from a meeting of the United Democratic Front at Natal University. He arranged with accused 5 to meet accused 3 at the Hospital the following morning. The meeting took place at the Hospital cafeteria. D was present at the meeting. Accused 3 told accused 5 that he was recruiting Indians for the ANC. Accused 5 was apparently willing to join the ANC. He was told by accused 3 that ANC operators do not function under their own names. Accused 5 chose the code-name "Lantis". (D had previously been given the code-name "Revelano Singh" alias "Rev"; accused 3's code-name was "Mike".) They were thereafter joined by one Lincoln. It is common cause that Lincoln at the time was the commander of MK for the Natal region. They accompanied Lincoln to a room in the Hospital where he proceeded to give them theoretical training in the use of explosives (grenades

and limpet mines) and the maintenance of "dead letter boxes" ("DLB's"), the latter being a depository for arms and explosives. He also instructed them on surveillance, discipline and the use of code names. They later returned to the cafeteria. They had lunch with accused 3; thereafter accused 3 gave them money for their bus fares and they went home. There had earlier been some discussion, initiated by accused 3, about recruitment. Accused 5 had mentioned that he had two persons in mind to recruit.

On the following Wednesday a further meeting took place between accused 3, accused 5 and D at the Unit 2 swimming pool. Accused 5 reported that he had been unsuccessful in enlisting the persons he had attempted to recruit. On a later date accused 3 telephoned D. He asked D to contact accused 5, and arranged for them to meet him that same night at the

Unit 2 Shopping Centre. They met as arranged. Accused 3 was accompanied by Lincoln. D and accused 5 were blindfolded. They were then driven to a house where they were taken into a room. There various explosive devices were taken out of a bag. Lincoln instructed them in the use of grenades and the operation of limpet mines. After the training session they were again blindfolded, and were then taken home. An arrangement was made to reconnoitre the house of Mr Rajbansi (the then chairman of the House of Delegates) the following evening. The reconnaissance was duly carried out. Accused 5 was present. In the car on the way back it was decided to attack Rajbansi's house on the following Sunday (4 August 1985). D asked accused 3 for a limpet mine for that purpose. On the Sunday evening at about 6 p m D and his cell members met accused 3 and Lincoln at

the Unit 2 swimming pool. Accused 5 was not present. They were offered the choice of two limpet mines. They eventually decided to use the smaller one. D, accused 3 and Lincoln then drove to the Lakehaven Children's Home where the larger limpet mine was entrusted to accused 5 for safe-keeping. Later that night D and the members of his cell placed a limpet mine on the sidewalk outside Rajbansi's house. Accused 5 was not present when this occurred. (It is common cause that a limpet mine exploded outside Rajbansi's house at approximately 10.35 p m on 4 August 1985.)

The next meeting involving accused 5 took place in November 1985. D met accused 3 and 5 at the Hospital. Accused 3 advised D to get a code 8 driver's licence, and accused 5 to get a code 11 licence. He gave D R40-00 to enable him to book

lessons for a driver's licence. Subsequently it was decided by accused 3 and D to target the Chatsworth House of Delegates' office for a bomb attack. On Friday 13 December 1985 accused 3 met D at the Unit 2 swimming pool. From there they drove to the Lakehaven Children's Home. There D called accused 5. Accused 5 handed accused 3 a packet containing a limpet mine. Accused 3 and D left accused 5 and returned to the swimming pool. D and his cell members were later that evening thwarted in their attempt to bomb the Chatsworth House of Delegates' office because of the presence of security guards. They then switched their target to the Chatsworth Court House building. (It is common cause that an explosion occurred there at 6.15 p m on 13 December 1985.) D did not give any further evidence implicating accused 5.

Although, as previously mentioned, accused 5 did not testify, his version was put to D by his counsel. It was to the following effect. In the bus on the way home from the United Democratic Front meeting at Natal University he was approached by D. He was asked by D to join him (D) at a meeting the following day with someone who wished to discuss political matters with them. Accused 5 met D the following morning at D's house. D told accused 5 that they were going to receive political lessons in relation to, inter alia, the ANC and the history of the political struggle in South Africa. D said that in order to protect their identity they should adopt fictitious names. Accused 5 adopted the name "Lantis" and D that of "Rev". They then proceeded to the Hospital cafeteria where accused 3 was introduced to accused 5 as "Mike". Later Lincoln

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arrived. Thereafter accused 3 left. Lincoln took accused 5 and D to a small room in the Hospital where he lectured to them on various political topics including the history of the ANC. In a later discussion about their political views D said he favoured violence; accused 5 disagreed. They eventually returned to the cafeteria where they were given money by accused 3 for their bus fares. Towards the end of 1985 accused 5 approached D and asked him how best to contact accused 3 as he needed money to obtain a driver's licence. As D also wished to see accused 3, they proceeded to the Hospital together. Accused 3 promised to assist accused 5, and advanced him R10-00 to book for his learner's licence. In response to a request for a loan by D in order to pay certain accounts, accused 3 gave D R30-00. This was claimed to be the full extent of accused 5's

involvement in the matters testified to by D. What was put to D under cross-examination constitute admissions made on behalf of accused 5 (S v W 1963(3) SA 516(A) at 523 C - F).

It is common cause that D's evidence, if accepted as true, would render accused 5 guilty of terrorism as charged, as his conduct would fall within the provisions of s 54(1) of the Act. This appeal consequently turns on the question whether D's evidence was rightly accepted by the trial court. Although, because accused 5 failed to testify, D's evidence implicating accused 5 stands uncontradicted, it does not follow that such evidence is necessarily true (Siffman v Kriel 1909 TS 538 at 543) or that the trial court was bound to accept it (Nelson v Marich 1952(3) SA 140 (A) at 149 A - B). As stated by GREENBERG, JA, in Shenker Brothers v Bester 1952(3) SA 664 (A) at

670 G, "the circumstance that evidence is uncontradicted is no justification for shutting one's eyes to the fact, if it be a fact, that it is too vague and contradictory to serve as proof of the question in issue". It was therefore incumbent upon the trial court to properly evaluate the evidence of D in the light of its alleged deficiencies, and the criticisms voiced against it, in order to determine whether it measured up to the standard required for its acceptability. If it did not measure up to such standard, it would not avail the State in the discharge of the onus of proof upon it that accused 5 failed to testify. While an accused person's failure to testify may in appropriate circumstances be a factor in deciding whether his guilt has been proved beyond all reasonable doubt, this is only so where the State has prima facie discharged the onus upon it. A failure

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to testify will not remedy a deficiency in the State case such as the absence of apparently credible implication of the accused (S v Masia 1962(2) SA 541 (A) at 546 E - F). The thrust of the argument of Mr Magid (who appeared for the appellants) was that the trial court failed to evaluate D's evidence properly - had it done so it would have found his evidence totally unacceptable. Consequently there would have been no basis on which to convict accused 5, notwithstanding his failure to give evidence.

The trial court delivered itself of a careful and well-reasoned judgment. It is apparent, both from the terms of the judgment and the treatment of the evidence, that the court was at all times aware, when considering D's evidence, that it was dealing with an accomplice who was also a single witness. It was fully conscious of the dangers inherent in such

evidence and the need to exercise caution in the consideration and evaluation thereof. It was alive to the shortcomings in D's evidence. It was also aware of the criticisms directed at D's evidence. (It is common cause that the arguments advanced on appeal relating to the non-acceptability of D's evidence were raised at the trial.) Many of these have been specifically dealt with in the judgment. The fact that some have not been mentioned does not mean that they were not duly considered. As has frequently been said, no judgment can be all-embracing.

This Court's powers to interfere on appeal with the findings of fact of a trial court are limited (R v Dhlumayo and Another 1948(2) SA 677 (A)). Accused 5's complaint is that the trial court failed to evaluate D's evidence properly. It is not suggested that the court misdirected itself in any respect. In

the absence of any misdirection the trial court's conclusion, including its acceptance of D's evidence, is presumed to be correct. In order to succeed on appeal accused 5 must therefore convince us on adequate grounds that the trial court was wrong in accepting D's evidence - a reasonable doubt will not suffice to justify interference with its findings (R v Dhlumayo (supra); Taljaard v Sentrale Raad vir Koöperatiewe Assuransie Bpk 1974(2) SA 450 (A) at 452 A - B). Bearing in mind the advantage which a trial court has of seeing, hearing and appraising a witness, it is only in exceptional cases that this Court will be entitled to interfere with a trial court's evaluation of oral testimony (S v Robinson and Others 1968(1) SA 666 (A) at 675 G - H).

In an attempt to convince us that the trial court was wrong in accepting the evidence of D, Mr

Magid analysed D's evidence in considerable detail. In doing so he pointed out what he claimed were contradictions, inconsistencies and improbabilities in D's evidence. He also referred to other features in D's evidence which he relied upon as reflecting adversely on D's credibility. The cumulative effect of these criticisms, he contended, was to render D's evidence unacceptable, thereby obviating the need for any reply by accused 5.

I do not propose to deal with each of the points of criticism advanced against D's evidence. It will suffice to refer at random to some in order to illustrate their nature and substance (or lack of it). In his evidence-in-chief D had stated that when he first made contact with accused 5 in the bus they were seated some distance from each other; under cross-examination it transpired that at a certain stage he

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had asked the person sitting next to accused 5 to move to enable him to speak to accused 5. There was confusion in his evidence whether the question of recruitment arose on the occasion of the first meeting between himself, accused 3 and accused 5, or the following Wednesday. He contradicted himself on whether Lincoln joined him and accused 5 in the cafeteria before or after accused 3 left them. He was criticised for stating in his evidence-in-chief that he made a statement to the police before being moved to Scottburgh gaol, whereas under cross-examination he claimed to only have signed his statement after his removal to Scottburgh gaol. To deal with these briefly. There is a distinct difference between making and signing a statement. D was never asked whether he had the same incident in mind when he spoke of making and signing his statement.

He may well have made an oral statement before his removal to Scottburgh, and have subsequently signed a prepared written statement. The alleged contradiction may therefore not be one at all. The bus incident assumes little importance in view of accused 5's admission (during cross-examination of D) that contact between them took place on the bus which led to the meeting with accused 3 the following day. There was no reason for D to lie as to how that admitted contact took place. The simple explanation for this so-called inconsistency is that the full picture only emerged under cross-examination. Likewise the contradiction concerning whether accused 3 left before or after Lincoln joined D and accused 5 in the Hospital's cafereria is of no moment in view of accused 5's admitted presence at the time. On the question of recruitment the trial court held that D's differing

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evidence could not satisfactorily be reconciled. The contradiction is, however, not one of any great substance. It must be borne in mind that D was testifying to a series of events which had occurred a long time previously. The fact that he had been kept in solitary confinement for some time could also have had an effect on his memory - a consideration to which the trial court at all times was alive. Of the improbabilities raised in argument, most of them were effectively dealt with in the judgment of the trial court. One such improbability was that accused 3 would have given D and accused 5 R40-00 with which to obtain learner's licenses. As the trial court correctly pointed out, to the extent that D's evidence was improbable in this regard, the defence version of the incident (that accused 5 approached a comparative stranger to borrow money from him and D seized the

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opportunity to borrow money to pay his accounts) is no less improbable.

I have given anxious consideration to the individual points of criticism raised against D's evidence as well as their cumulative effect. In my view D's evidence has not been shown to be substantially flawed. There are no material contradictions or inconsistencies in his evidence. Nor are there improbabilities in his evidence of such a degree as to render his veracity suspect. He has not been shown to have been a deliberately untruthful witness. At best for accused 5 it can be said that D was not a perfect witness who gave unblemished evidence. It is not necessarily expected of an accomplice, before his evidence can be accepted, that he should be wholly consistent and wholly reliable, or even wholly truthful, in all that he says. The

ultimate test is whether, after due consideration of the accomplice's evidence with the caution which the law enjoins, the court is satisfied beyond all reasonable doubt that in its essential features the story that he tells is a true one (R v Kristusamy 1945 A D 549 at 556).

There are, in my view, a number of safeguards which reduce the risk of D falsely implicating accused 5. The initial contact between D and accused 5 in the bus, the meeting with accused 3 at the Hospital the following day, the introduction to Lincoln and the time subsequently spent with him, are all admitted by accused 5, albeit in a different context. Accused 5 also admits accompanying D to accused 3 in November, but for a different reason from that advanced by accused 5. The significance of accused 5's admitted involvement with D is that it reduces the risk of D

falsely implicating accused 5 in order to shield the real culprit. It leaves the question, however, whether D may be falsely implicating accused 5 by (1) distorting otherwise innocent or lawful events, or (2) involving him in events which did not occur. The risk of (1) is substantially reduced by the admitted fact that code-names were agreed to before the meeting with Lincoln. If the meeting was for an innocent or lawful purpose there would have been no need for D and accused 5 to hide their true identities. The need for code-names is consistent only with their involvement in some nefarious or unlawful conduct, and to that extent is corroborative of D's evidence. The danger of (2) is lessened by the fact that D and accused 5 were apparently on a good footing with each other, and D has no particular ground for rancour against accused 5. In addition, if D had deliberately sought to falsely

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implicate accused 5 by involving him in events in which he had played no part he could have, and probably would have, gone much further in incriminating him than he did. A further safeguard is the absence of gainsaying evidence from accused 5 (S v Hlapezula and Others 1965(4) SA 439 (A) at 440 D - H).

D's evidence, on a proper appraisal thereof, establishes a strong prima facie case against accused 5. His evidence directly implicates accused 5 in criminal conduct. If accused 5 were innocent he could, with apparent ease, have refuted D's evidence under oath. He failed to do so. Whatever the reason therefor might have been, such failure ipso facto strengthened the State case and rendered D's evidence conclusive of his guilt (S v Mthetwa 1972(3) SA 766 (A) at 769 B - E). I am accordingly satisfied that the trial court was correct in accepting D's evidence as

true beyond all reasonable doubt. It follows that accused 5 (in view of the concession that D's evidence, if accepted, establishes his guilt) was rightly convicted. In the result his appeal must fail.

The appeal of accused 10

The evidence establishes conclusively that accused 10 made two pointings out after his arrest in consequence of which a quantity of arms and explosives was discovered. The first occurred on 11 February 1986 behind 4028 Mpanza Road, Lamontville - the house where it is common cause accused 10 resided with his family ("the first pointing out"). The second took place on 10 April 1986 at KwaGijima, where accused 10 pointed out an area in which two landmines were subsequently found ("the second pointing out").

The circumstances surrounding the first

pointing out were the following. Accused 10 directed the police to 4028 Mpanza Road. After alighting from the police vehicle he led the police along a footpath to the rear of his house. There, a short distance off the footpath, he pointed out a spot between two small banana trees. This is depicted on the photograph, Exhibit D 19. The area in question was overgrown with fairly lush vegetation. Quite obviously the vegetation had not been disturbed for some time. The spot pointed out by accused 10 was marked "D" on the plan, Exhibit C. The subsequent events are succinctly set out in the judgment of the court a quo as follows:-

> "A spade was obtained and accused 10 started digging at the place which he had pointed out. He dug superficially and in the process dug up an area which eventually measured about 5 x 3m. After accused 10 has been digging for about 15 minutes one of the members of the police party discovered a plastic bucket in the ground at the point

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> marked as E, about 5 paces from the point marked as D on exh C. This bucket contained a number of books and also the reference book of accused 10. After the bucket had been inspected accused 10 resumed his digging and after having dug for about 1 1/2 hours accused 10 eventually went back to the spot which he originally pointed out and on digging deeper there he unearthed a plastic bag there. In this bag were found inter alia a handgrenade, a 158 mini limpet mine, a box of detonators, 4 MUV2 pull switches and 35 rounds of ammunition."

The second pointing out occurred as follows. Accused 10 directed the police to a spot in the vicinity of the KwaGijima sports grounds. He moved about between some ruins and carefully surveyed the area. He then pointed out a certain area with a sweeping movement of his arms. He also pointed to an embankment on the opposite side of the road from where he was standing. He then crossed the road, mounted the embankment and, after turning to his left, proceeded to walk along it. By then one of the

policemen at the scene was on the embankment walking towards accused 10. When they were about 15 metres apart the policeman discovered two TM 57 landmines. By then accused 10 had proceeded about 40 - 50 paces along the embankment. While walking along the embankment accused 10 had been looking in the adjoining grass. It is appropriate to mention at this stage that accused 10 was arrested by one Sgt Moodley on 24 October 1985 some 300 metres from the KwaGijima sports grounds. At the time of his arrest he was in possession of an empty trunk. On later examination the inside of the trunk was found to contain traces of RDX, an explosive substance found in TM 57 landmines.

To revert to the first pointing out. The fact that accused 10 pointed out the precise location of the weapons' cache justifies an inference of knowledge on his part that the weapons were buried

there (R v Tebetha 1959(2) SA 337 (A) at 346 D). Such knowledge may have been acquired in a number of ways. Accused 10 may personally have concealed the weapons there; or he may have observed someone else do so; or he may have been told that they were buried there. Knowledge by accused 10 cannot therefore per se be equated with possession of the weapons by him. But knowledge may, depending upon the circumstances, lead to an inference of possession and, ultimately, guilt (S v Tsotsobe and Others 1983(1) SA 856 (A) at 864 D; S v Shezi 1985(3) SA 900 (A) at 906 A). In this regard it should be emphasised that possible innocent explanations of knowledge will rarely merit serious consideration if they are not put forward under oath (cf. S v Kanyile and Another 1968(1) SA 201 (N) at 202 E -203 B).

The trial court concluded, on the evidence, that accused 10 had possessed the weapons discovered behind his house. It was justified in arriving at such conclusion. The weapons were found in relatively close proximity to the house occupied by accused 10. He knew the precise spot where the weapons were buried - even the fact that the area was overgrown with vegetation did not prevent him from accurately pointing it out. This renders it unlikely that he was merely told where the weapons were hidden. In any event, it is unlikely that an innocent outsider would have been told of the whereabouts of a weapons' cache of that nature. The finding of a bucket containing accused 10's reference book close to where the weapons were discovered is a highly incriminating piece of evidence linking him to the area in question. It strongly suggests that accused 10, and not someone else,

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concealed the weapons there. Had accused 10 innocently acquired knowledge of the presence of the weapons one would have expected him to testify accordingly. It is not for this Court to speculate about possible innocent explanations not specifically advanced by accused 10 (S v Rubenstein 1964(3) SA 480 (A) at 487 H - 488 A). In the circumstances the proved facts coupled with accused 10's failure to testify, justify the inference, as the only reasonable one, that he was responsible for concealing the weapons where they were later found (S v Letsoko and Others 1964(4) SA 768 at 776 C - E). This in turn, in the absence of any explanation from accused 10, leads to the inference that he possessed the weapons in question. It is common cause that such possession, having regard to the circumstances and the nature of the weapons concerned, justified the trial court in

holding that accused 10 possessed the weapons with the intent set out in s 54(1)(a) to (d) of the Act, and that he was guilty of a contravention of s 54(1)(ii) and (iii) of the Act.

Different considerations apply as far as the second pointing out is concerned. The circumstances of that pointing out, although indicative of knowledge of the landmines by accused 10, are less susceptible of an inference of possession by him. Mr Schönfeldt, for the State, fairly (and in my view correctly) conceded that unless it were established that the trunk, when found in accused 10's possession by Moodley, contained traces of RDX in it, an inference of possesion would not be the only reasonable one. I do not propose to analyse the evidence relevant to this issue. Suffice it to say that such evidence is inconclusive on the question of when (and how) the

traces of RDX in the trunk first found their way there. The reasonable possibility that the trunk only became contaminated with RDX after accused 10's arrest cannot be excluded. In the result no inference of possession should have been drawn against accused 10 as a consequence of the second pointing out. This does not affect the verdict of guilty, as the inferences drawn from the first pointing out suffice to render accused 10 guilty as charged.

Accused 10 did not note an appeal against his sentence of 8 years imprisonment. He was, however, sentenced on the basis of having been in possession of the weapons discovered in consequence of the first pointing out, as well as the two landmines discovered at KwaGijima. The conclusion that he was not proved to have been in possession of the latter must needs have an ameliorating effect on his sentence. Mr

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Schönfeldt conceded that we were entitled, in the circumstances, to interfere with the sentence. An appropriate sentence will be one of 6 years' imprisonment.

In the result the following order is made:

1. The appeal of the first appellant (accused 5) is dismissed.

2. The appeal of the second appellant (accused 10) against his conviction is dismissed, but his sentence is altered to one of 6 year's imprisonment.

J W SMALBERGER
JUDGE OF APPEAL

STEYN, JA)
PREISS, AJA) CONCUR