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Judgment
1966

IN THE PRIVY COUNCIL

No. 1 of 1965

ON APPEAL FROM THE FEDERAL SUPREME
COURT OF RHODESIA AND NYASALAND

B E T W E E N :

SIMON RUNYOWA (Accused) Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON
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LEGAL STUDIES
25 APR 1967
25 RUSSELL SQUARE
LONDON, W.C.1.

ON APPEAL FROM THE FEDERAL SUPREME
COURT OF RHODESIA AND NYASALAND

B E T W E E N :

SIMON RUNYOWA (Accused) Appellant

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EXHIBITS NOT TRANSMITTED TO PRIVY COUNCIL

Mark	Description of Document
"1"	Plan and key
"2"	Photographs
"4"	Plan of general area
"6"	Bottle
"7"	Bottle
"8"	Photographs of interior of house
"9"	Lid, matches and wick
"10"	Finger print record of Accused No. 2
"11"	Thumb print lifted from Exhibit "6"

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ON APPEAL FROM THE FEDERAL
SUPREME COURT OF RHODESIA AND NYASALAND

B E T W E E N :

SIMON RUNYOWA
(Accused) Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

No. 1

In the High
Court of
Southern
Rhodesia

10

INDICTMENT

IN THE HIGH COURT OF SOUTHERN RHODESIA

No. 1

Thomas Arnoldus Theron Bosman, Esquire, Attorney
General of our Sovereign Lady the Queen,
within Southern Rhodesia, who prosecutes for
and on behalf of Her Majesty, presents and
gives the Court to be informed:-

Indictment.

20 That ALEXANDER GENDHAMU CHIRAWU, an African
petrol attendant, and KASSIANO MURINGWA, an African
tailor, and SIMON RUNYOWA, an African municipal
employee, all residing at Harare in the Province of
Mashonaland South in Southern Rhodesia (hereinafter
called the accused), are, all and each or one or
more of them, guilty of the crime of Contravening
paragraph (a) as read with paragraph (c) of sub-
section (1) of section 33A of the Law and Order
(Maintenance) Act, 1960.

30 In that upon or about the 2nd October, 1963,
and at or near Harare in the Province of Mashonaland
South aforesaid, the accused did all and each or one
or more of them wrongfully and unlawfully and without

In the High
Court of
Southern
Rhodesia

No. 1

Indictment
(continued)

lawful excuse, by the use of petrol, benzene, benzine, paraffin, methylated spirits or some other inflammable liquid, set or attempt to set on fire a building or structure, that is to say, house number 4093, Semi Detached Lines, Harare, aforesaid; and thus the accused did all and each or one or more of them commit the crime of Contravening paragraph (a) as read with paragraph (c) of sub-section (1) of section 33A of the Law and Order (Maintenance) Act, 1960.

10

Or otherwise:- That the accused are all and each or one or more of them guilty of the crime of Contravening sub-section (1) of section 33 of the Law and Order (Maintenance) Act, 1960.

In that upon or about the 2nd October, 1963, and at or near Harare in the Province of Mashonaland South aforesaid, the accused did all and each or one or more of them wrongfully and unlawfully and without lawful authority or reasonable excuse have in their possession or in or upon any premises occupied by them, the accused, an offensive weapon, that is to say, a glass bottle filled with paraffin or some other similar inflammable liquid, the said bottle also being fitted with a stopper and wick; and thus the accused did all and each or one or more of them commit the crime of Contravening subsection (1) of section 33 of the Law and Order (Maintenance) Act, 1960.

20

Wherefore upon due proof and conviction thereof the said Attorney General prays the judgment of the Court against the said ALEXANDER GENDHAMU CHIRAWU and the said KASSIANO and the said MURINGWA according to law.

30

Attorney General.

IN THE HIGH COURT OF SOUTHERN RHODESIA

SALISBURY CRIMINAL SESSIONS

DECEMBER 9th, 10th,
11th, 12th, 13th,
16th, 17th, 18th,
20th, 23rd, 1963.

In the High
Court of
Southern
Rhodesia

BEFORE THE HONOURABLE MR. JUSTICE HATHORN

Salisbury
Criminal
Sessions

ACTING CHIEF JUSTICE, AND ASSESSORS,

MESSRS. YARDLEY AND CRIPWELL

9th, 10th,
11th, 12th,
13th, 16th,
17th, 18th,
20th, 23rd
December, 1963.

R E G I N A

10

versus

- (1) ALEXANDER GENDHAWU CHIRAWU
- (2) KASSIANO MURINGWA
- (3) SIMON RUNYOWA

Mr. J. Gordon-Davies of Counsel for the Crown.

Mr. F.G. Farmar of Counsel for the 1st and 2nd accuseds.

Mr. E. Dumbutshena of Counsel for the 3rd accused.

Interpreters: Thomas Msemburi and Arthur Mujuru.

20

Mr. Gordon-Davies produces his authority to prosecute.

9th December,
1963.

HATHORN, A.C.J.: Is there any need for the indictment to be read out?

MR. GORDON-DAVIES: I understand they have not yet pleaded.

HATHORN, A.C.J.: They have not formally pleaded. Does Counsel wish the indictment put to them?

MR. FARMAR: Yes, please. I have not seen the indictment.

30

MR. GORDON-DAVIES: May I apply for an amendment. Wherever the date 2nd October appears, may it be substituted by 2nd September?

In the High
Court of
Southern
Rhodesia

Salisbury
Criminal
Sessions

9th December,
1963
(continued)

HATHORN, A.C.J.: Is there any objection?

MR. FARMAR: No, my Lord.

MR. DUMBUTSHENA: No.

HATHORN, A.C.J.: Very well, the indictment is amended by the substitution of September for October wherever that appears.

HATHORN, A.C.J.: Do you wish the indictment put, Mr. Farmar?

MR. FARMAR: Yes, I think it should be put.

(Indictment put to the accused)

10

INTERPRETER: All of the accused plead not guilty to the main charge, my Lord. All three accused plead not guilty to the alternative charge, my Lord.

PROSECUTOR OUTLINES THE FACTS OF THE CASE.

Evidence for
the Crown

No. 2

No. 2

EVIDENCE FOR THE CROWN

Detective
Sergeant John
Crowe.

EVIDENCE OF DETECTIVE SERGEANT JOHN CROWE

JOHN CROWE, sworn and examined

Examination.

BY MR. GORDON-DAVIES: Are you a Sergeant in the British South Africa Police attached to the Law and Order Section in Salisbury? - That is correct.

20

On Wednesday, the 4th of September, did you see the Accused No. 1, Alexander, in your office and there charge him with the crime of contravening section 33 A (1) (a) of the Law and Order (Maintenance) Act? - I did.

Was he in his sound and sober senses and properly warned and cautioned? - He was.

Did he freely and voluntarily elect to make a reply to the charge? - He did.

30

Did you record it and read it back to him? - I did.

In the High Court of Southern Rhodesia

Did he adhere to it and sign it? - He did.

The following day, the 5th of September, did you again see the accused and ask him whether he wished to make certain indications to you? - I did, my Lord.

Salisbury Criminal Sessions

In asking him this, did you first properly warn and caution him? - I did.

Evidence for the Crown

10 Was he in his sound and sober senses? - He was.

No. 2

Did he freely and voluntarily agree to make those indications? - He did.

Detective Sergeant John Crowe.

And did he subsequently make them to you? - He did.

Examination (continued)

On both occasions did Station Sergeant Mbanga act as your interpreter? - He did, my Lord.

20 MR. FARMAR: The admissibility of the alleged statement and indications is challenged on the basis that before the statement was taken on the 4th of September at the main charge office, in an office there the accused, Alexander, was beaten by a number of African detectives, African members of the C.I.D., whom he is unable to identify, and interrogated by them, my Lord.

HATHORN, A.C.J.: Do I understand then that the statement was admittedly made by the accused?

MR. FARMAR: Yes, my Lord.

HATHORN, A.C.J.: And the indications admittedly made?

30 MR. FARMAR: The indications were agreed to. They were suggested to him, and agreed to, my Lord.

HATHORN, A.C.J.: Is it alleged that the evidence of the indications was also forced?

MR. FARMAR: Yes, on the basis of the duress on the 4th and also on the basis that at the scene on the 5th there was a threat of further assault if he did not agree to those indications, my Lord.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Crown

No. 2

Detective Sergeant John Crowe.

Examination (Continued)

HATHORN, A.C.J.: Yes. Now, is there any other evidence to which objection may be taken?

MR. GORDON-DAVIES: Yes. There is the statement of accused No. 2. and statement of accused No. 3. plus indications made, not through this witness.

HATHORN, A.C.J.: So we have to try this separately?

MR. GORDON-DAVIES: Subject to your Lordship's direction, I intend to ask this witness to stand down and ask the other witnesses who can give the evidence to give evidence and then have a trial on all three issues at once.

10

HATHORN, A.C.J.: Is that convenient?

MR. FARMAR: Yes, but I would like to ask this witness one or two questions in relation to this admissibility issue.

HATHORN, A.C.J.: I don't think it is appropriate to do it now.

MR. FARMAR: I mentioned it in case he wished this witness to be excused.

20

HATHORN, A.C.J.: I understand he is merely putting him in the box for you to indicate your objections, if any, and then this witness will come back into the box.

(Witness stands down)

No. 3

No. 3

Judgment on Admissibility Issue.

13th December, 1963.

JUDGMENT ON ADMISSIBILITY ISSUE

HATHORN, A.C.J.: The accused may be seated, Mr. Interpreter, but I would like you to interpret what I am going to say.

30

INTERPRETER: As your Lordship pleases.

HATHORN, A.C.J.: Objection has been taken by Mr. Farmar, who appears for the first and second accused, to the admissibility of evidence tendered

by the Crown relating to two statements admittedly made by them on the 4th September last and to certain indications alleged to have been made by the first accused on the 5th September. The onus is on the Crown to establish beyond reasonable doubt that the statements and indications were freely and voluntarily made and without undue influence being brought to bear upon them.

In the High
Court of
Southern
Rhodesia

Salisbury
Criminal
Sessions

No. 3

Judgment on
Admissibility
Issue
(continued)

13th December,
1963.

10 The incidents which led to the taking of the
statements took place over three months ago. Many
of the details were of the kind of things which are
daily and perhaps even more frequently than that
done by members of the police. It is therefore
not surprising that there are certain conflicts
between the evidence of some of the police details
who spoke to them. I do not consider that any of
those conflicts are of such a character that they
are not properly explained by lack of observation
or lack of recollection. I did not understand Mr.
20 Farmar to contend that those conflicts were of a
character which reflected upon the honesty of the
witnesses concerned.

I was left with the impression that all the
witnesses called for the Crown endeavoured to the
best of their ability to give their evidence
honestly. I was particularly impressed with the
honesty and the fairness of Mr. Crowe, Mr. McIlveen
and Sergeant Mbanga. The others were perhaps not
so fluent in English and were perhaps not as clear
30 in their minds as to what took place as those wit-
nesses were. I recognise that there are certain
conflicts between the evidence of Sergeant Mbanga
and Mr. Crowe but I am satisfied that none of these
is a reflection upon the honesty of either of those
witnesses.

The first accused gave evidence and I was not
impressed by him as a witness. His evidence is
subject to certain criticisms which are important.
I am quite satisfied, for instance, that he
40 understands English perfectly well, despite his
denial. The first question he was asked in cross-
examination was whether he spoke English. He
quite plainly shook his head in answer to the
question before the question was interpreted to
him. There was also the fact that evidence was
given (I cannot recall which witness gave the
evidence) that he spoke English fluently. I

In the High
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Salisbury
Criminal
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No. 3

Judgment on
Admissibility
Issue
(Continued)

13th December,
1963.

understood this evidence not to be in dispute and it was at that stage that I noticed that the Court Interpreter was not interpreting the evidence that was being given in English to the three accused. I raised the question with him and he assured me that he had spoken to the accused and that they had indicated that they did not wish the evidence to be interpreted to them. He also informed me that he had arranged with the accused, which is in accordance with regular practice in such circumstances, that if they did not understand any of the evidence, they would draw attention to the particular part and he would interpret it to them. The integrity of the Court Interpreter is unquestioned. I thought that at the time and I still think it is so. In the result, I have no doubt at all that the first accused spoke falsely when he said that he could not speak English.

10

In another respect his evidence is subject to serious criticism. In two respects I consider that he varied his evidence from the instructions he had given. Mr. Farmar was meticulous, and properly so, in formulating the particulars of his objection to the evidence and in putting his client's version to the various witnesses. The case made throughout the Crown case as regards what took place when the first accused was taken to the scene of the crime on the 5th September was that he had been threatened and that it was because of those threats that he made certain indications. The case he made in his evidence in chief and during his cross-examination, until the words were virtually put into his mouth, was that the indications were the result of the police telling him to stand at a particular spot. Another respect in which his evidence deviated from his instructions was in regard to the allegation that the police (African Detective Sundayi, I think it was) made him rehearse the story that he wished the accused to tell when confessing. If that had happened, it was a most material point in the objection and one which the accused knew was important. Yet he did not instruct his counsel on the point.

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40

Further criticisms arise from the fact that his evidence in this Court varied from some of the evidence he gave at the preparatory examination. I do not propose to detail these matters; it is

sufficient to say that they are on material points. They are not minor matters of the kind that frequently occur with witnesses and that do not reflect on honesty. As I have said, they are material points and the accused was quite unable to explain the variations.

In the High
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No. 3

Judgment on
Admissibility
Issue
(continued)

13th December,
1963.

10 In addition, the probabilities seem to me to support the case made by the Crown and to be improbabilities in the contentions of the accused. It seems to me that it is improbable that the alleged assaults would have taken place in a room, with the door at times open no doubt, leading off a passage which is virtually a public passage and in which there are regularly present members of the public. In particular it is improbable that the accused would have been assaulted actually in the passage in the view of at least two persons who, I believe, are witnesses in this case. It seems to me im-
20 probable that the police would have made a search in this place in the street, which is alleged to have been indicated by the accused as the place where the paraffin bomb was made, if they in fact knew that the indication was an entirely false one. It is improbable that the police either would have told the accused what to do when he was supposed to be making indications in the back garden of the house or to have uttered threats to him in the presence of members of the public, who on the
30 accused's own showing obviously could have seen what was happening and were so close to him as to have been able to hear what was said. Indeed, if the police knew that the whole of the indications were a fabrication, it seems improbable that they would have made a journey into town to fetch a photographer. It seems to me that it is im- probable in the extreme that the accused would not have reported these alleged assaults, from which he said he suffered severe pain, at the very latest to the authorities at the gaol in Norton.

40 As regards the allegation that this interrogation started at something like half past six on the morning of the 4th September, it seems to me that this is improbable because it is likely that the persons concerned in the interrogation and who had arrested the accused would have gone to breakfast after the accused had been lodged in the cells.

In the High
Court of
Southern
Rhodesia

Salisbury
Criminal
Sessions

No. 3

Judgment on
Admissibility
Issue
(continued)

13th December,
1963.

Other points of criticism of the first accused's evidence relate to the conflict with Mr. Ellway as to whether there was a daily gaol roll call parade at the gaol and also the fact that Mr. Crowe saw no signs of distress in the accused when he charged him.

In the result I have no hesitation in coming to the conclusion that the Crown has proved beyond doubt that the accused was not assaulted. I have equally no hesitation in rejecting his evidence that he was assaulted. In this connection it is perhaps significant to note that Mr. Farmar in his address to the Court virtually abandoned, or at least did not support, the accused's allegation of the assault.

Mr. Farmar contended, however, that, even if I should reject the accused's evidence on this point, the interrogation was improper and therefore the evidence as regards the statement was inadmissible on this ground alone. The answer to this contention is to be found in the fact that the accused made it quite clear in his evidence that if there had been no assaults he would not have confessed. I do not consider, therefore, that the point is open to him. Even if I assume in favour of the accused that there was certain impropriety in the interrogation, I would refer to the case of R. v Ananias, 1963(3) S.A. 486 (S.R.). In that case it was held by the Chief Justice that, even if an interrogation were improper, the ultimate question was whether the person's freedom of volition had been negatived by the nature of the interrogation. I am satisfied on the evidence that the accused's freedom of volition was not negatived when he made the statement. This is supported by the fact that the next day he was ready to go and make indications freely and voluntarily at the scene of the crime.

I turn now to consider the objections raised on behalf of the second accused. It having been originally indicated to me by Mr. Farmar that this accused elected to give evidence on oath, he changed his mind, probably, I suppose, because he saw the sorry time that the first accused had in the witness box. However that may be, the effect of his decision to make an unsworn statement precluded me from the advantage of having seen him in

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the witness box and seeing how he answered questions put to him in cross-examination.

Certain of the improbabilities to which I have referred of a more general character apply equally in this instance. There is an additional improbability in the number of persons he says in his statement were engaged in interrogating him and assaulting him.

10 I do not consider that the evidence of African Constable Cyril bears on this matter at all, because his impression is that he saw the second accused in Mbanga's office on the 3rd September but I do not understand the second accused to contend that he was in fact in that office on that day.

20 There is also the curious conflict as to whether, when the second accused was arrested on the 3rd September, he was taken to the Harare Police Station first or straight to the main Police Station. That kind of conflict is entirely unimportant in the sense that it does not seem to me to matter one way or the other to which station he was first taken. However, without having seen this accused in the witness box and having regard to the impression I have formed of the Crown witnesses, I have no hesitation in finding that he was in fact taken straight to the main Police Station.

30 The second accused has contended that the interrogation of him contained from shortly before noon on the 3rd September until five o'clock in the evening and then for the greater part of the morning of the 4th September, and that it was not until some time late in the morning of the 4th September that he indicated that he was prepared to confess. Apart from the direct evidence on the point, there is an important point which supports the Crown case that he indicated that he was prepared to confess on the 3rd. This point emerged quite fortuitously, as it appeared to me. The point is that it was on information obtained from the second accused that 40 the first accused was arrested and that there was at that time no other information available to the police which implicated the first accused. The fact that this is so negatives completely the second accused's contention that he did not make any confession until the 4th September.

In the High
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No. 3

Judgment on
Admissibility
Issue
(continued)

13th December,
1963.

In the High
Court of
Southern
Rhodesia

Salisbury
Criminal
Sessions

No. 3

Judgment on
Admissibility
Issue
(continued)

13th December,
1963.

Giving the matter my best consideration, I am satisfied that the Crown has proved beyond reasonable doubt that the second accused was not assaulted.

There is no explanation for the delay between the time he confessed and the making of the formal charge on the 4th September. I see nothing improper in the fact that there was a delay nor do I see anything sinister in it.

Again Mr. Farmar has contended that even, if I should reject the allegations of assault, I should hold that evidence of the statement is inadmissible on the ground of the impropriety of the interrogation. Again I do not think that the point is open to him because the accused's statement made in Court today seems to me clearly to mean that it was the alleged assaults which caused him to confess and not the interrogation. But even if I assume that the questioning was improper, the same point arises as that to which I have already referred in connection with Ananias's case. In this respect it would appear to me too that there was no negating of this accused's freedom of volition. There is the added fact here that this accused had at least twenty-four hours to think about matters between the time he confessed orally and the time that he answered the charge after receiving a caution. This it seems to me was ample time in which to compose himself and to decide whether he would answer the charge or not.

10

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30

In the result, I am satisfied that the objections taken must fail. I am satisfied that the Crown has proved beyond reasonable doubt that evidence in respect of the statements and of the indications is admissible and I rule accordingly.

(Court adjourned 3.50 p.m.)

No. 2

EVIDENCE OF DETECTIVE SERGEANT JOHN CROWE
(Recalled)

SIXTH DAY OF TRIAL

MONDAY, DECEMBER 16, 1963

In the High
Court of
Southern
Rhodesia

Salisbury
Criminal
Sessions

JOHN CROWE, still under oath,

Evidence for
the Crown

BY MR. GORDON-DAVIES: Is this the statement
you recorded from the accused No. 1 on the 4th of
September? - Yes, my Lord.

No. 2

10 Read it, please? - (Statement read and put
in, Exhibit 3.)

Detective
Sergeant
John Crowe
(recalled)

Did Mr. Mbanga act as your interpreter? - That
is so, my Lord.

Examination

Would you look at this plan which has been
produced by consent, Exhibit 1? - (Key to plan
read.)

16th December,
1963.

20 Now, you have told us, Mr. Crowe, that on the
5th of September the accused, after a warning and
cautioning, freely and voluntarily elected to make
certain indications to you at the scene? - That is
so, my Lord.

Will you describe the indications he made? -
The accused entered what is described as the veget-
able garden on the plan, my Lord, and stood in a
position.

Hathorn, A.C.J.: Just a moment. You had
better go back a little bit for that. You came
from....? - From the eastern side, my Lord, and we
entered the complainant's garden.

30 I think I am right in saying that the south is
the top of the plan? - That is so, my Lord.

BY MR. GORDON-DAVIES: Describe, first of all,
your arrival at the place and take us from your
point of arrival through the indications made? - On

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Evidence for
the Crown

No. 2

Detective
Sergeant
John Crowe
(recalled)

Examination
(continued)

16th December,
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arrival the accused alighted from the vehicle followed by me and Sergeant Mbanga. The accused then led the way in a westerly direction along Gatula Street and entered the complainant's garden, that is the garden of 4093 by way of a lane which separates stand 4092 from stand 4093.

Is that the lane marked "earth path" on the plan? - That is so, my Lord. On entering the vegetable garden of 4093, the accused Alexander took up a position close to the position marked "A" on the plan.

10

BY HATHORN, A.C.J.: "A" has an arrow attached to it? - That would be actually in the garden, but close to the path which is directly in front of the garden, practically on the edge of the garden.

BY MR. GORDON-DAVIES: Perhaps you could mark on the plan approximately where the accused stood. Just mark it with an X? - (Witness marks plan.)

HATHORN, A.C.J.: Mr. Interpreter, you are interpreting this to the accused?

20

MR. INTERPRETER THOMAS: I am, my Lord.

BY MR. GORDON-DAVIES: When the accused made the indication at point X, did you make a note at the time? - Yes, my Lord.

Refreshing your memory from that note, will you tell us what he said the indication was? - He said: "This is where I stood with Kassiano," and that the bomb was thrown from this point, and that Kassiano walked in that direction, indicating with his hand the west side of the garden.

30

Would that indication represent a passage between the hedge and the door of the bath-room, "B" on the plan? - It would, my Lord. There is sufficient space there for a person to leave the garden and go in any direction he chooses.

Who actually led the way down the earth path through the fence into the rear vegetable garden? - The accused, my Lord.

When he made this indication, were spectators present? - They were, my Lord.

40

Now, did you cause a photograph to be taken of this indication? - Not at that time. I returned to Salisbury, picked up African Detective Alick, returned to the scene and caused the photograph to be taken then.

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When the accused took up a position for the purpose of the photograph, did he do that freely and voluntarily? - He did, my Lord.

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10 Before you shew us the photograph, what did you say to the accused then and what transpired? - We then asked the accused if he would like to indicate where the bomb had been constructed.

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HATHORN, A.C.J.: At which point? - This occurred at the first indication.

Detective
Sergeant
John Crowe
(recalled)

20 After the indication? - After the indication had been made at the rear of the complainant's garden, I then asked the accused if he would like to indicate where the petrol bomb had been made and where the paraffin bottle which had been used to fill the petrol bomb had been discarded.

Examination
(continued)

16th December,
1963.

BY MR. GORDON-DAVIES: Did you warn and caution him when you issued that invitation? - No, my Lord. I did not warn and caution him. As far as I remember, there was only one warning and caution issued and that was prior to going to the scene that morning.

I understand that you warned and cautioned him specifically in connexion with your proposed visit to the scene? - That is so.

30 When you asked him whether he would like to shew you where the bomb had been made, what did he do? - The accused left the complainant's residence, walked in an easterly direction until he arrived at Stand 4077, which is 16 houses to the east of the complainant's residence, my Lord.

BY HATHORN, A.C.J.: I take it he led you into Gatula Street? - That is so. 4077 is in Gatula Street, my Lord.

40 BY MR. GORDON-DAVIES: Did he actually lead the way? - Yes, my Lord.

In the High Court of Southern Rhodesia

Having arrived at that point, did he make any indication? - He did, my Lord.

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Did you make a written note of that he indicated? - Yes, my Lord.

Evidence for the Crown

Refreshing yourself from that note, can you tell us what he did? - The accused indicated an area of ground in front of a small hedge which was in front of stand 4077, and through Mr. Mbanga the accused said: "This is where I filled the bomb and this is where I discarded the bottle."

10

No. 2

Did he say that freely and voluntarily? - Yes, my Lord.

Detective Sergeant John Crowe (recalled)

Did you cause photographs at the time to be made of both these indications made by the accused and also a photograph of the front of the house of the complainant? - I did, my Lord.

Examination (continued)

HATHORN, A.C.J.: That is misleading, Mr. Gordon-Davies.

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MR. GORDON-DAVIES: I beg you Lordship's pardon.

20

HATHORN, A.C.J.: As far as I remember the evidence, Mr. Crowe went back into town to fetch a photographer and it was on a later occasion.

MR. GORDON-DAVIES: I beg your Lordship's pardon. I will cover that.

BY MR. GORDON-DAVIES: Did you have to fetch a photographer? - I did.

At what stage did you fetch him? - The time it would take to drive from the scene to Salisbury, pick up a photographer and return, approximately 20 or 25 minutes.

30

At the stage when you left to fetch a photographer, had the accused made both indications or only one? - He had made both indications. I remember that when we arrived with the photographer after the indications had been made at the complainant's house, we all drove down to stand 4077. I remember we motored down.

When you returned with the photographer, did you invite the accused to take up the position at the rear of the complainant's house that he had indicated to you earlier? - I did.

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Did you have that indication photographed? - I did.

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Thereafter, did you proceed to stand 4077? - I did.

Evidence for
the Crown

10 And ask the accused to repeat his indication?
- I did.

No. 2

Did you cause a photograph to be taken of that? - I did.

Detective
Sergeant
John Crowe
(recalled)

Similarly did you have a photograph taken of the front of the complainant's house? - I did.

Examination
(continued)

When the accused repeated his indications for the purpose of photography, did he do so freely and voluntarily? - He did, my Lord.

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1963.

Are these the photographs? - They are, my Lord.

20 Would you read the key, please? (Key to
photographs, Exhibit 2, read.)

Did you conduct a search at the place indicated by the accused as being the place where he made the petrol bomb? - Yes, my Lord, and of the surrounding area.

Did you find anything? - No, my Lord.

Now, have you subsequently returned to this house and made a note of what the house is made of? - Yes, my Lord.

30 Describe how many doors there are and what they are made of -- this is the complainant's house? - If I may refer to notes, my Lord?

HATHORN, A.C.J.: Yes? - The house consists of red brick with plaster covering, an asbestos roof supported by wooden rafters. On entering the house by the front entrance, that is to say from Gatula Street, this leads into what I believe

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(continued)

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is termed the lounge. There you have a wooden door with a metal frame.

Which door is that, the front door? - Yes, the actual front door, my Lord. In this lounge, I observed the following items. One medium table made of wood, four wooden chairs with what appeared to be fibre stuffing or padding, one large sideboard made of wood, one sideboard small made of wood; one book-case, medium sized, made of wood. There are wooden rafters through, my Lord. The floor is of concrete or cement. There is paint to a height of approximately 6'6" about the entire lounge and the remainder of the distance consists of white-wash. There are two other wooden doors with wooden frames leading from the lounge or giving access through the lounge to a kitchen and a bedroom in the front of the house, my Lord.

10

I think you ought to refer to the plan. It will be much easier to related it to the plan. The front door goes into room "E"? - Yes, that is so, my Lord, and "F" consists of a bedroom, my Lord.

20

"F" seems to have a separate entrance, according to the plan. There is no communication between "E" and "F"?

BY MR. GORDON-DAVIS: No doorway is shewn. Is there, in fact, a doorway? - I cannot recall exactly. I do know, my Lord, that you can enter the kitchen and a bedroom which would appear to be "F" from the lounge, my Lord.

30

BY HATHORN, A.C.J.: Well, "C" is the kitchen, isn't it? - Yes, my Lord.

And "D" is a bedroom? - Well, "F" my Lord, in fact is a bedroom in the front of the house, and there is actually no door. There is just a space with a curtain coming across.

A doorway and not a door? - That is so, my Lord.

Between "D" and "F" or "E" and "F"? - Between "E" and "F" there is a small space which gives access from the lounge into "F".

40

It is just a space which is covered up by a curtain.

Yes? - The window frames in the lounge, the rooms marked "F", "D" and "C" all consist of metal type frames.

BY MR. GORDON-DAVIS: Yes, and the doorways leading out of "C", that is into the yard and into "E", what are they made of? - It is a wood door with a metal frame, and the same is for the bath-room, my Lord.

10 That is the room "B"? - That is so, my Lord.

 And room "A"? - Room "A" that just consists of a toilet-cum-washroom, a wooden door with metal frames.

 Are the floors cement throughout? - That is so, my Lord.

20 And are there wooden rafters above each room? - Yes, my Lord. In the room marked "D" which has a concrete floor and brick walls, mortar and whitewash, my Lord, the door leading into it is a wooden door with a wood frame; as I have already stated, asbestos roof, wood rafters, metal window frames and I observed one iron bedstead, a mattress and blankets were in this room. There was one wooden cot with a mattress and blankets. One large mattress by itself was there, one large wooden chest of drawers, two small wooden tables and three fibre suitcases, my Lord. Wooden shutters have since been fitted to the window of the room

30 marked "D" since the night of the offence, that is to say wooden shutters which are accessible from the inside of the room, my Lord.

 Now, will you look at this map which will be produced. That is a map, I understand, giving us an aerial view of the township surrounding the complainant's house? - Yes, my Lord.

40 Does that, to the best of your knowledge accurately depict the surrounding area? - It does, my Lord, with the exception that the stand numbers have since been altered; instead of, say, a four figure number like 4093, I think it has been altered

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Detective
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(recalled)

Examination
(continued)

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to ordinary single numerals now. I am not quite sure what the present system is, but the numbers have been altered since this photograph was taken actually since the time of the offence.

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This shews marked in red 4093, 4092, 4077, 4146 and 4288? - Yes.

Evidence for the Crown

BY HATHORN, A.C.J.: What is the one 4089? - That is the residence of the accused No.3 or was the residence of the accused No.3, my Lord. 4092 was the residence of Machingedza, a witness in this case. 4093 is the residence of the complainant in this case, Luke Chagamba. 4077 indicates the residence where Accused No.1, Alexander, made indications to me concerning the manufacture of the bomb. 4146 is the residence of Accused No. 2, Kassiano, and 4288 indicates the residence of Accused No. 1, Alexander.

10

No. 2

Detective Sergeant John Crowe (recalled)

Examination (Continued)

BY MR. GORDON-DAVIS: What is the distance between 4077 and 4093 approximately, - Approximately one and a half time the length of this room.

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20

HATHORN, A.C.J.: That would be about 45 to 50 yards. Just while you are on distances, what is the distance between 4146 and 4093, and the other one further away? - I would say the distance between 4146, 4093, 4092 and 4089 would be approximately the length of this room.

That is about 30 yards. And the distance to 4288 from the complainant's house? - I would say about four times the length of this room

30

About 120 yards.

BY MR. GORDON-DAVIS: Have you visited this scene at night? - No, my Lord. I have been to the area at night on other inquiries, but not in connexion with this case.

Are you in a position to tell us what the street lighting is like at night? - Yes, the street lighting in front of the complainant's house, 4093, is quite good because you have Mpeticoti Beer Hall facing it, and that is illuminated. I cannot say at what time the illuminations cease or whether they remain on all night, but I know that at approximately half past nine at night it is quite well illuminated.

40

CROSS EXAMINED

CROSS-EXAMINED BY MR. FARMAR: Have you any idea how many timbers in the rafters there are in each room? - As far as I remember, there were approximately three.

HATHORN, A.C.J.: Just a moment, what does this Exhibit, the plan, come in as?

THE REGISTRAR: Exhibit 4, my Lord.

BY MR. FARMER: Approximately three? - Quite thick beams, my Lord.

10 What was the height of the room "D"? - I didn't measure it, my Lord. I don't know.

Could you give an approximation? - A rough approximation would be approximately as high as this wooden ventilation point, my Lord.

HATHORN, A.C.J.: About eight or nine feet.

BY MR. FARMAR: Did you say there were metal window frames in that room? - In "D", yes, my Lord I think you are able to see it actually from the photographs in Exhibit "M".

20 Photograph No. 2? - Yes, that would be so.

You say the whole of the construction of the window is either glass or net? - Yes, with the exception, of course, of just the putty or whatever substance is used to keep the glass in position.

And the frame of the door? - Metal, my Lord, or some similar alloy.

30 Did the accused, Alexander, actually point these spots out to you, or was he led there and shewn these spots? - No, the accused Alexander was asked to take up a position, that is to say in the photograph taken at the rear of the complainant's residence, to take up a position in which he had been standing when he had thrown the bomb. At least, they were the instructions I passed on to the accused through Sergeant Mbanga.

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Evidence for
the Crown

No. 2

Detective
Sergeant
John Crowe
(recalled)

Cross-
Examination

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CROSS-EXAMINED BY MR. DUMBUTSHENA: In Exhibit 2, photograph No, 3, how is the street lighting at that place? - I don't know, my Lord, This photograph was taken on a very sunny day. As regards street lighting, I cannot say. It would not fall within the Lighting from the Mpeticota Beer Hall, as it is a considerable distance away. It is at the very end of that line.

Evidence for
the Crown

Your wouldn't know whether at night there is light? No, I don't know, my Lord. I didn't check.

10

No. 2

Detective
Sergeant
John Crowe
(recalled)

No Re-examination.

BY MR. YARDLEY: Are these houses semi-detached? - Yes, I believe that is so, they are semi-detached. Your get 4093 and 4094, that would be two houses in one block.

Cross-
Examination
(continued)

But they are attached to each other? - Yes, my Lord.

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1963.

BY HATHORN, A.C.J.: I am not quite happy about your marking of the spot "X" on the plan, Exhibit 1. If you compare the photograph, if you look at photograph No. 2 of Exhibit 2? - Yes, my Lord.

20

...it looks from that as if the spot at which the accused was standing is off the corner of that. You can see the door of the lavatory in the photograph, and you can see the door of the bathroom? - I am afraid, my Lord, I am not very good at translating the photograph on to the plan.

30

You can see the corner of the room quite clearly. It looks as if your "X" ought to be much further, almost where the letter "A" is, or even further to the right. At any rate, I take it that the photograph....? - The photograph is a correct one, my Lord.

No. 4.

EVIDENCE OF DETECTIVE SERGEANT MBANGA
(recalled)

In the High
Court of
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MBANGA, recalled, still under oath,

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EXAMINATION BY MR. GORDON-DAVIS CONTINUED:

Are you a detective station sergeant in the C.I.D. in Salisbury? - I am, my Lord,

Evidence for
the Crown

No.4

10 On the 4th of September, did you act as interpreter for Mr. Crowe when he charged the accused with this crime? - I did so, my Lord.

Detective
Sergeant
Mbangwa
(recalled)

Did you truly and faithfully interpret all that was said between them? - That is correct.

Would you look at this charge sheet, Exhibit 3? - I have seen the charge sheet, Exhibit 3 before the Court. This is the one.

Examination

Is that a correct recording of all that was said? - I believe so, my Lord.

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1963.

20 The following day on the 5th September, did you act as interpreter when Mr. Crowe received certain indications from the accused at the scene? - I did so.

Did you properly warn and caution the accused, as Mr. Crowe instructed you? - That is so, my Lord.

At the scene when indications were made, did you truly and faithfully interpret all that was said between the accused and Mr. Crowe? - I did so, my Lord.

30 Will you look at the photographs, Exhibit 2. Will you look at photographs 2 and 3 of Exhibit 2. Do those correctly depict the indications made by the accused? - That is so, my Lord.

CROSS EXAMINED

Cross-
Examined

CROSS-EXAMINED BY MR. FARMAR: Was the Accused No. 1 taken to these spots and told to indicate them, or did he indicate them himself? - The accused was prepared to make an indication by himself.

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the Crown

No. 4

Detective
Sergeant
Mbunga
(recalled)

Cross-
Examination
(continued)

16th December,
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Re-
Examination

BY HATHORN, A.C.J.: But how did he get to the spot was the question? - The first spot, the accused led the party to the first spot. We walked along the road, the dust road. As we were near the scene, the accused led us. He walked behind the house towards the south side of the scene. As soon as the accused arrived at the garden at the rear of the house, he stopped and took up a position there.

Was there any question of the accused Alexander being told to take up a position at this house? - Yes, but not at this stage. That was at a later stage, after we had collected the photographer.

10

NO CROSS-EXAMINATION BY MR. DUEBUTSHENA.

Re-Examined

RE-EXAMINED BY MR. GORDON-DAVIS: When the accused first made the indications at the scene before the photographer arrived, was he told to take up a position, or was he asked to? - None whatsoever.

20

Was he asked or was he told, or did he do it without anything being said? - He simply did it without being told anything.

Examination
by the
Court

EXAMINED BY THE COURT

BY Mr. CRIPWELL: You did tell us you went to the back of this building and without any suggestion or anything else the accused went and stood at a certain spot which you wanted him to show you? - That is so, because the accused knew exactly what was our purpose in going out. He was cautioned at the office before we went out. As soon as we arrived at the scene, he walked behind the house and took up a position there and started making an indication.

30

When he was cautioned, was he told something was wanted of him? - He was told the nature of the inquiries we were making and he was told again if he wished to make an indication in relation to the case we were investigating, he could do so.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

He was told to make indications when you got there? - That is so, my Lord.

Evidence for the Crown

10

BY HATHORN, A.C.J.: What was the accused's condition when he made the statement, Exhibit 3, on the 4th September? - My Lord, I would rather describe the accused's condition as normal.

No. 4

Yes, I know, but I don't think it has been elicited what his state was. What was the state of his senses? - He was in his sound and sober senses.

Detective Sergeant Mbanga (recalled)

When he made the indication? - As well as at the time when he made the indication.

Examination by the Court (continued)

16th December 1963.

No. 5.

20

EVIDENCE OF DETECTIVE SERGEANT THOMAS BRIAN MCILVEEN, (recalled)

No. 5

THOMAS BRIAN MCILVEEN, duly sworn and examined

Detective Sergeant Thomas Briar Mcilveen (recalled)

BY MR. GORDON-DAVIS : You have told us that it was on the 4th September that you recorded a statement from the Accused No.2? - That is correct.

Was he in his sound and sober senses? - He was.

Examination

Was he properly warned and cautioned? - He was.

30

Did he make the statement freely and voluntarily? - He did.

Is this it? - That is the statement, my Lord.

(Statement read and put in, Exhibit 5.)

Tea adjournment

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CROSS EXAMINED

CROSS-EXAMINED BY MR. FARMAR: Did you rely entirely on the interpreter for the accuracy of the interpretation, or did you understand what was said by Kassiano? - I relied upon the interpreter, my Lord.

Evidence for
the Crown

No. 5

Detective
Sergeant
Thomas Brian
McIlveen
(recalled)

NO CROSS-EXAMINATION BY MR. DUMBUTSHENA

NO RE-EXAMINATION

Cross-
Examination

No. 6

No. 6

EVIDENCE OF AFRICAN SERGEANT NYAMADZANO

10

NYAMADZANO, still under oath

African
Sergeant
Nyamadzano
(recalled)

EXAMINATION BY MR. GORDON-DAVIS CONTINUED:

Are you a sergeant in the British South Africa Police in Salisbury? - That is correct.

Examination

On the 4th of September, did you act as interpreter for Mr. McIlveen when he recorded a statement by Accused No. 2 in answer to the charge put to him? - Yes, my Lord.

Did you truly and faithfully interpret all that was said? - Yes, my Lord.

20

Would you look at this statement, Exhibit 5. Is that a correct recording of what was said? - Yes, my Lord.

CROSS-EXAMINED

CROSS-EXAMINED BY MR. FARMAR: I wonder if you would look towards the end of the first page where it says: "I asked him more about this house and he told me that he had been shown this house by Simon." That is about 10 lines from the bottom. Did he say that he had been shown this house by Simon or that he would be shown this house by Simon? - My Lord, he said he was shown this house by Simon.

10

He had been shown it by Simon? - He had been, yes.

NO CROSS-EXAMINATION BY MR. DUMBUTSHENA

NO RE-EXAMINATION.

MR. GORDON-DAVIS: Before proceeding to evidence of statements made by accused No.3, I propose to call Mr. Wiltshire.

No. 7

EVIDENCE OF INSPECTOR MICHAEL BENJAMIN WILTSHIRE (recalled)

20

MICHAEL BENJAMIN WILTSHIRE, still under oath,

BY MR. GORDON-DAVIS: Are you a detective inspector in the C.I.D. in Salisbury? - I am, my Lord.

On the 2nd of September at about two a.m. as a result of a report, did you proceed to house 4093, S.D. Lines, Harare? - I did, my Lord.

There did you see the complainant in this case, Luke Chikambura? - I did.

30

Did he make certain indications to you and did you, yourself, notice things? - I did.

Describe what you saw? - There was one window only in the bedroom which the complainant indicated to me and this had a broken pane, a hole in the pane about five inches in diameter, and there were

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Evidence for
the Crown

No.6

African
Sergeant
Nyamadzano
(recalled)

Cross-
Examination

No. 7

Inspector
Michael
Benjamin
Wiltshire
(recalled)

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splinters of glass inside on a cot which stood about four feet from the window, and lying on the cot was a bottle made into a type of incendiary bomb. This bottle had a wick made of cloth and five matches where the wick went through the top of the bottle. One of these matches was a spent match and the other four were unused. I examined the bottle and smelt it, and the liquid contents smelt like paraffin.

Evidence for
the Crown

Did you take possession of this bottle?
- I did, my Lord.

10

No. 7

Is that the bottle? - It is.

Inspector
Michael
Benjamin
Wiltshire
(recalled)

My Lord, it is a Mazoe Crush bottle about six inches in height.

HATHORN, A.C.J.: I don't think you need describe it.

Examination
(continued)

MR. GORDON-DAVIS: As your Lordship pleases.

(Bottle put in, Exhibit 6.)

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Did you subsequently decant the contents of this bottle? - I did.

And placing these contents in a separate clean glass jar, did you hand it over to Dr. Thompson of the Forensic Department of the Police? - I did, my Lord.

20

Is that the bottle with the liquid that you decanted? - It is, my Lord.

(Bottle put in, Exhibit 7.)

BY HATHORN, A.C.J.: How full was the Mazoe Crush bottle when you saw it? - It was about two-thirds full. In fact, I did have it photographed in the condition it was when I found it.

30

BY MR. GORDON -DAVIS: Did you also photograph the interior of the room you have described? - Yes, my Lord.

Are these the photographs? - They are.

Would you read the key to the photographs, please.

(Key to photographs read. Photographs put in Exh. 8.)

Now, to return to the bomb before we deal with the room, did you subsequently dismantle this bomb and remove the top of the wick? - I did, my Lord.

10 Are these the items? - Yes, my Lord, still in the same condition.

Is that the screw top? - Yes, with four live matches and one spent match and there is a wick protruding with the burnt portion at the top.

BY HATHORN, A.C.J.: It seems quite a lot of cloth that was inside the bottle, was it? - It was, my Lord.

BY MR. GORDON-DAVIS: It looks about 12 inches of cloth? - Yes.

20 Is the amount of wick at present protruding through the lid the amount that you saw when you saw the bottle? - Yes.

That top part is in a charred condition.

BY HATHORN, A.C.J.: Were the matches broken? - They are full matches, with the heads protruding above the top of the bottle.

But most of the stick of the match is inside? - Yes, it is.

(Lid, matches and wick put in, Exhibit 9.)

30 BY MR. GORDON-DAVIS: Did you hand the Mazoe Crush bottle itself over to Mr. Robinson of the C.I.D.? - I did, my Lord.

Now, to return to the room in which you found these things, what is the distance between the broken pane "A" and the point "B"? - I would say about six feet, my Lord., perhaps a little more.

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No. 7

Inspector
Michael
Benjamin
Wiltshire
(recalled)

Examination
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No. 7

Inspector
Michael
Benjamin
Wiltshire
(recalled)

Exmination
(continued)

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Did you subsequently make indications for the purposes of a plan to Mr. Rowan of the Police? - I did.

Would you look at the inset of that plan, Exhibit 1. Referring both to the photograph and to the inset of the plan, can you describe the contents of the room, please? - Yes, as on the plan, a bed beneath the window "H" on the plan; a clothes basket in the corner near the window, and a cot along one wall, a mattress on the floor against the wall opposite the window, a wooden chest of drawers and some suitcases.

10

What was the cot made of? - Wood.

Is there a mattress in it? - Yes.

What is it made of? - Of some type of cloth.

Describe what the bed "H" on the plan and "C" on the photograph is made of? - That has a mattress and blankets, that had.

Is the bed itself made of steel? - I don't remeber offhand; I imagine it was probably steel.

20

Do you know what the mattress stuffing was? - No I didn't examine the mattress closely.

Can you describe the mattress "K" on the plan? - Yes, that was a normal type mattress.

Could you see what the stuffing was? - No, I didn't see the inside of it.

Are the depictions on the plan, Exhibit 1, correct? - They are.

Now, Mr. Wiltshire, have you experience in incendiary bombs? - I have carried out experiments with incendiary bombs.

30

Have you used paraffin in such experiments? - I have.

Can you describe, please, how an incendiary bomb works to the best of your knowledge? - Yes, the inflammable content soaks into the cloth wick,

and the cloth wick is then lit and the bomb is thrown and in order to ignite the bottle part of the bomb should break thereby scattering the inflammable contents which then ignite and in an enclosed space cause a type of explosion and would set fire to anything inflammable.

In the High
Court of
Southern
Rhodesia

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Sessions

10 How far is the flame thrown from the bomb when it breaks? - Well, for instance, in a room of this size being an enclosed space, it has been found in experiments throwing into enclosed rooms that the liquid contents spread.

Evidence for
the Crown

BY HATHORN, A.C.J.: Splashes, do you mean? - Well, as the bomb breaks -- in this case, it didn't, of course, but as it breaks it splashes, if you wish that term.

No. 7

Inspector
Michael
Benjamin
Wiltshire
(recalled)

It splashes and spreads? - And spreads and at the same time ignites and, of course, also gives off a vapour which helps to cause a form of explosion.

Examination
(continued)

20 BY MR. GORDON-DAVIS: Is there anything in the mechanics of this particular bomb that would indicate that it is incapable of explosion? - No.

16th December
1963.

BY HATHORN, A.C.J.: You say you have undertaken experiments with bombs containing paraffin? - Yes, my Lord.

As I understand it, paraffin is not nearly so volatile as petrol? - We have used petrol as well and we found it is more volatile than paraffin.

30 But does a paraffin bomb work if properly thrown? - Oh, yes, it does work. We have tried with all types of volatile liquid and we have found that paraffin does, in fact, work.

BY MR. GORDON-DAVIS: I understand that it is necessary for the bottle to break? - It is. If the bottle did not break and the wick continued to burn, it would naturally cause a fire if it landed on something inflammable.

40 Did you subsequently obtain a copy of a plan of Harare, cause it to be photographed and did you, yourself, mark off various places on that plan? - I did.

Does Exhibit 4 correctly depict the area? - It does.

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Evidence for
the Crown

No. 7

Inspector
Michael
Benjamin
Wiltshire
(recalled)

Cross-
Examination

16th December
1963.

CROSS-EXAMINED

CROSS-EXAMINED BY MR. FARMAR: If the wick is not well and truly alight when the paraffin bomb is thrown, what is likely to happen? - It would possibly go out during flight.

In this case is there anything about the condition of the wick in Exhibit 9 which might indicate to you in your experience that if thrown lighted it might go out before landing? - I really can't say.

I ask this because in the first accused's, Alexander's statement, he has it on record as saying that he pushed the wick down so that there was only a little bit of wick showing. Do you think that would have any effect? - I would say there is enough wick there to light it and throw it without the flame going out. That is about the normal amount we used when we tried experiments.

10

BY HATHORN, A.C.J.: How much wick is showing? - About two inches, my Lord. In fact, the photograph will show the exact amount. I would say it is about the same as it is at the moment. I don't think it has moved at all.

20

BY MR. GORDON-DAVIS: How much of it that is out is charred? - About half; taking an average about half, I would say, my Lord.

Would it be necessary for the wick to be still alight when the bottle broke? - Yes.

In the case of paraffin? - Yes.

And the sizes of the bottles you have used in experiments, have they been as small as the Mazoe bottle, Exhibit 6? - Yes.

30

They have been as small as that? - Yes.

And they have filled a room like this, have they? - Yes.

BY HATHORN, A.C.J.: I have seen Mazoe Crush bottles larger than that one? - Yes, that is a small size, my Lord.

They are sold in two sizes, are they? - As far as I am aware, it is quite a popular bottle. We have used both sizes in our experiments.

In the High Court of Southern Rhodesia

10 CROSS-EXAMINED BY MR. DUMBUTSHENA: Did it appear to you that the wick was not burning when it landed on the baby's cot? - There was no sign of any burning on the cot itself, so it possibly wasn't burning, although the wick wasn't in actual fact in contact with the cot. It was lying on its side and therefore the wick was slightly above it.

Salisbury Criminal Sessions

Evidence for the Crown

No. 7

Wouldn't you agree that for it to cause any explosion there must be a great deal of velocity in throwing the bomb? - Enough to break it, yes, and it would have to be thrown quite hard.

Inspector Michael Benjamin Wiltshire (recalled)

Is it not common knowledge that a bottle with paraffin that drops on to the ground does not cause an explosion? - Yes.

20 So that ordinarily a paraffin bomb would not explode unless under very exceptional circumstances? - It would have to be alight at the wick.

Cross-Examination (continued)

Have you since found out the significance of matches stuck outside the bottle and not inside the bottle as your experience was previously? - The significance of them being outside?

16th December 1963.

Yes? - No, I don't know why they were there; probably an added form of ignition, I imagine.

30 Do you think that the presence of sticks of matches inside the bottle with the paraffin helps in igniting? No, I don't think it makes any difference at all.

BY HATHORN, A.C.J.: You mean inside the bottle completely?

MR. DUMBUTSHENA: Completely inside it.

BY HATHORN, A.C.J.: They don't have any effect on it? - We have not found that they have any effect at all.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Crown

No. 7

Inspector Michael Benjamin Wiltshire (recalled)

Cross-Examination (continued)

16th December 1963.

Re-Examination

BY MR. DUMBUTSHENA: Would you describe the construction of this bomb as having been the work of inexperienced hands? - I don't know.

I suppose that is why it failed to go off? - I have already said that in my opinion it would work. I think any bomb of this nature is home made and is probably constructed by inexperienced people.

At lease, this one did not work for one reason or another? - Yes, well, it is no different basically in its nature from any other bomb of its nature I have ever seen.

10

RE-EXAMINED

RE-EXAMINED BY MR. GORDON-DAVIS: Did you notice whether any of the liquid was spilt or thrown out of the bottle on to the mattress of the cot? - No, I don't think so.

It was put to you that this bomb would only work in very exceptional circumstances. If you threw that bomb now if it was alight and broke, would it work? - If it was in one piece, yes.

20

Examination by the Court

EXAMINED BY THE COURT

BY MR. YARDLEY: If the wick had been pushed down to a very small wick as suggested in a statement by the accused, would you not have expected the match heads to have ignited and the wick to have ignited? - Yes, I would have expected so.

Would you say it was unlikely it had been pushed down, as four of the heads are intact and had not ignited? - It is unlikely it would be pushed in lower than it is at the moment.

In the High
Court of
Southern
Rhodesia

MR. CRIPWELL: How thick was the glass of the pane through which the bottle was thrown? - It was just a normal window, not any thicker than usual. I find difficulty in gauging the exact thickness.

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Criminal
Sessions

10 Would you probably agree that the thickness of the bottle was thicker than the thickness of the window pane? - I can't really say. Perhaps part of the glass of the bottle is thicker than the thickness of the glass in the window pane.

Evidence for
the Crown

No. 7

In relation to the size of the pane, how big was the bottle?

Inspector
Michael
Benjamin
Wiltshire
(recalled)

BY HATHORN, A.C.J.: Didn't you say the hole was about five inches? - The hole in the pane was about five inches in diameter.

Examination
by the
Court
(continued)

20 BY MR. CRIPWELL: What I am trying to get at is was it a lucky occurrence the bottle managed to get through the pane without hitting one of the metal strips? - Possibly, although I am afraid I didn't measure the actual size of the pane itself, but I don't think it would be very difficult, although one would obviously have to stand fairly close to the window.

16th December
1963.

How high above the ground was that hole in the pane? - I didn't measure it.

30 Looking at the picture, would you say it was 4' 6" to 5' from the ground? - Something like that.

So it might be the bottle was lobbed and not thrown? - It would depend on who threw it.

What I am trying to get at is it is rather fortunate that the bottle managed to get as far as it did do? - I really can't say. That I don't know.

BY MR. YARDLEY: If it was lobbed and not thrown do you think it would have reached from the window to the cot? Would it not require some force behind it

In the High
Court of
Southern
Rhodesia

Salisbury
Criminal
Sessions

Evidence for
the Crown

No. 7

Inspector
Michael
Benjamin
Wiltshire
(recalled)

Examination
by the
Court
(continued)

16th December
1963.

to go through the pane of glass and get as far as the cot? - Yes, I think it would require a considerable amount of force.

BY HATHORN, A.C.J.: There is one obvious reason, I suppose, why it didn't set alight to the contents of the room, namely, that it fell on the soft part and didn't break? - Yes, my Lord.

Apart from that, there is another possible thing that happened, I suppose, that the wick was put out, blown out, while it was thrown or was knocked out when it went through the window pane? - Yes, my Lord.

10

If it, in fact, remained alight, it could have done some damage by setting alight to the bed-clothes? - Yes, it would have done, I think, had it remained alight.

Have you done experiments with this sort of thing, throwing them through glass windows? - Yes, my Lord.

As well as without having an intervening glass pane? - Yes, we have done both, my Lord.

20

What effect does the glass pane have on it? - Usually if the bomb is thrown -- it has to be thrown quite hard -- if it is thrown hard enough, it makes no difference at all, but occasionally the wick is more likely to go out where you have a pane of glass. We have found where it does go through a pane of glass, occasionally the wick will go out as it goes through, whereas if you threw it through an open window or an open door, that does not occur.

30

Through the Court at Mr. Gordon-Davis's Request:

It occurs to me there might have been a curtain which had an effect.. Did you notice if there was a curtain hanging across the window?. - No.

Did you notice, perhaps, one on the floor? - No, I didn't.

BY HATHORN, A.C.J.: If there were a curtain hanging down, would that have any effect on the putting out of a wick? - I think it would, my Lord. On the other hand, the wick may have caused the curtain to become alight.

40

EVIDENCE OF MR. JOHN WILLIAM THOMPSON

JOHN WILLIAM THOMPSON, duly sworn and examined,

BY MR. GORDON-DAVIS: Do you hold the position of forensic scientist in the British South Africa Police? - I do, my Lord.

Are you a Bachelor of Science and a Doctor of Philosophy? - Yes, my Lord.

10 Are you a Fellow of the Royal Microscopic Society? -Yes.

Are you, by virtue of these qualifications, qualified to carry out examinations involving skill in chemistry and physics? - Yes.

On the 6th of September did you receive from Mr. Wiltshire of the C.I.D. a bottle, Exhibit 7, containing clear liquid? - I did.

Is this the bottle? - This is the bottle.

Is that the liquid that was in it when you received it? - I presume so.

20 Did you conduct an examination of that liquid? - I did.

What did you find it to be? - The liquid was ordinary illuminating paraffin.

Did your tests involve skill in physics? - Yes.

No Cross-examination by Mr. Farmer.

No Cross-examination by Mr. Dumbutshena.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Crown

No. 8

Dr. John William Thompson

Examination

16th December 1963.

In the High Court of Southern Rhodesia

No. 9

EVIDENCE OF DETECTIVE INSPECTOR CYRIL ROBINSON (recalled)

Salisbury Criminal Sessions

Evidence for the Crown

No. 9

Detective Inspector Cyril Robinson (recalled)

Examination

16th December 1963.

CYRIL ROBINSON, duly sworn states: Detective Inspector, C.I.D. Headquarters, Salisbury, qualified to give evidence in respect of identification of persons by means of finger-prints. I have 12 years practical finger-print experience. Of the three accused, I know Accused No.2., but only in connexion with this case and my evidence refers to him alone. On the afternoon of the 2nd of September, 1963, I received from Detective Inspector Wiltshire a bottle which I now see before the Court as Exhibit 6. The bottle was empty and was uncorked and unstoppered. I carried out a finger-print examination of this bottle, Exhibit 6, and found it to bear certain finger impressions. One of the impressions on the bottle is a thumb impression in this position (indicating). It is ringed with a black mark.

10

20

BY HATHORN, A.C.J.: You indicate at the lower end of the bottle on the opposite side of the label approximately? - Yes, my Lord. This was an identifiable impression. On the opposite side to the thumb impression were further impressions which were fragmentary. Between the identifiable thumb impression and the edge of the label were certain other unidentifiable finger smears. Due to the fragmentariness of the impressions, I am unable to state whether they are finger or palm. On the 5th September, 1963, I saw the accused No. 2 at the C.I.D. headquarters, Salisbury, and personally recorded his finger-prints, which I now produce as Exhibit 10.

30

(Finger prints put in, Exhibit 10.)

I have prepared photographic enlargements of the identifiable thumb impression on the bottle, Exhibit 6, that is the impression towards the base of the bottle and to the side of the label and of the right thumb impression appearing on the finger-prints, Exhibit 10, mounted side by side, which I now produce before the Court as Exhibit 11.

40

(Finger print comparison put in Exhibit 11.)

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Crown

No. 9

Detective Inspector Cyril Robinson (recalled)

Examination (continued)

16th December 1963.

10 I have marked out 12 ridge characteristics appearing in coinciding sequence in each indicating beyond any doubt whatsoever that they were made by the same thumb, that is the right thumb of No. 2 accused. I have also made a close study of the fragmentary impressions appearing on the opposite side of the bottle to the thumb, that is the impressions appearing on the opposite side of the label, and there are six characteristics appearing in this impression and the same characteristics appear in the right ring finger of the Accused No. 2. From the position of the identifiable thumb print and the position of the fragmentary impression on the opposite side of the label, it is indicative that the bottle was held in this position.

20 Lord. That is with the cork downwards? - Yes, my Lord.

BY MR. GORDON-DAVIS: In the right hand? - That is so, my Lord.

Mr. Robinson, apart from the fragmentary impressions that you mentioned, were there other unidentifiable fragmentary impressions on the bottle? - Yes, my Lord.

No Cross-Examination by Mr. Farmer.

CROSS-EXAMINED

Cross-Examination

30 CROSS-EXAMINED BY MR. DUMBUTSHENA: Mr. Robinson, how far would these finger prints go back to be clear? For instance, the person who bought that bottle from a grocer, would his finger-prints still be on it? - That I can't answer. I would have to know what happened to that bottle from the time of purchase.

40 I mean we would not know how recently the finger impression had been made? - No, my Lord, without knowing how extensively the bottle had been handled and what had happened to it, I couldn't answer that question.

No re-examination.

In the High
Court of
Southern
Rhodesia

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Sessions

Evidence for
the Crown

No 9

Detective
Inspector
Cyril
Robinson
(recalled)

Examination
by the
Court

16th December,
1963.

EXAMINED BY THE COURT

BY MR. YARDLEY: Were there any indications of other finger-prints on the bottle as if it had been handled a lot? - No; there are several smears, but they are completely unidentifiable.

BY MR. CRIPWELL: The impressions you describe couldn't have been made by somebody using the bottle to pour out the liquid? - No, my Lord, unless, of course, the bottle was completely emptied. If they had poured the whole contents from the bottle, it is possible that the bottle could have been picked up in that manner and emptied in that manner, but it is most unlikely.

10

BY HATHORN, A.C.J.: I understand it is virtually impossible to say how old the print is? - That is so.

Because that depends on the way it has been kept? - That is so, my Lord, the amount of sweat or the amount of fat in a person's sweat, it depends on how much he is sweating at the time he handles it. Temperature plays a part, and it is impossible to determine with any degree of accuracy the age of a latent impression on any object.

20

Yes, and it depends on its exposure? - Yes, my Lord, to the weather.

Rain, sun and so on? - Yes, my Lord.

In what respect are finger-prints most vulnerable from the point of view of identification? - Excessive handling is one of the main things. If a person leaves an impression on a bottle and many people come along and handle it they can completely obliterate the impressions that are on it or superimpose them to such an extent that they are completely unidentifiable. Once again, it depends how the bottle is held. It is possible for an impression to be made on this bottle and for 10 other people to handle it and it would not be obliterated.

30

That is pure chance? - Yes, my Lord.

And it can be smeared quite easily? - Yes, my Lord, the slightest touch can smear an impression.

40

No.10

EVIDENCE OF DETECTIVE SERGEANT DENNIS HENRY BENNYWORTH (recalled)

In the High Court of Southern Rhodesia

DENNIS HENRY BENNYWORTH, re-called, still under oath;

Salisbury Criminal Sessions

BY MR. GORDON-DAVIS: Are you a detective in the Criminal Investigation Department in Salisbury? - I am, my Lord.

Evidence for the Crown

10 On the 4th of September did you charge the accused No. 3 with the crime of contravening section 33 (1)(a) of the Law and Order (Maintenance) Act? - I did.

No. 10

Was he in his sound and sober senses? - He was.

Detective Sergeant Dennis Henry Bennyworth (recalled)

Was he properly warned and cautioned? - He was.

Examination

Did he freely and voluntarily elect to make a reply to the charge? - He did

16th December 1963.

20 Did you record it and read it back to him? - I did.

Did he adhere to it and sign it? - He did.

Did African Detective Sergeant Hode act as your interpreter? - That is correct, my Lord.

HATHORN, A.C.J.: You have not changed your attitude over this statement, Mr. Dumbutshena?

MR. DUMBUTSHENA: No, my Lord.

HATHORN, A.C.J.: Let the statement be put in.

BY MR. GORDON-DAVIS: Is that the statement you recorded? - This is the statement, my Lord.

(Statement read and put in, Exhibit 12.)

Now, on the 5th September, did you again see the Accused No. 3? - I did, my Lord.

In the High
Court of
Southern
Rhodesia

Salisbury
Criminal
Sessions

Evidence for
the Crown

No. 10

Detective
Sergeant
Dennis Henry
Bennyworth
(recalled)

Examination
(continued)

16th December
1963.

Where? - At Harari Police Station.

What was your purpose in seeing him? - I wanted to ask him if he was willing to make indications at all.

Did African Sergeant Nyamadzano act as your interpreter? - Yes.

Did you properly warn and caution the accused? - I did.

Did he freely and voluntarily elect to make the indications? - He did. 10

BY HATHORN, A.C.J.: Is this subject to objection, the indications?

MR. DUMBUTSHENA: The accused will say that he was in a car. He was ask where he bought his provisions. He denies that he specifically told the police where he had bought the paraffin.

HATHORN, A.C.J.: It is really in issue what the indication was.

MR. DUMBUTSHENA: Yes, my Lord.

BY MR. GORDON-DAVIS: What did you ask the accused to indicate? - I asked him if he was willing to indicate the place where he bought the paraffin, as mentioned in the charge sheet. 20

You say he did make an indication? - Yes.

Who was present? - Nyamadzano and African Detective Takadiyi.

Where did you go to? - He took us to the Marowa Shopping Centre on the Ardbennie Road, and he then indicated No. 2 shop.

Who gave the directions for arriving at this shop? - When we were in the car at the police station before we arrived he spoke to one of the A.Ds in the native language and the A.D. told me to go to the Ardbennie Road. When we got to the shopping centre, I was told the shop. 30

Did the accused get out of the vehicle? -
Yes.

Did he enter the shop? - Yes, he went with
me.

At the scene at this shop, did he say
anything? - Yes, he indicated No.2 shop and said
words to the effect: "this is where I bought the
paraffin."

10 Who was your interpreter when he said that?
- Nyamadzano.

No Cross-examination by Mr. Farmar.

CROSS-EXAMINED.

CROSS-EXAMINED BY MR. DUMBUTSHENA: On what
date did Accused No.3 make this statement to you? -
On the 4th.

Do you know when he had been arrested? - I
do't know exactly. I didn't have any other dealings
with the case.

20 Did you know that Accused No.3 had been
released before then? - I have heard that, but I
wasn't aware of it at the time.

Accused No.3 will say that on the 3rd of
September when he was released he was made to sign
some statement that was half typed? - I don't know
about that.

And that was the only paper that he ever signed
at the police station? - No, he signed this statement
which I recorded on the 4th.

In the High
Court of
Southern
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Salisbury
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Evidence for
the Crown

No.10

Detective
Sergeant
Dennis Henry
Bennyworth
(recalled)

Examination
(continued)

16th December
1963.

Cross-
Examination

In the High
Court of
Southern
Rhodesia

At the Marowa Grocery in what language was the accused speaking? - He was speaking in the native language.

Do you understand Shona? - No.

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Criminal
Sessions

You don't - No.

Evidence for
the Crown

If he had told the Shona interpreter that Grocery No. 2 was where he bought his provisions, you wouldn't have heard that? - I wouldn't have heard that, no.

No.10

Detective
Sergeant
Dennis Henry
Bennyworth
(recalled)

If the interpreter asked him further whether even paraffin was bought there and he said Yes, you wouldn't have heard that? - No.

10

When was the Accused No.3 sent to Marandellas? - I don't know.

Cross-
Examination
(continued)

Wasn't it on the 5th? - It may have been on the afternoon of the 5th. I don't know.

16th December
1963.

You went to Harari in the morning? -
Yes.

No Re-examination.

Examination
by the
Court.

EXAMINED BY THE COURT

BY MR. CRIPWELL: Is this grocery shop to be seen on Exhibit 4? - I have not seen Exhibit 4, my Lord. (Exhibit 4 shewn to witness.) It is not shewn as such, but I think it is one of these two spare spots, marked as spare spots between Canon and Chitiyofacing on to the Ardbennie Road.

20

BY HATHORN, A.C.J. How was this statement taken? Just give me an outline? - The charge was put to the accused and the caution was put to the accused.

30

Who prepared the charge? - I prepared the charge. The caution was put to the accused. He then started talking and I recorded everything he said until he was finished.

How was it interpreted? - He said a certain passage to the interpreter who then interpreted it into English to me.

And you recorded it sentence by sentence? -
I recorded it sentence by sentence.

In the High
Court of
Southern
Rhodesia

Were any questions put to him during the
course of his statement? - No, my Lord.

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Sessions

You have the statement before you? - Yes.

There is a line along which the accused
signed, and then there are various words. When did
you type those in? - Which words, the ones below
the accused's signature?

Evidence for
the Crown

10 Yes? - They were typed immediately after-
wards. As I finished his reply, I typed the line
ready for his signature. I typed the rest under-
neath, took it out of the typewriter, read his reply
back to him which he then signed and myself and the
two witnesses signed in the appropriate positions.

No.10

Detective
Sergeant
Dennis Henry
Bennyworth
(recalled)

Who was present when this statement was
made? - African Detective Sergeant Hode and A.D.
Cyril.

Examination
by the Court
(continued)

Anyone else? - No.

20 What did you know about the details of this
offence? - The only details I knew was that the
offence had occurred. I did go to the scene on
the Monday morning with Mr. Wiltshire. As far as
the investigation was concerned, I wasn't concerned
with any of the investigations. On this particular
day, the 4th, I was detailed by Mr. Wiltshire to
charge this accused, which I did. Apart from the
indications which were made the next day, that is
the only connexion I have had with the case.

16th
December
1963.

30 EVIDENCE OF AFRICAN DETECTIVE SERGEANT
HODE

HODE, Duly sworn and examined,

No. 11

BY MR. GORDON-DAVIS: Are you a detective
sergeant in the C.I.D. in Salisbury? - I am, my
Lord.

African
Detective
Sergeant
Hode

On the 4th September, did you act as
interpreter when Mr. Bennyworth recorded a state-
ment from the accused in answer to the charge in

Examination

In the High
Court of
Southern
Rhodesia

this case? - Yes, my Lord.

Did you truly and faithfully and to the best of your ability interpret all that was said between you? - Yes, my Lord.

Salisbury
Criminal
Sessions

Would you look at the statement, Exhibit 12? Is that a correct recording of what was said? - Yes, my Lord.

Evidence for
the Crown

No.11

No Cross-examination by Mr. Farmar.

African
Detective
Sergeant
Hode

Examination
(continued)

16th December
1963.

Cross-
Examination

CROSS EXAMINED

CROSS-EXAMINED BY MR. DUMBUTSHENA: Had you met the Accused No.3 before the 4th of September? - I can't remember whether I had seen the accused No.3 before the 4th September.

10

Did you know that accused No.3 was at the main station under arrest before that day, before the 4th? - I did not talk to him and I did not see him, my Lord. If he was there, he was there, because I was very busy with other things, my Lord.

Had you seen him being interrogated? - What I remember is I remember the day I took him to Sergeant Bennyworth for charging.

20

Do you remember seeing Accused No.3 on the 3rd of September, when he was free?

BY HATHORN, A.C.J.: That was the Tuesday, was it?

BY MR. DUMBUTSHENA: That was the Tuesday?
- Seeing him at the office?

Yes? - As I was very busy, I said I did not see No. 3 accused. If I saw him some time, I have forgotten.

Accused No. 3 will say that you are the one that brought a sheet of paper that was typed at the top, and you asked him to sign it on that day on the 3rd? - That is not correct, my Lord.

10 BY HATHORN, A.C.J.: I think you had better make it quite clear when it was, Mr. Dumbutshena. If I remember the evidence, he was released on the 3rd and re-arrested on the 3rd or the 4th. Was this at the time of his arrest, or the time of his release?

MR. DUMBUTSHENA: At the time of his release.

HATHORN, A.C.J.: I think you had better make it clear what time you are dealing with.

20 BY MR. DUMBUTSHENA: This was on the morning of the 3rd of September when Accused No.3 was released. Do you remember seeing him? - I don't remember, my Lord.

You can't even remember whether he signed a paper that you presented to him? - The paper I remember was the paper when he was charged. After he was charged, he signed his name.

30 How did you know that accused No.3 was to make a statement? - I was told to collect him, my Lord, where he was.

Who told you that? - From where he was to Detective Bennyworth.

I mean who told you to collect him? - Detective Bennyworth, the one who charged him.

BY HATHORN, A.C.J.: Yes, who told you to go and collect him? - Detective Bennyworth.

In the High
Court of
Southern
Rhodesia

Salisbury
Criminal
Sessions

Evidence for
the Crown

No.11

African
Detective
Sergeant
Hode

Cross-
Examination
(continued)

16th December
1963.

In the High
Court of
Southern
Rhodesia

BY MR. DUMBUTSHENA: Had you anything to do with this case yourself? - Yes, I did something with this case, because I acted as interpreter to No. 3 Accused when he was charged.

Salisbury
Criminal
Sessions

Do you know the number of people who have been arrested or who were suspects? - Well, as I charged one, I happen to know there were three accused at the station charged with this accused.

Evidence for
the Crown

BY HATHORN, A.C.J.: Apart from interpreting for this charge sheet, did you have anything to do with this case? - No, I did not do anything with this case.

10

No.11

African
Detective
Sergeant
Hode

If you look at Exhibit 12, will you read the second sentence of the statement. The second line of the statement by the accused? - "The one who organized this, that is the setting fire of this house was one Amon Nyamukondiwa.

Cross-
Examination
(continued)

Can you say in Shona how you would produce a sentence like that? - Well, that is what the accused said.

20

16th December
1963.

How would you put it in Shona? - "Mumwe chete wakagadzira zvakapisa. Mumwe anonzi Nyamukondiwa."

BY HATHORN, A.C.J.: Would you give that in English, Mr. Interpreter?

MR. INTERPRETER ARTHUR: One person who constructed things with which to burn, one who is called Nyamukondiwa."

MR. DUMBUTSHENA: That is very different.

HATHORN, A.C.J.: It is a free translation.

30

MR. DUMBUTSHENA: My Lord, in Shona you would not have a paraphrase like the one inserted there: "That is the setting fire of this house." It is untypical and to me very suspect and that is why I wanted him to translate it.

BY MR. DUMBUTSHENA: Do you not translate an ordinary sentence into Shona, how did you put his statement into Shona? - As I have put it here.

In the High Court of Southern Rhodesia

The sentence in English you couldn't put into Shona correctly? - I have put it.

Salisbury Criminal Sessions

You regard this as the correct interpretation of the sentence? - That is how I put it.

Evidence for the Crown

10

Would you deny it if the accused No.3 said he didn't make any statement? - As far as I know he made a statement.

No.11

Would it not have been proper for the accused or you who were interested in this case to have got more information from the accused? - We have got the information he gave us, as to what he did.

African Detective Sergeant Hode

In comparison, look at the statement of the other accused. Accused No.1, Exhibit 3, do you see its length? - I am not the one who was typing.

Cross-Examination (continued)

I didn't ask you that.

16th December 1963.

20

BY HATHORN, A.C.J.: You can easily put it, both the other accused made very much longer statements. That is the only point I think you are making?

MR. DUMBUTSHENA: Yes, my Lord.

30

BY MR. DUMBUTSHENA: What I wanted you to notice is that the other accused made far longer statements than accused No.3 and I put it to you it was because, if they ever made them, the police were interested in extracting more information from them, but since No. 3 was not present, they couldn't go further than that? - Well, I cannot say, because what he told us was what was written down.

And I put it to you that on the 3rd of September in the morning before the release of accused No.3 you did present a paper that was half typed to accused No. 3 to sign, because he was being released? - Whenever we release somebody, we don't make him sign something.

40

BY HATHORN, A.C.J.: It is being put to you that you did take a piece of paper to the third accused before his release and make him sign it on the Tuesday, the day before this. What do you say to that? - That is not correct, my Lord.

NO RE-EXAMINATION

In the High
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Southern
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Evidence for
the Crown

No. 11

African
Detective
Sergeant
Hode

Examination by
the Court

16th December
1963.

EXAMINED BY COURT

BY MR. CRIPWELL: The defence counsel for accused No. 3 used the term "extract information". Don't I understand that this statement was made without any questioning being done at all? - That is correct, my Lord.

BY HATHORN, A.C.J.: When the third accused was brought in to be charged on the 4th of September, did you know that he had been arrested and then released and then re-arrested? - I didn't know, my Lord.

Now, did you have anything to do with his release? - I did not have anything to do with his release, my Lord.

Now, how does it come about that you have a man who has been arrested and then it is decided that there is not sufficient evidence against him and he must be released. What happens at the main Charge Office? - That if there is no case, my Lord, he is released at the Charge Office and given all his property and then let go.

But somebody has to do something. If your superior officer says: "This man must be released," what do you go and do? - I go to the Charge Office and see who is in charge and tell them this man is to be released. There is no charge. He takes the book and takes him out from the cell and releases him.

Do you have to sign a piece of paper? - If there is property or money or other things, he has to sign in the book that he is given his money.

He signs a receipt? - There is a book, my Lord.

But the prisoner must sign for what property he is given back? - Yes.

In a book? - Yes, my Lord.

Do you have to sign a paper? - If there is no witness in the Charge Office, I also sign.

10

20

30

No, don't worry about the property. If a man has to be released, you go to the man in the Charge Office and you say: "This man must be released."? - Yes, my Lord.

In the High
Court of
Southern
Rhodesia

Do you have to sign a book to say that you are delivering him to be released? - No, I do not sign anything.

Salisbury
Criminal
Sessions

Does the accused have to sign anything? - No, he does not sign anything.

Evidence for
the Crown

10 I think it was suggested that this took place at Harari.

No. 11

MR. DUMBUTSHENA: No, not at Harari, my Lord, at the main station.

African
Detective
Sergeant
Hode

Examination
by the
Court
(continued)

16th December,
1963.

No. 6

EVIDENCE OF AFRICAN SERGEANT NYAMADZANO
(recalled)

No. 6

NYAMADZANO, still under oath:

African
Sergeant
Nyamadzano
(recalled)

20 BY MR. GORDON-DAVIES: You have told us you are a sergeant in the police in Salisbury? - That is correct.

Examination

On the 5th of September, did you act as interpreter when Mr. Bennyworth asked accused No. 3 whether he would make certain indications? - Yes, my Lord.

Did you truly and faithfully interpret all that was said between Mr. Bennyworth and the accused? - Yes, my Lord.

30 Did you warn and caution the accused? - I didn't warn and caution the accused. He was warned and cautioned by Mr. Bennyworth at first.

In the High
Court of
Southern
Rhodesia

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Evidence for
the Crown

No. 6

African
Sergeant
Nyamadzano
(recalled)

Examination
(continued)

16th December
1963.

Did you interpret that? - I did my Lord.

What did the accused indicate? What did he say when he was invited to make these indications under caution? - My Lord, the accused said he was going to show us where he purchased the paraffin from.

What was he asked whether he would indicate? - He was asked by Mr. Bennyworth to go and indicate where he purchased the paraffin from.

Which paraffin from? - Which was used in the petrol bomb. 10

Did you proceed to an address in Harari? - We did, my Lord.

What happened when you got there? - He indicated to us No. 2 shop at Marowa Grocery where we got some paraffin from.

Did he say anything when he indicated the shop? - Yes, my Lord. He said: "This is the shop where I bought the paraffin from."

Did he say which paraffin he was referring to? - To the one which was used in the petrol bomb. 20

Did he actually say that, or did you all assume that? - He said that.

BY HATHORN, A.C.J.: Just give me the words that he used when he showed you the shop. What did he say? Perhaps in Shona would be better. - (Through interpreter Arthur) He indicated a certain shop and said: "This is the shop from which I bought the paraffin." 30

BY MR. GORDON-DAVIES: Did he say anything else? - At that moment he did not say anything else besides that.

Did you enter the shop with him? - Mr. Bennyworth entered the shop. I remained outside.

What did the accused do? - Did he enter the shop? - The accused entered the shop with Mr. Bennyworth and A/D Takadiyi.

Don't tell me what the accused said, but you say that is all he said at that time about paraffin. Did he say anything more at any other time? - At the time or eventually?

In the High
Court of
Southern
Rhodesia

At any other time apart from the actual words you have mentioned now, did he say anything else about paraffin? Yes, or No? - No.

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Sessions

10 Did he say anything about his general provisions and groceries? - He did, my Lord. He said this was the shop from which he gets his general provisions or all that is eaten in his house is obtained from that shop.

Evidence for
the Crown

No. 6

When did he mention paraffin, before or after that or at the same time or what? - He mentioned paraffin as we left Harari Police Station soon after taking him from the detention cells.

African
Sergeant
Nyamadzano
(recalled)

Is this before you got to the shop? - That is so.

Examination
(continued)

20 You told us he had mentioned paraffin at the scene. Now think and start again and tell us exactly what he said at the shop when he made those indication? - He mentioned paraffin soon after he was taken out of the detention cells. He said: "I bought paraffin at a certain shop situated at Marowa Shopping Centre," so we took him to this spot at Marowa Shopping Centre. Upon our arrival we entered the enclosure where all the shops are centralised. The moment we entered this centre he led us and said: "This is the shop from which I bought the paraffin, but the person who actually served me is not present." So the accused, A/C Takadiyi and Mr. Bennyworth entered the shop. It was whilst inside the shop that he then said: "This was the shop from which I buy all my groceries."

30

16th December
1963.

Did you enter the shop? - I did not enter behind the counter. I was outside at the counter and the spot where I stood I was within hearing distance. I was able to hear everything.

40 Did you enter the portals of the shop, the doors? - No, I did not. I was standing near the door, not actually inside.

In the High
Court of
Southern
Rhodesia

How far did the accused go into the shop?
How far away was he when he said this word about
provisions? - As far from myself to the short-
hand writer (indicating about two paces.)

Salisbury
Criminal
Sessions

What actually did he say about provisions?
- He said: "This is the shop where I buy all
my groceries," and he enumerated them as mealie-
meal, sugar, milk, tea. Those are the type of
groceries he mentioned.

Evidence for
the Crown

No. 6

African
Sergeant
Nyamadzano
(recalled)

Do I understand correctly that the only time
he specified paraffin or rather paraffin that was
used in the petrol bomb was at the time when
Mr. Bennyworth originally asked him whether he
would indicate the shop where he bought the
paraffin? - Yes.

10

Examination
(continued)

NO CROSS-EXAMINATION BY MR. FARMAR.

Cross-
Examination

CROSS-EXAMINED

16th December,
1963.

CROSS-EXAMINED BY MR. DUMBUTSHENA:

Have you only gone to Marowa Shopping
Centre that day? Were you going to Marowa
Shopping Centre only? - Yes.

20

Then from there you went back to Harari?
- No, my Lord, from Marowa Shopping Centre we
went to where Mr. Crowe and Sergeant Mbanga were,
because Mr. Bennyworth intended to speak to
them.

In fact, that is where you were going to
originally from Harari? - When we set off from
Harari, we were going to Marowa Shopping Centre.

I put it to you that you were going to
see Sergeant Crowe first and then you passed
through Marowa Shopping Centre? - That is so.
On our way one would have to pass Marowa
Shopping Centre, that is correct.

30

BY MATHORN, A.C.J.: But the point being
put to you is when you left Harari Police Station

your destination was not the shopping centre but where Mr. Croew and Mr. Mbanga were? - Our destination was Marowa Shopping Centre. It was after these indications had been made that Mr. Bennyworth then decided to go and see Mr. Crowe.

Lunch adjournment.

10 BY MR. DUMBUTSHENA: Can you remember where did you first go to when you left Harari Police Station with accused No.3 on the 5th? - From Harari Police Station we went to Marowa Shopping Centre for indications.

Perhaps if I remind you, do you remember going to accused No. 3's house? - After the indications.

Of course accused No. 3 will say that you first went to his house and that was the purpose for which you went to Harari, then on your way back you stopped at Marowa Shopping Centre? - I deny that.

20 BY HATHORN, A.C.J.: You say you went to the shopping centre first? - Yes.

And from there? - We went to see Sergeant Crowe.

Did you go to the accused's house at all? - After indications.

That was at Marowa? - Yes.

From Marowa where did you go? - We went to the accused's house where Sergeant Crowe was.

I see, Sergeant Crowe was at the accused's house? - He was at the accused's house.

30 BY MR. DUMBUTSHENA: And are you quite sure that at Marowa accused No. 3 said: "This is the shop where I bought the paraffin"? - I am quite certain about it.

I would just like to remind you a little. At the preparatory examination you gave a different story at page 104. About the 10th line: "Did he say what this shop was, why he had indicated it?"

In the High
Court of
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Evidence for
the Crown

No. 6

African
Sergeant
Nyamadzano
(recalled)

Cross-
Examination
(continued)

16th December
1963.

In the High
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Evidence for
the Crown

No. 6

African
Sergeant
Nyamadzano
(recalled)

Cross-
Examination
(continued)

16th December,
1963.

and your answer was: "He said that was where he obtained his provisions and everything on account." - (Question and answer put through interpreter Arthur) That is what he said. He said if he intended to take anything on account he could do so.

And that is what he told you first, wasn't it. - No, what he told us first was about the paraffin. Later he then told us that he gets his provisions from that shop on account. 10

Why didn't you tell the magistrate that he said: "This is the place where I buy paraffin."? - That was never asked me. I wasn't asked about it.

But I have just read a question to you? - It is written as I have repeated it before this Court that when we set off from the Charge Office we were going to the shop where he bought paraffin. Upon our arrival he then elaborated upon it as I have repeated before this Court.

That is not as you said it before the learned magistrate. 20

BY HATHORN, A.C.J.: You see, according to this, the next question was: "Did he say anything about paraffin?" and the answer was: "He then said he had purchased the paraffin from that shop." Did you say that? - That is correct, my Lord.

Well, is it correct then that he first told you when you got to the shop this is where he bought his provisions and then afterwards said this is where he bought the paraffin? - No, my Lord, it is the other way round. He mentioned paraffin first then provisions afterwards. 30

MR. DUMBUTSHENA: I am obliged to your Lordship.

BY MR. DUMBUTSHENA: The accused will say that you asked him where he bought his provisions. He said: "I buy my provisions at No.2 Marowa Groceries"? - We did not ask him, my Lord. He told us of his own volition. "This is where I buy paraffin," and added: "Even my provisions, I buy them from this shop." 40

And he will say then you asked him: "Even paraffin?" and he said Yes? - No.

In the High
Court of
Southern
Rhodesia

He will say he said nothing about buying paraffin for making a petrol bomb. - What I know is he told me that he bought paraffin from this shop with which to construct a bomb. This was said whilst at Harari Police station before we arrived at Marowa.

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Criminal
Sessions

10 The paraffin was more important than the provisions, wasn't it? - From what we wanted, yes. We were more interested in paraffin than provisions.

Evidence for
the Crown

No.6

Why then had you to be reminded about his buying paraffin at No.2? - No-one reminded me about it. The accused told us of his own volition after being asked by Mr. Bennyworth.

African
Sergeant
Nyamadzano
(recalled)

I am talking about the preparatory examination. You had to be reminded? - I did not have to be reminded of things that I did.

Cross-
Examination
(continued)

20 But you had left out the paraffin. You had said: "This is the place....."

16th December,
1963.

HATHORN, A.C.J.: That is not quite fair, because he had already mentioned that earlier in this evidence. If you look at the bottom of page 103 and the top of page 104.

MR. DUMBUTSHENA: My Lord, that is all the more reason why...

30 HATHORN, A.C.J.: But it is not quite fair to put it to the witness that he had to be reminded of the paraffin. He mentioned the paraffin at an earlier stage. He said: "Then he led us to the shop," and went on about other things and then went on about paraffin.

MR. DUMBUTSHENA: The accused will say he was not asked where he bought the paraffin. He was asked where he bought his provisions, so he went to show where he bought his provisions.

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Court of
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Evidence for
the Crown

No.6

African
Sergeant
Nyamadzano
(recalled)
Cross-
Examination
(continued)
16th December,
1963.

BY HATHORN, A.C.J.: I understand exactly your contention, but when you put it to the witness he had to be reminded about paraffin, I merely point out he had mentioned paraffin earlier in his evidence at the preparatory examination. I do not know how you are going to put the question.

MR. DUMBUTSHENA: I am obliged to your Lordship. The nature of the question is: "Did he say anything about paraffin?"

HATHORN, A.C.J.: At that stage, yes. I think you can put it that way. Perhaps I could do it.

10

BY HATHORN, A.C.J.: As your evidence reads at the preparatory examination you didn't tell the magistrate that when you got to the shop the first thing that the accused told you about was about the place where he bought paraffin. You mentioned provisions and only after that did you mention paraffin. Now, counsel wants to know why this was? - Upon our arrival he said: "This is where I bought paraffin, including all my provisions."

20

NO RE-EXAMINATION.

Examination
by Court.

EXAMINED BY COURT

BY MR. CRIPWELL: Tell me again, where did you say accused No. 3 referred to a bomb? - At Harari Police Station soon after having been removed from the detention cells when he was taken out of the cells.

No. 12

30

No 12.

EVIDENCE OF LUKE CHIGAMBURA

Luke
Chigambura

LUKE CHIGAMBURA, duly sworn and examined (through African interpreter Arthur):

Examination.

BY MR. GORDON-DAVIES: Do you live at house

No. 4093 S.D. Lines, Harari in Gatula Street? - Yes, my Lord.

Do you live in that house together with your wife and children and your mother? - My mother had just visited.

Do you know any of the accused, apart from this case? - I know one.

Which one? - Accused No. 3, Simon, the one wearing a beard.

10 Did you know his name prior to this case? - No, I did not.

Did you know him by sight? - Yes.

Did you know him well by sight or is he a person you had only seen once or twice? - I had seen him many times.

Is Mashingaidze your next-door neighbour? - Yes.

Do you remember the day previous to the bombing of your house? - Yes.

20 BY HATHORN, A.C.J.: Are you referring to the Saturday or the Sunday?

MR. GORDON-DAVIES: I am referring to the Sunday.

BY HATHORN, A.C.J.: I think you should put it like that.

BY MR. GORDON-DAVIES: Do you remember Sunday, the 13th of September, the day immediately before your house was bombed? - Yes.

30 That Sunday, were you in the garden of your neighbour Mashingaidze reading a newspaper with him? - Yes.

Did you see the accused at that time? - I saw Simon at that time.

Now, at what time was it when you saw him? - Between eight and nine a.m.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Crown

No.12

Luke Chigambura

Examination (continued)

16th December, 1963.

In the High
Court of
Southern
Rhodesia

Salisbury
Criminal
Sessions

Evidence for
the Crown

No.12

Luke
Chigambura

Examination
(continued)

16th December,
1963.

What were you and Mashingaidze doing? -
We were reading the Sunday Mail.

Were you discussing the news? - Yes.

What were you discussing in particular?
- We were discussing political news.

Did you express your own views? - Yes.

And what views are those that you discussed?
- The news we were discussing, because the article
was: "Do not go to U.N.I.P. meetings or Malawi
meetings," so in the course of our discussion we
were just discussing what does this mean that we
are now stopped.

10

HATHORN, A.C.J.: I do not think this is
admissible.

MR. GORDON-DAVIES: My Lord, I am not putting
this forward to prove anything, to prove the
truth of what was being said. I am introducing it
purely to show what was going on at a material time,
the material time being when accused No.3
materialised. Perhaps I should frame my questions
differently.

20

HATHORN, A.C.J.: He can quite clearly give
the nature of the discussions. They were having
a political discussion about a news item. I have
no objection to that, but I do not see the fact
that they had an argument or a discussion or an
agreement or disagreement about that is in any
way relevant at all.

BY MR. GORDON-DAVIES: As your Lordship
pleases. Now, whilst you were having this
discussion, did anybody materialise? - Simon did
not actually come to where we were.

30

Where did he come to? - He stood at a
distance of about eight yards from where we were
sitting.

Indicate that distance, please - From
where the sergeant is to where the witness is
(indicating about eight to ten paces).

Did he actually enter the garden or did he stand in Gatula Street or where did he stand? - He was no longer in the street. He was in front of hut No. 4091.

In the High
Court of
Southern
Rhodesia

Could he hear what you were saying? Was he within earshot? - To me it appeared as if he was within earshot.

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10 When he took up that position, what did he actually do? - He did not do anything, save standing at that spot for about five or ten minutes.

Evidence for
the Crown

Was he facing you, was he looking away, what was he doing? - He was facing us.

No.12

Now, how loudly were you talking? - Well, we were talking in an ordinary speaking voice. There were times when we had to raise our voices discussing and answering questions from each other.

Luke
Chigambura

Examination
(continued)

He stood for five to seven minutes, you say. Did you discuss politics throughout his stay there?
- Yes.

16th December,
1963.

20 Did he say or do anything at that stage? - He did not say anything that morning.

After he had left, did you see him again? - I saw him later between five and seven in the evening. I am not quite certain what time.

Where were you at the time? - I was at Mashingaidze's quarters again.

Were you inside or outside in the garden with him? - We were outside, opposite the corner of the house.

30 What actually were you doing? - I was standing and Mashingaidze was sitting in the chair there.

What were you doing? Were you talking or just sitting sunning yourself or what? - We were watching children who were singing songs praising Nkomo and a police jeep was coming following them dispersing the crowd.

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Salisbury
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Sessions

Evidence for
the Crown

No.12

Luke
Chigambura

Examination
(continued)

16th December,
1963.

Where did you see the accused on this occasion? - He came at that moment whilst we were there. Mashingaidze was sitting there. He stood at a distance about five yards from where we were. He called out words from that distance. The accused said: "All those who support Sithole, they are sell-outs. They want to sell the country."

Did he say that in English as you said it? - I am repeating the words as he said them.

Then you used the word "batingesi"? - Yes, he said that in Shona as he turned away to go. 10

What exactly were those words in Shona? - "They want to sell the country."

Was he in Gatula Street or was he in the garden or where? - He was just near the spot where he had been standing in the morning, just in front of hut No. 4091.

Who was he facing when he said these words? - He was facing us, looking at us.

BY HATHORN, A.C.J.: Are you able to say whether he was addressing the words to any particular people or whether he was just shouting them out in general? - Well, seeing that he was facing the two of us who were there and what happened subsequently, I concluded that this remark was addressed to us. 20

Yes?

BY MR. GORDON-DAVIES: Now, you said this was between five and seven. Was it light or dark? - My Lord, I have no recollection. I am unable to say whether that was before sunset or after sunset, but one was able to see at the time. The countryside was still light. 30

Were you seeing him by natural light? - I do not remember whether he was illuminated by artificial light or illuminated by natural lights. I have no recollection, but I was able to see him at the time.

Having said these words, what did he do? - He turned in the direction of his house. 40

And disappeared, did he? - Yes, he disappeared and later returned.

Now, you said that as a result of what subsequently happened you concluded that he was addressing his remarks to you. From what he actually did at the time, did you or did you not conclude that he was addressing them to you on just the manner in which he said them? - Whilst the remark was being addressed, it did not occur to me to ascertain to whom the remark was being addressed, but later because of what occurred I then concluded that it was addressed to us.

And had nothing happened, you would not have reached any such conclusion? - No, I would not have reached such a conclusion, but I would have remembered the remark in my mind.

Now, did you see the accused again? - Yes.

How long after this incident you have described? - Well, after a period of about five minutes.

Where were you at the time? - I was still outside Mashingaidze's hut.

Were you still with Mashingaidze? - Yes.

When you saw the accused, was he alone? - No, he was in company of someone else.

Where actually did you see him? - They came to the spot where we were sitting.

Did they enter Masingaidze's yard and come up to you? - Yes.

Would you recognise the person who was with the accused again? - Well, my sight, yes.

Would you look at this man here (indicating). Can you say anything about him? - This is the person who came with him.

The evidence will be that this is Amon Nyamakandiwa. How many were in the accused's party? - There was just the two of them.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Crown

No.12

Luke Chigambura

Examination (continued)

16th December, 1963.

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Court of
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Evidence for
the Crown

No.12

Luke
Chigambura

Examination
(continued)

16th December,
1963.

How was the man Amon dressed? - I don't remember what he was wearing. I know he was wearing a hat made out of a fur skin.

What happened when these two people came up to you? - Upon their arrival, it appeared as if Amon was not there.

Why do you say that? What exactly do you mean by that? My Lord, customarily when a person reaches where others are he would be happy and exchange greetings, but he appeared as if he was worried or distressed by something. 10

Tell us what was said and what actually happened? - They did not say many things, my Lord.

Tell us what was said? - They merely greeted each other, that is the two greeted Mashingaidze. Simon produced threepence and gave it to Mashingaidze with which to buy cigarettes. They went away. After that they left.

Did they speak to you? - They did not speak to me. 20

Did you to them? - I said "Good evening" to them. No-one replied. They kept quiet.

Did they look at you? - They were looking at me, especially Amon was looking at my face.

How was he looking at you? - He was a person who did not want to look in my face in a manner in which I would look at him. (indicated).

BY HATHORN, A.C.J.: That is looking away and dropping his eyes.

BY MR. GORDON-DAVIES: After they left, did you see him or the accused again? - Yes, I did. 30

When? How long after this incident? - I should say about ten minutes.

Where were you? - I was still at Mashingaidze's quarters.

Where was the accused when you saw them? -
I saw them coming from the direction of Simon's
house.

In the High
Court of
Southern
Rhodesia

Did you see where they were headed for? In
which direction they were travelling when you lost
sight of them? - They were proceeding in the
direction of Mapetticoat Beerhall.

Salisbury
Criminal
Sessions

Who is "they"? The accused and who else?
- There were about seven of them.

Evidence for
the Crown

10 Did you recognise any of them, apart from the
accused? - I was able to recognise the two who had
been at this spot where I was, that is Simon and
Amon.

No. 12

Luke
Chigambura

Do I understand that they simply passed
down the road without looking at you or passing
any comment? - That is so, my Lord.

Examination
(continued)

That night, did you and your family go to
bed as usual? - Yes.

16th December,
1963.

20 At what time did you personally go to bed?
- I went to bed at 11 p.m.

Did you go to bed in the bedroom which
overlooks the back yard? - Yes.

That is the room next door to the kitchen
and which overlooks and is near to the lavatory
and bathroom? - Yes.

Now, what bed did you sleep in? Did you
sleep on the bed or on the floor? - I was on a
raised bed.

30 Was anybody in bed with you? - We were three of
us on the bed.

Who were they? - My wife and child and I, the
three of us, the child who is still breast-feeding.

Did you have any other people in the room? -
There were other people in the room.

Who were they? - My son, Daniel, and a small
girl Joyce who comes after Daniel. They were in the
same room. They were lying on the mattress on the

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the Crown

No.12

Luke
Chigambura

Examination
(continued)

16th December,
1963.

floor. They had their bed on the floor.

How old is Daniel? - He is five now.

How old is the little girl that you have mentioned? - Thirteen months now.

How old was the child that was in bed with you? - Joyce is three years old. Joyce and Daniel were on the mattress on the floor.

And the child in bed with you? - Thirteen months.

Where does that child normally sleep? -
She normally sleeps in a baby's cot which is normally kept next to our bed, quite close to our bed. This cot is not quite close to the bed, but it is situated in the same room.

10

Was there anybody else sleeping in the House that night? - There were three others in the other room.

Who were they? - My mother and a little girl called Lizzie and my eldest daughter Lucy.

Was the window in your bedroom open or closed when you went to sleep? - The window was shut.

20

Did you have a curtain over the window? - Yes.

Did it cover the whole window? - Yes.

Were you awakened during the night? - Yes.

What by? What did you find? - I was awakened up when this bottle broke the window-pane. The breaking noise woke me up.

30

Was that your own bedroom window? - Yes.

Did you get up and investigate? - Yes, I got up. I went outside to investigate.

Then did you investigate your bedroom itself? - Yes.

Did you find anything? - I saw a bottle in the baby's cot.

In the High Court of Southern Rhodesia

Did you pick up this bottle and examine it?
- I did.

Look at this bottle, Exhibit 6, What do you say about that bottle? - I picked up a bottle similar to this one.

Salisbury Criminal Sessions

Was it subsequently taken away by the Police?
- Yes.

Evidence for the Crown

10 Just look at this wick and top please, Exhibit 9, What do you say about that? - This is the wick I found in this bottle, my Lord.

No. 12

Now, how was the bottle lying actually? - It was lying in that position (indicating on the side with the neck downwards).

Luke Chigambura

Examination (continued)

Did you notice whether or not any of the contents were leaking out? - I noticed that the contents were leaking out, but I smelt it. It was leaking. What I detected was the smell.

16th December, 1963.

20 Did you notice whether the mattress was wet in any way? - Yes, it was wet.

BY HATHORN, A.C.J.: What was the smell you smelt? - A smell of paraffin, my Lord.

BY MR. GORDON-DAVIES: Did you handle this bottle, pick it up and put it in an upright position?
- Yes.

Did your wife handle it? - Yes.

30 Did you go outside and meet an African constable and bring him in and did he touch it too?
- Yes.

Now, did you touch the wick at all? - No.

Did you notice the condition it was in? Was it in the condition it is in now or was there some light on it, a glow, or didn't you notice? - It was as it is, my Lord. Your Lordship can see that the top part had been burnt.

In the High
Court of
Southern
Rhodesia

BY HATHORN, A.C.J.: I think what we want to know is whether there was any fire or smouldering on it when you saw it. It looks as if it had been burnt? - It was no longer smouldering, my Lord. The fire had gone out.

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Criminal
Sessions

BY MR. GORDON-DAVIES: Had anything happened to the curtain which you say was over the window when you went to sleep? - The curtain had been thrown into the baby's cot.

Evidence for
the Crown

BY HATHORN, A.C.J.: I do not understand that. Had it come away from its hangings at the top? Do you mean the bottom had come over and stuck on the edge of the cot? - The curtain had been removed to one side from the curtain pole. It was still holding on to the window only to one side and the rest of the curtain was in the baby's cot.

10

No. 12

Luke
Chigambura

Examination
(continued)

16th December,
1963.

BY MR. GORDON-DAVIES: Did you notice the time when you first awakened? - I noticed after some time, not immediately I got up, it was about twenty-to-one when I then noticed the time.

20

Do you know how long after the incident it was that you noticed this time? - I should think about five to seven minutes.

Had your window been intact when you went to bed? - Yes, it had been intact.

Subsequently, did you make indications to Mr. Wiltshire, the European inspector there? - Yes.

Would any of the accused have had any right to throw this bottle into your house? - No.

30

Now, does or do the lights from Mapetticoat Beerhall shine on to the front of your house and illuminate your front garden? - They throw light to the front part of the House.

Now, when the Mapetticoat Beerhall closes, do those lights go out? - No, they remain on throughout the night.

So is there the same kind of light at midnight as there is, say, at eight o'clock at night? - Yes, my Lord.

Do I understand that prior to this case you had never seen accused Nos. 1 and 2? - No, I had not seen them, my Lord.

BY HATHORN, A.C.J.: Do you support a political party? - Yes.

Which one? - Z.A.N.U., the one headed by Sithole.

NO CROSS-EXAMINATION BY MR. FARMAR.

CROSS-EXAMINED

CROSS-EXAMINED BY MR. DUMBUTSHENA:

Before this Sunday, did you used to see Simon passing in front of your house every day? - Not every day. I used to see him passing.

Usually in the morning during the week at this time about eight or nine a.m. you would, of course, be working? - Yes.

And you would not, of course, notice him if he passed at that time? - That is correct.

Did you know that Simon worked at the Marengeny Beerhall? - No.

And did you know that on this day between eight and nine or even long after that about ten he was going to the beerhall to work? - I did not know that.

BY HATHORN, A.C.J.: I did not follow the question I am afraid. You say between eight and nine and up to ten o'clock he was going....

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the Crown

No.12

Luke
Chigambura

Examination
(continued)

16th December,
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Cross-
Examination

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BY MR. DUMBUTSHENA: Because the witness has said he is not quite sure of the time I am saying between that time or after nine the accused No. 3 would be going towards his work at the beerhall.

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BY HATHORN, A.C.J.: After nine?

MR. DUMBUTSHENA: Yes. Accused No. 3 is used to seeing Mr. Mashingaidze.

Evidence for
the Crown

WITNESS: Yes, I used to see him entering Mashingaidze's house.

No. 12

BY MR. DUMBUTSHENA: Even of course the giving of threepence to Mr. Mashingaidze shows that they are friendly? - That indicates that they are friendly.

10

Luke
Chigambura

Cross-
Examination
(continued)

Can you tell me what Simon was wearing that morning the first time you saw him? - I know him, my Lord. I did not take particular notice of the clothes he was wearing.

16th December,
1963.

If he says he had a white dustcoat on, you cannot deny that of course? - I wouldn't dispute it, my Lord.

20

At the time when the children were passing along the road, was Simon present? - He was not among the children, but he was at this hut. I did not know where he was in fact, because it was at the time he came up and uttered the words that I have repeated before this Court.

You mean after the children had passed? - Yes.

If he shouted, as you say, "Sell out", could he not have been referring to what the children were singing? - At that stage, my Lord, I wouldn't have disputed it. I concluded that it wasn't that because of what happened afterwards.

30

I mean at that time he could have been in your mind referring to what the children were singing about? - The children were singing songs of praise, praising Nkomo. When the accused arrive he said: "Those who support Sithole were sell-outs."

40

BY HATHORN, A.C.J.: Was that agreeing or disagreeing with what the children were saying? - That was disagreeing.

Disagreeing with the children? - Yes.

Well I don't know whether I understand this quite. Do you support Sithole? - Yes.

And what is his relationship with Nkomo? - They are not agreeing at all. They have parted. They are at loggerheads.

10 They are opponents, are they not? - There are opponents.

Well, now, what was the third accused when he was talking about anybody who supports Sithole is a sell-out, who was he supporting? - With those words it appeared as if he was supporting Nkomo.

And so were the children supporting Nkomo? - Yes.

20 BY MR. DUMBUTSHENA: And, of course, the accused will say that he never said to you: "All those who support Sithole are sell-outs." - I said he called out facing us when he called out those words.

And do you say he did not even say that those who supported him are selling the country? - That was his last word on that occasion.

BY HATHORN, A.C.J.: I do not know whether you are putting the question that he never uttered these words at all, that is the point.

MR. DUMBUTSHENA: Yes, that is the point.

30 HATHORN, A.C.J.: The witness took it you never uttered the words to him. I think you had better make it clear.

MR. DUMBUTSHENA: Yes, my Lord.

BY MR. DUMBUTSHENA: The accused will say that he never uttered these words at all? - I am certain he did, my Lord.

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Cross-
Examination
(continued)

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Chigambura

Cross-
Examination
(continued)

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1963.

How long have you been living in Harari Township? - I have been living in Harari two-and-a-half years. This is my third year.

And all that time did you belong to a political party? - Yes.

And if you did, how frequently did you hear the words "sell-out" used? - I would not remember how frequently I have heard these words, but the fact is I have heard them being uttered.

You would agree with me if I say that people call each other sell-outs? - Yes, I do agree with you.

10

And that they do not go to the extent where they fight amongst themselves? - Some go to the extent of fighting and the others do not.

That is those who fight will have gone beyond the expression "sell-out"? - Well, I wouldn't know what will have been uttered there, my Lord.

Would you, yourself, fight someone who had called you a sell-out? - No, I personally would not.

20

And you would agree with me if I said it would even be foolish for a person who had known you for the first time to call you a sell-out and to want to fight you? - This did happen, my Lord. I cannot explain it any other way.

You said on that day, that is the 1st of September, you were reading the Sunday Mail? - Yes.

30

And it is natural for people to discuss what they read, if there are two or three and if there is a controversial subject? - Yes.

Were you yourself, the two of you, Mashingaidze and yourself, arguing between yourselves? - Yes.

I suppose Mashingaidze was not agreeing with you? - Yes.

Did you at any time during the argument think that Mashingaidze was angry with you? - No.

And it would be natural for someone passing through the road to listen to such an argument? - Yes, it is natural, but on the day in question no passerby stopped there to listen.

But you said that Simon stood about eight to ten paces away from you? - Yes, I did say so, about eight yards.

10 And you thought he was listening? - I thought that he was listening to us. When this incident occurred I then thought of it, but not before this incident occurred.

You described how Amon looked at you? - Yes.

I take it that there was nothing unnatural about Simon on that day? - Well, something said, naturally the manner in which he called out and the manner in which he walked on suggested something unnatural.

20 You didn't remember that when you were giving evidence, did you? - I mentioned that when I gave evidence.

When he got to you with Mashingaidze, you said he greeted Mr. Mashingaidze? - Yes, merely saying good-evening, that was all.

That was natural, wasn't it? - Yes, that is the normal way.

Did Mashingaidze ask for tobacco? - No.

30 And, of course, if he didn't, did Simon just produce a tickey? - Yes, he just produced a tickey.

Perhaps you didn't see even Simon producing a tickey? - I saw the tickey.

NO RE-EXAMINATION.

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the Crown

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Chigambura

Cross-
Examination
(continued)

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1963.

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EXAMINED BY THE COURT

BY MR. YARDLEY: You say two-and-a-half years ago you were belonging to a political party? - Yes.

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Criminal
Sessions

What party then? - I remember when it was called the N.D.P.

Was it then that you joined the party? - Yes, I was enrolled as a member of the N.D.P.

Evidence for
the Crown

When that ceased? - Z.A.P.U. was formed and I became a member of Z.A.P.U.

No.12

Luke
Chigambura

And you have left Z.A.P.U. and joined Z.A.N.U.? - Yes.

10

Examined
by the
Court

BY MR. CRIPWELL: Look at the second photograph in Exhibit 8, please, When did the curtain get up to the place where it is on the picture? - I do not know when it was that the curtain was placed where it is as it appears in the photograph.

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1963.

When you saw the bottle in the cot, was that curtain stretched from the window on to the cot, is that what you say? - My Lord, I intended to elaborate on it that this curtain was not actually thrown into the baby's cot itself. The curtain remained between the walls and the cot.

20

So it didn't reach the cot? - This curtain was a long piece of material. The other end of the curtain touched the baby's cot.

BY HATHORN, A.C.J.: Does your neighbour Mr. Mashingaidze belong to a political party or support a political leader? - I do not know whether he belongs to any political party. I have no idea.

30

Well now, you are a supporter of Mr. Sithole, are you not? - Yes.

The third accused seems to be a supporter of Mr. Nkomo because he shouted out these words that anybody who supported Sithole was a sell-out? - Yes.

Now, are you not able to say from your discussions with your neighbour, whether he supports one or other of these two persons? I don't mean joining a party, but supporting them? - In the course of our argument, it did not occur to me to notice which party he was supporting, my Lord.

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10 MR. GORDON-DAVIES: My Lord, I would like to make available to my learned friends in case it becomes significant that in his statement to the police this witness said he saw Simon standing 20 yards away on the first occasion and the witness doubted whether Simon could have heard the discussion.

Evidence for
the Crown

No.12

Luke
Chigambura

HATHORN, A.C.J.: I think you should put that, if you are going to rely on it.

Examined by
the Court
(continued)

BY MR. DUMBUTSHENA: Yes, my Lord. I am indebted to your Lordship.

20 (To witness) Did you not say to the police that Simon was standing 20 yards away and you doubted whether he could have heard you? - I did not doubt the fact that he overheard our conversation. I said he did.

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1963.

HATHORN, A.C.J.: Perhaps you had better let him see the statement.

MR. DUMBUTSHENA: Yes.

(Statement shown to witness).

30 WITNESS: I see this, my Lord, but I do not think that I uttered these words. I made a rough estimate of the distance.

RE-CROSS-EXAMINATION

Re-Cross-
Examination

BY MR. DUMBUTSHENA: Was this statement not read back to you? - This statement was handed to me to read. I did not read the whole statement. It was handed to me to read.

I put it to you that you told the police that Simon was standing about 20 yards away from where you were? - My Lord, I gave a rough estimate indicating a spot. I did the same thing before the

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Re-Cross-
Examination
(continued)

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magistrate. I indicated a certain distance.

A distance as far from the Magistrate's Court to the Police station and I put it to you you said you doubt whether Simon heard you? - I do not think I said so, my Lord.

NO RE-EXAMINATION.

No.13

EVIDENCE OF MASHINGAIDZE

No.13
Mashingaidze

MASHINGAIDZE, duly sworn and examined (through African interpreter Arthur):

10

Examination.

16th December,
1963.

BY MR. GORDON-DAVIES: Do you live in house 4092 Gatula Street in the S.D. Lines of Harari? - Yes.

Is Mr. Chigambura your immediate neighbour? - Yes.

Do you know any of the accused, apart from in connection with this case? - I know Simon Runyowa.

Do you know any of the others? - No.

20

How did you know him, as a friend or by sight? - I know him, my Lord, because he is staying not very far from me.

But do you know him by name as a person to speak to or do you only know him by sight? - I know him because he is related to my wife.

Do you belong to any political party or do you support any leader, even if only in spirit? - I am a member of the Central African Party.

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Do you remember Sunday the 1st of September? - I do.

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On that day were you sitting in you garden with the complainant, Mr. Chigambura? - That is correct, my Lord, I remember that.

Evidence for the Crown

10 What were the pair of you doing? - We were talking political matters.

No. 12

Did you have the latest newspaper? - Yes, we had the Sunday Mail of that day, my Lord.

Mashingaidze

Did you see the accused whilst you were so engaged? - Yes, I saw the accused.

Examination (continued)

What time was this? - It was in the morning between eight and nine, my Lord.

16th December, 1963.

What was he doing when you saw him? - At that time in the morning he arrived and stood. He did not say anything.

20 Where did he stand, how far from you, indicate a distance? - He stood as far as from where I am to the Herald reporter.

HATHORN, A.C.J.: About 10 or 12 paces away.

BY MR. GORDON-DAVIES: Was he standing in the street or where? - No, he was not in the street. He was standing next to my neighbour, that is the next-door building, that is the same building. They are semi-detached.

30 He wasn't in your yard? - No, he was in the yard of this person who keeps the semi-detached room.

What was he apparently doing? - I do not know why he stood there listening, my Lord.

Did he appear to be listening? - I say that he was listening, because he is a person who was standing there.

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Mashingaidze

Examination
(continued)

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1963.

Who was he looking at or what was he looking at whilst he was standing? - He was looking at the two who were sitting down together.

Is that you two that you refer to? - Referring to Luke and myself.

How long did he stay like that? - For about five minutes.

During the time that he was there did the complainant Chigambura express his own political feelings? - Yes, that is so. We were discussing whilst he was standing there.

10

Was he within earshot or were you speaking in low voices or what? - We were speaking in a normal speaking voice. If he was a person with that particular aspect in order to listen to what we were talking about he would have heard everything. We were not speaking in a low voice or a loud voice, but in an ordinary speaking voice.

After the accused left, did you see him again? - Yes, later I saw him coming back.

20

What time was that? - It was about five o' clock p.m.

Was it still daylight? - Yes.

Where were you? - I was sitting with Chigambura outside my hut against the wall of my hut.

In your garden? - No, this time not in the garden, that is on the verandah of my hut.

What did the accused do? Where did you see him? - At that stage there were children running about calling out: "Sithole down. Nkomo up." He stood at a distance as I have indicated before the Court.

30

Twelve paces, yes? - He then said: "You sell-out. You are selling the country to Sithole."

Now, who was he facing or looking at when he said these words? - He was facing us.

To whom did he appear to be addressing his remarks? - He was addressing them to the two of us.

Did he shout them or just speak them or what?
- He shouted them at the top of his voice.

Did he speak in English or in Shona? - He spoke them in Shona, but he used the word "sell-out" which is an English word.

Did he use any other English word? - No, he did not say any other word that I remember.

10 Tell us as closely as possible the actual words he used? - He said: "You sell-out. You are selling the country to Sithole."

Anything else? - After uttering those words, he turned away.

Did you see him again? - Yes, I saw him later.

Where were you? - Still on the verandah. We had not moved.

20 How long after this incident that you have just described was this? - About ten minutes later when he appeared.

Where actually did you see the accused? - He came in company with someone else.

Did he enter your garden? - We were no longer in the garden. We were on the verandah, not in the garden.

Did he come up to you on the verandah? - Yes, he came to the verandah where I was with his friend.

30 Would you recognise his companion again? - I know him.

BY HATHORN, A.C.J.: What is his name? - Now I know his name, but at the time I didn't know his name. I know it now.

Well, what is his name? - Amon.

BY MR. GORDON-DAVIES: Any other name? - Nyamakandiwa.

How was he dressed, particularly his head? - He was wearing a fur-skin hat.

40 Did these people speak to you? - I spoke to Simon.

Did you see this man? - Yes, this is the man who was with him.

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Examination
(continued)

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Mashingaidze

Examination
(continued)

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1963.

The evidence will be that that is Amon Nyamakandiwa. Yes, tell us what was said by whom and what happened? - I said to Simon: "Do you remember that on Saturday I told you that I wanted tobacco?" Simon addressing me, his son-in-law, said: "I have no money, my son-in-law. I only have threepence," and he gave me the threepence. They walked going round my house.

Did either the accused or Amon say anything to the complainant? - No, they did not say anything to him. 10

Did you notice anything about the person Amon Nyamakandiwa, anything about his manner? - He did not utter a word, but from the manner he looked at him there were signs of looking at a person only.

Who did he look at and how did he look to you? - He looked at my companion in the manner in which I am looking at the assessors.

BY HATHORN, A.C.J.: I do not follow what you are trying to convey. Was he looking in a friendly way, an unfriendly way, in a happy way, an unhappy way, or how? - In an unfriendly way, as a person who had something in his mind, my Lord. 20

BY MR. GORDON-DAVIES: After the accused man Amon left, did you see them again? - Yes, we later saw them when there were seven of them.

Where were they going? - They were walking along the road proceeding in the direction of the beerhall.

How long after this incident you have described was this? - About ten minutes. 30

Incidentally, when the accused shouted the words to the effect that Sithole adherents were sell-outs or selling out to Sithole, did he make any gesture? - He said: "You sell-out" (indicating waving hand downwards).

BY HATHORN, A.C.J.: What do you understand he was indicating by the gesture he was making? - I thought he was angry and that he noticed the manner in which we were living displeased him, that is what I thought at the time.

It is a little difficult to describe the gesture. Would you do it again? - (indicated.)

A sort of downward movement as if slapping people down?

Mr. GORDON-DAVIES: Yes, a sort of downward wave repeated a few times from shoulder height with one hand.

(Court adjourned at 4 p.m.)

SEVENTH DAY OF TRIAL

TUESDAY, 17th DECEMBER, 1963

MASHINGAIDZE, recalled, still under oath (through Interpreter Arthur):

NO CROSS-EXAMINATION BY MR. FARMAR.

Cross-Examined

CROSS EXAMINED by MR. DUMBUTSHENA: You said you knew Simon very well? - That is so.

10 Where does he work? - He works for the Municipality.

Is that at the Marangenyra beerhall? - That is correct.

Does he pass through Gatula Street when he goes to work? - Yes, he walks along Gatula Street in order to go to work.

Do you think Simon would have any cause to quarrel with you? - I have never quarrelled with Simon. Not to my knowledge. I can't think of any cause.

20 Are you still a member of the Central African Party? - Yes, I am up to this day.

Wasn't it disbanded some time back? - I understand it was disbanded.

Do you sympathise with any political group among the Africans? - I have not elected any in my life.

30 Then what were you arguing about on 1st September? - Because of the pamphlets which had been issued prohibiting Malawi from convening meetings.

There was no discussion about local politics, was there? - No.

You didn't speak about the virtues of Mr. NKomo or Mr. Sitole? - No.

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And if, as you say, Simon listened to your conversation he heard you saying it is wrong to prohibit meetings for UNIP and Malawi? - I think that is what he heard.

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And that had nothing to do with Simon's political convictions? - I wouldn't know that.

Evidence for
the Crown

And, of course, you said there were children passing through the streets who were shouting: "Sitole down, Nkomo up?" - Yes.

No.13

Mashingaidze

Where were they going to? - They were walking along the road. 10

Cross-
Examination
(continued)

Just walking normally? They weren't running? - They were running. When they saw Policemen coming they ran away.

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1963

And, of course, that shouting and singing had nothing to do with you? - We had nothing to do with their singing. It did not affect us in any way.

Did you hear such singing before? - No, I had not.

Do you attend political meetings in Harari? - My life in Salisbury, I have never attended any of these meetings. 20

And you said that Simon stood somewhere near to you and shouted: "You are sell outs. You are selling the country to Sitole?" - That is correct.

And you said he was using Shona, Chizezuru? - I said he spoke in Shona, but using the English word "Sell out."

Didn't you say at the preparatory examination that he said: "Sell outs of the country," and he said those words in English? - It is correct it is in English; he said it in English. 30

BY HATHORN, A.C.J.: The words in English he used you said were "sell out." According to the preparatory examination the words "Sell outs of the country" were used in English? - That is so.

BY MR. DUMBUTSHENA: Which is which?

BY HATHORN, A.C.J.: Don't worry about the Magistrate. Were the words he used "Sell outs," or "Sell outs of the country?" - "Sell outs of the country," in English.

In the High Court of Southern Rhodesia

BY MR. DUMBUTSHENA: He did not say, "You are selling the country to Sitole?" - That is what is contained there, because he was speaking about Sitole.

Salisbury Criminal Sessions

10 BY HATHORN, A.C.J.: Yes. I don't think you meant that. Did he speak about Sitole in Shona or in English? - He said that in English, "You are selling the country to Sitole."

Evidence for the Crown

No.13

Mashingaidze

Just tell us exactly all that he said, and tell us which part he said in English and which part he said in Shona? - "Sell out of the country" in English. "You are selling the country to Sitole", in English.

Cross-Examination (continued)

17th December 1963

Did he say anything in Shona? - Not at that moment, he did not.

20 BY MR. DUMBUTSHENA: Yesterday you said he only said "sell out" in English, and the rest of the words were in Shona? - I was asked whether he spoke in Shona. I said this word, "Sell out" is an English word.

BY HATHORN, A.C.J.: I understood your evidence yesterday to be that he said everything in Shona except the word "sell out?" - That is what I said yesterday.

30 Now you are saying something different because you are saying he said it all in English? Well, put it this way: Are you saying something different today from what you said yesterday? - No, I am not saying something different from what I said yesterday.

BY MR. DUMBUTSHENA: Did Simon repeat these words? - Yes, he repeated them.

He said nothing else other than what you have told us? - No.

In the High
Court of
Southern
Rhodesia

Did he say anything about Sitole supporters? -
At that stage when he referred to Sitole supporters,
it was at this very stage he said they were selling
the country. Sellers of the country.

Salisbury
Criminal
Sessions

He did not say: "All those that support Sitole
are sell outs?" - Not at that stage.

Evidence for
the Crown

Did he say it at any other time? - No.

No.13

Mashingaidze

When you say Simon came to you with Amon, I
understand, was Simon friendly to you? - On the
day in question he was not friendly. He appeared to
be angry. 10

Cross-
Examination
(continued)

Was he angry with you? - I don't know with
whom he was annoyed. I don't know whether he was
annoyed with me or someone else.

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1963

You were able to ask him for tobacco, were you
not? - Yes. As an intimate friend who always
associates with me.

His anger did not mean anything to you? - I
don't know what had annoyed him because I was merely
speaking to him about tobacco at this stage. 20

You say he gave you a tickey? - That is
correct.

Because there was nothing wrong with him? -
I wouldn't know it. I had already asked for it
from him.

Of course, this was your usual practice, asking
Simon to give you tobacco, was it not? - That is
true.

If Chigambura says you did not ask Simon for
tobacco would he be right? - Well, I asked for
tobacco. It would mean he misunderstood what was
said. 30

Let's go back to this shouting of sell outs.
At what time was this? - It was at about five
o'clock.

What had happened? - At this stage there were
children who were singing in the street, as I have
already told the Court. They were running along
the road.

Might Simon have been shouting because of what he had heard from the children? - I wouldn't know.

Of course this means that you did not connect his saying "Sell out" - you didn't understand him to mean that you were sell outs? - It should be known by us that he was addressing us saying he was not very far from us.

I mean you only? - I would not pick out or select because the two of us were together.

10

Because the complainant, if I understood him well, said he only connected this sell out business with him when his house had been bombed, shall I say? - At that stage I would not differentiate. To me it appeared as if it was addressed to the two who were there.

BY HATHORN, A.C.J.: At the time that appeared to you? - At the time it was uttered it was addressed to us.

20

BY MR. DUMBUTSHENA: Why did you think it was addressed to you? - Because the two of us were sitting together. There would be nothing to indicate that he was trying to select or differentiate.

BY HATHORN, A.C.J.: Yes, but what about the other people? - I wouldn't know these other people.

30

I think the point is, why do you say they were addressed to you and your companion? Were there not other people nearby in the vicinity to whom he might have addressed the words? - There were no other people near us.

BY MR. DUMBUTSHENA: Did you connect the singing of the children with you? - No.

Won't you agree that somebody, after hearing the children singing, "Down, Sitole, up Nkomo," would say: "Sitole supporters are sell outs," without referring to anyone in particular? - It did not occur to me in that manner.

In the High Court of Southern Rhodesia
Salisbury Criminal Sessions

Evidence for the Crown

No.13

Mashingaidze

Cross-Examination
(continued)

17th December 1963

In the High
Court of
Southern
Rhodesia

You don't accept anyone who said, "Sitole's supporters are sell outs" might have been inspired by the singing of the children? - No, my lord. I don't think so.

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Criminal
Sessions

At the preparatory examination you were asked this question: "To whom was he saying these words?" That is, "Sell out" and everything else. Then you replied: "We do not know to whom he addressed these words, maybe to us, but we do not know, maybe to somebody else."

Evidence for
the Crown

10

No.13

Mashingaidze

BY HATHORN, A.C.J.: Did you say those words?
- I did not utter those words.

Cross-
Examination
(continued)

BY MR. DUMBUTSHENA: They were just put here?
- When were those words uttered? Yesterday?

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BY HATHORN, A.C.J.: Just pay attention for a moment. According to the record of the evidence you gave at the preparatory examination, you were asked to whom the third accused was addressing these words about sell outs. Now, according to the record, your answer to the question was this: "We do not know to whom he addressed these words, maybe to us, but we do not know, maybe to somebody else." Then you went on to say that there was no one else in the vicinity. Now, did you say those words, that you didn't know to whom he was addressing the words? - Yes, I did say so.

20

BY MR. DUMBUTSHENA: Are you still of the opinion that he was saying those words to you? - No.

BY HATHORN, A.C.J.: To whom was he addressing them? - That is what I don't know, because when he made this remark he was looking at us.

30

Do you now agree with me that he might have been inspired by the children who were passing by singing?

MR. GORDON-DAVIS: With respect, we must have this word "inspired" differentiated from "directed towards." My learned friend's questions have been to the effect the accused, when saying these words, was not speaking to the witness. That is something entirely different from this source of inspiration.

HATHORN, A.C.J.: Yes, I think that is so, but I am not sure that it is a matter for the witness to answer whether somebody was inspired by something. You can say he appeared to be inspired by these words. "Did it appear to you that the singing caused him to say these words?" But I am not sure that the witness can answer that question.

In the High Court of Southern Rhodesia
 —
 Salisbury Criminal Sessions
 —

10 MR. DUMBUTSHENA: By inspired I don't mean he was saying it to the children; what I mean is, was it as a result of the singing of the children that the accused might have said these words?

Evidence for the Crown

No.13

Mashingaidze

HATHORN, A.C.J.: Isn't that a matter for argument and for the accused? What can this witness say? How can he say, unless it is something that was apparent?

Cross-Examination
 (continued)

17th December 1963

20 MR. DUMBUTSHENA: This is the situation I envisage: There are people singing, "Down with Sitole; up with Nkomo," and somebody hears these words and says: "All Sitole supporters are sell outs." To me it does not seem to be improbable.

HATHORN, A.C.J.: Yes, but how can the witness speak to that? That is the difficulty I have, you see.

MR. DUMBUTSHENA: Yes, I do admit that.

30 HATHORN, A.C.J.: I am not sure that it isn't a matter for argument, unless you can elicit from the witness that there was some other apparent connection between the two. But I don't see that you can get very far on that.

MR. DUMBUTSHENA: I won't carry on with that. (To witness): You say Amon and Simon came to you at the time you asked for tobacco? - Yes.

What did Amon do? - He didn't do anything to me.

And the accused, besides giving you 3d., what else did he do? - He did not do anything. They set off going away.

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No.13

Mashingaidze

Cross-
Examination
(continued)

17th December
1963

They, of course, did not point at Chigambura?
- I did not see that because pointing is normally
done by a finger or a hand. I did not see that.

In the preparatory examination you were asked
this question:

HATHORN, A.C.J.: Ask him whether he was asked
this question.

BY MR. DUMBUTSHENA: Were you asked this question:
"Did you see what the accused and this person in the
fur hat did?" - Yes, I remember that question. 10

And did you not give these words in reply:
"What they did is this, they came and pointed to
Luke?" - That is correct.

You say they did nothing else besides coming to
you? - I said I did not see anything that was done
because pointing is normally done with one's hand.

How did they point to him if they did not use
their hands? - One may point with one's eyes. It
is different.

In the morning when you first saw accused No.3 20
what was he wearing? - I did not take any particular
notice of the garments he was wearing.

What does he usually put on when he goes to
work? - He normally uses a white dust coat when
going to work.

Was he not putting it on on that day? - No.

Was he not on his way to Marenganya? - No,
he was coming from the direction of his house.

Of course if he is going to Marenganya he will
pass through the street past your house to
Chigambura's? - That is his normal route to go to
Marenganya. 30

RE-EXAMINED

RE-EXAMINED BY MR. GORDON-DAVIS: Did the complainant, Chigambura, mention anything which would indicate what his political affiliations were? - I concluded from the conversation that he was siding with Sitole's party.

What made you come to that conclusion? - I arrived at this conclusion from the conversation we held.

10

Just describe briefly the substance of what he said that made you come to the conclusion that he was of Sitole's persuasion? - Well, this originated from these words when he said: "People who want to follow this part should choose the rightful leader."

Did he say who that leader was? - The leader he was referring to was Sitole.

20

BY HATHORN, A.C.J.: How do you know that? - Well, I knew that because of the talk we had at the time.

BY MR. GORDON-DAVIS: Did he mentioned Sitole at any time? - We had Sitole in mind in our conversation.

Why do you say that? - If one was engaged in a conversation with a person it is easier to detect what is in his mind, or what he is thinking about.

Did he mention Sitole? - That is what I mean.

Did he?

30

Examined by the Court

BY HATHORN, A.C.J.: Did he mention the name? - He did not mention the name Sitole, but referred to it as a new party.

BY MR. CRIPWELL: You say you have never attended a political meeting. How, then, did you join the Central African Party? - I used to attend meetings convened by that party because I was a member of that party.

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Evidence for the Crown

No.13

Mashingaidze

Re-Examination

17th December 1963

Examination by the Court

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Mashingaidze
Examination
by the Court
(continued)

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You said that the third accused used to wear a white coat; is that his working coat? - Yes, it is a garment he uses when on duty.

Was he wearing that white coat on this Sunday?
- No.

When you said that this call was made by him you said there was nobody in the vicinity? - Yes, my lord.

Do you mean by that that they were not within hearing distance? - There was nobody within hearing distance or within ear shot. 10

But will you agree with me that Gatula Street is a street which is usually full of people? - Yes, I agree with you it is a well defined road.

But on this Sunday morning the only people there were these children who were being moved on by the Police? - I don't say it was just these people who were driven away by the Police. I told the Court what I saw.

Was there nobody in the Mapetticoat Beer Garden at that time? - There was a large number of people there. 20

They could not have heard what was said? - No, they would not. It is a long way.

BY HATHORN, A.C.J: You say that you gathered from the conversation that the complainant was a supporter of Sitole? - That is what I have said.

Was that part of the conversation overheard by the third accused, or did it take place when he wasn't there? - I wouldn't know. 30

Do you know which party the third accused supports, which leader? - I don't.

When you heard him shout out these words what did those lead you to believe? - I thought the accused belonged to Nkomo's party.

Because of what? - Because of these words that he uttered.

Do you know whether Amon supports either of these leaders? - No, my lord, I wouldn't know that.

You say when he came on this Sunday afternoon he was wearing a skin hat, a fur hat? - Yes.

Is there any significance to be attached to the wearing of a fur hat? - I arrived at the conclusion, if a person was wearing a fur skin hat, they belonged to Nkomo's party.

10 Well, when I asked you which leader he supports you said you didn't know? - Yes. I should have said so because there was nothing to indicate that he supports that particular party save the fur skin hat he wore at the time.

Now, I don't quite understand about the three pence and the tobacco; would you just explain that to me? - Every time I meet Simon I speak to him about tobacco.

20 In what sense do you speak to him about it? - As a person who is known to me, close to me and thirdly related to my wife.

And did you ask him for tobacco? I don't understand why he gave you money. Did he owe you money? - Yes, he gave me money, 3d.

I know he gave you money, but did he owe money to you? - No, my lord. I did not owe him anything. He said he had no tobacco on him, that day, so he decided to give me a tickey.

30 Was the idea you could use the tickey to go and buy some? - Yes, that is what it meant.

Do you sometimes give him tobacco if you have it and he gives it to you if he has it? What is the position between you? - Yes, my lord, that is what it is. We normally ask for tobacco. If he has it I ask him, and he does the same thing to me.

(Tea adjournment)

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Evidence for the Crown

No.13

Mashingaidze Examination by the Court (continued)

17th December 1963

In the High
Court of
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NO. 14

EVIDENCE OF AMON NYAMAKANDIWA

Salisbury
Criminal
Sessions

AMON NYAMAKANDIWA, duly sworn and examined
(Through Interpreter Arthur)

Evidence for
the Crown

BY MR. GORDON-DAVIS: Do you live in Harari
township, being employed in Salisbury? - Yes.

No.14

And which, if any, of the three accused do you
know? - Accused No.3.

Amon Nyama-
kandiwa

What name do you know him by? - Simon.

Examination

How long have you known him? - I believe it
is about two years since I have known him. 10

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1963

In what capacity have you known him? - I knew
him because we live in the same township. We stay
in the same township.

Have you spoken to him from time to time and had
occasion to visit him and the like? - No.

BY HATHORN, A.C.J.: You have not visited him?
- I remember I spoke to him on Sunday.

BY MR. GORDON-DAVIS: Is that Sunday, 1st
September? - Yes. 20

Where did you see him on that day? - I saw
him in the beerhall.

Which beerhall? - Mapetticoat. I don't know
the English name of that beerhall.

At what time? - At five p.m.

Did he approach you or you him? - We just
met in the beerhall when I had arrived from my house.

Were you alone? - I was.

And was he alone? - Yes.

Describe the conversation you had with him? - 30
The conversation was this: He said: "Do you know
that there is a person who is belonging to Sitole's
party who is in the Municipality here?" He said,
"His house is situated near here. Come with me, I
will show it to you."

Please omit nothing in conversation. Don't generalise. Just tell it in your own words? - We went to this particular house. He pointed it out to me. He said: "This is the house I was telling you about owned by a sell out." I said, "I want to go and see that old man of mine called Mashingaidze" who was sitting outside. "There he is sitting."

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

10 Which house was he indicating to you as being where the Sitole supporters were sitting? - The house next to the one occupied by Mashingaidze.

Evidence for the Crown

No.14

The one that is semi detached to Mashingaidze's house, or one separated from it by the lane? - Separated by the sanitary lane.

Amon Nyama-skandiwa

Examination (continued)

Describe what happened? - I went there and greeted Mashingaidze. After greeting Mashingaidze I went back to the beerhall.

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20 Now, when the accused first said to you that there was a person in the Municipality who belonged or adhered to Sitole, and said he would show you this house, why did you accompany him? - Well, I thought he was merely showing me because that was a new party which had just been inaugurated. I thought he was merely going to show me where a person who is belonging to that party stays.

30 What was his mood or manner when he divulged this information in the beerhall? - Well, from his face, I did not conclude that there is something sinister about it. He appeared to be his normal self.

Was anything said as to the desirability or otherwise of such people? - He said people of that type, something should be done to such people.

40 Did he say this before or after you adjourned to see this house? - Before. Sorry, no, after we had visited this house we went back to the beerhall. Whilst in the beerhall, then these words were uttered.

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Evidence for
the Crown

No.14

Amon Nyama-
kandiwa

Examination
(continued)

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1963

And when the house was indicated to you was anything said by him, apart from what you have mentioned, that this is the house which belongs to a person of Sitole? - No, nothing was said.

Did you know Luke Chigambura at this stage? - No, I did not.

Did you, in fact, go and greet or speak to Mashingaidze? - Yes.

Did you enter his yard and go up to him? - Yes, I did.

Did the accused accompany you or did you go alone? - He was behind me. He also entered the yard.

How is it you knew Mashingaidze? - I regard him as an elder brother, according to our tribal relationship.

Who was he with? - I did not take particular notice of the person who was with him.

BY HATHORN, A.C.J.: Was there a person with him? - I saw his wife who was sitting down.

BY MR. GORDON-DAVIS: Was there anybody else? - I did not take notice about it.

BY HATHORN, A.C.J.: I don't follow what your evidence is. Do you mean that there was no other person there besides Mashingaidze and his wife, or there may have been somebody but you didn't notice? - My lord, I noticed no other person. I should say there wasn't any other person besides him.

BY MR. GORDON-DAVIS: Did you see any dealing between the old man Mashingaidze and the accused? - He was behind me; I don't know what happened.

What was said when you went up to the old man Mashingaidze? - I did not hear anything.

Did you greet him? - I greeted him.

Tell us what happened from the moment you went up to him to the moment you left; what was said by anybody, and what was done? - I greeted Mashingaidze. After greeting him I then told him I was going away. I never sat down.

10

20

30

And when you left did Simon leave with you, or what? - We entered the beerhall together. He was behind me.

As you were walking along the street to the beerhall, returning to the beerhall, did you notice whether there were any people with you, or immediately behind you? - No.

10 When you got back to the beerhall what happened? - I said when we got into the beerhall he said: "People like those who adhere to Sitole, something should be done to them."

Anything else? - I said to him: "I don't know anything about what you are now saying." When I said I didn't understand it, he said he was going to his hut. He left me in the beerhall.

How long were you two in the beerhall together on your return from Mashingaidze's house? - I had no watch on me. We were only together a short time, and then we parted company.

20 Did you express your feelings about this suggestion or statement something should be done to Sitole supporters in any other form other than the one you have just mentioned? - No, I did not.

How was Simon dressed on this occasion? - I don't remember.

Can you remember whether or not he was wearing a white dust coat? - I don't remember.

30 What were you wearing? - I was wearing a check shirt, the jacket I am wearing now and the trousers I have on now, and a pair of black shoes.

What if anything were you wearing on your head? - I was wearing a fur skin hat.

Do you know of what political persuasion is Accused No.3? Is or was? - I have no idea.

40 BY HATHORN, A.C.J.: Well, what did you think he was when he said that something ought to be done to supporters of Sitole? - My lord, I did not arrive at any conclusion. I merely withdrew

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Evidence for the Crown

No.14

Amon Nyama-kandiwa

Examination (continued)

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Salisbury Criminal Sessions

Evidence for the Crown

No.14

Amon Nyama-kandiwa

Examination (continued)

17th December 1963

and declined to hear what he was suggesting because I didn't agree with what he was then saying.

BY MR. GORDON-DAVIS: Do you support any political leader, even if only in spirit? - No, my lord.

Prior to the banning of ZAPU did you have any feelings then? - Yes, I had joined ZAPU. That is, I had been a member of ZAPU.

Do you know where Simon lives? - I know he stays in the Municipal section of the location.

10

You don't know his address? - The section assigned to Municipal employees. That is the side he stays.

Do you know the number and street and so forth? - No.

Was he on duty or off duty at the time he spoke to you in the beerhall and took you to this house? - I did not ask him, so I am unable to say whether he was on duty or not.

Do you know of your own knowledge what his hours of duty are? - No.

20

NO CROSS-EXAMINATION BY MR. FARMAR

Cross-Examination

CROSS-EXAMINED

CROSS-EXAMINED BY MR. DUMBUTSHENA: Did you say Mr. Mashingaidze was your relation? - I did.

Did he know your name, then? - Yes, he did.

Had you visited his house before? - Yes, I had visited his house before.

If Mr. Mashingaidze said he did not know your name, then, would that be correct? - Probably because Mashingaidze is an old man. He stays at Nyashanu in Bohera district, and I live at Mrewa. When we met in town we introduced each other and came and finally found out that he is a relation of mine.

30

BY HATHORN, A.C.J.: If he says that he didn't know your name at this stage, at this time on this Sunday, what do you say to that? - I would not say anything. I don't know if he had forgotten it or not.

I am under the impression that he said he had never seen the witness before: is that not correct?

10 MR. DUMBUTSHENA: Yes, I think he did. (To witness): Are you sure Mr. Mashingaidze comes from Nyashanu? - He comes from Nyashanu, but owns a farm at a place called Zowa.

Does he stay at Nyashanu? - I remember that is what he told me.

Doesn't he have a farm at Mapiro, and not Zowa? - I believe this is Zowa. It is at Makwiro. I don't stay there, and I have never been there.

20 So you don't know Mashingaidze's place? - I met him in Salisbury and I know him from Salisbury, that he is a relation of mine.

BY HATHORN, A.C.J.: What do you say if Mashingaidze says this was the first time he had seen you on this Sunday? - No, I disagree with that. I am aware that he knew me.

BY MR. DUMBUTSHENA: If Mashingaidze says you did not say anything when you met him on that day, what would you say? - I said nothing besides greeting him.

30 He said you did not even greet him? - No, I disagree with him on that part. We exchanged greetings.

If Mashingaidze says he was with Mr.Chigambura when you came with Simon and not his wife - he didn't say anything about his wife - ? - No, I disagree with him. I didn't see Chigambura.

BY HATHORN, A.C.J.: Do you know Chigambura?
- No, I do not.

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Amon Nyama-kandiwa

Examination (continued)

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No.14

Amon Nyama-
kandiwa

Gross-
Examination
(continued)

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Do you now know him? - I knew him for the first time when we met at the preparatory examination.

Both Mashingaidze and Chigambura both say you were together there when you came with the third accused; what do you say to that? - No, I didn't see Chigambura. I saw Mashingaidze alone. He was sitting in a chair reading a paper.

BY MR. DUMBUTSHENA: Simon says he never talked to you on that day? - My lord, I know that he spoke to me on that day.

10

Did you know Simon then? - I knew him as a person who was residing in the Municipal section of the location. The section assigned to Municipal employees.

Before that day had you carried on any conversation with Simon? - No.

You had never talked to him? - No.

Now, do you think a person who did not know you, whom you had not talked to, could just approach you and say, "There is a servant there?" What right had he? - That is what I don't understand.

20

And even to suggest to a stranger that something must be done to somebody - don't you think that is improbable? - Well, I believe the reason why he said so is, we are staying in the same village and we knew each other for some time.

How did he know you weren't a friend of Chigambura? - I don't know.

So you agree that it was dangerous for Simon to go and say to you: "Let's do something to this person?" - Yes, it was dangerous.

30

NO RE-EXAMINATION.

Examination
by the Court

Examined by the Court

BY MR. CRIPWELL: What do you do for a living? - I am employed by the Salisbury Plywood.

What does that mean? - They stock Masonite, plywood, doors and so on in this shop, and I am employed as a general shop assistant.

How did you first come in contact with the third accused? - As I have said before, we used to see each other, especially in the beerhall, and we know each other just by sight.

What was the third accused doing in the beerhall? Was he there just like you were there? - I entered through one gate, and I saw him also coming in through the other gate, so we met as I was entering.

10 You met as people who were going to buy beer? - That is correct.

How often in the past had that happened? - I wouldn't know.

Had it happened? - I don't know.

You can't say whether it happened or not? - I cannot.

Did you have any beer that day? - We didn't have any beer that day.

20 What did you do in the place? - When we returned after all these expeditions, after a short time he told me he was going to his home. Since I had no money on me with which to buy beer I stayed in the beer hall for a short time after he had gone away, and I thought of going away too.

30 BY HATHORN, A.C.J.: Now, the other evidence we have heard is that when you and the third accused went to Mashingaidze, he was the man who spoke to Mashingaidze, and there was a conversation about tobacco, and eventually the third accused gave Mashingaidze a threepenny piece. What do you say to that? - No, I did not see that.

You see, the evidence was that you didn't speak to anybody? - As they were talking I was leaving. I did not see them handing any money.

Now, this fur hat you were wearing, has that got any significance? - No, there is no significance.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Crown

No.14

Amon Nyamankandiwa

Examination by the Court (continued)

17th December 1963

In the High
Court of
Southern
Rhodesia

You see, we have had evidence that a fur hat indicates support for Mr. Nkomo? - I don't know. That may be his belief. I bought it merely as a hat to wear.

Salisbury
Criminal
Sessions

Doesn't Mr. Nkomo always wear a fur hat? - I don't know.

Evidence for
the Crown

I suppose you know who Mr. Nkomo is, do you? - I know him. When I had occasion to see him he was not wearing a fur hat.

No.14

Amon Nyama-
kandiwa

You haven't seen a picture of him in the newspaper wearing a fur hat? - I did. 10

Examination
by the Court
(continued)

And after ZAPU was banned to which political leader did you adhere? - I don't adhere to any political leader up to this day.

17th December
1963

You know what this case is about? The throwing of a petrol bomb into Chigambura's house? - I heard that.

Were you ever suspected of this crime by the Police? Of having some part in it? - No.

Were you ever asked to go to the Police Station soon after this case took place? - I was arrested. 20

For what? As being suspected of taking part? - I do not know why or what they thought of me.

But you were arrested in connection with this case? - Yes, I was told that I was arrested in connection with this case. I was then placed in the detention cells.

And then released, I suppose? - Yes.

BY MR. YARDLY: You said it was at your suggestion you went to see Mashingaidze? - It was. 30

And then you just greeted him and went away? - That is correct.

Isn't that rather strange? - No, my lord, it is not strange. I was afraid to puzzle him because he was engaged in reading a newspaper.

MR. GORDON-DAVIS: In the statement this witness made to the Police he said he also knows that Simon was a member of ZAPU, and I confirm that he was arrested as a suspect in this case.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Crown

No.14

Amon Nyama-kandiwa

Examination by the Court (continued)

17th December 1963

NO. 15

EVIDENCE OF AFRICAN DETECTIVE TAKADIYI (recalled)

No.15

Evidence of African Detective Takadiyi (recalled)

Examination

TAKADIYI, duly sworn and examined: (In English)

10 BY MR. GORDON-DAVIS: You are an African Detective in the CID? - I am.

On 5th September did you accompany Mr. Bennyworth and Accused No.3 to a certain shop in the Harari township? - I did.

Were you present when the accused was told the purpose of this journey? - I was.

Did you hear the accused warned and cautioned? - Yes.

Who by? - By Detective Bennyworth.

20 Through whose interpretation? - Through Sergeant Nyamadziwo's interpretation.

Was the purpose of the journey explained to the accused? - It was.

In the High
Court of
Southern
Rhodesia

Salisbury
Criminal
Sessions

Evidence for
the Crown

No.15

Evidence of
African
Detective
Takadiyi
(recalled)

Examination
(continued)

17th December
1963

BY HATHORN, A.C.J.: Where did the warning and cautioning take place? - I think at the Harari Police Station, if I am not mistaken.

Well, can you say whether it was before the journey started or before it finished? - Before the journey started.

BY MR. GORDON-DAVIS: Tell us what explanation of the purpose of the journey was mentioned to the accused? What was said to him explaining the purpose? - The accused was asked whether he would like to go and indicate where he bought the bottle of paraffin they used as a petrol bomb. 10

Was it actually said what paraffin was being referred to? - Yes, it was said the paraffin which they used on this house in question of Mr.Chigambura.

Was that actually said to him, or is that just assumed? - It was said.

Who by? - By Detective Bennyworth.

Did you hear it being interpreted? - It was being interpreted by Sergeant Nyamadzano. 20

Did you go with him to the shop? - I did.

When you arrived at the shop was an indication made?

BY HATHORN, A.C.J.: I think you must put it differently. What happened when you arrived at the shop? - When we arrived at the shop the accused, myself and Detective Bennyworth got out of the car and went straight to the shop where the accused said he bought the bottle of paraffin and indicated it to us. In other words, he pointed out the shop where he bought the bottle of paraffin. 30

Was he inside the shop or outside at that stage? - We were just at the entrance to the shop.

Where was Nyamadzano? - Sergeant Nyamadzano if I am not mistaken remained in the car. He didn't go in the shop with us.

Was anything else said by the accused besides that? - Besides what?

Besides what you have told us; if you can't remember, tell us? - Nothing else I can remember, except indicating this shop.

BY HATHORN, A.C.J.: After you had been there where did you go with the accused? - After that I understand Detective Bennyworth wanted to go and see Sergeant Crowe at the scene of the crime.

10 Did you go with them? - We went together, yes.

NO CROSS-EXAMINATION BY MR. FARMAR.

CROSS-EXAMINED

CROSS-EXAMINED BY MR. DUMBUTSHENA: Did I understand you to say that Sergeant Nyamadzano remained in the car? - Yes.

And never went with you? - Yes.

And you, I suppose, were interpreter? - Yes, at the time of the indications.

20 If Sergeant Nyamadzano says he was there, would he be mistaken? - He might be mistaken.

Did the accused and Sergeant Bennyworth enter into No.2 grocery? - As well as myself, yes, we went into the shop.

Did you enter? - I just remember Detective Bennyworth entering the shop. Myself and the accused, we remained outside.

30 Did the accused say anything about that shop being the one from which he bought his groceries, provisions? - No, I never heard that.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Crown

No.15

Evidence of African Detective Takadiyi (recalled)

Examination (continued)

17th December 1963

Cross-Examination

In the High Court of Southern Rhodesia
—
Salisbury Criminal Sessions
—
Evidence for the Crown

Because you weren't present? - I was present.

Well, Sergeant Nyamadzano says three people met there, the accused, Sergeant Bennyworth and Sergeant Nyamadzano? - He might be mistaken, or he is mistaken, as far as I know.

Are you sure even that the accused was told that the paraffin had been used on Chigambura's house? - Yes.

No.15

Evidence of African Detective Takadiyi (recalled)
Cross-Examination (continued)

Did the accused, if you were there, not say: "The shop where I buy my provisions is No.2," and then the accused was asked where he bought paraffin from, and he said at No.2? Is that not what happened? - That is not correct. The accused said he was going to indicate to us where he bought paraffin. I never heard that was where he bought his provisions. I never heard that.

10

17th December 1963

What time was it? - I can't remember the time, but that was in the morning, if I am not mistaken.

Was this before or after you had been to Accused No.3's house? - That was before.

20

Re-Examination

RE-EXAMINED

RE-EXAMINED BY MR. GORDON-DAVIS: Do you say Nyamadzano was in the car, or it is your impression he was in the car? - We were in the car together.

When you went into the shop do you say Nyamadzano definitely remained in the car, or it is your impression? - What I would say is that we left the car, the three of us, as well as Detective Bennyworth and the accused. I wouldn't know whether Sergeant Nyamadzano followed behind, but I did not see him at the shop in question.

30

Examination by the Court

EXAMINED BY THE COURT

BY HATHORN, A.C.J.: How far from the shop was the car parked? - The car was parked just at the main entrance to the shopping centre, about five or six yards away from the main entrance.

How far is that from shop No.2? - I would say about 15 yards up to No.2 shop.

You see, I understood the Sergeant to say that after the shop was indicated, I think he said three of you went into the shop, that is yourself and the accused and Mr. Bennyworth, and he was just at the entrance and he heard the accused say: "This is where I buy my provisions." What have you to say to that? - He said, "This is where I bought the bottle of paraffin."

In the High Court of Southern Rhodesia
Salisbury Criminal Sessions

10 I know that is the evidence about that. But after he got into the shop, according to the Sergeant, he also said, "This is where I get my provisions?" - It might be so, but I won't say. I never heard of that. It might be true.

Evidence for the Crown
No.15

Evidence of African Detective Takadiyi (recalled)

Examination by the Court (continued)

17th December 1963

NO. 16

EVIDENCE OF FREDDIE MIRIMI

FREDDIE MIRIMI, duly sworn and examined (Through Interpreter Arthur)

No.16
Freddie Mirimi
Examination

BY MR. GORDON-DAVIS: Do you live in Harari and do you work at shop No.2, Marowa? - Yes.

20 Do you know any of the accused? - I don't.

Do you sell paraffin in that shop? - I do.

How much does it cost? - Sixpence a bottle.

Were you on duty on Sunday, 1st September?
- I was.

At what time did you close your shop? -
At 8.30 p.m.

NO CROSS-EXAMINATION.

EXAMINED BY THE COURT

In the High
Court of
Southern
Rhodesia

BY HATHORN, A.C.J.: Do you know if you sold
any paraffin that day? - My lord, I do
remember selling paraffin to many customers from
the morning, the whole day.

Salisbury
Criminal
Sessions

Evidence for
the Crown

No.16

Freddie Mirimi

Examination
by the Court

17th December
1963

No.17

NO. 17

African
Constable
Cyril
(recalled)
Examination

EVIDENCE OF AFRICAN CONSTABLE CYRIL
(recalled)

CYRIL, duly sworn and examined (In English);

BY MR. GORDON-DAVIS: Are you a Constable in
the Police? - I am.

10

On 3rd September were you attached to the Law
and Order (Maintenance) Section? - I was.

At 2 p.m. on 3rd September did you arrest
Accused No.3, Simon? - I did.

Where? - At Tasara's house, his brother.

Is that in Harari? - In Harari location.

When you arrested the accused did you warn and
caution him? - I did.

Did you inform him of the nature of the charge
upon which he was being arrested? - I did inform
him.

20

What actually did you say to him? - I told
him: "I am arresting you for the same offence."

What offence were you referring to?

In the High Court of Southern Rhodesia

BY HATHORN, A.C.J.: Did you tell him what the offence was? - Of petrol bombing which occurred at 4093.

Salisbury Criminal Sessions

BY MR. GORDON-DAVIS: Did you actually say that to him at 2 p.m. on 3rd September? - I did.

Evidence for the Crown

Was the accused in his sound and sober senses? - He was.

No.17

10 And did he freely and voluntarily say something to you? - He freely replied.

African Constable Cyril (recalled)

MR. DUMBUTSHENA: The accused will say he didn't make a statement.

Examination (continued)

HATHORN, A.C.J.: There is no objection to the admissibility of it, then?

17th December 1963

MR. DUMBUTSHENA: No.

BY MR. GORDON-DAVIS: What did the accused say? - The accused said: "I deny the charge," and he said: "Zanda and Kassiano are responsible for the case."

20 Who did you understand him to mean when he said Zanda? - He meant Alexander.

Did you thereupon convey the accused to the Police Station? - I did.

HATHORN, A.C.J.: Was this in the preparatory examination?

MR. GORDON-DAVIS: It was not. I informed my learned friend eight days ago I was going to lead this evidence.

30 HATHORN, A.C.J.: Wasn't he a witness to one of the statements?

BY MR. GORDON-DAVIS: Were you a witness to one of the statements? - I gave evidence.

You were a witness to the statement of Accused No.3? - I was.

In the High Court of Southern Rhodesia

Who was that statement recorded by? - By Detective Smith.

Detective Smith? - Yes.

Salisbury Criminal Sessions

No. Do you know Mr. Bennyworth? - Yes. That is the one.

Evidence for the Crown

Can you remember who was the interpreter? - Sergeant Hode.

No.17

Was the accused in his sound and sober senses when he made this statement? - He was.

African Constable Cyril (recalled)

Was he properly warned and cautioned? - He was properly warned and cautioned.

10

Examination (continued)

And did he make a statement? - He did.

Was it recorded and read back to him? - It was.

17th December 1963

Did he adhere to it and sign it? - Yes.

Is this the statement, Exhibit 12? - This is the statement.

Did you sign that as a witness? - I did.

Was that statement recorded on 4th September? - It was.

NO CROSS-EXAMINATION BY MR. FARMAR.

20

Cross-Examination

CROSS-EXAMINED

CROSS-EXAMINED BY MR. DUMBUTSHENA: How many of you went to re-arrest Simon? - We were two African Constables.

BY HATHORN, A.C.J.: You mean you and one other, or you and two others? - Myself and one other.

BY MR. DUMBUTSHENA: What was your duty on that day? - I was on duty at the CID office. Then I was detailed to go and re-arrest him in Harari Location.

30

Did you understand that he had been arrested before for the same crime? - I understood he was arrested, my lord, but not for the offence.

Why did you say "I am arresting you for the same offence?" - What I heard is this, from the member in charge, that they had been informed by their sources before ...

In the High Court of Southern Rhodesia

10 HATHORN, A.C.J.: I think this had better be interpreted, please. (To witness): You heard what? You heard from the member in charge what? - (Through Interpreter Arthur) To go and re-arrest him. I was instructed by the member in charge to go and arrest the accused because he had received information about him.

Salisbury Criminal Sessions

Evidence for the Crown

No.17

BY MR. DUMBUTSHENA: Why did you say just now in evidence: "I am arresting you for the same offence?" - Because, my lord, the accused had been arrested and released, so when he was re-arrested I then informed him, "I am re-arresting you for the same offence." By that I implied that he had heard what sort of an offence he was suspected to have committed.

African Constable Cyril (recalled)

Cross-Examination (continued)

20 Did you not say to the accused: "I have come to fetch you; you are required at the Charge Office?" - No, my lord, I did not say so. I said: "I am arresting you."

17th December 1963

And did you not say to him: "I will bring you back?" - No, my lord, I did not.

When did the accused make a confession statement which is signed to the Police? - When I brought him we only stopped a short time before I took him for a charge.

30 That is on the third? - Yes.

You are sure that on the third you saw the accused making this statement and signing it? - I may not be certain of the exact date as I am referring to the occasion. It may be the second day. I am not quite certain of the exact date.

Because the accused will say that he did not make any statement? - He made a statement.

40 And he will say that you never warned him of anything when you came to re-arrest him, as you say? - I warned him.

In the High
Court of
Southern
Rhodesia

Salisbury
Criminal
Sessions

Evidence for
the Crown

No.17

African
Constable
Cyril
(recalled)

Cross-
Examination
(continued)

17th December
1963

Re-Examination

Examination
by the Court

What did the other Constable do? - Are you referring to one other Policeman who was in my company?

Yes, I am? - He did not do anything. I had received instructions from the member in charge, so I invited him to accompany me.

RE-EXAMINED

RE-EXAMINED BY MR. GORDON-DAVIS: What was his name, the other one? - I don't remember. Probably it was one Mandizuidza.

10

EXAMINED BY THE COURT

BY HATHORN, A.C.J.: Who gave you instructions to go and arrest the third accused on this day that you are speaking of, the day he was re-arrested? - The member in charge and an African Sergeant.

Who is the member in charge; I don't know? - Mr. Wiltshire.

I want you to tell me through the interpreter what words you said to the third accused when you arrested him? - I said: "I am re-arresting you on a charge of petrol bombing which occurred at No. 4093."

20

Now, in your evidence in chief which you were giving in English you said that you were arresting him for the same offence; did you use those words to him? - I said: "I am arresting you for this offence."

Now, you say that you knew that he had already been under arrest? - Yes.

And I understand from what you say that you thought that when he was previously arrested it was for this paraffin bomb case. Let me put it to you in another way. For what offence did you think he had been arrested and then released? - He had been arrested for a different offence. I did not hear what offence it was, but he was also suspected of this particular offence.

30

Well, why did you say you were arresting him for this offence if you knew he had been arrested for some other offence? - The instructions I received from the member in charge were ...

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

I don't want to hear what the instructions were. But you can tell me if you have any information about this from anybody? - Could your lordship repeat the question now?

Evidence for the Crown

10 Well, I don't want you to tell me what the member in charge told you. You say that what you knew was that he had been arrested for another offence, suspected of this offence? - Yes.

No.17

African Constable Cyril

From whom did you get that information? - From informers.

(recalled)

NO FURTHER QUESTIONS BY COUNSEL.

Examination by the Court (continued)

20 BY MR. YARDLY: When you say re-arresting, when you went to re-arrest him, do you mean arresting for a particular charge, or do you mean arresting again because he had been arrested before? - Arresting him again.

17th December 1963

NO.12

No.12

EVIDENCE OF LUKE CHIGAMBURA (recalled)

Luke Chigambura (recalled)

CHIGAMBURA, recalled, sworn and examined (Through Interpreter Arthur):

Examination

BY MR. GORDON-DAVIS: You were telling us yesterday you were sitting in Mashingaidze's yard when the accused shouted, amongst other things, the words: "Sell out?" - Yes.

30 When you say he shouted, did he make any gesture, or in that time surrounding his shouting? - When repeating the words I told the Court yesterday he did say it together with that movement (indicating a downward movement of the hand and arm).

How many such movements did he make? One or more than one? - It is more than one.

In the High
Court of
Southern
Rhodesia

Salisbury
Criminal
Sessions

Evidence for
the Crown

No.12

Luke
Chigambura
(recalled)

Examination
(continued)

17th December
1963

Cross-
Examination

Well, two, three, or a dozen, or what? -
I did not count.

In whose direction did he make this gesture?
- In our direction.

And in what direction was he looking when he
made that gesture? - In our direction.

NO CROSS-EXAMINATION BY MR. FARMAR.

CROSS-EXAMINED

CROSS-EXAMINED BY MR. DUMBUTSHENA: If he was
pointing at you making gestures, why did you not
immediately conclude he meant you? - This entered
my mind and I kept it in my mind. 10

You say you only related it to yourself after
the incident had happened? - Well, I kept it in
my mind. I then realised that it meant me after
the incident had happened. I knew what gesture
had been made.

But at that time, of course, you did not think
he was meaning you? - From the manner he looked at
us and the distance he was from us I thought that
meant ourselves. And the manner he had walked from
the direction of his hut and stopped where he had
stopped, the spot he was when he made the gesture,
I concluded from that that he meant us. 20

Was he speaking in English when he was
shouting? - The first words were in English, and
the last words in Shona.

In Shona he then said: "You are selling the
country?" - Yes.

BY HATHORN, A.C.J.: What were the English
words he used? - (In English) "All those who
support Sitole, they are sell outs." (Through
Interpreter) "They want to sell the country." 30

That was in English, was it? - (In English)
"All those who support Sitole, they are sell outs."
(Through Interpreter) I am repeating his exact
words in the English that he used.

Then the rest you say was in Shona, was it?
 - Yes. Finally he spoke in Shona.

BY MR. DUMBUTSHENA: And those words were what? - "They want to sell the country." "Vanoda kutengesa nyika."

It was not: "Varo kutengesa nyika?" "They are selling the country?" - "Vanoda." "They want to sell the country."

10 Why did you say yesterday, "They are selling the country." "Varo kutengesa nyika?" - I did not say that they are selling the country. I said they want to sell the country.

I have all your words here. "All those who support Sitole, they are sell outs?" - Yes, that is correct.

Then you went on, "Varo kutengesa nyika." "They are selling the country?" - No, "They want to sell the country." Probably Counsel misunderstood me.

20 Oh, no.

HATHORN, A.C.J.: He speaks your language.

RE-EXAMINED

RE-EXAMINED BY MR. GORDON-DAVIS: When you said it was not until the next day that you came to the conclusion that the accused had been referring to yourself, did you mean yourself personally, or did you mean to you and Mashingaidze? - I was then including myself alone. I meant myself alone.

30 HATHORN, A.C.J.: As I indicated to Counsel at the adjournment, it seems to me as at present advised Mr. Wiltshire's evidence of the circumstances of the third accused's first arrest are relevant. Subject to anything Mr. Dumbutshena might say, I would like him recalled. What is your attitude, Mr. Dumbutshena?

MR. DUMBUTSHENA: I have no objection. I have consulted my client.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Crown

No.12

Luke Chigambura (recalled)

Cross-Examination (continued)

17th December 1963

Re-Examination

In the High
Court of
Southern
Rhodesia

HATHORN, A.C.J.: You are not interested, Mr. Farmar?

MR. FARMAR: I am not.

Salisbury
Criminal
Sessions

MR. GORDON-DAVIS: My information is that Mr. Wiltshire is out of the office, but he is expected back at any moment, and his office is alerted to dispatch him up here immediately. The interpreter who was used is similarly being found. It is not sure, however, whether or not this man is on leave.

Evidence for
the Crown

No.12

Luke Chigam-
bura(recalled)

Re-examination
(continued)

17th December
1963

Court adjourned at 3 p.m.

10

EIGHTH DAY OF TRIAL

Eighth Day. Wednesday, December 18th, 1963

MR. GORDON-DAVIS: At your Lordship's request, Mr. Wiltshire is available. I understand that no interpreter was used.

No.7

NO. 7

Inspector
Michael
Benjamin
Wiltshire
(recalled)

EVIDENCE OF INSPECTOR MICHAEL BENJAMIN WILTSHIRE
(recalled)

MICHAEL BENJAMIN WILTSHIRE, recalled by the Court,
still under oath,

20

Examination
by the Court
18th December
1963

BY HATHORN, A.C.J.: I understand, Mr. Wiltshire, that the third accused was arrested on the morning of the 2nd of September? - Yes, my Lord.

Would you please explain what took place? - Yes, my Lord. The Accused No.3's house was indicated to me by the complainant who made a report to me and as a result of that I went into the accused No.3's house and found him in bed.

At approximately what time was this? - I would say at about 2.30 a.m., my Lord.

30

Yes? - I asked him to get up, and he did so. I spoke to him in English. He appeared to understand English all right. I told him I wanted to have a look round his room and he consented and with Constable Norris I looked round his room. I found a spear made of all metal with a metal handle and a metal spike and I found some penicillin and a syringe. At that stage, due to a report made to me by the complainant, I suspected that the Accused No.3 knew something about this petrol bombing, but I had not sufficient information to arrest him in that connexion. After finding the penicillin and the syringe, I asked the accused to account for them because I had knowledge of the theft of similar items from a hospital in Salisbury, and he could not account for them satisfactorily. I there saw the opportunity to detain him on a charge of theft, to make inquiries into the possibility of the theft of those items, and I told the accused that I was having him detained at Harari Police Station for theft. My reason for doing so was it was just a holding charge. I intended to have him questioned about his movements on the previous day in connexion with the case presently under trial.

Was he, in fact, arrested? - He was, by me.

Now, I think he was released on the following morning, Tuesday, the 3rd? - Yes, my Lord.

Do you know what time he was released? - Before lunch some time, my Lord. I couldn't say the exact time.

And on whose instructions was he released? - On mine; it was thought that he was not connected with this matter.

Then I understand he was arrested again on the afternoon of the 3rd? - Yes, my Lord.

On whose instructions was that? - On mine.

Had you or had you not any further information by then? - I had some further information, my Lord.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Crown

No. 7

Inspector Michael Benjamin Wiltshire (recalled)

Examination by the Court (continued)

18th December 1963

In the High
Court of
Southern
Rhodesia

Salisbury
Criminal
Sessions

Evidence for
the Crown

No.7

Inspector
Michael
Benjamin
Wiltshire
(recalled)

Examination
by the Court
(continued)

18th December
1963

From what source had you obtained that information? - From the accused Kassiano, not directly but through a report received.

Now, there is only one other question I want to ask you. What are the mechanics, the administrative procedure, when a man who has been arrested is released such as the third accused. What is the usual procedure? - He is booked out of the detained book. A detained book is kept at each police station and every person detained is entered in the detained book on detention, and there is an outward booking when he is released. 10

By whom is the entry made? - By the person in charge of the cells on information given by the person sent to make the release.

Is the person who is detained required to sign? - Not unless he has any property such as cash which has been entered into the book and which he has to receive back. In this case, I am unable to say whether this is so. 20

What does he have to sign? - Just to the effect that the money, or whatever it is, that was taken from him on his detention and kept in a separate place in the cells, to the effect that he has received those items back again.

Where does he have to sign? - In the detention book.

That is the same book in which the entry is made that he is released? - Some police stations keep two separate books. One is the detained book and one is the prisoners' property book. At the Salisbury main police station the two books are combined into one, my Lord. 30

Have you any questions, Mr. Farmar?

MR. FARMAR: No, thank you, my Lord.

HATHORN, A.C.J.: Mr. Dumbutshena?

CROSS-EXAMINED

10 BY MR. DUMBUTSHENA: The accused understands that he was arrested in connexion with this case and what happened subsequent to his arrest was that he was interrogated right from the 2nd of September and beaten up, and even when he was released he was being interrogated on the same matter? - I instructed that he should be questioned in regard to this present matter, but I have no knowledge of his being beaten up.

If the accused formed the impression that he had been arrested in connexion with this matter because of the fact that the complainant came to his house with you and then when he was detained he was questioned about this crime, he would not be mistaken? - He probably did have that impression, but he should not have done, because I made it quite clear to him that I was detaining him on the charge of theft.

20 BY MR. GORDON-DAVIS: When the releasee, the prisoner being released, signs for his property, does he actually sign the book itself or a piece of paper which is pasted in the book? - No, he signs the book itself.

CASE FOR THE CROWN CLOSED

HATHORN, A.C.J.: Have you any witnesses to call, Mr. Farmar?

30 MR. FARMAR: My Lord, in relation to the age of the second accused, I wish to call his mother, Monica, and then I understand the two accused do not wish to give evidence. My instructions are that they wish to make an unsworn statement.

HATHORN, A.C.J.: Mr. Dumbutshena, have you any witnesses you wish to call?

MR. DUMBUTSHENA: No, my Lord, I have not.

HATHORN, A.C.J.: Does your client elect to give evidence or to make an unsworn statement?

MR. DUMBUTSHENA: He is going to make an unsworn statement.

In the High
Court of
Southern
Rhodesia

—
Salisbury
Criminal
Sessions

—
Evidence for
the Crown

No.7

Inspector
Michael
Benjamin
Wiltshire
(recalled)

Cross-
Examination

18th December
1963

In the High
Court of
Southern
Rhodesia

EVIDENCE FOR THE DEFENCE

NO.18

EVIDENCE OF MONICA

Salisbury
Criminal
Sessions

MONICA, duly sworn and examined through African
Interpreter Thomas,

Evidence for
the Defence

BY MR. FARMAR: Do you live in Harari Township?
- I do, my Lord.

No.18

And are you the mother of the second accused,
Kassiano? - I am, my Lord.

Monica

Examination

When he was born, where were you living? -
I was living at my kraal in the Buhera District.

10

18th December
1963

Can you say when Kassiano was born? - I am
not in a position to give the year in which the
accused No.2 was born, but I am able to recall the
occasion during which he was born. That was when
the Government issued to the inhabitants of the
reserve yellow mealie meal because of great hunger
prevailing.

What was the hunger due to? - There was drought,
my Lord. 20

Have you any other idea of how old Kassiano might
be? - As far as I can recall, there has been a
lapse of about 16 years since this occurred.

If I might just return to this question as to
whether there was only one year when this maize was
issued in the Buhera District, are you quite clear
that there was only one that you know of? - As far
as I am aware, my Lord, it was only one year.

For how long after his birth did you live in
the reserve? - For ten years. 30

And for how many years prior to his birth had
you been living in the Buhera Reserve? - I do not
know, my Lord, the lapse of time before the birth of
Kassiano, because it is practically the whole of my
life up until then.

Are you able to fix this year of the yellow maize in relation to the beginning or end of the Second World War? - I am afraid I cannot relate the date of the issue of the yellow maize with either the beginning or the end of the war.

Finally, do you know what has happened to Kassiano's father? - Kassiano's father died after Kassiano's birth.

No Cross-examination by Mr. Dumbutshena.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Defence

No.18

Monica

Examination (continued)

18th December 1963

Cross-Examination

10

CROSS-EXAMINED

CROSS-EXAMINED BY MR. GORDON-DAVIS: At what number do you live in Harari Township? - I do not know the number. I only know the section I live at and it is the National Section of Harari Location.

Can you tell the time? - I cannot read the clock.

20

Do you know that your son has a registration certificate 25271, Buhera? - I cannot identify his registration certificate with any number, but I know that he is in possession of one.

Do you know whether it is an adult one or not? - I cannot tell the difference between the two.

Do you remember giving evidence at the preparatory examination? - I do.

30

You are on record there as saying in answer to a question as to how old your son is, "I no longer remember how old he is." That is on page 116 about six lines from the top. Is that correct? - Yes, my Lord.

If you cannot remember or relate the year of the yellow maize to the war, how is it that you are able to give us the figure of 16 years which you did? - My Lord, I can only remember that it must be 16 years since yellow maize was issued to the African people by the Government.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Defence

No.18

Monica

Cross-Examination (continued)

18th December 1963

How do you know that? - I only know that the period which has elapsed is 16 years since yellow maize was issued.

BY HATHORN, A.C.J.: Yes, but how do you know that it is 16 years? - I do not know the names of these years, but I am able to count that the time which has elapsed covers 16 years.

BY MR. GORDON-DAVIS: How many fingers am I holding up? - Seven, my Lord.

BY HATHORN, A.C.J.: It will be recorded that there were seven fingers and one thumb held up.

10

BY MR. GORDON-DAVIS: How big was your child at the time of the yellow maize? - Kassiano was three months old when the yellow maize was issued.

How long did the issue of yellow maize last? - Two months.

At what time of the year? - It was during the rainy season just before the reaping period of the early crops.

You had rain that year, did you? - Yes, my Lord. 20

You did reap your crops? - Yes, my Lord.

Did the rains come at the normal time? - That is so, my Lord.

No Re-examination.

Examination by the Court

EXAMINED BY THE COURT

BY MR. CRIPWELL: Was there any special reason why your child was called Kassiano? - No special reason. We only named him Kassiano.

On which side of the reserve did you live, the Sabi or the Nyazvidzi side? - I live in Chief Makombe's area.

30

But you don't know either of those two rivers? - I know the Nyazvidzi River, and my kraal is situated south of that river.

Was it the yellow meal made by the soldiers, or was it the one made by the storekeepers? - This maize was sold by the storekeepers.

Finally, can you remember the name of the Native Commissioner at Buhera that year? - No, my Lord.

Witness withdraws.

HATHORN, A.C.J.: I understand the first accused wishes to make an unsworn statement.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Defence

No.18

Monica

Examination by the Court (continued)

18th December 1963

10

NO.19

UNSWORN STATEMENT OF ALEXANDER GENDHAMO
CHIRAWU (Accused No.1)

Accused No.1. Yes, my Lord. I have nothing much to say except to express my innocence. That is all, my Lord.

HATHORN, A.C.J.: Mr. Farmar, are there any particular points to which you would like me to direct his attention?

MR. FARMAR: No, my Lord.

HATHORN, A.C.J.: I understand the second accused also wishes to make an unsworn statement.

ACCUSED No.2: Yes, my Lord.

HATHORN, A.C.J.: What do you wish to say?

NO.20

UNSWORN STATEMENT OF KASSIANO MURINGWA
(Accused No.2)

ACCUSED NO. 2: I wish to emphasise the fact that the statement which I made to the Police had been extracted from me by force. My Lord, where

No.20

Kassiano Muringwa (Accused No.2)

Unsworn Statement

20

In the High
Court of
Southern
Rhodesia
—
Salisbury
Criminal
Sessions
—
Evidence for
the Defence

No.20

Kassiano
Muringwa
(Accused No.2)
Unsworn
Statement
(continued)
18th December
1963

in that statement there is a description of how the bomb was manufactured, that is something which was dictated to me and where a reference is made to that house which was bombed, the truth of the matter is I never went there. I handled this bottle, Exhibit 6, when it was brought to my residence by Accused No.1. If there was any discussion at all about this affair, it must have taken place during my absence. I wish to mention my Lord, that on that particular day I did not leave my house.

10

BY HATHORN, A.C.J.: Which day are you referring to?

ACCUSED NO.2: On Sunday, my Lord. I did not leave my home to go anywhere visiting. That is all I have to say, my Lord.

HATHORN, A.C.J.: Are there any points to which you wish me to direct his attention?

MR. FARMAR: I am obliged to the Court, yes, my Lord, there are several points. One is can he recall in what position he held the bottle when he handled it. The other two points relate to his registration certificate, if he could tell the Court if he can recall how long he has had his registration certificate, and whether it is an adult or a juvenile one.

20

HATHORN, A.C.J.: That is strictly not relevant at this stage, is it?

MR. FARMAR: No, it would only be relevant later.

HATHORN, A.C.J.: I think I would prefer to leave that to a later stage, because it seems clear on the evidence of the mother and certain information available to one of the Assessors it is a matter we may have to have evidence on. I think I would leave the evidence of the registration certificate at this stage,

30

MR. FARMAR: Yes, my Lord.

HATHORN, A.C.J.: (To Accused No.2): Now, you are not obliged to say anything on these points that I am going to put to you, but you might care to indicate the circumstances in which you handled the bottle and if you are disposed to tell the Court the day that you are referring to when you did handle it.

40

ACCUSED NO.2: My Lord, it was on this Sunday that the first accused called at my residence. He had with him a bottle containing paraffin and as a person known to him I greeted him and walked with him part of the way. Meanwhile I was carrying his paraffin bottle.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

BY HATHORN, A.C.J.: Is the bottle you are referring to this one, Exhibit 6?

Evidence for the Defence

10 ACCUSED NO.2: I cannot say that it is the bottle, but it is identical to the bottle that I handled.

No.20

BY HATHORN, A.C.J.: Is there anything else that you wish to say?

Kassiano Muringwa (Accused No.2)

Unsworn Statement (continued)

ACCUSED NO.2: No, my Lord.

HATHORN, A.C.J.: Now, I understand the third accused elects to make an unsworn statement.

18th December 1963

ACCUSED NO.3: That is so, my Lord.

HATHORN, A.C.J.: What is it you wish to say.

NO. 21

No.21

20 UNSWORN STATEMENT OF SIMON RUNYOWA (Accused No.3) Simon Runyowa (Accused No.3)

30 ACCUSED NO.3: I wish to describe my movements on the particular Sunday leading to my arrest. On that Sunday I left my home at six a.m. going to Highfields Village. I was accompanied by one Amon. After visiting a younger brother, I went to the bus terminus at Highfields at 9.30 a.m. I arrived at my own home at Harari at 9.45 a.m. I sat for a while at home and at ten a.m. I left for duty, and my duty was at the Marenganya Beer Hall, Harari. When I arrived at my place of work, I waited for the hour to strike to begin work which was 10.30 a.m. After reporting for duty, my colleagues obliged me by giving me time off. I remained in the beer garden till 11.30 a.m. when I left to return home.

Unsworn Statement

I arrived back home at 12 noon. I was wearing my working white dust coat, my Lord. I remained at home till the beer hall opening time, which is four p.m. when I left my home accompanied

In the High
Court of
Southern
Rhodesia

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Sessions

Evidence for
the Defence

No.21

Simon Runyowa
(Accused No.3)

Unsworn
Statement
(continued)

18th December
1963

by Andrew and one other person and entered the Mapetikoi Beer Hall. There we bought ourselves a supply of beer, which we consumed. Some time later, Andrew expressed a desire to go to the hostels and left my company. The other unknown person left at the same time. I remained in the beer hall till eight p.m. when I left to go back home.

I listened to the wireless which was switched on till I felt tired and retired to bed. I did not go out after that. Early the next morning, I think it was at two a.m. I was awakened by hearing a knock on my door. I demanded to know who it was, and the reply was: "It is us, the Police." I opened the door for the Police who demanded to know the various persons who were sleeping in my house. I explained that they were visitors. I was asked to indicate the room I occupied before the arrival of the Police. I indicated my bedroom. The Police party entered, consisting of two Europeans, one African policeman and three African civilians. I should like to mention that among the three African civilians was the complainant. One European policeman demanded to know which was Runoywa, and the complainant indicated me to him. The policeman asked me where the boys I had been moving about with during the day were. I replied that the only person I had been moving about with during the day was Amon. The policeman wanted to know where Amon was, and I went to the room which he occupied in my house. Andrew and I were then arrested and taken to Harari Police Station. That was after we had been told that a certain house had been bombed. Members of the C.I.D. remained at the bombed house while the uniformed policemen conveyed us to Harari Police Station.

At daybreak we were conveyed to the Central Police Station, Salisbury. Again I was asked to enumerate the boys with whom I had been associating the previous day and I repeated the fact that I had not been associating with any other persons. I was made to sit in an office and presently African Station Sergeant Mgama alias Mbanga came in. When he came in he found that there were several other members of the C.I.D. present and he said in English: "Boys, start the race." I did not appreciate what he meant by starting the race, but to my surprise these other members of the C.I.D. set upon me and assaulted me. Several blows were dealt out on my neck, on my ribs and one of them kicked me with his

10

20

30

40

10 booted foot on my private parts and my penis is
 painful up to this day as a result. This kick
 knocked me down. As a result of the severity of
 this kick, I remained in a dazed condition for
 approximately three minutes. When I came to, I
 noticed that all the members of the C.I.D. were
 grouped in the doorway. I sat on the floor for
 a little while and I was ordered to sit on the
 bench and presently Sergeant Crowe came in. His
 first question was: "Has he admitted?" and the
 reply was: "No, he has not." He was carrying a
 weapon this long (indicating about three or four
 inches longer than his forearm with his fingers
 extended from his biceps to his fingers.) It
 had a short metal handle and the weapon was a
 round rubber affair. He struck me once on the
 back with this weapon. After delivering this
 blow, he said: "Carry on," and left the office.
 My troubles were resumed until I was led back to
 20 the detention cells. That was after I had had
 my finger-print impressions taken, my Lord.

In the morning of the 3rd, I was removed from
 the detention cells and taken back to the office.
 From that office I was taken to the studio upstairs
 where a photograph of me was taken. Presently
 Sergeant Mbanga came accompanied by one other
 member of the police force carrying sheets of
 paper. I was told that I was being released,
 and I was asked to sign one of these sheets.
 30 There was some writing on it, and I was shewn a
 particular spot to affix my signature, which I did.

Andrew was released at the same time and
 Sergeant Mbanga drove me back to my residence
 as well as Andrew.

40 Shortly after my arrival and before I had
 had an opportunity to report to my brother what
 had happened to me, a police vehicle arrived at
 my home and I was told by the members of the
 police that I was required to present myself
 at the charge office for a short while only
 and that I would be driven back home thereafter.
 I was asked whether I had had my food at that
 time. I said I had not, and I was taken to my
 home to have food. From there, I was driven to
 the Central Police Station, Salisbury. A state-
 ment was read to me. The statements which were

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Evidence for
 the Defence
 No.21

Simon Runyowa
 (Accused No.3)

Unsworn
 Statement
 (continued)

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Sessions

Evidence for
the Defence

No.21

Simon Runyowa
(Accused No.3)

Unsworn
Statement
(continued)

18th December
1963

read out to me were those of the first two accused and Amon Nyakondiwa. I told the police that I knew nothing about the contents of these statements and the police were insistent that I knew of everything that was said in those statements.

BY HATHORN, A.C.J.: Just a moment, of what day are you speaking now when these statements were read to you?

ACCUSED NO.3: It was on the 3rd, my Lord, the day of my release and re-arrest, my Lord. After that, I was again detained in the detention cells. I could hardly walk during the subsequent period owing to the assaults I had suffered and Sergeant Crowe gleefully indicated to his colleague that I had been assaulted in the ribs and groin. Despite my requests to be taken to the hospital for treatment, I was told to wait until the pain had subsided.

10

After that, I was taken to the magistrate's court. The statements were read out and the matter was postponed to the 18th. I was then transferred to Marandellas. I was being looked after by an African corporal at Marandellas Prison, and I complained that I wanted to attend the hospital for treatment. I was told to wait for a vehicle which would convey me together with other sick prisoners to the hospital, but unfortunately it did not come. That is all I have to say, my Lord.

20

HATHORN, A.C.J.: Mr. Dumbutshena, are there any points to which you would like me to direct your client's attention?

30

MR. DUMBUTSHENA: Yes, my Lord. One is the indication which is supposed to have been made at the Marowa Grocery, and the statement to Cyril who re-arrested him, and then whether he was medically examined at the Salisbury Prison when he was brought back to Salisbury.

BY HATHORN, A.C.J.: When is this supposed to have taken place? He says he was on remand to the 18th -- of September I suppose it is. Was it after that?

40

MR. DUMBUTSHENA: It was after that, yes.

BY HATHORN, A.C.J.: Is that relevant at all?

MR. DUMBUTSHENA: I think some evidence about his medical examination about the complaint he is supposed to have made.

In the High
Court of
Southern
Rhodesia

HATHORN, A.C.J.: I certainly will draw his attention to that. Let the third accused stand up. You are not obliged to answer any of these questions, but at your Counsel's request I draw your attention to these questions which you have not dealt with and you may care to do so. One relates to the question of the indications at the grocery shop.

—
Salisbury
Criminal
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—
Evidence for
the Defence

No.21

ACCUSED NO.3: When we were at my home in Harari, the Police asked me where it was that I bought all my provisions. I replied that I did so at the Marowa Grocery. I was asked whether I bought my provisions on credit. I said Yes. We then left my residence for the Marowa shopping centre, and the police truck stopped outside it. I was asked to indicate to the police the actual shop from which I bought my provisions, and I did so, my Lord. The police asked whether the shopkeeper remembered me particularly buying paraffin on the previous day and the shopkeeper said he had not been in attendance at the shop on the previous day, but his son was absent from the shop. This shopkeeper was asked to direct the police to where his son could be found. He did so at some place in the industrial area. This son was located and asked by the police whether he remembered selling me paraffin on the previous day and he answered he did not remember, my Lord. He was asked whether he would have remembered if I had, in fact, purchased some paraffin on the previous day and he said he would have remembered that. That is all I can say about that point, my Lord.

Simon Runyowa
(Accused No.3)

Unsworn
Statement
(continued)

18th December
1963

Tea Adjournment.

HATHORN, A.C.J.: Now, the next point to which I am asked to draw your attention is the question of what was said when African Constable Cyril re-arrested you on the 3rd of September.

ACCUSED NO.3: Constable Cyril informed me that I was required at the Charge Office for a brief period only and that he would soon return me to my residence. That is all that he said in connexion with my being required at the Charge Office.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Defence

No.21

Simon Runyowa (Accused No.3)

Unsworn Statement (continued)

18th December 1963

HATHORN, A.C.J.: I think the point to which your attention is being drawn is the evidence of Constable Cyril as to what you said.

ACCUSED NO.3: I dispute his evidence, my Lord.

HATHORN, A.C.J.: The other point to which I am asked to draw your attention is something about a medical examination in Salisbury Prison. I do not know what this is about.

ACCUSED NO.3: A female Government Medical Officer called at the prison after I had requested to be medically examined. She looked at me and did not examine me. I demanded to be examined, but one other male person who was present said that she should not examine me because I had deferred the examination too long. When I protested, I was then punished by the prison authorities. At the moment, I am subject to solitary confinement as a result of that.

10

BY HATHORN, A.C.J.: At what stage do you say this took place?

20

ACCUSED NO.3: Long after the preparatory examination, my Lord, and after I had been returned from Marandellas.

HATHORN, A.C.J.: Is there anything else you wish to say?

ACCUSED NO.3: No, my Lord.

CASE FOR THE THIRD ACCUSED CLOSED

Examination by the Court

EXAMINED BY THE COURT

HATHORN, A.C.J.: There is just one point. I understood you to put it to Sergeant Hode it was he who caused the third accused to sign a piece of paper.

30

MR. DUMBUTSHENA: Those were my instructions.

HATHORN, A.C.J.: The third accused has said it was Mbanga.

MR. DUMBUTSHENA: If I understood him well, he said Mbanga brought the papers and then I took him to mean he made him sign, but my instructions were that Sergeant Hode made him sign.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

BY HATHORN, A.C.J.: I think perhaps I had better find out, if you have no objection?

Evidence for the Defence

MR. DUMBUTSHENA: I have no objection.

No.21

10

HATHORN, A.C.J.: (To Accused No.3) This is a point I have raised because I am not quite sure what your statement is about the piece of paper you were made to sign.

Simon Runyowa (Accused No.3)

ACCUSED NO.3: I referred to Sergeant Mbanga being accompanied by one other member of the police. I heard Sergeant Mbanga referring to this other person as a sergeant. Mbanga gave instructions to this sergeant to make me sign the sheet of paper, which was done.

Examination by the Court (continued)

18th December 1963

20

BY HATHORN, A.C.J.: Who is this Sergeant to whom you are referring who made you sign this?

ACCUSED NO.3: My Lord, I know Sergeant Mbanga. Among the witnesses who gave evidence, he is a big chap.

BY HATHORN, A.C.J.: That is the other sergeant.

ACCUSED NO.3: Yes, my Lord.

HATHORN, A.C.J.: Now, Sergeant Hode was asked questions about this point.

30

ACCUSED NO.3: I remember, my Lord, reminding my Counsel to put those questions to that particular witness.

HATHORN, A.C.J.: This point that Mbanga gave instructions was not put to him?

MR. DUMBUTSHENA: No, my Lord, it was not put to him. I was not given instructions on that.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Defence

No. 21

Simon Runyowa (Accused No.3)

Examination by the Court (continued)

18th December 1963

No. 2

Detective Sergeant John Crowe (recalled)

Examination by the Court

HATHORN, A.C.J.: I appreciate that. I am just wondering whether Mbanga ought not to be given an opportunity to deal with the point. It seems to me, subject to anything you may say, Mr. Dumbutshena, that Mbanga ought to be given the opportunity, in view of your client's statement which he obviously did not make to you.

MR. DUMBUTSHENA: I have no objection, my Lord.

MR. GORDON-DAVIS: On the same basis, I think Sergeant Crowe should be re-called to deal with the suggestion of hitting the accused with a rubber truncheon.

10

BY HATHORN, A.C.J.: That wasn't put to him?

MR. DUMBUTSHENA: No, that was not put to him.

NO. 2

EVIDENCE OF DETECTIVE SERGEANT JOHN CROWE (recalled)

JOHN CROWE, Re-called, still under oath,

BY HATHORN, A.C.J.: Sergeant Crowe, a point has emerged from the third accused's statement which was not put to you? - Yes, my Lord.

20

I think you have been in Court and you have heard it? - Yes, my Lord.

And you have heard an allegation that? - That I entered the office and struck him once across the face with a weapon and that subsequently I gleefully told some of my colleagues that he had admitted or that he had not admitted it - I can't remember which.

What do you say about the allegation of the assault? - I deny it, my Lord. I deny the allegation of the assault and I have no knowledge of any such weapon as described by the accused No.3, Simon Runyona.

30

No Cross-examination by Mr. Farmar.

No Cross-examination by Mr. Dumbutshena.

BY MR. GORDON-DAVIS: Did you ever gleefully point out the accused's apparent suffering to one of your colleagues and say that he had been assaulted in the ribs and groin? - No, my Lord.

Did you ever see any apparent suffering? - No, my Lord.

Witness withdrew

10 MR. GORDON-DAVIS: My information is that Mr. Mbanga is at Highfields and efforts are being made to locate him. We shall certainly have him this afternoon.

HATHORN, A.C.J.: I wonder if anyone has any objection to the addresses starting?

There being no objection, Counsel addressed the Court.

NO. 4

EVIDENCE OF DETECTIVE SERGEANT MBANGA (recalled)

MBANGA, Re-called by the Court,

20 BY HATHORN, A.C.J.: We have had evidence that the third accused was released. Having been arrested early on the morning of the 2nd, he was released on the morning of the 3rd, that is the Tuesday, and was arrested again that afternoon. Do you know anything about the circumstances in which he was released? I don't mean why he was released, but of his actual release? - Not very much, my Lord, but I was given to understand

30 No, I don't want to know that. Were you present when he was released? - Not at all, my Lord.

Who gave the instructions for his release? - I believe the instructions was given by Mr. Wiltshire during my absence.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Defence

No.2

Detective Sergeant John Crowe (recalled)

Examination by the Court (continued)

18th December 1963

No.4

Detective Sergeant Mbanga (recalled)

Examination by the Court

In the High
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Southern
Rhodesia

Salisbury
Criminal
Sessions

Evidence for
the Defence I
No.4

Detective
Sergeant
Mbangwa
(recalled)

Examination
by the Court
(continued)

18th December
1963

Did you give any instructions at all relating to his release? - Not at all, my Lord.

Now, it has been suggested that certain pieces of paper were given by you to Sergeant Hode in the presence of the third accused just about the time he was released, that you instructed Hode that the third accused had to sign one or more of those pieces of paper. What do you say to that? - That is incorrect, my Lord. To enlighten the Court again, my Lord I can say the accused is definitely telling lies, because when a person is being released from cells he is not to be brought to the C.I.D. offices at all. It is the duty of the A.D. concerned in the investigation to go to the Charge Office and report to the duty sergeant that so and so has to be released and no charge, and the release book will be booked in the Charge Office, whereby the accused has to endorse his signature in the book if he has any cash or property. From there, he would not have occasion to go to the C.I.D. offices.

Lord
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20

Have you any questions, Mr. Farmar?

MR. FARMAR: No questions, my Lord.

CROSS-EXAMINED

Cross-
Examination

BY MR. DUMBUTSHENA: Whereabouts would the accused be being interrogated at the time he was released? - The same thing applies, my Lord. If the accused had been interrogated prior to his release, immediately after being released the accused would not be interrogated again. He would just be left at the Charge Office to find his own way home.

30

Where would he be interrogated, in the charge office or at the C.I.D. offices? - The interrogation normally takes place at the C.I.D. offices.

And if he was to be released while he was at the C.I.D. offices and he was informed there, would it be necessary to take him to the charge office to inform him that he was going to be released? - No, my Lord. The position is he can never be released from the C.I.D. office. He has to be released from the Charge Office.

40

Nobody is disputing that part of it. What I am saying is would you, the C.I.D., have to wait to tell the accused at the Charge Office that he was going to be released, or would you inform him where he was in your Department? - No, he would be told at the Charge Office that he was being released without any charge.

In the High Court of Southern Rhodesia

Salisbury Criminal Sessions

Evidence for the Defence

No.4

Detective Sergeant Mbanga (recalled)

Cross-Examination (continued)

18th December 1963

10

HATHORN, A.C.J.: I think you are at cross purposes. Perhaps I could put the question. I suppose there would be no objection to your saying to an accused: "Well, we are going to release you now. Come along to the Charge Office and we will fix it up"? - Yes, that depends on the man doing the investigation. He can do.

HATHORN, A.C.J.: Is that the point?

MR. DUMBUTSHENA: That is the point, my Lord.

BY HATHORN, A.C.J.: Your point is he would have to go to the Charge Office for the actual formal signing off? - That is so, my Lord.

20

Have you any questions, Mr. Gordon-Davis?

MR. GORDON-DAVIS: No, thank you, my Lord.

(Counsel continued their addresses)

HATHORN, A.C.J.: I will give judgment in this matter at ten o'clock on Friday morning.

NINTH DAY OF TRIAL

FRIDAY, DECEMBER 20th, 1963

NO. 22

J U D G M E N T

No. 22

Judgment

20th December

1963

30

HATHORN, A.C.J.: The unanimous verdict of the Court is that all three accused are guilty on the main charge. Let the accused be seated and I will give the reasons.

In the High
Court of
Southern
Rhodesia
—
Salisbury
Criminal
Sessions
—
No.22
Judgment
(continued)
20th December
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It is common cause and it is amply proved that in the early hours of Monday, 2nd September, last, a paraffin bomb was thrown through the bedroom window of Mr. Chigambura's house at 4093 S.D.Harare. The only bomb that was thrown was found to be made of a small Mazoe Orange Crush bottle rather more than half full of paraffin. The wick was a piece of cloth long enough to reach the bottom of the bottle. It had a metal cap with a home-made slot in it. About two inches of wick was protruding from the cap and the wick was charred at the top. On one side of the wick, and sticking through the slot was a spent match. On the other side, sticking in the slot, were three unexpended matches. All matches had their heads protruding.

10

The bottle was thrown through a window pane and it landed on the mattress of a child's cot. There was no sign of charring of the mattress or its covering. Some of the paraffin leaked on to the cot. The only damage done was to the window pane.

20

There was plenty of inflammable material in the house, both fixed and movable. There were wooden doors, and the internal doors had wooden frames. There were wooden rafters. There was wooden furniture. There were mattresses, blankets, baskets, suitcases and clothes in the room. The house was a residence, and in this particular bedroom the complainant and his wife and three children were asleep when the bomb was thrown.

On the bottle the right thumb-print of the second accused was found.

30

Detective-Inspector Wiltshire arrived at the scene at about 2.30 on the morning of the 2nd September. As the result of a report from the complainant he went to the third accused's house, which was situated a couple of houses along the road from the complainant's. He searched the house because he had suspicions that the third accused might have been connected with the offence. He found nothing connecting the third accused with the present crime, but he found a hypodermic syringe and some penicillin which he had grounds for suspecting to be stolen property. He had insufficient information to warrant arresting the accused on the present charge, but he considered that he had sufficient information to arrest him on the charge of theft, which he duly did. This he described as a holding charge.

40

The third accused was released on the morning of Tuesday, 3rd September and on the afternoon of the same day he was arrested on the present charge as the result of fresh information which became available to Wiltshire.

10 The case against the third accused depends primarily on the statement, Exhibit 12, which is alleged to have been made by him to Detective Benneyworth, on Wednesday, 4th September, and on certain other evidence to which I shall refer later.

The case against the first and second accused rests principally on statements admittedly made by them on the 4th September, Exhibits 3 and 5 respectively, on indications alleged to have been made by the first accused on 5th September, and on the thumb-print of the second accused.

20 After a protracted hearing on the question of the admissibility of evidence relating to Exhibits Nos. 3 and 5, and to the alleged indications, I ruled that the evidence was admissible. Nothing has happened since I gave that ruling to alter my view as to the admissibility of the evidence relating to these points.

30 As regards the impression the witnesses made on us, we have no doubt at all that all the members of the police who were witnesses gave their evidence honestly, and to the best of their respective recollections. Some of them were, in certain respects, not satisfactory, but that does not reflect, we think, on their honesty. I shall deal with certain of these points later. We were particularly impressed by the European members of the police who gave evidence and also by African Detective Sergeants Mbanga and Hode.

40 The Crown witness Amon Nyamakandiwa, it was plain, was acutely uncomfortable in the box and left us with a very poor impression indeed. In addition there were certain improbabilities in his evidence. It was quite obvious that he was not telling us all he knew. Perhaps this was because he was at one time suspected of being a participant in the present crime. We place no reliance on his evidence whatsoever.

In the High
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No.22

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(continued)

20th December
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—
No.22
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(continued)
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The complainant and Mr. Mashingaidze both impressed us as endeavouring to tell the truth to the best of their ability. Of the two, Mashingaidze was the more impressive. We could detect no motive for him to tell the Court anything but the truth. He is a friend of the complainant and a relative by marriage of the third accused, and also a friend of his. Both seemed to be somewhat reluctant to say anything very definite on the subject of the political views of other persons. It seemed to us that neither was prepared to go further on this point than to express a somewhat tentative belief. There were in addition certain criticisms in their evidence as to conflicts between them and variations in their own evidence. We have considered all these criticisms with great care, but we are satisfied that none of them reflects on the honesty of either witness. 10

None of the accused gave evidence on oath, each one contenting himself with making an unsworn statement. This is a matter for comment in respect of all three. The first accused alleges that he, in fact, made no indications to the police on 5th September. The second accused sought to give an innocent explanation for the presence of his thumbprint on the Mazoe Crush bottle. The third accused alleges that his statement, Exhibit 12, was a fabrication of the police. Their refusal to give evidence especially on these points, is properly a matter for comment because their statements cannot be tested by cross-examination. 20 30

In dealing with the evidence against each accused we are fully aware that any allegations made by any one of them against another accused in an unsworn statement is not evidence against that accused.

The case against the first accused rests on the confession, Exhibit 3, and on the indications alleged to have been made by him on the 5th September. As regards the indications we are satisfied that the Crown has proved beyond reasonable doubt that he made them, and that in doing so he was pointing out where he stood when he threw the bomb into the house and where he was when the bomb was made. The witnesses to these facts were Crowe and Mbanga, on the quality of whose evidence we have already commented. 40

Further, there are improbabilities in the accused's allegations. It is improbable that the police would manufacture an indication in the complainant's back garden in the presence of members of the public. It is improbable that the police would have searched for the paraffin at the spot outside the house No. 4077 if they knew that no indications had in fact been made. It is also improbable that they would have taken the trouble of going back to the police station to collect the photographer to take photographs of what they knew had not been done.

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On these indications and on the confession, Exhibit 3, the Crown has proved beyond reasonable doubt that the first accused was the person who threw the bomb. But Mr. Farmer contended that there was a reasonable doubt about the proof of the first accused's intent to set the house on fire or to attempt to do so. This is based on the last 12 lines of the statement, Exhibit 3, to which I shall refer for convenience as the exculpatory portion of it. Mr. Farmer contended that the statements must be taken as a whole, and therefore that the exculpatory part of it must be accepted as well as the inculpatory part of it.

In the exculpatory part of it, the first accused says that he had second thoughts about throwing the bomb lest it injure the occupants of the house, that he removed some of the matches, that he shortened the wick, and that he knew that the flame would go out while the bottle was in flight.

We doubt very much, to say the least of it, whether the contention is open at all, for in this Court the accused has denied taking any part in the crime. Our view is that the point would be open only if he had maintained the same attitude in this Court as he did in his statement. The fact that he has changed his attitude strongly suggests that he has abandoned the whole of the statement including his attempted excuses.

However that may be, we shall assume that the point is open. Even so, in our view, it fails.

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The slot in the cap of the bottle appears to be fully occupied with the wick and the four matches. Perhaps one more match could be inserted, but it does not appear that there is room for more than one, yet the accused speaks of removing "some of the matches." It also seems strange that if he should have decided to remove any matches he did not remove them all. The part about the wick does not seem to us to be valid; what was protruding was about two inches, and this can hardly be said to be small.

10

Then there is an inconsistency. If the accused knew as he says he did, that the wick had gone out before the bomb landed, there was no need for him to return to see that no damage had been done. Indeed, it is improbable that he would have returned at all.

Finally, on this point, if the accused had wished to avoid causing any damage to the occupants of the house but had wished to make it appear to his companions, and perhaps to others, that he had had his heart in the operation, the obvious thing to have done was to have thrown the bomb at the outside of the wall, either below or to one side of the window. He could then have blamed the failure of the mission on his faulty aim.

20

In the result we reject the exculpatory part of this statement. In those circumstances the only reasonable inference to draw from the first accused's conduct is that he intended to set the house on fire, or to attempt to do so.

30

As regards the second accused, in his confession he admits clearly to being a party to a common unlawful purpose to commit the present crime. He admits taking part in all the acts of preparation, and he also admits going to the scene and being present while the bottle was lighted and thrown. At no time did he dissociate himself from the execution of the common purpose, though he claims to have been reluctant to take part.

40

His statement to this Court is subject to criticism. He said that the description of the manufacture of the bomb Exhibit 5 was dictated to him. This is clearly a variation from the instructions he gave to his counsel, for there was no cross-examination on this point.

There is also an inconsistency. He first said that he had not left his house all day. Then, when asked, at the request of his counsel, to elaborate on how the thumb-print came to be on the bottle, he said that he walked part of the way with the first accused, carrying the bottle. We have no hesitation in rejecting the statement he made in this Court.

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10 In respect of both the first and second
accused Mr. Farmar sought to apply the case of
Regina v. Mutambo decided by Young, J. on 14th
October, last, at Bulawayo, Judgment No.133 of
1963. That case is clearly distinguishable
from the present case on two grounds. The first
is that the building in that case could not be
set on fire because of the nature of its
construction, and the second is that the Court
accepted in that case that the accused's intention
20 in throwing the bomb was merely to frighten the
occupants.

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(continued)
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1963

He also contended that no attempt in law had been established. It is clear that this contention fails because what was proved to have been done went far in excess of acts of preparation and clearly amounted to an attempt.

30 I come now to the third accused. He alleges that the statement, Exhibit 12, was fabricated by the police and that he was made to sign it before he was released on Tuesday, 3rd September. This is in itself improbable. Apart from that, Hode was emphatic that he had not obtained the accused's signature to a piece of paper on 3rd September or at all. He was patently genuine when he said he had no recollection of even seeing the third accused on that day. Mbanga was equally emphatic that he had nothing to do with giving instructions to Hode to obtain a signature from the third accused to a piece of paper before he was released.

40 The allegation is improbable too in this respect, that, if the police had a confession from him before his release, they would have released him and then re-arrested him later that day. If the police had fabricated the confession and obtained the accused's signature to it on a promise to release him they would surely then have refused to release him.

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(continued)

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We are satisfied on the evidence of Benneyworth and Hode that the third accused made the statement, Exhibit 12 on the 4th September in the circumstances testified to by them. For what it is worth, African Constable Cyril's evidence was to the same effect.

Independently of the Assessors I am satisfied that the evidence as to the statement is admissible.

The Crown also relied on an indication alleged to have been made by the third accused on 5th September as to the shop where he bought the paraffin. Although Benneyworth was quite clear that that indication was made by the third accused, there are serious conflicts between African Sergeant Nyamadzawo and African Detective Takadiyi as to what took place. The third accused contends that all he did was to shew the police the shop where he bought his provisions, including paraffin. In view of the conflicts, even though they may be due to faulty recollection, we feel it fairer to the third accused to ignore this part of the case. That the third accused might have bought paraffin from that store on Sunday, 1st September, is clear from the evidence of Freddie Mirimi, which was not disputed.

10

20

Another point relied upon by the Crown is the statement alleged to have been made by the third accused to Cyril when he arrested him on the afternoon of 3rd September, namely, that he denied the charge, but said that the first and second accused were responsible. Cyril's evidence as to the so-called warning and cautioning is so confused that I am not satisfied that the evidence is admissible. Accordingly I rule that it is not and I have directed the assessors to ignore it. They assure me that they have done so.

30

On the evidence of Mashingaidze and the complainant we find it proved that the third accused stood for a time on Sunday morning, 1st September, listening to their conversation. But there is no evidence that anything that was said at that time would have led the third accused to suppose that the complainant was a supporter of Mr. Sithole.

40

We also find it proved that the third accused uttered words to the effect that supporters of Sithole were sell-outs and were selling the country. The

evidence of the two witnesses as to the nature of the gestures made by the third accused at the time was quite dramatic and lent weight to our view that the evidence was true.

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The uttering of the words may have been inspired, as contended for by Mr. Dumbutshena, by the shouting of the children at the time the words to the effect: "Up with Nkomo, and down with Sithole." But that does not alter the fact that the accused used the words. The words were clearly spoken to the complainant and Mashingaidze. No one else was there, he was facing them when he spoke the words, and he made the gestures at them.

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(continued)
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We also find it proved that the third accused and Amon (wearing a fur hat indicative of his support for Nkomo) came to Mashingaidze's house when the complainant was there. On this occasion it was plain that the third accused and Amon were contemptuous of the complainant.

The combined effect of the evidence of what took place on the Sunday seems to indicate that the third accused knew that the complainant was a supporter of Sithole, which he is, and it shews certainly that the third accused was against Sithole and his supporters. This provides a possible, or even a likely motive for the third accused to want to harm the complainant.

Mr. Dumbutshena has argued that it is unlikely that mere political disagreement would be sufficient motive for a man to have anything to do with a crime such as the present which carries the death penalty. We do not accept that argument. It is a regrettable fact that experience in this Court in recent years has shown that political views provide a motive for serious crimes of violence amongst some Africans.

Turning to the statement, Exhibit 12, in it the third accused admits knowing that the purpose of the crime was to set fire to a house and the identity of its organiser. He admits knowing which house was to be set fire to, and he admits assisting in the plan by going to buy the paraffin which he handed to the other

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1963

participants in the plan. Finally, he admits that they left with the paraffin saying: "We are going to our house." In the context "our house" can only mean the house which was the subject of the plan.

In those circumstances the third accused clearly aided and abetted the other participants knowing what crime was contemplated and we find accordingly. On this basis it was common cause that the third accused was a socius criminis and as such liable as a principal.

10

Mr. Dumbutshena argued that the furthest that the statement went was to show that the third accused was an inciter, and on that basis he contended that the third accused should be acquitted on the present charge because it does not include an alternative charge as an inciter under section 366A of the Criminal Procedure and Evidence Act (Cap.28).

I cannot accept this contention. There is not one word in the statement which suggests that the accused incited anyone else to commit the crime. Indeed, the alleged inciter or organiser is named, and the accused also says that it was this person who shewed them the house that he, the inciter, wanted to set on fire. All this is completely inconsistent with the third accused being an inciter. There is thus no need to refer to the cases quoted on the question of what the position would have been if the accused had been an inciter.

20

So far as the third accused's statement to this Court is concerned, it is clear that on certain points the statement varied from the instructions which had been given to Counsel. These are some of them.

30

The basis of the objection to the statement was that ~~the~~ third accused had been made to sign a sheet of paper on which there was typing. In this Court he spoke of "sheets" of paper and said he was asked to sign "them". He also varied his instructions by bringing in Mbanga as the person who ordered Hode to get the signature. And he omitted from his instructions the allegation of a serious assault by Crowe. We have no hesitation in rejecting his statement.

40

10 I should in conclusion give my reasons for directing the recall of certain witnesses. I asked for the recall of Wiltshire because I knew from the evidence given during the separate trial that his evidence was that the third accused had been arrested originally on a charge of theft and not on the present charge. Since one of the issues to be decided by the full Court was whether Exhibit 12 was a fabrication produced, it was alleged, at the time of his release, I thought it right that that evidence should be available to the full Court. As regards the recall of Crowe and Mbanga, I did not do this in order to discredit the third accused, for his omission to give instructions on the points concerned had already emerged. I did it because allegations were serious ones, they were new allegations, and neither witness had had an opportunity to give his evidence on the points. It seemed to me
 20 right that their evidence should be available to the Court.

In the High Court of Southern Rhodesia
 ———
 Salisbury Criminal Sessions
 ———
 No. 22
 Judgment (continued)
 20th December 1963

Mr. Dumbutshena did not object to the recall of any of the witnesses.

Mr. Farmar, I take it you have nothing to say on the question of sentence in respect of the first accused?

MR. FARMAR: There is nothing I can say about that, but I have something to say in relation to the second accused.

30 MR. DUMBUTSHENA: I have nothing to say.

HATHORN, A.C.J.: So far as the second accused is concerned, there will be further investigation into his age. Let him be seated.

Sentence on Alexander Gendhamu Chirawu and Simon Runyowa (Accused No.1 and No.3)

So far as the first and third accused are concerned, Parliament has seen fit to deprive me of any discretion in the matter and I have no option but to pass on them sentence of death.

Sentence on Alexander Gendhamu Chirawu and Simon Runyowa (Accused No.1 and No.3)

40 THE REGISTRAR: Tell the prisoners Alexander Gendhamu Chirawu and Simon Runyowa that they have been duly convicted of the crime of contravening

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—
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No.22
Judgment
Sentence on Alexander Gendhamu Chirawu and Simon Runyowa (Accused No.1 and No.3)
(continued)
20th December 1963

paragraph (a) as read with paragraph (c) of subsection (1) of section 33A of the Law and Order (Maintenance) Act, 1960. Ask them if they have or know of anything to say why sentence of death should not be passed upon them according to law.

ACCUSED NO.1: I feel that I should ask the Court to exercise special clemency in my case because of the following circumstances: I am an orphan. My father died, leaving me a widowed mother with two small children to look after, and I have been their sole support. If I should be deprived of them they will suffer an untold consequence as a result. Again, I emphasise that the Court should exercise special clemency. That is all.

10

HATHORN, A.C.J.: I thought I had explained to the accused that Parliament had deprived me of any discretion in the matter, and that I am under an obligation to pass this sentence.

ACCUSED NO.3: I ask the Court to consider the fact that I have a wife and nine children, six of whom are going to school. I am the sole support of this family. If I should be sentenced to death these people will have been deprived of their livelihood. I had a herd of seven head of cattle in the Reserve which could have been used by my family, but unfortunately they all got stolen. I have no relatives on whom my children might draw. That is all.

20

HATHORN, A.C.J.: The sentence of the Court on each of you is that you be returned to custody and that sentence of death be executed upon you according to law.

30

(Short adjournment)

No. 23
High Court Order
23rd December 1963

NO. 23

O R D E R

R E G I N A

versus

- (1) ALEXANDER GENDHAMU CHIRAWU
- (2) KASSIANO MURINGWA
- (3) SIMON RUNYOWA

40

At Salisbury on the 9th day of December, 1963.
Before the Honourable Mr. Justice Hathorn (A.C.J.)
and Assessors, Messrs. Yardley and Cripwell.

In the High
Court of
Southern
Rhodesia

Mr. Gordon-Davies of counsel for the Crown.

No.23

For (1) and (2) Mr. Farmar and for No.(3) Mr.
Dumbutshena.

High Court
Order
(continued)

The prisoner, being arraigned and charged with
the crime of c/s s. 1(a) as read with 1(c) of
Section 33A of the Law and Order (Maintenance)
Act, 1960, alternatively c/s s. 1 of Section 33
of the Law and Order (Maintenance) Act, 1960.

23rd December
1963

10

PLEADED 1.) Not guilty to both main and
2.) alternative charges.
9.12.63 3.)

VERDICT 1.)
2.) Guilty on main charge.
20.12.63 3.)

20

SENTENCE 1. Sentenced to death
20.12.63 & 2. Seven years i.h.l.
23.12.63 3. Sentenced to death.

ASSISTANT REGISTRAR.

NO. 24

No.24

PARTICULARS OF TRIAL

Particulars
of Trial

REGINA versus (1) ALEXANDER GENDHAMU CHIRAWU
(2) KASSIANO MURINGWA
(3) SIMON RUNYOWA

Regina versus
(1) Alexander
Gendhamu
Chirawu
(2) Kassiano
Muringwa
(3) Simon
Runyowa

30

1. Age and occupation of appellants. 1. 24-25 years, petrol attendant.
2. 16-17 years, tailor.
3. 37 years, Municipal employee.

December 9th-
23rd, 1963

2. Date of trial and sentence December 9, 10, 11, 12,
13,16,17,18 and 23,1963.

In the High Court of Southern Rhodesia	3. Place and Court of trial	High Court of Southern Rhodesia, Salisbury Criminal Sessions.	
No.24	4. Before whom tried	The Hon.Mr.Justice Hathorn, Acting Chief Justice, and Assessors, Messrs. Yardley and Cripwell.	
Particulars of Trial (continued)	5. Charge	Contravening para.(a) as read with para.(c) of sub-section (1) of section 33A of the Law & Order (Maintenance) Act 1960; alternatively contravening section (1) of section 33 of the Law & Order (Maintenance) Act 1960.	10
Regina versus (1) Alexander Gendhamu Chirawu (2) Kassiano Muringwa (3) Simon Runyowa	6. Plea	Not guilty to main and alternative charges.	
December 9th-23rd, 1963	7. Verdict	Guilty on main charge.	
	8. Sentence	1. Sentenced to death 2. 7 years i.h.l. 3. Sentenced to death	20
	9. Name of Counsel for the prosecution	Mr. J. Gordon-Davies.	
	10. Name of Counsel for the defence	Mr. F.G.Farmar for Accused Nos.1 and 2; Mr.E.Dumbutshena for Accused No.3.	
	11. Were the appellants defended in forma pauperis?	Yes.	
	12. Were any exhibits put in at the trial?	Yes.	30
	13. Was any statement made by appellants read and not marked as an exhibit?	No.	
	14. Were appellants bailed before trial? If so, with how many sureties, and in what amounts?	No.	
	15. What orders (if any) were made for the restitution of property?	None	

147.

NO. 25

IN THE FEDERAL SUPREME COURT

APPELLATE JURISDICTION - CRIMINAL

In the matter of the appeal of:

BETWEEN

SIMON RUNYOWA Appellant

and

THE QUEEN Respondent

In the Federal
Supreme Court

No. 25

Notice of
Appeal

NOTICE OF APPEAL

10

BE PLEASED TO TAKE NOTICE that the above-mentioned Appellant, SIMON RUNYOWA, hereby notes an Appeal against his Conviction by this Honourable Court sitting at Salisbury on the 20th December, 1963, on a charge of contravening Section 33A (1)(a) of the Law and Order (Maintenance) Act, 1960, as amended and against the sentence of death then and there imposed.

THE GROUNDS OF APPEAL AGAINST CONVICTION are:-

20

1. That the learned judge erred in law and on the facts in finding that the Appellant was a socius criminis and guilty of the offence charged under Section 33A of the Law and Order (Maintenance) Act.

30

2. That the learned judge misdirected himself in rejecting the defence submission that the Appellant was, on the evidence, an inciter and should have been indicted under Section 366A of the Criminal Procedure and Evidence Act (Cap 28) as read with Section 33A of the Law and Order (Maintenance) Act.

3. That the Court erred, on the merits, in finding that the Appellant had made a statement to the police.

In the Federal
Supreme Court

No. 25

Notice of
Appeal
(continued)

4. That there was insufficient evidence on which the Court could convict the Appellant on the main charge.
5. That the conviction could not be justified in law and on the facts.

THE GROUNDS OF APPEAL AGAINST SENTENCE are:-

1. That the Sentence was excessive regard being had to all the circumstances of the case.
2. That the learned judge erred in convicting the Appellant under that Section of the Law and Order (Maintenance) Act that carries the mandatory death penalty. 10

THE RELIEF SOUGHT is that the Conviction be quashed and the Sentence set aside or reduced.

BE PLEASED FURTHER TO TAKE NOTE that the Appellant has no funds wherewith to pay for the preparation of the Record and the prosecution of his Appeal and he therefore prays that he may be granted legal aid in this regard.

DATED at SALISBURY this day of 196 20

(Sgd) Simon Runyowa
APPELLANT.

To:

The Registrar of the High Court,
SALISBURY.

and to

The Registrar of the Federal Supreme Court,
cnr Third Street/Jameson Avenue,
SALISBURY.

NO. 26

J U D G M E N T

IN THE FEDERAL SUPREME COURT at SALISBURY

Criminal Appeals Nos. 228, 232 and 229 of 1963.

BETWEEN: (1) ALEXANDER GENDHAMU CHIRAWU
(2) KASSIANO MURINGWA
(3) SIMON RUNYOWA Appellants

and

THE QUEEN Respondent

In the Federal
Supreme Court

No. 26

Judgment

17th February
1964

10 Before : Clayden, C.J., Quenet and Forbes, F.JJ.

The 17th day of FEBRUARY, 1964

J U D G M E N T

Quenet, F.J. :

20 The appellants were convicted by the High Court of Southern Rhodesia of contravening Section 33A of the Law and Order (Maintenance) Act, 1960, in that on Monday, the 2nd of September, 1963, they wrongfully, unlawfully and without lawful excuse by the use of paraffin attempted to set on fire house No. 4093 Semi-Detached Lines, Harare, Salisbury. The first and third appellants were sentenced to death; the second appellant was sentenced to seven years' imprisonment with hard labour.

30 During the early hours of the 2nd September, 1963, a paraffin bomb was thrown through the bedroom window of the house in question. In the bedroom were the householder, his wife and three children. The bomb landed on a child's cot. It failed to explode, and the only damage was to the window through which it was cast.

The first appellant, Alexander Gendhamu Chirawu, appeals only against his conviction.

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No. 26

Judgment
(continued)

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His first ground of appeal is that the trial Court should have accepted his confession in its entirety. The second and third grounds allege a failure to prove he intended to commit the crime laid to his charge. In convicting him the trial Court relied upon his confession, Exhibit 3, and upon certain indications made by him to the police. The correctness of the learned trial judge's finding that both the confession and the indications could properly be admitted in evidence is not challenged in this Court. In his confession the appellant admitted he had committed the crime. Towards the end of the statement this appears:

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"I then realised that what we were doing was not a good thing, and that it might cause injury to the people in the house. I then took some of the matches from the top of the bottle and also pushed the wick inside the bottle so that there was only a little bit of wick showing. The fire was still on the wick and I knew that when I would throw the bomb that the wind would be against the wick and put the fire on the wick out. I then threw the bomb by the window, I mean through the window at the back of the house, I saw that before the bomb landed, that the fire had gone out."

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This passage, so it is said, showed the appellant did not intend to set the house on fire, and that by reason of the steps he had taken, he believed the bomb would fail to fulfil its purpose. In the course of his judgment, the learned judge observed that about two inches of the wick protruded from the slot in the top of the bottle and that four matches were still in position. The trial Court considered it possible that one more match could be inserted into the slot but not more than one. It considered the exculpatory part of the confession to be false and I can find no fault with that conclusion.

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It was also submitted that the prosecution failed to prove that the house into which the bomb was thrown was one which could be set on fire. This point was considered by the trial Court and was, very properly, rejected.

The second appellant, Kassiano Muringwa, advances two grounds upon which he says his appeal should succeed. First, that he should not have been convicted because he dissociated himself from the enterprise "before the stage of preparation had passed" and secondly, it was not proved he intended to set the building on fire. The bomb was found to bear his right thumb print. In an unsworn statement from the dock he stated he handled the bottle, Exhibit 6, after the first appellant had brought it to his house. He never discussed any plan to set fire to a house, nor did he leave his house that day. In answer to a question by the learned judge, he replied: "... it was on this Sunday that the first accused called at my residence. He had with him a bottle containing paraffin and as a person known to him I greeted him and walked with him part of the way. Meanwhile I was carrying his paraffin bottle." That was a very different account of the affair from the one he gave in his statement, Exhibit 5. That statement was found to have been freely and voluntarily made, and it is not said the learned judge was wrong in admitting it in evidence. The statement makes it perfectly clear that not only was the appellant present during the time the attack was being planned and the bomb made but also when it was thrown at its target. It is quite true the appellant said in his statement that while they were on their way to the scene he tried to get Alexander "not to do this thing" telling him that they would be arrested. Alexander replied that no one would be arrested as nobody would know about it. I infer from this that the appellant's reluctance to go forward with the venture sprang from the fear that he might be arrested. Having received Alexander's assurance that that would not be so, he accompanied the others to the house and remained there until the attack was over. If he had wished to dissociate himself from the affair he had ample opportunity of doing so. The trial Court rejected as false his unsworn statement from the dock and was satisfied beyond reasonable doubt that he participated in the commission of the crime. I agree with that view of the matter.

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The third appellant, Simon Runyowa, appeals against his conviction and sentence. In his

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(continued)

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1964

appeal against conviction, he alleges the trial Court erred in holding he participated in the commission of the offence. The remaining grounds of appeal were abandoned at the hearing. In dealing with the statement made by this appellant to the police, Exhibit 12, the judgment reads: "... in it (that is to say, Exhibit 12) the third accused admits knowing that the purpose of the crime was to set fire to a house and the identity of its organiser"- by which I understand the learned judge to mean the appellant was aware of the identity of the person who organized the plan to set fire to the house. The judgment then continues:

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"He (that is to say, the third appellant) admits knowing which house was to be set fire to, and he admits assisting in the plan by going to buy the paraffin which he handed to the other participants in the plan. Finally, he admits that they left with the paraffin saying: 'We are going to our house'. In the context 'our house' can only mean the house which was the subject of the plan.

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"In those circumstances the third accused clearly aided and abetted the other participants knowing what crime was contemplated and we find accordingly. On this basis it was common cause that the third accused was a socius criminis and as such liable as a principal."

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The judgment refers to the fact that the appellant had a possible motive to injure the owner of the house which was to be set on fire. Although the evidence did not establish the appellant accompanied the others to the scene, he knew the house which was to be burnt and he knew the method which was to be employed. He himself had bought paraffin to be used in the project and it was he who handed the paraffin to one of his companions. On this evidence the trial Court concluded that the appellant's conduct made him a socius criminis in the commission of the crime and, as such, was liable as a principal. I cannot myself see any ground for holding that the trial Court was wrong in convicting the third appellant of the crime laid to his charge.

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There is also an appeal by the third appellant against the sentence imposed upon him. The first ground alleges that the sentence was excessive, and the second reads: "... the learned judge erred in convicting the Appellant under that Section of the Law and Order (Maintenance) Act that carries the mandatory death penalty." In Richard Mapolisa v. The Queen, Judgment No. 91/63 as yet unreported, this Court held that section 33A of the Law and Order (Maintenance) Act applied to a socius criminis and that he was subject to the same penalty as the principal offender. It follows, the trial Court had no alternative but to impose the death penalty.

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Supreme Court

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(continued)

17th February
1964

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(SGD.) V. QUENET

Federal Justice.

I agree.

(SGD.) J. CLAYDEN

Chief Justice

I agree.

(SGD.) A. G. FORBES

Federal Justice

DELIVERED at SALISBURY this 26th day of FEBRUARY, 1964.

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F.G. Farmer for the Appellants.

R.R. Horn for the Respondent.

Pro Deo.

In the Federal
Supreme Court

NO. 27

O R D E R

No.27

Order

IN THE FEDERAL SUPREME COURT at SALISBURY

26th February
1964

Criminal Appeal No. 229 of 1963

Between: SIMON RUNYOWA Appellant

and

 THE QUEEN Respondent

Before: Clayden, C.J., Quenet and Forbes, F.JJ.

The 17th and 26th days of February, 1964

Upon hearing Mr. F.G.Farmar of counsel for the appellant and Mr. R.R.Horn of Counsel for the respondent and having perused the documents filed herein 10

IT IS ORDERED that the appeal be and it is hereby dismissed

BY THE COURT

GIVEN under my hand and the seal of the Court the 26th day of February, 1964.

(SGD.) R.D.M. DAVIDSON

REGISTRAR. 20

LAST PARAGRAPH OF JUDGMENT READS:

In the case of the third appellant, Simon Runyowa, the attention of the Executive is directed to the fact that leave to appeal against the judgment of this Court in Mapolisa's case has been granted by the Judicial Committee of the Privy Council. The third appellant is not himself in a position to finance an appeal to the Privy Council. This Court would respectfully suggest that the appellant be informed that his

sentence will not be considered until after Mapolisa's case has been decided by the Judicial Committee, or, if that course is not accepted, that he be told so, so that he can make efforts to apply for leave to appeal.

ORDERED THIS 26th day of February 1964.

In the Federal
Supreme Court

No.27

Order
(continued)

26th February
1964

NO. 28

ORDER GRANTING SPECIAL LEAVE TO APPEAL
TO HER MAJESTY IN COUNCIL

In the Privy
Council

No. 28

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AT THE COURT AT BUCKINGHAM PALACE

The 10th day of August, 1964

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

MR. BOYD-CARPENTER MR. CARR
SIR EDWARD BOYLE MR. THOMAS

Order granting
Special leave
to appeal to
Her Majesty
in Council

10th August
1964

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 27th day of July 1964 in the words following, viz.:-

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"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Simon Runyowa in the matter of an Appeal from the Federal Supreme Court of Rhodesia and Nyasaland between the Petitioner and Your Majesty Respondent setting forth that the Petitioner desires to obtain special leave to appeal in forma pauperis to Your Majesty in Council from the Judgment of the Federal Supreme Court of Rhodesia and Nyasaland delivered the 17th day of February 1964 by which Judgment the said Court dismissed the Appeal of the Petitioner against his conviction by the High Court of Southern Rhodesia at the Salisbury Criminal Sessions on the 20th day of December 1963 of contravening paragraph (a) as read with paragraph (c) of sub-section(1)

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In the Privy
Council

No.28

Order granting
Special leave
to appeal to
Her Majesty
in Council
(continued)

10th August
1964

of Section 33A of the Law and Order (Maintenance) Act, 1960 as amended: And humbly praying Your Majesty in Council to grant him special leave to appeal in forma pauperis from the Judgment of the Federal Supreme Court of Rhodesia and Nyasaland dated the 17th day of February 1964 and that of the High Court of Southern Rhodesia dated the 20th day of December 1963 or for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof no one appearing at the Bar on behalf of the Respondent Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Federal Supreme Court of Rhodesia and Nyasaland dated the 17th day of February 1964: 10 20

"AND Their Lordships do further report to Your Majesty that the proper officer of the said Federal Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution. 30

Whereof the Governor or Officer administering the Government of Southern Rhodesia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. N. LANDALE

E X H I B I TNo.12HARARE C.R. 3/9/63EXHIBIT 12CHARGE SHEET AND STATEMENT OF
SIMON RUNYOWA (Accused No. 3)

Exhibit

No.12Charge Sheet
and Statement
of Simon
Runyowa
(Accused No.3)

10 I. Dennis Henry BENNEYWORTH, a Detective in the British South Africa Police, attached to Law and Order (Maintenance) Section, Criminal Investigation Department, Salisbury, hereby certify that at the Salisbury Criminal Investigation Offices, Salisbury, I charged African Male SIMON RUNYOWA with the crime of contravening section 33(A)(1)(a) of the Law and Order (Maintenance) Act, 1960, as amended.

20 I said to him: SIMON RUNYOWA you are charged with contravening section 33(A)(1)(a) of the Law and Order (Maintenance) Act 1960, as amended, in that upon or about the 2nd day of September 1963, and at 4093, S.D.Lines, Harare, Salisbury, you did wrongfully and unlawfully and without lawful excuse by the use of petrol, benzine, paraffin, methylated spirits of other inflammable liquid attempt to set on fire any person, building, structure, vehicle, aircraft or railway engine, tender, carriage, van or truck, that is to say you threw a bottle containing inflammable liquid through the bedroom window of 4093 S.D.Lines, Harare, Salisbury, the residence of African LUKE CHIGUMBURA.

30 I warned the accused: I must warn you that you are not obliged to say anything in answer to the charge, but that anything you do say will be taken down in writing and may be used in evidence.

The said SIMON RUNYOWA then elected to make the following reply:-

40 "I have got something to say. I understand the charge but I deny. The one who organised this, that is the setting fire of this house, was one AMON NYAMUKONDIWA. We were four in number. AMON, KASIANO, myself and another one whose name I do not know. When we were four AMON was pointing to us, the number of the house that he wanted to set on fire. We passed near to the house for indications. After we had passed this house we

Exhibit
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 No.12
 Charge Sheet
 and State-
 ment of Simon
 Runyowa
 (Accused No.3)
 (continued)

went further and then we separated, and I went to my house. Around about 6.00 p.m. KASIANO, and the other man whose name I do not know, came to my house. They entered into the bedroom where I was. As they entered in food was ready. We ate food together. After food, this other man who I do not know, asked me whether I could get somebody to go and buy paraffin. I said 'Give me the money.' He gave me sixpence. I tried to find somebody to go and buy this paraffin but I could not get one. I then went myself and got the paraffin. When I returned back from buying paraffin they were not in, but they left a message saying that when I returned I should wait for them as they would be coming back. Before five minutes they arrived. The other man asked me whether I had got the paraffin and I replied 'Yes'. After handing them the bottle of paraffin, they then said 'We are going to our house'. Then they left. At about 2.00 a.m. I heard the Police knocking at my door. That is all I know.

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(Sgd.) SIMON RUNYOWA

Charged by Det. D.H. BENNYWORTH (Sgd.) 6093
 Witness and Interpreter A/D/Sgt. HODE (Sgd.) 12295
 Witness A/D CYRIL (Sgd.) 12575

Language used English:Shona

1.00 p.m. on 4th September 1963. C.I.D.Offices,
 Salisbury.

IN THE PRIVY COUNCIL

No. 1 of 1965

ON APPEAL FROM THE FEDERAL SUPREME
COURT OF RHODESIA AND NYASALAND

B E T W E E N :

SIMON RUNYOWA (Accused) Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

BERNARD SHERIDAN & CO.,
14, Red Lion Square,
London, W.C.1.
Solicitors for the Appellant.

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.
Solicitors for the Respondent.