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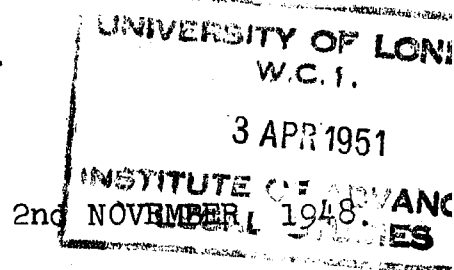
36, 1949

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IN THE HIGH COURT OF BASUTOLAND.

CRIMINAL SESSIONS



BEFORE:

Mr Acting Justice Sutton.

ASSESSORS:

J. Elliot.
F. I. Parnell.

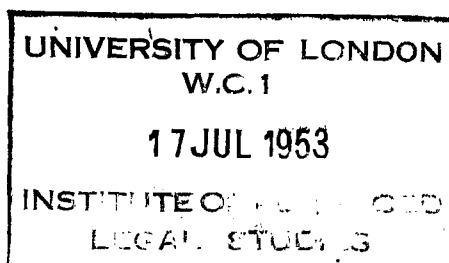
AFRICAN ASSESSORS:

George D. Makhehle.
Moramang Jonathan.

R E X vs. (1) Bereng Griffith Lerothola.
(2) Gabashane Masupha.
(3) Mojautu Nonyana.
(4) Makione Mphiko
(5) Sankatane Masupha.
(6) Mosiuoa Masupha.
(7) Kemaketse Masupha
(8) Fusi Rakakala.
(9) Saferi Ntsoso.
(10) Ramabanta Mahleke.
(11) Moloi Ntai.
(12) Titimus Ramashamole.

VOLUME: 11.

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31187

J U D G M E N T UNIVERSITY OF LONDON
W.C.1.

17 JUL 1953

HIS LORDSHIP:

The indictment charges 12 accused with murdering Meleke Ntai, a Mosuto, on or about the 4th March, 1948, at Fusi's in the district of Teyateyaneng. The twelfth accused was found not guilty and discharged after certain evidence had been led for the Crown, the Prosecutor withdrawing the charge against him. The charge is alleged to be one of ritual murder.

The 1st accused is a descendant of Moshesh and is the son of the late Paramount Chief Griffith. He is the senior male representative in the Basutoland Territory of all the sons of Moshesh. On March 4th 1948 he was on a visit to Chief Gabashane, the 2nd accused, at Mamathe's Village in the district of Teyateyaneng. He was accompanied by Chief Ntoane, now deceased, one of his subjects and advisers. The 12th accused, who has been acquitted, Titimus Ramashamole, was an adviser and councillor of No. 1 accused.

No. 3 accused, Mojautu, was a servant of the 1st accused. No. 2 accused, Gabashane Masupha, lives at Mamathe's Village, in the district of Teyateyaneng, and is the Chief of that Ward. He ranks as No. 3 Chief in Basutoland. The 4th accused is headman of Mamathe's Village, under Chief Gabashane. Nos 5 and 6 accused are sons of Chief Gabashane's father's uncle. No. 7 accused is his uncle's son. These three live in huts provided for them by Chief Gabashane at his residence. Fusi, No.8 accused, is a native doctor and he treats mental patients and he resides at a place known as Fusi's, some two miles from Mamathe's Village. No. 9 accused lives at Mamathe's Village. No. 10 accused lived at Mahleke's Village, several miles distant from Chief Gabashane's residence. No. 11 accused lives at Lepai's
/village.

Village.

Shortly stated, the case for the Crown is that at a meeting on the evening of March the 3rd at Chief Gabashane's residence a conspiracy to murder Meleke Ntai was entered into. No. 11 accused, Maloi, is alleged to have sold his brother for £100 on that occasion.

At that meeting it is alleged that all the accused, except Nos. 8 and 9, were present. The next day Maloi Ntai with Meleke Ntai the deceased, Makhetha Ntai and Ntsane Ntai, proceeded on horseback to the funeral of a relative at Mahleke's village, some four miles distant from Mamathe's Village. On the way back, on their return from the funeral, Meleke Ntai was left behind by the other three. It is alleged that he was intercepted, seized, dragged from his horse, held on the ground, throttled by No. 4 accused, suffocated by No. 3 accused and held by the other accused with the exception of Chiefs Bereng and Gabashane, who stood by. Portions of his upper and lower lips were cut off by Chief Ntoane, and the flesh handed to Chief Bereng. He was thought to be dead and orders were given by Chief Gabashane for his body to be disposed of in a donga. He was carried to the donga by a number of the accused, assisted by the four witnesses for the Crown, Mapeshoane, Molemohi, Sothi and Sepalami, and having disposed of Meleke Ntai in the donga the persons who took part therein returned to the place of the assault, reported to the Chiefs, Bereng and Gabashane, that the order had been carried out and dispersed. That, briefly, is the case for the Crown.

On March the 6th of this year the dead body of Meleke Ntai was found in a deep donga, below the hillside near certain huts known as Fusi's. The Crown case is that

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this was a consequence of the conspiracy to murder entered into on the evening of March the 3rd.

The Post Mortem examination of the body of Meleke Ntai was made on March the 7th and revealed that his death was due to drowning. Lieutenant Castle of the Basutoland Mounted Police prepared and put in a plan of the locus in quo referred to in evidence and has marked thereon certain spots on information obtained from Mapeshoane and other witnesses for the Crown. He has also produced certain photographs of various places. An inspection in loco was held by the Court and a record thereof was made and is before the Court. The plan shows thereon Chief Gabashane's residence where the conspiracy to murder is alleged to have been entered into, and the main road to Fusi's, along which a motorcar is said to have proceeded on the night of the assault. Spot E on the plan indicates the place from which the party is said to have proceeded along a footpath marked by dotted lines to the spot J on the main road to Fusi's, where Meleke Ntai is said to have been dragged from his horse, to spot K where he is alleged to have been assaulted in the way I have described. The plan also shows the donga into which it is alleged he was thrown. From K to the donga is all stone without any vegetation, in two terraces, steep and very uneven. On a dark and rainy night it would be difficult to carry a body down without slipping and falling. The dotted line on the plan represents the route pointed out and alleged to have been taken on the night of March the 4th, when the body was disposed of. P is the spot from where the deceased is alleged to have been thrown and O the spot where his body was found. The principal witnesses for the Crown were four accomplices, Mapeshoane, Molemohi,

/Sothi

Sothi and Sepalami, and Ntsane and Makhetha Ntai.

Molemohi's evidence was extremely unsatisfactory and it was obvious that he was an untruthful witness. Not only did he deny important statements that he had made at the Preparatory Examination, but he made one remarkable statement to Lieutenant Castle which he denied in evidence in this Court. It was that an umbrella stay had been pushed up the nostrils and into the throat of the deceased at the time of the alleged assault. The Crown has accordingly abandoned his evidence, and places no reliance thereon. The accused are all charged with the crime of murder. In Rex vs. Ndhlovu, (A.D. - 1945 - p. 369), it was said, "One golden rule is always to be seen running through the thread of law, that it is the duty of the Crown to prove the accused guilty", and let it be added, beyond reasonable doubt.

The Crown in this case alleges a case of conspiracy to murder and in such a case anything said or done by any of the conspirators in furtherance of the conspiracy is evidence against all of them. The Crown relies in this case largely on the evidence of accomplices. The three witnesses, Mapeshoane, Sothi and Sepalami, were accomplices. According to their own evidence they took part in the commission of this crime, indeed they were in it up to their necks. The law is that the evidence of an accomplice must be corroborated. One accomplice may corroborate another. The question to be considered in this case is whether these three accomplices corroborate one another, and if so whether this corroboration may be relied upon.

Certain very pertinent remarks about the way the evidence of accomplices should be dealt with were made in the recent case of Rex vs Nconcana (A.D. - 1948 - p.399).

/I refer

I refer to the remarks of Shreiner, J.A. in that case. There is no difficulty about the law in this case because if the accused assaulted, or were party to the assault alleged to have been committed on Meleke Ntai and believing him to be dead they caused his body to be removed to a donga containing mud and water where he met his death by drowning, they are guilty of the crime of murder, for they have killed him and the necessary intention to kill was present.

I now come to deal, as briefly as possible, with the evidence. Masiele Ntai, the wife of Meleke Ntai, said that she last saw him alive on a Thursday in the morning. That was March the 4th. He rode away to a funeral with Maloi Ntai, Ntsane Ntai and Makhetha Ntai. It was raining that day and the rain continued throughout the day. She did not see her husband again. On the following day when her husband had not returned she searched for him. She saw Maloi and asked him where her husband was and he said they had left him behind in the direction where the funeral was. He had been left behind because he could not go at the same pace as the others. Her husband's horse came back after that without a saddle and reins, but with a bit in its mouth. She searched unsuccessfully for him, went to Fusi's and spoke to him, and asked him if he had not seen her husband. He said no, but that he had seen his saddle and as a result she went to look for the saddle, found the saddle, saddle-cloth, sjambok and handkerchief near Fusi's at a spot marked M on the plan, some 116 paces from spot J, where it is alleged Maleke Ntai was pulled from his horse. Fusi said he had seen a strange thing of a saddle and took her there. Her husband was a sickly person, he had suffered from epileptic fits, but not of late, he was a horseman but could

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no longer gallop. She went with Fusi and reported to Chief Gabashane.

Paulus Kahlolo stated in evidence that he lived at Mamathe's village and was working for Fusi. He was looking after lunatics, and sometimes during the day he used to take them to the stream in the donga near Fusi's village. He saw a person, and that must have been on March the 6th, lying in the donga, when he took the patients down to the stream. After he had seen the body he reported to Fusi. It was very early in the morning when he reported. This was not the usual hour of going to wash in the stream. It was just as the sun rose, earlier than the usual hour. He saw, about this time, Fusi standing above on the hill. It was not his custom to stand on the hill to watch what the witness did. He did that for the first time. That morning, contrary to the usual custom, Fusi had sent him early to take the lunatics to the water.

Mamasela Thothe stated that she knew Fusi, and while at his place for treatment she saw a saddle, saddle-cloth, sjambok and handkerchief lying in the veld. She told Fusi about it. She left things as they were. The saddle was lying inside out. This was on the Friday afternoon, in an open place where people often pass.

Pheta Mosehle stated that he lived at Mamathe's Village near Fusi's. He saw a saddle down below his village and that of Fusi's. He hadn't found it by himself. Fusi called out to him and said, "Come here brother-in-law." When he came to him he said, "Here is a saddle which is a miracle." He said, "Look here, brother-in-law, they threw the saddle here so they must say we are killing people". He said, "Guard the saddle while I go to raise the alarm to the Chief". It was on a Friday. He guarded the saddle

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until dark. Fusi did not return. When Bowman came he said that he had been ordered to come and see the saddle. They guarded the saddle that night. Next morning while they were waiting for Fusi to arrive they saw him appear on the hill. He came down to them and told them his mental patients had discovered the body in the donga. He said, "The matter has happened between us both. Most probably the Government will ask us about it." And the witness said, "Do you think I could stab myself with an assegai in the stomach?" By that he means, "Do you think I can murder a person and place his body in front of my house?" It was early in the morning as the sun rose that Fusi was standing on the hill. The suggestion about this evidence is that Fusi knew where the body was before it had been found. He pointed out the spot where the saddle, saddle-cloth and sjambok were found to Lieutenant Castle.

The next evidence is that of Trooper Hamilton of the Basutoland Mounted Police. He says on Saturday, March 6th, he went to Mamathe's to investigate the report about the body having been found. He went to see Chief Gabashane and from there he was taken to the spot where the body was found. He pointed out that spot to Lieut. Castle. The body was lying on its right side, almost the whole of the right side was in the mud. He found it at the spot O marked on the plan. The right arm was a little stretched forward. Lying on a bench in Court he demonstrated how the body was lying. The body was lying on its right side and hip and right elbow with the right arm flexed at right angles; with the right hand supporting the head; the head pointing towards the left shoulder; the lower portion of the left arm lying on the ground stretched out in front

of the face; legs stretched out, not quite taut; with knees and toes on the ground. In this position nostrils and mouth would not be in water and sand, unless the water was three or four inches deep, assuming that the surface of the ground was perfectly level. The body was clothed with two blankets, falling in front of the head, still pinned on to the neck. They had fallen over the head, away from the head. The trousers were still on, held up by a belt. There was no boot on the left foot. There was a boot on the right foot. He examined the body for injuries. He saw there was an injury on the left side of the mouth on both the upper and lower lips. He moved the body and as he moved it he saw crabs where the body had been lying. The right shoulder was lying on the ground. There were about four very small crabs about the size of a half-a-crown piece.

That day he took possession of the saddle, saddle-cloth, sjambok and handkerchief. The second boot was found by Fusi's wife on Sunday. Fusi's wife made a report to him, and as a result he found a boot which appeared to be the missing boot. It was still in the veld. The hat was also found there. He pointed out to Lieutenant Castle where he saw it and took possession of it. The point where those things were found is the point R. approximately 214 paces from M. where the saddle was found.

On Sunday he made an inspection for spoor. In the donga near where he found the body, there was something in the nature of an island, and on the southern side of the island he found a place where the grass had been trampled. There had been much rain and there were no footprints on the ground. The grass had been disturbed and trodden down.

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There was not much water in the donga, but when he raised the body there was water underneath it. It appeared as if the body had collected water there. On the Sunday he observed spoor on the main road. There were the tracks of a motor car that had stood there some days ago. The tracks showed that the car had come from the direction of Mamathe's and turned round. He did not attach any importance to it at the time. He was cross-examined in considerable detail as to these spoor with a view to showing that his evidence as to these spoor was not to be relied on. I shall deal with this matter later. He examined the blankets and found no blood marks on them.

I now come to deal with the evidence of Mapeshoane, Sothi and Sepalami. That evidence was given at great length. A very detailed and exhaustive cross-examination took place. I do not propose to follow either Counsel for the Prosecution or the Defence in going into all the details of this evidence. I will deal with this evidence as briefly as possible.

The witness Mapeshoane deposed to a conspiracy to murder entered into on the evening of March the 3rd at the residence of Chief Gabashane. He stated in evidence that that night No. 10 accused arrived at his house. He was in bed and got up. No. 10 said Chief Gabashane wanted him, and he went with him to where the Chief was. A short while after he arrived, No. 5 accused left and shortly after that he arrived accompanied by No. 11 accused, Maloi. The evidence of Mapeshoane is that when Maloi arrived at the meeting, Chief Gabashane asked him to sell his brother to him for £100, that the Chief Bereng was present, and No. 3, his servant, No. 4 the headman of Mamathe's village,

No. 5, No. 6 and No. 7 who occupied huts from Gabashane, and No. 10 who had been living in the hut with No. 5 accused, at Chief Gabashane's village. Fusi was not present at this meeting. As I have said, Mapeshoane deposed at this meeting that Maloi agreed to sell his relative to Gabashane for £100. The witnesses, Ntsane Ntai and Makhetha Ntai were called to corroborate Mapeshoane's evidence, as to the conspiracy to the murder. Their evidence is, at the instance of Maloi they accompanied him on the evening of March 3rd to the residence of Chief Gabashane. When they got there Maloi told them to stop there and he went on to the Chief's house. After a long time he returned. This evidence which, I believe, is consistent with the evidence of Mapeshoane that No. 5 was sent to fetch Maloi and returned with him very shortly. These two witnesses were interrogated by Lieutenant Castle in March of this year, and according to his evidence, gave an innocuous account of their movements on the way to and from the funeral they attended on March 4th. They said that they left Meleke behind because they wanted to attend to their cattle. They did not mention their visit to Chief Gabashane on the 3rd March. Lieutenant Castle said it was not easy to get statements at the outset of this case. The situation eased after the accused had been arrested.

I now come to deal with the evidence of the three accomplices, Mapeshoane, Sothi and Sepalami as to the events of March the 4th. They have all been given bad characters by Chief Gabashane and No. 4, the headman of Mamathe's village. Even if this evidence be accepted it is difficult to believe that they could have concocted the terrible story

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to which they have deposed. They did not make statements until after their arrest, and when they were sent for by Lieutenant Castle and interrogated, they came out with the story they have deposed to. Mapeshoane has a remarkable memory and he gave the same evidence in this Court, practically without variation, that he gave at the Preparatory Examination. He explained how he came to tell the very same story without forgetting anything and without any discrepancies. He said he spent his time thinking of what he stated in evidence at the Preparatory Examination. According to the evidence of these witnesses, Molemohi was in the first group of witnesses proceeding to Fusi's and Mapeshoane, Sothi and Sepalami were in the second group. As Molemohi's evidence has been abandoned by the Crown, there is no evidence as to what happened at the very beginning of the alleged assault on Meleke Ntai. Mapeshoane says he accompanied No. 10 accused on the evening of March the 4th to where his Chief wanted him; No. 10 denied this. Chief Gabashane ordered him to call No. 9 accused and Sepalami; No. 9 denies that he was called. Sepalami says that he was returning from seeing a woman that evening. Mapeshoane came out of a group of people, and said he had been looking for him. He doesn't mention No. 9 accused. Mapeshoane says he found No. 9 accused and Sepalami and returned with them. They went to the back of No. 4 accused's huts (point E. on the plan); Sothi said he was called by No. 4 accused and came to David's place where they found the others. Mapeshoane, Sothi and Sepalami all say that No. 1 accused, Chief Bereng, was in the group of persons before it divided. Mapeshoane, Sothi and Sepalami say that No. 2 and No. 6 accused went to where a motorcar was standing, at

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the corner of Twai's (point B. on the plan). Sothi says that when he joined the big group, No. 4 made a speech and said they were going to Fusi's to kill a person. He said he was going back. No. 4 accused said, "If you do we'll kill you." Mapeshoane and Sepalami made no mention of this. Mapeshoane and Sepalami say that the group went from No. 4 accused's huts along a footpath to the corner of a garden. No. 4 spoke and said they should go to Fusi's and kill a person. Sothi says he first met the group at David's place where it divided. Mapeshoane and Sepalami say No. 1 accused, Chief Bereng, was in the first group. Sothi doesn't place him in it. Mapeshoane says that the first group was followed by the motorcar and the second group followed closely after, and met the car on the main road. The first group went past and the car followed. They followed the footpath. The second group came after the motor car, and came to behind Fusi's place. He noticed the first group and motorcar were standing still. Suddenly he saw a horse come away from the group and so they hurried to get to the group. Sothi says there was a motorcar ahead of them at David's. He doesn't know who was in the car. He thought Ntoane and others. He did not see Chief Bereng on the ground. They moved off in two groups. He saw a motorcar going in the direction of Fusi's as they went on to Fusi's, but there were no lights on as it approached them.

In cross-examination he says he saw No. 2 and No. 1 in the car, on the left of No. 2. No. 2 was driving the car and Nos. 3 and 6 were also in the car. He thought Ntoane was also in the car. After a time he saw No. 2 drive away with No. 1 next to him. The motorcar stopped at Fusi's. Sepalami said in his evidence in chief that the motorcar went on the main road below. In cross-examination he says

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the motorcar followed the first group. It had dim lights until it stopped. It went along the main road and they along the footpath. The car continued along the main road the whole time up to the time of the assault. Sothi says that as they were walking they saw No. 4 accused speaking to a man on horseback. They passed No. 4 accused and went on. No. 4 accused caught them up and passed them and joined the first group. Sothi says that No. 10 got hold of the horse. The horse had been ridden by the deceased. Sepalami says that as they came near Fusi's, they saw a horse leaving the first group. Sothi must be mistaken when he says that he saw No. 10 holding the horse. Sepalami says that as they came near Fusi's, they saw a horse leaving the first group, the group stopped, there was no rider or saddle on the horse. Mapeshoane and Sepalami state that No. 1 accused, Chief Bereng, was present when the group assembled and when it split up into two groups, that he was in the first group, that No. 2 accused, Chief Gabashane followed in a motorcar, and that both were present at the scene of the assault.

I now come to deal with the evidence of what happened at the scene of the assault. Mapeshoane says, "When we arrived the man was being held down on the ground. There was much confusion and hurry and I just got hold of his leg". Then when he arrived he noticed No. 4 accused was throttling the man. No. 3 accused was suffocating him. He did not notice where each one held. While they were holding the man on the ground, No. 1 told Ntoane to go ahead with the work. Ntoane produced a knife and cut the man's lip. After he had cut the lip he handed the flesh to No. 1, Chief Bereng, and after No. 1 had got hold of the lip

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he said, "This man of yours has no blood. He is an unhealthy person". He says all the names mentioned (that is, the persons who formed these two groups), held the deceased down. No. 1 and No. 2 and Fusi, No. 8, did not hold the deceased. They stood there. No. 2 held a torch and No. 5 held a second torch. All the others were holding the deceased. He did not notice Fusi arrive. At the time Ntoane was instructed to cut the lips of the deceased he noticed him. No. 3 was suffocating the man. He had closed his mouth and nose. There was no way he could breathe. He used both hands. He was being throttled by No. 4 accused. He demonstrated on the floor of the Court how the throttling took place. A Sergeant of Police was placed on his back on the bench and the witness took up his position on the right hand side of the sergeant near his head. He placed his left hand under the head of the sergeant, with his four fingers towards the left of the neck of the sergeant, and his thumb at the right side of the back of the neck of the sergeant. He placed his right hand round the front of the neck of the sergeant, across the larynx, with his right thumb on the left hand side of the neck and his four fingers across the neck on the right side of the neck. The hyoid bone being between the thumb and the first fingers. He demonstrated in this Court how the lips were cut, i.e. beginning below the left nostril across the left of the upper lip and round to the right of the lower lip to opposite where the cut had started on the upper lip. No. 4 continued holding the man by the throat. He estimated that the whole work took about half an hour from the time that he seized the man's knees to the time the body was carried away. When he was carried away he was dead. He was cross-examined as to this

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assault and he says, "I saw how the lips were cut. You can imagine how terrible it was. It stands out very clearly in my mind. The actual killing cannot be removed from my mind." He did not notice the use No. 4 made of his left hand. He says, "Before the face was cut it was clear that this was to be a ritual murder". He knew that when they left home they were going to murder a person. He says that very little blood came from the lips, but there was blood. The other witnesses, Sothi and Sepalami, also gave detailed and circumstantial evidence as to the assault similar to that given by Mapeshoane. It is not necessary to refer to this evidence in detail. Sothi says that he didn't see any blood. Sepalami says that he was surprised to see no blood. These three witnesses also gave evidence in detail, particularly under cross-examination, as to the carrying of the body down to and disposing of it in the donga. It must have been a dangerous and perilous journey. I have already referred to some extent to the evidence of Ntsane and Makhetha Ntai. These two witnesses deposed as to the events relating to the funeral on the Thursday. They say that they went to the funeral at Mahleke's village, and when they left home to go to the funeral they scattered, they didn't all go together. They met after they left Mamathe's village. They eventually got to Mahleke's village and attended the funeral. There was food and drink there. The four who were there were the deceased, Maloi, Ntsane Ntai and Makhetha Ntai. They left on their return home and they left the deceased in the pass. They left him because his horse could not walk on the flat rocks and he could not race his horse as they did. Maloi said that they should race their horses. They asked why

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and he said to leave deceased behind. Ntsane Ntai from whose evidence I am reading said that Maloi said, "If you don't leave him behind you will see what is going to happen." They raced their horses after Maloi had first raced his horse, and they left deceased behind. When they came to Ntsi's on the western side near the road they met a group of people. They were following the footpath parallel to the main road. It was a small group. He couldn't say how many because it was dark. No. 11 remained and went to them on the footpath. He didn't notice what No. 11 did because they continued on their way. Maloi came on and caught them up. Makhetha asked who the people were he had gone to and Maloi said, "What do you want to do with it? You continue wishing to know other people's affairs." From the way he spoke to them they did not answer him.

The witness Makhetha Ntai gave similar evidence. The inference to be drawn from this evidence is that Maloi went to inform this group that Meleke Ntai had been left behind.

These witnesses were cross-examined as to their conduct in leaving Meleke behind and they did not come out of it well. I can find no sufficient reason for disbelieving their evidence. It establishes that Meleke Ntai was deliberately left behind at the instance of Maloi Ntai. These two witnesses say that Maloi went to the group of persons on the footpath and the evidence is corroborated by Moliko who deposed to seeing a group of persons on the night of March 4th above the main road, and hearing No. 11's voice soon afterwards on the main road. This witness quite obviously appeared to be telling the truth.

I now come to deal with the evidence as to the presence of a motorcar on the main road at the scene of the assault. I have referred to the evidence of Mapeshoane, Sothi and Sepalami, as to the presence of a motorcar on the main road and at the scene of the assault on the evening of March 4th. This evidence is supported by that of Moliko who deposed that he saw a motorcar at Twai's. Lieutenant Castle says that Moliko could not have seen a car through the trees at Twai's but the witness says he saw the lights of a car and heard the door banging. The car went on the main road in the direction of Fusi's. Ntsane and Makhetha Ntai did not see any car, but the reason for that may be that the car was not on the main road, at that time. It may be that they passed there before the car reached the main road. Mapeshoane identified the car he spoke of as that of accused No. 2. Sothi and Sepalami merely speak of a motorcar. Trooper Hamilton said that that Sunday after the finding of the body he found the tracks of a car which had come to a place near the scene of the assault, and which had turned in the direction of Mamathe's. He was cross-examined severly on this point, but no adequate reason has been advanced why I should reject his evidence on this point. There was evidence that the car belonging to Chief Gabashane became out of order on February 26th, and was under repair from February 26th to approximately the end of March. The witness Walters stated that he entered the employ of the firm of Dere and Glynn at Kolonyana on February 23rd, and that he fetched No. 2's car from Pholo's on Friday of the same week, and that the car was in his possession for at least six weeks. He was unable to produce any documentary evidence in support of the time he had the car in his possession.

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The evidence of Moliko, Trooper Hamilton and the other witnesses for the Crown to whom I have referred, satisfies me that there was a car at the times and places referred to in evidence on March 4th. It doesn't satisfy me that the car was that of the accused, Chief Gabashane.

I now come to deal with the medical evidence. Dr. Ogg found that the deceased, Meleke Ntai, had met his death by drowning. Such injuries as he found he attributed to crabs, though he said that the injury he found to the lips was not inconsistent with a knife having been used, as crabs were likely to attack a place where there was a wound. Dr. Ogg, in his Post Mortem report, stated that portion of both lips was missing from below the right nostril in a semi-circle. He also stated that in evidence in this Court. When he was asked to illustrate this on his own upper and lower lips, he did this from below the nostril to the right of the upper lip down to the middle of the lower lip. Dr. Ogg did not, in his Post Mortem report, state which portion of the upper and lower lips was missing. It was not until he gave evidence in this Court when recalled that he demonstrated which portion of the lips was missing. The witnesses, Mapeshoane, Sothi and Sepalami, all stated that the upper and lower left lips were cut. Trooper Hamilton in his evidence stated that he saw an injury to the left side of the mouth on both the upper and lower lips. I see no reason for doubting this evidence, particularly as Dr. Ogg did not state in his Post Mortem report which portion of the upper and lower lips was missing. The argument therefore that the evidence of the witnesses, Mapeshoane, Sothi and Sepalami, that the upper and lower left lips were cut cannot be accepted, is untenable. Dr. Ogg found no cut

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on the gums of the deceased. He said that if a sharp knife had been used at night in a hurry there might or might not be an incision in the gums of the deceased. Assuming the cutting was done from outside and at right angles to the gums it is possible that there might have been ^{marks} / on the gums. It depended on whether the lips were held by the fingers. He would expect the gums to be cut if the lips were held with the fingers. If the lips were held out it was quite possible that the gums would not be cut. Mapeshoane said he would have noticed if Ntoane had taken the lips in his left hand and lifted them up. Sothi demonstrated that the lips were pressed together. At this distance of time it seems to me it would be difficult for the witnesses to remember exactly how the lips were held, if at all.

I do not think that the fact that no marks were found on the gums establishes that the lips were never cut.

No blood was found either on the body or blankets of the deceased. Whilst the accused was being throttled there was pressure on the carotid artery which, according to the evidence of Dr. Whitworth, as long as that continued it would stop bleeding, but as soon as that pressure was released the blood would flow so long as the heart continued to beat. The witness Mapeshoane said that there was little blood. The witnesses Sothi and Sepalami said there was no blood. Sepalami said that Chief Bereng said, "This man is no good; he has no blood", when he was handed the flesh by Ntoane. (I have already referred to what Mapeshoane said). This remark is so unique that it does not seem to me that it can have been concocted. It must be accepted as having been made. Dr. Whitworth said blood would not flow as easily from a cold sick person as in a well, hot one. The deceased was wearing two blankets at

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the time he was found in the donga, pinned round his neck. Dr. Whitworth said if the deceased was wearing a blanket round his neck he ^{would} / expect to find blood on the blankets. It would probably fall on his neck and dry blood would be found on his neck. If it was correct that the body was lying in cold water it would tend to wash away the blood and clean the blankets. On the face it would be removed more easily than on a blanket, even if a blanket had been lying in water you would expect to find some marks on it. The evidence is that it was raining on Thursday and the body and blankets must have been rained on and this rain and the flow of water from the rain down the donga may well have washed away the blood, which the evidence showed to have been small in quantity, from the body and the blankets.

Dr. Ogg found no bruises on the body of the deceased. He found no signs of human agency on the body, no signs of any assault. The body was subsequently exhumed and examined by Dr. Whitworth, who found no signs of any assault to the neck. Dr. Ogg stated he was in Court when the witness Mapeshoane demonstrated how the deceased was throttled, with a fair length of time and a fair degree of force he would expect to find bruises in the tissue of the neck where the fingers and thumb had been. Bruises would depend on how long and how hard force was used. If the body of the deceased had been thrown into the donga from a distance of 10 to 15 feet, he would expect to find bruises on the body. The nature of the bruises depended on the nature of the ground on which he fell. If he landed in thick mud there would be very few bruises. If he was relaxed there would be very little bruising. Dr. Whitworth

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said if the body had been thrown from a height of 13 feet on sharp stones, he would probably find bruises, but not necessarily with flat stones.

The witnesses for the Crown who testified to the throttling all thought the deceased had been killed. They were mistaken, because it is clear that he was still alive when taken to the donga. He appears to have put up little resistance, and in such circumstances it would not be necessary to use much force. The circumstances that there were no signs of an assault on the deceased, cannot outweigh the evidence of the witnesses I have referred to that an assault did actually take place. The story told by them is a terrible one and as I have said, it is inconceivable that it should have been concocted. The deceased was wearing trousers and two thick blankets, and it is conceivable that, owing to this, he sustained no injuries when being dragged from his horse, pressed on the ground, carried to the donga, and thrown into mud, water and water-borne stones. There is some evidence that I have omitted to refer to. There is the evidence of two women who resided at Fusi's, Malineo and Mathabo, that on the evening of March 4th Fusi left their huts where he had been with them and returned late at night, and asked for food. This is to show that he was out that night. There is also the evidence of Mampane Mothobi who said that he lives 700 yards away between Fusi's and his village, and he said on a Thursday night in March a man arrived whom he didn't know, knocked at the door and he asked, "What is it? " The man said, "Father, come out. There is a man on the road. The man has been thrown from his horse. He is drunk. His people have left him behind". He asked who

/he

he was and the man said he was Fusi. He said, "Go to the headman". He said he had no power. Then the man left.

That evidence is to show that Fusi was out that night on a somewhat curious mission, and that for reasons best known to himself he wished to get Mampane Mothobi out of his hut that night.

The evidence of the two women and the last-named witness is only evidence against Fusi.

I now come to deal with the evidence for the Defence. I need not deal with that evidence in detail, for it is a total denial of the evidence of the Crown witnesses and in particular that of the accomplices. Titimus, who was originally No. 12 accused, first gave evidence; then No. 3, No. 1, No. 2, in fact all the other accused in turn, and each and every one completely denied any association with the accomplices. The evidence for the Crown was that all the accused, with the exception of Nos. 8 and 9, were present at the meeting on March 3rd. All of them denied in evidence there being such a meeting or that they were present at the meeting. They and No. 9 accused deny that they were present in the group which assembled on the evening of March 4th, that they proceeded to the scene of the assault, and took part in it.

No. 8 accused denies that he was present at the scene of the assault on the evening of March 4th.

No. 10 accused has set up an alibi as to the night of March 4th. As I have said the evidence of the accused is a complete denial of the evidence of Mapeshoane, Sothi and Sepalami. They deny that they took part in a conspiracy to murder and in the subsequent assault on and
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disposal of the body of Meleke. The presence of all the accused, excepting No. 8, and including Nos. 10 and 11, at the meeting on the evening of March 3rd at the house of Chief Gabashane, has been established by the evidence of Mapeshoane. There is also evidence that the accused, with the exception of Nos. 8 and 11, formed part of the group which assembled behind No. 4 accused's hut on the evening of March 4th, and proceeded to the scene of the assault and took part in it. I have referred to the evidence which identified No. 1 accused, Chief Bereng, as having been present at the meeting on March 3rd when the conspiracy to murder was hatched, to his presence in the group which assembled on the evening of March 4th and his proceeding to the scene of the assault and to his presence at the assault itself and to the part he took therein; also^{to}/the evidence which I believe, that after the flesh had been cut from the lips of Meleke, he said, "This man has no blood". Chief Bereng stated in evidence that during the time he was staying with No. 2 accused he did not leave the house except on the occasions when he went to Ficksburg and Maseru. He stated that he was suffering from gout and was unable to walk at the time. His evidence that he did not leave the house is supported by that of Accused Nos 2, 3, 5, 6, and 7 and Titimus. If he did not walk he must have travelled by car. I believe the evidence of Mapeshoane, Sothi and Sepalami which identifies him with the assault on the accused.

As to Chief Gabashane, there is the evidence which I believe that he instigated the conspiracy to murder Meleke and incited the accused Maloi to make Meleke Ntai the victim of a ritual murder. There is evidence that he was present at the group which assembled behind No. 4 accused's

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hut on the evening of March 4th, that he proceeded with No. 6 by car to the scene of the assault, was present thereat, and gave the order for the disposal of Meleke Ntai in the donga. Then as to No. 3, the evidence of Mapeshoane is that he was present at the meeting on the evening of March 3rd, was in the group which assembled behind No. 4 accused's huts and proceeded to the scene of the assault and took a prominent part in it. The evidence is that he held his hands over the face of Meleke Ntai whilst No. 4 accused was throttling him.

As to No. 4 accused, there is evidence that he was present at the meeting on the evening of March 3rd; that he took an active part throughout in carrying out the conspiracy to murder Meleke; that he was the spokesman when the group assembled on the evening of March 4th, and that he was the man who throttled Meleke. His evidence that he was sick at the time, suffering from sore eyes, and confined to his hut, does not ring true.

As to accused Nos. 5, 6, and 7, the evidence identifies them as having been present at the meeting of March 3rd, in the group which assembled on the evening of March 4th, and as to their proceeding to and being present at the scene of the assault, taking part therein and assisting to carry the body of Meleke to the donga. As to Fusi, No. 8 accused, Mapeshoane and Sepalami depose to that he was present at the scene of the assault, and Sepalami stated that he held Meleke by his right hand, that he remained with Nos. 1 and 2 accused when the body was removed to the donga. There is evidence that he was present on the hillside above the donga in the early morning of March 6th when the body of
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Meleke was found and that he had given an order to Paulus to take the patients to wash early that morning, contrary to the general instruction given to Paulus. There is also evidence that he was abroad that night. I refer to the evidence of Malineo Mathabo and Mampane Mothabo. He endeavoured to entice the last witness out on a pretext that someone was in trouble on the main road. His evidence is a bare denial of everything and he states that on that particular night he was ill.

As to No. 9 accused, the evidence does not establish that he was present at the meeting of March 3rd, but there is evidence that he was called to the gathering of the group on the evening of March 4th on instructions of No. 2 accused, that he proceeded to the scene of the assault, took part in it and helped to carry Meleke Ntai to the donga.

As to No. 10 accused, there is evidence that he was present at the meeting on the evening of March 3rd, that he was a member of the group that assembled behind No. 4 accused's huts on the evening of March 4th, that he proceeded to the scene of the assault, took part in it, and helped to carry the body of Meleke Ntai to the donga.

Sothi identifies him as holding the horse at the scene of the assault but he must be mistaken in this, because Mapeshoane and Sepalami say - and Sothi was with them - that as they hurried to the scene of the assault a riderless horse emerged from the group in front of them.

No. 10's evidence was that he proceeded to a funeral at Mahleke's on March 4th, that he left the funeral with Mahlaha and Tsiu for his home at Mahleke's and that he spent the night there. Setotonyana stated in evidence that he saw No. 10 accused go home with Tsiu and Mahlaha and this

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witness says he saw him early next day at Mahleke's. The witness Tsiu deposed to the fact that he was present at the funeral and at the end of the funeral went home with No. 10 accused, slept with him and shared his hut.

Mapeshoane says that he was called by No. 10 to the meeting of March 3rd. It is admitted that No. 10 was at Chief Gabashane's that evening; moreover he had been there for some months sleeping in the same hut as No. 5 accused. He was used as a messenger by Chief Gabashane. The two witnesses to whom I have referred were only asked recently to depose to this alibi. It is a stale alibi and I am not prepared to accept it in view of the evidence that he was present when the group assembled on the evening of March 4th, proceeded to the scene of the assault, took part in it, and helped to carry Meleke Ntai to the donga.

As to No. 11 accused, it has been proved that he was a party to the conspiracy to murder on the evening of March 3rd, that he sold Meleke to Chief Gabashane, that he left Meleke behind on the return from the funeral at Mahleke's and that on the way back he stopped to speak to one of the group proceeding to the scene of the assault, that he subsequently admitted to the witness Meleke that he had done so, and that when he heard on the Friday that Meleke was missing, he made little or no effort to search for him.

His evidence is a complete denial of the evidence to which I have referred.

Mapeshoane was cross-examined in great detail by Counsel for the Defence, and in my opinion his evidence was not shaken. He gave his evidence well and conveyed the impression to me that he was speaking the truth. I

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can find no sufficient grounds for rejecting his evidence. His evidence is corroborated as to the meeting of March 3rd by Ntsane and Makhetha Ntai.

As to the events of the evening of March 4th, he was corroborated in material respects by the evidence of the witnesses Sothi, Sepalami and Moliko. It is true that Sothi's evidence is, in many respects, at variance with that of Mapeshoane. He is an unintelligent man of weak character, but in my opinion he tried to tell the truth to the best of his recollection and ability. Sepalami's evidence was substantially in agreement with that of Mapeshoane. **As I** have said, they told a circumstantial and terrible story with a wealth of detail and I cannot believe that it was concocted. The deceased Meleke was dragged from his horse, throttled, suffocated, his lips were cut, and when he was thought to be dead he was carried to and deposited in a deep donga, containing mud and water, and as a consequence of having been thrown into the donga in the condition he was, he lost his life by drowning, and that constitutes murder.

For the reasons I have given, I find that the guilt of all these accused has been established beyond reasonable doubt and all the accused will be found guilty of murder.

I wish to state that the two Administrative Officers as well as the Native Assessors, agree with the verdict.

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REGISTRAR: Bereng Griffith Lerotholi, have you anything to say why sentence of death should not be passed upon you?

BERENG GRIFFITH LEROTHOLI. Yes. I should like to say before Your Lordship that the whole of this matter is merely a lie which has been concocted, so that we should be in the position in which we are now, but as to the man that first concocted the story I am unable to say who it is. I might also add that our Counsel spoke very strongly in this matter to try and establish our innocence. There is not one stone which they left unturned. As far as I could understand myself, the Prosecutor was unable to establish as to how the deceased met his death. I might touch upon one or two points. Mapeshoane states that the plan was made on the 3rd March, and he states that after his arrival No. 5 accused was sent to go and call No. 11 accused, but the two sons of Ntai who state that they accompanied Maloi do not state that anybody else went out to call No. 11 accused. They state that Maloi went into the skerm himself, and the witness Mapeshoane states that on Thursday when he left that residence he was ordered to call two more and that he carried out that order. Another strange thing which is a miracle, is where he did not even come to the junction of the roads and he was able to know that there was a Buick motorcar at that place, which should go to show the Court that this was only concocted because Chief Gabashane is known to own a Buick car. I shall go further: As the evidence goes, when they left that place they knew they were going to Fusi's. They do not say, "in the direction of Fusi's" they actually say they were going to Fusi's, and this is very strange as this man had not been tethered

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there or shut up in Fusi's house, how it was known that he would be found at Fusi's. It is said that as the procession went toward Fusi's there was a motorcar which had its lights on, but the other two men who were with Maloi did not see the motorcar which is very strange as to how they could fail to see the car. Here I find very great difference of procedure between the Courts of the Europeans and our Native Courts, because right through the case I find His Lordship states, "So-and-so's evidence states that," and that the evidence of the accomplices says that the motorcar was on the road, but Your Lordship says that it may be that at that time the motorcar was not on the road or possibly it was still at Ntai's. I may point out another thing: one of the sons of Ntai states that when they left the funeral no person had yet left the funeral, and Ramabanta, No. 10 accused, who is alleged to have called Mapeshoane on the night of the 3rd, was present at the funeral, and it is very strange as to how a person who is going on foot could pass the men who were riding to have got to Mamathe's and then to have turned back in the opposite direction and then to have met the horsemen, to have met these men who themselves admit that they were riding very fast. The sons of Ntai state that they left Meleke at the pass because his horse could not walk on the flat stone, and it is very strange, seeing that they had already left him behind, could it be necessary for Maloi to say, "Let us leave him behind?" Your Lordship, if you are convinced by the evidence of the Crown witnesses, give your sentence, but the truth of God is the whole of this thing has been concocted. This matter of ritual murder with which I stand charged here,

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I stand much higher than to condescend to such a thing. I am the second son of the late Paramount Chief Griffith, the oldest male descendant of the late Paramount Chief Moshesh, as has been stated. I have no thought whatever that dead flesh can help to raise any man's status. I am proud of my position. I have no thought whatsoever that flesh can change my position or turn me into the son of a King or perhaps the son of God! If you are satisfied with the evidence, do as you wish, but as for the case, it has been concocted.

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REGISTRAR: Gabashane M ha, have you anything to say why sentence of death should not be passed upon you?

GABASHANE MASUPHA: My senior brother has said all that is necessary. All I might say is to add two or three words in addition to his, that is that if Your Lordship is satisfied with regard to this thing that we have denied, Your Lordship should proceed. It may be perhaps after this case there will no longer be any ritual murders in Basutoland, because with our eyes, the eyes of our souls, we can see on the other side of the horizon what our Government is after. This matter has been concocted and is a cruel matter against us.

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REGISTRAR: Mojautu Nonyana, have you anything to say why sentence of death should not be passed upon you?

MOJAUTU NONYANA: Yes, Your Lordship, I have a few words to say although my Chiefs have said most of what I was

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going to say. What has been said by Chief Bereng and what has been said by Chief Gabashane is quite enough but I should like to add the following words: The evidence which will lead me to the grave is evidence which has only been concocted in conjunction with the Government, and as I am a nonentity, I can do nothing. The truth is I didn't even know this man, Meleke, and I have no blood on my hands. These witnesses which Your Lordship believes, their evidence is not in agreement excepting in portions where it is agreed Your Lordship puts the evidence together and makes it agree. What can I do? I am a nonentity. I cannot withstand to the force of what has already been concluded. All these accused here, I know not one of them, even the witnesses I only know Mapeshoane. This only shows that I am bound with my Chief because he happened to be at Mamathe's on that occasion and I was with him. I shall not avoid death if it comes straight to me, but what you should know, Your Lordship, is that I am absolutely innocent as you see me standing here. I used to believe that there were these ritual murders, but today I am satisfied that there are no ritual murders, these things are merely concocted by the authorities. I don't know if I may say more, I am nothing but dust - you can blow me away as you wish, but I am not at all guilty.

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REGISTRAR: Makione Mphiko, have you anything to say why sentence of death should not be passed upon you?

MAKIONE MPHIKO: Yes, I have something to say, but very little. It is agreed that I was a sickly man, but because I was a servant of Chief Gabashane, Your Lordship therefore proposes to pass sentence of death upon me. The witnesses have

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stated that on that occasion "Makione" was sick, but how can I resist the wish seeing that it comes straight into my face, I can't avoid it. But it remains there is no truth in this. Molemohi told the court that I did not go and call him. After he had run away from custody as he was longing for his home, he passed his own house and came straight to my house just to go and smear me with this scab. Sepalami states that it was said that they would be killed, but how can that be - he had already passed his house and he says he was going toward my house. He should have gone off the path into his own house, as near as this witness box. This is a mere concoction and nothing else. I have finished, Your Lordship.

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REGISTRAR: Sankatane Masupha, have you anything to say why sentence of death should not be passed upon you?

SANKATANE MASUPHA: The first reason that I should like to place before Your Lordship, I ask Your Lordship to look at me and to look at my two Chiefs and to see if I am fit to serve these two chiefs for such a great way. Where are the chief councillors who should do such work, therefore, Your Lordship, you should know that Mapeshoane's evidence is not true. It was merely evidence wishing that Sankatane Masupha should be killed, merely because he is nowⁱⁿ/the hands of Chief Gabashane. Your Lordship, please look carefully into the matter. I confirm the words spoken by my two senior brothers, Chief Bereng and Chief Gabashane, that there is a plan about this matter - it is not that Sankatane Masupha is the man sought after, or these other people here, but the people that are sought after are Gabashane and Bereng

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because there are reasons to which we can point on the other side of the horizon. The cause is not the death of Meleke - if you can think the matter deeply you will find the cause is not the deceased. The evidence is not congruent, it differs. I am only a small insect on ashes under your feet therefore I ask Your Lordship to carry out the wish of those people who say we have committed murder, but be careful of the other side. These things will not be agreeable to Court twice or three times.

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REGISTRAR: Mosiuoa Masupha, have you anything to say why sentence of death should not be passed upon you?

MOSIUOA MASUPHA: Yes, I say that Chief Bereng has already spoken and also Chief Gabashane. All the evidence that was adduced against us here is not true. I add again that that evidence was not true, but if Your Lordship has already found that I am guilty, let Your Lordship carry out your wish.

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REGISTRAR: Kemaketse Masupha, have you anything to say why sentence of death should not be passed upon you?

KEMAKETSE MASUPHA: I have already denied this charge. I still deny the charge. All the reasons already advanced by my two Chiefs I agree with and all the other accused who have already spoken. Those are the words which I thought I was going to mention. I don't see how I can be considered guilty, because God knows that we are not at all guilty. We are not guilty of shedding Meleke's blood.

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I conclude by saying whatever Your Lordship may consider - give your sentence. This, of course, will remain to be seen by the One who is higher than both of us. That is all I should like to say.

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REGISTRAR: Fusi Rakokoli, have you anything to say why the sentence of death should not be passed upon you?

FUSI RAKOKOLI: I would like to state here the evidence against me is not true. I was arrested with Mapeshoane, just the two of us, and I and he were promised money. It was said that if I would not carry out this thing, that Chief Bereng and Chief Gabashane should be killed, they said therefore because I refused to carry that out I should also be charged with murder. Mapeshoane has been offered £700 and I was promised £700. How can I go into the midst of a group of people while I was not present at the planning of the murder, but even if there are two men I would not go amongst them at night. The Sergeant of the Teyateyaneng Police and the police officer there, they are the people who offered me this, and also the Corporal Maiketse. Now I should like to disgrace the Government because they themselves disgraced me. We have been promised amounts of money - we were promised money so that we could have Chief Bereng and Chief Gabashane killed. Sergeant spoke to me about a certain woman, Mofakotsani, at Mokhotlong who was killed and he said that she had been killed exactly the same way/^{as}the the deceased. I did not own the deceased at all, but if you want to kill me you had better do so, Your Lordship. Makhetha was
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charged with murder and he was removed from amongst us in gaol. How can he become a Crown witness? Do as you wish, it was said that I would die of being killed by other men and women will die of labour.

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REGISTRAR: Seferi Ntsoso, have you anything to say why the sentence of death should not be passed upon you?

SEFERI NTSOSO: Yes. I start by saying that the evidence which has caused my conviction is not true. I say this because I was one of those who were arrested at the beginning of the investigation. I was with Sothi and I was shut up in the house day and night for three months. It was said that if I did not confess I would be killed as, in fact, here it is now, I am to be killed. It was said that I should say that Chief Gabashane and Chief Bereng are the people who caused the murder so that then I would be safe. There is no truth from the evidence given by all those witnesses. They have all lied. I have committed no murder, but in your exalted position, we cannot argue with you if you have given a word. Perhaps you, yourself, know why you want to kill us. Because of this untrue evidence, I place all my affairs in the hands of the High Court.

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REGISTRAR: Ramabanta Mahleke, have you anything to say why the sentence of death should not be passed upon you?

RAMABANTA MAHLEKE: I start by saying that the words spoken by the two chiefs, the senior Chief and the junior Chief ... did Your Lordship hear that Chief Gabashane stated in the Court here that on that particular Thursday I was at Mahleke's?

/You

You have also heard that my witnesses said that I was at Mahleke's. The sons of Ntai who had gone thereto bury Tlatsoenyane, I was with them. How was it possible for me to fly, leaving the horses behind, from Mahleke's. I didn't even have a horse, perhaps it could have been supposed that I raced my horse fast. When the time has arrived we shall meet with Mapeshoane and the other witnesses - we shall meet them on the way to Heaven. Your Lordship, please wash your hands so that the blood from us should not spoil your hands. I conclude by asking for mercy on my own behalf and on behalf of these other people. I have finished, Your Lordship.

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REGISTRAR: Maloi Ntai, have you anything to say why the sentence of death should not be passed upon you?

MALOI NTAI: I have something to say although one cannot preve death. Death cannot be stopped. I agree that you are not a prophet. If you are a prophet I would not be standing here this moment. This is the first time I have been arrested. This is the first time that I have appeared before the European Court. This is the first time that I have had experience of the police methods, this very year. I am glad, Your Lordship, that you have given me this opportunity of saying a few words so that I may die after having spoken. I think, on the 1st of March, Chief Gabashane called a very big pitso at our home. This was at Teyateyaneng camp and there there was another Chief who spoke, it was the Resident Commissioner. What he said was, "This land of Moshesh is not spoiled", he said that there were bad ritual murders being carried out. He said that each person, if he

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finds there is conspiracy to kill another person, even if that conspiracy is being done by big chiefs like Chief Gabashane, he said that that person should go and report to the Government, so that the Government could take up the matter before the person could be killed. I feel very sorry indeed. During the same week, on the 3rd of March, I went from my home with Makhetha to this pitso and Chief Gabashane was also present at the pitso. Makhetha says I woke him up at night on the 3rd day and that he accompanied me to the Chief's place. I say this is not true, it is false. Makhetha and Ntsane would ... we have our own local headman who rules over me and Makhetha and Ntsane, through whom we get any messages from the Chief and then the local headman picks out one of the young men to carry out the order from the Chief. Chief Gabashane would not send a message direct to me to call Ntsane and Makhetha at night. I don't think that Chief Gabashane even knows these men. Ever since Chief Gabashane was placed as a Chief, he has never sent me on any errand, he doesn't even know that I have any person to order or that I have none. I am only sent by the Court staff to send a message to my headman and then on my return from the mission I report to the Court. I never went direct to Chief Gabashane. I think I was arrested on the 7th of March and now I have been nine months away from my children, under arrest. I was shut up very cruelly by the police officer ... where is the police officer? He is not here - I don't see him ... the police officer of Teyateyaneng, the Sergeant, and the police. One of the policemen here Maikhetse. I found Makhetha and Ntsane there, we were shut up together. I am sorry to hear them say they were shut up separately from me, we took a whole week being

/questioned

questioned about Meleke's matter. We were questioned standing together. It was said that we, the three of us, had killed Meleke or that we had other people to assist us. Ntsane and Makhetha denied. I was removed from them, it was said that I was hardening them. When I was alone I was asked a question in the following words: "You, Maloi, were ordered by Chief Gabashane to kill Meleke. You were with others," but the names of the others were not mentioned. "You were afraid that you would be killed", then I said they knew nothing about it. Then afterwards the question was put in this form: "Say that you were ordered by Chief Gabashane." This was said by the police officer - this was said by the Sergeant - this was said by Maikhetse and Mahlomola, Mahlomola Thlemoli. I said that they knew nothing about it. They said afterwards, "Yes, you should deny because you have been bribed". Then they said, "You should agree so that you must turn into King's evidence and have nice food". They said that one of Makhabane's men agree very late to turn King's evidence and therefore he was not allowed to give evidence. "From here you'll be killed and you will leave your children behind." Mahlomola said that he knew my house, knew my children and how many there were; he said that I was doing a very bad thing by agreeing to leave my children behind because of some other person. The Police officer said that Tsenuli was interpreting that on that occasion Maikhetse failed to interpret. He said, "But why are you sympathising with Chief Gabashane? You have your own children, you have your own cattle, you have your own land, why don't you mention his name? Are you to be killed without mentioning it?" I said, "You had

/better

better kill me if you like. I am just like a sheep, but I know nothing about the killing of the deceased". As time went on, the accused were arrested at Mamathe's. Ntsane and another were shut up for two full months without seeing the sun, and they came out when the third month had gone three weeks, and they were sent back home. When the Chief was to be arrested at home I was ... the door was open for me where I had been shut up, there was the Police officer, the Sergeant and Maikhetse. When I went outside I saw Fusi and Mapeshoane. The Police Officer asked me if I had seen Fusi and Mapeshoane and I said, "Yes". He said, "Do you still deny, even today?" I said that if I don't know a thing I shall not bind myself and say I know it, and he picked up a paper from his table which he read out to me. He read out the names of the people who killed Meleke, these accused here. He said, "These are the people who killed Meleke". And then when he finished he said there are these other three and he read the names of Makhetha Ntai and Ntsane Ntai. Then I was shut up again. Then the following day I saw them escorting Mapeshoane to the office behind where they usually force people to confess. I could see him through the hole in the door. That day I heard nothing further. The following day I was called - I was placed behind something like this prisoner's dock and the Sergeant stood where he was facing me and they asked me to listen. Then Mapeshoane was brought in. I know what Mapeshoane said on that occasion. Mapeshoane gave the names of all these accused, as he said in this Court. Then he said he found three sons of Ntai in the Khohlong house. He didn't see me, I was put at the back of the dock so he spoke not knowing I was there. I was only looking at the

/sergeant

Sergeant. Then he went on to say that the three sons of Ntai had gone there to sell Meleke. The Sergeant asked him if all the three sons of Ntai had spoken. Mapeshoane said that only one of them spoke. Mapeshoane said that I was the only one who spoke to Gabashane and he said that all the other people were quiet and also Chief Bereng was quiet. He said that Chief Gabashane asked that I may sell him Meleke. He said that he did not hear any agreement reached. The sergeant asked him if the other two sons of Ntai had agreed because of the money offered, he said that he did not hear that agreement. He said that each one of us was offered £100 - the three sons of Ntai - that was £300. After he had made this statement he was taken out of the office. I was then told to come out from behind the prisoner's dock. I was asked if I had heard what Mapeshoane said and I said, "Yes". They said, "What do you say about what you have heard?" I said, "It is all lies". They said, "You're going to be killed". I said, "Well and good. I have always said that you can do as you wish, I am not going to lie". He said, "Who is your witness?" I said, "My witnesses are Makhetha and Ntsane." He said, "They are going to be arrested, Makhetha and Ntsane." And the next day I actually saw them under arrest. I was let out again next day. On that day I was placed face to face with Mapeshoane and they asked me to sit down. They asked Mapeshoane in my presence if he knew me, and as I was haggard as I nearly died because of being shut up alone, Mapeshoane was unable to identify me. He looked at me closely, then late afterwards he said, "This is Maloi Ntai". Then they asked him to make a statement. On that occasion he spoke in my presence. Then he said, "I'll speak plainly." Then he said Chief Gabashane

/asked

asked Maloi Ntai to help him sell his brother Meleke to him and then on that occasion he mentioned my name alone and that he offered me £100. Mapeshoane said that in order that an agreement could be reached. Then he heard "Maloi" say that somebody had died at Mahleke's and that they would all go together to the funeral accompanied by Meleke. I say it is a lie when Mapeshoane says I sold a person for £100. How can I sell a person of Chief Gabashane? I am a man of Chief Gabashane in the same way as the deceased. Why didn't Mapeshoane, because of the instructions given by the Resident Commissioner, only a few days ago, go to the Government and report? The same applies to Makhetha and Ntsane, why didn't they report? They say that they had this from me - I'm not the Chief. How did they believe that the words I told them came from the Chief? The deceased was more closely related to them than to me. He belongs to their own skerm. Why did they not report to Ntai when they came home? Why didn't they report to the headman? Or to any person in the village? Why didn't they say that I had done a strange thing that night? Because even at that time it was fearful to travel at night. Molemohi has now gone back on the statement he made on the day of his arrest. He was shut up for three days, and I was called into the office where he was and he stated that he had seen me at Mamathe's one night. He said it was raining. He says we stood behind Makione's hut and were speaking there. He said that it was at night and he was relieving nature near an aloe hedge. Today he gives a different story. He now

/says

says he saw me at David's place. That I was as close to him as Counsel is. He says he was not able to see the blanket that I was wearing. He didn't see the hat that I was wearing, but he recognised me by my features, but he says it was very dark. Do you consider that there is truth in that, Your Lordship? He says he was in ^{the} /first group when he saw me; that I was speaking to No. 4 accused, Makione. He says that Makione left the path and went across to the main road. He says the main road was as near as that ... (witness indicates). Sothi states he was in the back group and was with Mapeshoane and Sepalami. He says he saw the man leave the road going towards him. Sothi points the distance to outside the Court house. Sothi states it was still light enough when he saw me do this and he was able to identify me from a distance.

HIS LORDSHIP: Now, it's time you came to an end. You are just taking up the time of the Court - it's time you came to an end.

MALOI NTAI: I shall never come to an end, Your Lordship.

HIS LORDSHIP: I know, that is why I am going to stop you.

-----oOo-----

S E N T E N C E.

HIS LORDSHIP:

The sentence of the Court is that each of you be taken from the place where you now stand back to the place of custody and at a time and place to be decided by His Excellency, the High Commissioner, you be hanged by the neck until you be dead. The question of compensation is left to the Native Court.

-----oOo-----

SHORTHAND WRITER'S CERTIFICATE.

I, the undersigned, hereby certify that the
aforegoing is a true and correct transcript
of the evidence recorded by me in the case
of Rex vs. Bereng Griffith Lerotholi and
eleven others.

A. Nass

A. NASS.
SHORTHAND WRITER.

ANNEXURE "A".

CIRCULAR No. 28 of 1946.

No. 17.

Office of the Paramount Chief,
Matsieng,
BASUTOLAND.

Chief
.....
.....

Chief,

I greet you Chief.

I remind you my circular letter No. 1 of 1946 which embodied my reprimand on the practice of Ritual murders.

2. Now that it appears there is no change in the situation, and matters actually appear to be getting worse, I find myself compelled to re-issue order which will bring this matter to a close. It shall behove every district chief, chief and headman, whenever there is a report of alleged ritual murder to sound the alarm and make immediate investigation into that allegation and further offer the Government every assistance in his power. This is the duty of every responsible person.

3. As you are aware Chief, the name of the Basuto Nation, above that of other dark races enjoys reputation of being industrious, honest and loyal to the Government of His Majesty the King. This reputation has been built by the actions and deeds of the Basuto. It stands to reason therefore that all disreputable deeds will gain the same widespread advertisement, which factor will not only destroy our good name but will cast such a slur on the chieftainship as will result in the withdrawal of the privileges and powers of the chiefs.

4. I cannot pass over this matter without giving you Chief, a severe note of warning. In these ritual murders your names are often mentioned and the people say that they are ordered by you. As I cannot fathom your secret feelings these sayings may be true or may not be true. If they are true it would be a great calamity for Basutoland to fall in to disgrace on your account. These ritual murders are a new outgrowth and occurrence in Basutoland, and were never a practice with previous chiefs. You must know that God cannot but permit that the perpetrator of such a deed become unknown, further, take notice that whoever is found connected with these matters will be deprived of his powers and privileges.

5. I hereby instruct and order, therefore, whatever person who shall have heard or known of such matter and failed to report as instructed will have to answer for himself in the same way as the perpetrator of the deed. Finally, I wish to direct these remarks or directives to every Mosuto and warn them that should they ever receive instructions from their Chiefs to kill a person, they should, without delay, report the matter to me so that I may take up the matter with the Chief concerned. Here is

/my

my order and it rests with you to choose whether you will take it and report all intended ritual murders to me or whether you will take that of the chief or headman to kill a person; as is often the defence of many persons to charges of this matter that they committed the deed on the orders of their chiefs.

6. Every person who is involved in a ritual murder charge who pleads for defence that he perpetrated murder on the instructions of his chief will be answerable for the instruction contained in this Circular Letter which says, "You must refuse and report to the Paramount Chief any orders to perpetrate a murder otherwise your defence shall not be accepted. Take, therefore, as my orders, who are your Head, and deal no more in these actions which you claim to receive from your Chiefs.

With greetings,

I am,

(signed) MANTSEBO SEEISO

PARAMOUNT CHIEF.

ANNEXURE "B".

AT INSPECTION IN LOCO.

MAPESHOANE, sworn states:

Judge: I want you to point out the spot where you caught the deceased? Show me the spot where he was caught and pulled off his horse? Just about there. (Witness points out spot). This is where he was operated upon. What spot is this? -- This is where we found him on the ground.

You do not know how he was pulled off the horse because you were not there at the time. -- No. This was the spot where you say the deceased was operated upon? -- Yes "K".

The nature of the ground is uneven? -- Yes.

By Grobelaar: Where did the deceased lie? -- Just about here. (Shows).

There are a few stones lying about? -- Yes.

Judge: The witness did not indicate "K" as the exact spot but the approximate spot.

Where did you see the horse coming out of the crowd? -- As they appeared ^{on} the horizon.

When you were coming along where did you see the deceased's horse first? -- As we appeared on the horizon the horse was leaving the group here. The horse left the group and proceeded on its way? -- Yes.

Now point out the way you went to the donga and the way you threw the body? (Witness does so).

That is the spot shown on the map "P"? -- Spot P is the spot from which the body was thrown. It is approximately 40 yards from the edge or beginning of the donga to "P".

/MOLEMOHI

MOLEMOHI, Sworn States:

Judge: Show me the place where the man was pulled off the horse? -- About here.

The road is of a stony nature.

The spot pointed out is approximately opposite point "J". There is a flat stone near the spot and stones at intervals in the vicinity.

Witness shows where deceased was put on the ground. Within 4 - 6 paces from spot pointed out by Mapeshoane. Witness shows the route taken when disposing the body, and states he cannot remember whether the body was thrown down at spot X or Xi, both spots being pointed out by him.

Spot X and Xi are marked on the plan in Red.

X is 20' - 25' drop.

Xi is 14' - 15' drop.

There are stones all along the border of the stream at Xi. There are few stones at X.

It is approximately 200 yards from X to Majone's village. In order to come to spot X or Xi one has to go along a narrow strip of land between two dongas. There is a trickle of water below spot X. It is approximately 40 yards from edge of donga to X.

Mr. Thompson: The witness Mapeshoane shows the spot "P" (on the plan) as the spot where the body was thrown over.

Trooper Hamilton, who is still to be sworn, pointed out spot "O" as the spot where he found the body. Mapeshoane showed how the party proceeded in order to dispose of the body at "P".

/Mr. Grobelaar

Mr. Grobelaar: Near spot "P" are a number of broken stones covering an area of 10' x 6'. There are lumps of clay as well. There is a trickle of water at this spot as well.

Mr. Thompson: The distance between the spot "X", pointed out by Maolemohi, and "P" pointed out by Mapeshoane, is 15 paces. There is a sheer drop of 25 feet on the left side of the donga along route pointed out by Mapeshoane. On the right side the donga slopes. On the route taken by Mapeshoane in two places the width of the path is 2 - 3 paces.

Mapeshoane pointed out the route taken by the party carrying the body to point "P", Mapeshoane, just before reaching "P" going up the steeper slope and the others with the body taking the easier slope.

Mr. Grobelaar: The witness Mapeshoane pointed out that the party who carried the body of the deceased proceeded along a bank or ledge between two branches of the donga for a distance of about 40 yards. This bank has a sheer drop of 35 feet on the left and on the right there is a drop of from about 8 to 10 feet which is not as steep as on the left, but one false step to the right by a person walking on it would probably result in his losing his balance and falling. The bank or ledge is at some places two to three paces wide.

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G R

IN THE HIGH COURT OF BASUTOLAND.

ARTHUR CLEMENT THOMPSON, in his capacity as Acting Attorney-General for the High Commission Territories, who as such prosecutes for and on behalf of His Majesty the King, presents and informs the Court that:-

- (1) BERENG GRIFFITH LEROTHOLI, Basuto male of Phamong in the district of Mohale's Hoek;
- (2) GABASHANE MASUPHA, Basuto male of Mamathe's in the district of Teyateyaneng;
- (3) MOJAUTU NONYANA, Basuto male of Phamong, in the district of Mohale's Hoek;
- (4) MAKIONE MAPIKO, Basuto male of Mamathe's in the district of Teyateyaneng;
- (5) SANKATANE MASUPHA, Basuto male of Mamathe's, in the district of Teyateyaneng;
- (6) MOSIUOA MASUPHA, Basuto male of Mamathe's, in the district of Teyateyaneng;
- (7) KEMAKETSE MASUPHA, Basuto male of Mamathe's, in the district of Teyateyaneng;
- (8) FUSI RAKAKALI, Basuto male, of Mamathe's, in the district of Teyateyaneng;
- (9) SAFERI NTISO, Basuto male, of Mamathe's, in the district of Teyateyaneng;
- (10) RAMABANTA MAHLEKE, Basuto male of Mamathe's, in the district of Teyateyaneng;
- (11) MOLOI NTAI, Basuto male of Mamathe's, in the district of Teyateyaneng;
- (12) TITIMUS RAMASHAMOLE, Basuto male of Phamong, in the district of Mohale's Hoek;

hereinafter called the accused are guilty of the crime of

M U R D E R

In that on or about the 4th day of March, 1948, and at Fusi's in the district of Teyateyaneng, the accused did each and all or one or more of them wrongfully, unlawfully and maliciously kill and murder MELEKE NTAI in his lifetime a Basuto adult male there being. In case of conviction the said ARTHUR CLEMENT THOMPSON, in his capacity aforesaid prays for judgment against the accused according to law.

(Sgd). A.C. THOMPSON
Acting Attorney-General for the
High Commission Territories.

Exhibit "A". H.41.

BASUTOLAND GOVERNMENT.

Report of Post-Mortem Examination.

To the Supt. Police,

I HEREBY CERTIFY that, at (1) Teyateyaneng, on the 7th day of March 1948, commencing at the hour of 2.45 p.m. I examined the body of a (2) male, (3) African, (4) Adult. That the body was identified to me by Bethuel and Mokhahle of Mamathe's as being that of (5) Meleke. That as the result of my observations, a schedule of which is appended, I have formed the opinion that death occurred (6) 2¹/₂ days prior to my examination, and that it was due to (7) drowning.

REMARKS: (8) Deceased last seen Thursday evening and found lying on his right side in a donga. Head and right side found in water. (There had been heavy rain on Thursday and Friday). When the body was lifted numerous crabs were seen in the water just under the body. It was noted that portions of both lips were missing and that there were abrasions on the eyelids. Two blankets were found together about 4 paces from body. Dated at Teyateyaneng this 7th day of March, 1948.

Signature: R.C. OGG

Qualifications: M.B., Ch.B.(Edin)

Designation: M.O.

SCHEDULE OF OBSERVATION.

External Appearances (10) Body covered in fine river sand. Not decomposed. Hands and feet blanched showing immersion in water. Upper and lower lip missing from below right nostril in a semi-circle. Remains of upper lip showed slightly jagged edges, lower lip cleaner line.

Tip of left nostril abraded irregularly, probably crabs.

Area 1 in. x 3/4 in. abraded midsternum - ditto

Left leg 3 areas 1/4 each abraded - ditto

/Right leg

Right leg one area 1/2 in. abraded - ditto

Both eyelids had superficial skin removed - ditto

Age of deceased: Apparent 48/50. Reputed +/- Boer War.

Skull and its contents (10) No bleeding into scalp. No fracture of skull. Brain congested. No fracture of base.

Mouth, Pharynx and Oesophagus. Except for absence of lips normal. No forth apparent.

Pericardium Pericardial Sac, and Heart (11) N.

Large Blood Vessels (12) Some syphilitic atheroma.

Larynx, Trachea, and Bronchi contained fair amount River Sand.

Pleurae, Pleural Sacs and Lungs:

Right: Voluminous, Heavy, some old adhesions. Blood-stained frothy fluid expelled. Lung tissue darker than normal.

Left: Not so heavy as right and less fluid and less dark.

Thymus, Thyroid and Lymphatic Glands (13) N.

Peritoneum and Peritoneal Sac (14) N.

Spleen. N.

Stomach (15) and Omenta Crammed with meat. Deceased had evidently had a very large meal. No liquid or water seen.

Intestines (16) N.

Mesentery N.

Vermiform Appendix N.

Liver (17) Gall Bladder and Bile Ducts. N.

Kidneys (18) Ureters and Suprarenal Glands:-

Right N.

Left N.

Urinary Bladder (19) and Urethra N.

Pancreas N.

Generative Organs (20) N.

Spinal Column and Cord (21) No fracture of neck.

/Additional

ADDITIONAL OBSERVATIONS.

From the appearance of the right lung particularly coupled with the very appreciable amount of river sand in Larynx, Trachea and Bronchi and congestion of brain - death due to drowning. The absence of lips and the abrasion etc. of nose and eyelids compatible with being caused by crabs.

Organs, Parts or Material reserved for further investigation and now disposed of.

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SECRET.

Exhibit "B".

10/48

Office of the Medical Officer,

Maseru, Basutoland.

2nd July, 1948.

THE COMMISSIONER OF POLICE,

MASERU.

This is to certify that we were present at the exhumation of the body of a Male African adult at Teyateyaneng African Cemetery on 29.6.48, and subsequently examined the body for certain injuries - it being alleged that deceased had been throttled and a sharp instrument forced into his nostrils and throat.

The body was in an advanced state of decomposition - but was identified to us by BETHUEL NTAI, by certain cuts on the lips, as being that of MELEKE, of MAMATHE'S. He further stated that the grave from which the body was removed was that in which Meleke had been buried.

It was noted that the incision made at the first post-mortem examination extended from below the chin to the symphysis pubis and that the skull had been opened.

The tissues on both sides of the neck were opened up - but no sign of bruising of the tissues was found. The incision made at the first Post-mortem was re-opened and continued upwards and through the middle of the jaw bone and the back of the throat and mouth thoroughly examined. The mucous membrane here was well preserved and showed no sign of injury. The mucous membrane of the nose was completely decomposed and it could not be said whether or not there had been any injury here.

SUMMARY: Evidence of the alleged injuries was not found.

1. Sgd: B.D. WHITWORTH 2. Sgd: R.C. OGG
MEDICAL OFFICER. MEDICAL OFFICER

ITEM 10. PLAN 1.

- "A" Marks the spot where Witnesses Ntsane and Makhetha Ntai are alleged to have stood while No. 11 accused went to see the Chief (No. 2 accused). Dotted line marks the route alleged to have been taken by No. 11 accused.
- "B" Marks the spot where it is alleged the car stood, at junction of road leading into Mamathe's village.
- "C" Marks the spot known as Twai's.
- "D" Marks the hut of No. 4 accused.
- "E" Marks the spot where group is alleged to have congregated behind "Makione's" (No. 4 accused).
- "F" Marks the position of Hut of Witness Moliko Khotatso. Spotmarked at stable is the spot where Witness Moliko is alleged to have stood when he saw group pass behind his hut.
- Spot marked at corner of garden is the spot to where Witness Moliko walked when he heard voice of No. 11 Accused on road below garden (65 paces to road).

DISTANCES:

Spot "E" to Road leading into village = 5.5 feet

Spot "E" to "F" = 65 paces.

Spot "F" to route taken by group = 38 paces.

Spot "E" to "B" = 132 paces.

----- Indicates route alleged to have been taken by Nos. 2 and 6 accused when they left group and went to car.

·_·_·_·_·_·_ Indicates route alleged to have been taken by group led by No. 1 Accused, going through village.