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UNIVERSITY OF LONDON  
W.C.1.

1951

IN THE HIGH COURT OF BASUTOLAND.

ADVANCE  
STUDIES

CRIMINAL SESSIONS

2nd NOVEMBER 1948.

BEFORE:

Mr Acting Justice Sutton.

ASSESSORS:

J. Elliot.  
F. I. Parnell.

AFRICAN ASSESSORS:

George D. Makhehle.  
Moramang Jonathan.

R E X vs. (1) Bereng Griffath 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: 1.

Reported by:  
A. Nass,  
P.O. Box 2038  
JOHANNESBURG.

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IN THE HIGH COURT OF BASUTOLAND.

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I N D E X

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17 JUL 1953

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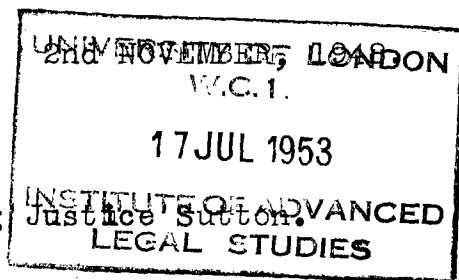
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CRIMINAL SESSIONS



BEFORE:

Mr. Acting

ASSESSORS:

J. Elliot.  
F.I. Parnell.

AFRICAN ASSESSORS:

George D. Makhele.  
Moramang Jonathan.

R E X vs. (1) Bereng Griffith Lerotholi.  
(2) Gabashane Masupha.  
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(8) Fusi Rakakali.  
(9) Saferi Ntsoso.  
(10) Ramabanta Mahleke.  
(11) Moloi Ntai.  
(12) Titimus Ramashamole.

FOR CROWN:

Mr. A. C. Thompson, K.C.

FOR DEFENCE:

Mr. N. Grobelaar, K.C.  
Accused Nos. 1,3,12.

FOR DEFENCE:

Mr. I. Maisels, K.C. and G. Gordon.  
Accused Nos. 2,4,5,6,7,8,9,10,11.

CHARGE:

Murder.

PLEA:

Not Guilty.

VERDICT:

Guilty.

SENTENCE:

Death.

-----oOo-----



FIRST DAY.

OPENING ADDRESS TO COURT:

MR. THOMPSON: May it please Your Lordship:

M'lord in this case these 12 accused stand before Your Lordship charged with the crime of murder in that on the 4th day of March they were criminally responsible for the death of amman by the name of Meleke Ntai.

M'lord this case falls within that class of case known as ritual murder. In other words instead of the usual motive for murder existing, gain, jealousy and so forth, the motive alleged in this case is an attempt to obtain what is known amongst these people as medicine in order to preserve themselves or their crops or their persons from evil and to make them more prosperous.

The history of events, as will be related by the Crown witnesses starts the day before the date alleged in the indictment, i.e. it starts on Wednesday, March 3rd, on which occasion a witness by the name of Mapeshoane, who is a younger brother of No. 2 accused, was sent for, or rather fetched by No. 10 accused, and taken to No. 2's house. No. 1 accused and other accused were there (not all of them - details will be related to Your Lordship by the witnesses themselves), and after a number of them had gathered, including this accomplice Mapeshoane, No. 11 accused was sent for. No. 2 told No. 11 that he wanted him for a certain purpose and then proposed to No. 11 that No. 11 should sell his brother for the sum of £100. In other words, m'lord, that No. 11 should at the appropriate time and place produce his brother to be murdered, in return for which No. 11 should receive the sum of £100. No. 11 agreed and apparently explained that a suitable opportunity would occur on the following day, Thursday, March the 4th, the reason being that a funeral was to take place in the

/district

district on that day, and No.11 would have an opportunity when accompanying his brother away from the funeral to lure him, as it were, to the place of killing where he could be set upon by the accused.

I should have said, m'lord, that Nos.1 and 2 are important chiefs in Basutoland. They are both District Chiefs, and No 1, in particular, is a man of considerable authority and influence amongst the Basuto people.

Coming back to the events of Thursday, March 4th, the accused and others assembled at No.2's house, somewhere about 8 o'clock and set out on their journey. But not present on that occasion were either No.11 accused (i.e. when they set out from No.2's house) nor No.12. Might I say now, to make it perfectly clear, insofar as No.12 accused is concerned, the Crown case against him is only that he was present when this proposition was first mooted on the Wednesday. There is no evidence, very little evidence, that he took any part thereafter in the murder, and it may well be that at the close of the Crown case it will be found that the Crown has not made out a case against him.

As against the remaining accused m'lord, there is the accomplice whose name I have mentioned, Mapeshoane, and there are three other accomplices, and there has also been mentioned a man, a chief, by the name of Ntoane. Ntoane is not one of the accused, the reason being that he was arrested at the same time as the other accused, became ill shortly after his arrest, was sent to Hospital, and I am instructed died recently. At the time of the Preparatory Examination he was still alive, but not in a fit state of health to appear at the Preparatory Examination.

On this evening, Thursday, March 4th, a band of these men collected at the house of No.2 accused and

/finally

finally a band of 15 persons set out. I have already informed Your Lordship No.12 was not amongst them, nor was No.11. Your Lordship will recollect it was No.11's duty to entice his brother to the scene. The evidence will be that No.11 was then ~~some~~ distance away bringing his brother to what proved to be the scene of the murder. Nor was No.8 present m'lord. No.8 joined at a later stage.

These 15 persons set out, the 15 persons being 10 of these accused, i.e. those accused with the exception of Nos.8 and 12, the four accomplices making 14, and this Chief Ntoane making 15. These 15 persons ~~set~~ out and after a while they split on the instructions of No.4 into groups. The first group consisted of No.1 accused, Ntoane, Nos. 3,4,5, and 10 accused, and the accomplice Molemohi. It appears there was a motor car in the vicinity m'lord, and Nos. 2 and 6 went into the motor car, and the second group ~~wh~~ich consisted of the remainder of the 15 persons, viz. Nos. 7 and 9 accused, and the other three accomplices, Sepalami, Sothi and Mapeshoane, proceeded not a very great distance to a place which is described by some of the witnesses as "near Fusi's", Fusi being No.8 accused. In other words they proceeded to a place near the place where No.8 lives, where the first group were joined by No.8, and on the way No.11 accused came on horseback from the other direction, stopped for a moment and spoke to No.4 and passed on. What he said was not heard; what I am going to ask Your Lordship to presume he said will be presented later in the proceedings.

The first group stopped and they were joined by the two persons in the car, Nos. 2 and 6, and by No.8 and at about that moment the ~~deceased~~ came riding on horseback from the <sup>same</sup> direction that his brother No.11 had come,

/when

when No.10 immediately caught the horse, the other accused caught the unfortunate deceased and pulled him to the ground, and just about that time, m'lord - Your Lordship can imagine that it is impossible to pin down to a precise moment when things happened - about that moment, the second group arrived on the scene. By the time the second group arrived there were present all the accused except Nos. 11 and 12, Ntoane and the four accomplices.

I want to explain to Your Lordship that No. 11 had spoken to No.4 and passed on, and No.12 in fact never joined the party at all.

The evidence will be, m'lord, that the nose, mouth, and throat of the deceased were held while he was on the ground, and that Ntoane produced a knife and, on the instructions of No. 1, cut a piece of flesh, one piece of flesh from the upper and lower lips - a portion of the lower and a portion of the upper lip - from the deceased. Ntoane produced the knife and cut - on the instructions of No.1. He cut a portion of the upper and lower lips in one piece and handed this piece of flesh to No.1 accused. No.1 accused then made the remark something to the effect that the victim that had been produced was not a healthy man and didn't bleed sufficiently; that is probably the reason why no further injuries were inflicted. That is why in this case we do not have to discuss the very gruesome details one sometimes has to discuss in ritual murders of this nature.

On the instructions of No.2 the body was carried away by some of the accused and thrown into a donga, which was in the neighbourhood. There had been rain that night, and the probabilities are that there was a small amount of water lying at the bottom of the donga. However the body was thrown into the donga and I'll come back to that in a moment

/when

when dealing with the medical evidence m'lord. There ~~were~~ the usual threats by the leaders of these people, Nos. 1 and 2, to the accused that if any of them spoke very serious consequences would follow and the party then returned to No.2's village from which they had come and dispersed.

Now that story, as put forward on behalf of the Crown, will rest mainly on the evidence of these four accomplices.

I may say this, that this village was not the village where No. 1 lived. In fact, it is not the district in which he lived. That I can tell Your Lordship. It was certainly not the village and not even the district. He came from another district.

As I was saying the Crown case will depend very largely indeed on the evidence of the four accomplices, and the legal authorities will be given at the close of the case on behalf of the Crown that if the evidence of the accomplices is found by Your Lordship to be genuine, satisfactory and credible, that that is sufficient, and that one accomplice can corroborate another and so forth. The authorities will be placed before Your Lordship.

As my learned junior points out to me m'lord - I haven't gone into this in great detail - various of the accused helped to hold the deceased while he was on the ground. It wasn't just Chief Nyokane cutting him; he was held down to the ground.

M'lord I have purposely avoided in my opening address going into these details. Quite frankly, m'lord for the reason that sometimes the witnesses' memories change, and I don't want to be told that I have bound them down to one story when they suddenly decide that

/it was

it was somebody else who did it. Your Lordship will appreciate my position. It is rather dangerous for the Crown to try to go down to minute details when opening the case. I am indebted to my learned junior for reminding me. The various accused did play an active part in that they held the deceased down while ~~Whoane~~ did the cutting.

Now there is a certain amount of corroboration, general corroborative evidence, not implicating any of these accused personally, by a witness who saw groups moving about in rather a mysterious fashion that evening; that witness does indicate No. 11 because he heard and recognized his voice. Then Your Lordship will remember the deceased was seized from a horse, and there is evidence that the saddle of a horse was found near the spot on the ground - near the spot where it is alleged the murder took place; clothing of the deceased and other exhibits were found near that spot on the ground and the horse itself returned to the place where the deceased was living, unsaddled and, of course, without a bridle. It will show that something happened to the deceased which was unusual to say the least of it.

The evidence directly implicating the accused m'lord applies first of all to No. 11 accused. There is independent evidence as to how No. 11 accused, his brother, the deceased, and two or three other men left this funeral to which I have already referred, and No. 11 suggested to the other men that they should gallop on and leave his brother, the deceased, behind. Those witnesses will be called to tell Your Lordship the story of how it was that the deceased became separated from the party with which he left the funeral and was alone and therefore an easy victim at the time and place where these men were waiting for him.

Then insofar as No. 8 accused is concerned, all

/these

these events took place in the neighbourhood of No.8's residence, so that the evidence of No.8's movements on that night is important, that he was about and not in bed at the time when he was expected to be; and there is evidence of the accused's movements in the following two or three days, when he knew the body was lying in the vicinity; and it will be suggested, in the light of that knowledge attributed to him, these movements were very suspicious indeed.

M'lord, that in very broad outline is the case for the Crown, save for the medical evidence.

The medical evidence in this case is inconclusive. The killing took place on the Thursday, it is alleged; the body was found on the Saturday and was immediately taken into the Medical Officer and a post mortem examination was held. The medical evidence is inconclusive m'lord, save on one subject. The medical officer is convinced from his examination that the deceased died from drowning, because river sand was found in the lungs. The medical officer will give Your Lordship his reason for coming to that conclusion. As I have already told Your Lordship, this was a deep donga, there had been rain that night and presumably there was water in the bottom of the donga. If Your Lordship accepts that evidence, the probabilities will be that the deceased was unconscious but not dead when he was thrown into the donga, probably landed face downwards, and being unconscious was unable to struggle and get himself out of the water, and so breathed in some water and sand and, in fact, died from drowning.

As to the wound round the lips, the doctor finds that crabs had been nibbling at those wounds and other parts of the face and body and, therefore, as there are distinct signs of nibbling by crabs, it is impossible for

/the doctor

the doctor to say, beyond any shadow of medical doubt, that this was a cut as alleged by the accomplices. He can say that the medical finding is not inconsistent with a cut wound to some extent.

M'lord, I do intend calling the doctor first, and I would be obliged if Your Lordship would defer ~~the~~ decision as to whether he can be released. The doctor in this case is due to go on leave as from the day after tomorrow. May I raise that question? I am fairly confident that with the assistance of my learned friends and Your Lordship's concurrence, we shall be able to release the doctor. Naturally if any of my learned friends wish him to stay that will be done. M'lord I think after the doctor has been examined and cross-examined, the Crown case and I presume the Defence case will have been put to him so clearly that every possibility will have probably been explored, particularly as there is only one wound in this case, unlike so many of these cases, m'lord, where there are eleven, twelve, fifteen wounds. That makes it more difficult.

Insofar as this cut is concerned the evidence is inconclusive to this extent, because undoubtedly crabs have been nibbling at the mouth it cannot be stated for certain that there was a cut wound on the mouth. All the injuries seen by the doctor might have been caused by crabs; at the same time it is the experience of the doctor, when anybody is in the water and there are open wounds crabs are apt to go for those open wounds first and not the other parts of the body.

However that may be m'lord - again at the proper stage of the case I shall have to convince Your Lordship that on the evidence as a whole the Crown will prove the cause  
/of death



of death, which it is necessary for the Crown to prove before the Crown can go further and ask Your Lordship to find these persons criminally guilty of murder.

M'lord, I propose to call the medical evidence first, Dr. Ogg. I then propose to call a formal witness who indentified the body to the doctor, and then the Police Officer in charge of the case to put in plans and photographs which were not put in at the Preparatory Examination.

MR. MAISELS: M'lord we are quite prepared to admit identity of the deceased, and also I can save my learned friend the evidence of arrest if he wishes it, and the date can merely be formally recorded.

MR. THOMPSON: Thank you. I propose to call the widow, m'lord, after the plans have been put in, to identify the garments that were found and the saddle as being her husband's, and to explain how her husband left with his brother, No. 11. She never saw him again.

I will then come to these four accomplice witnesses, whom I have mentioned to Your Lordship, and after that I will call four witnesses who will implicate No. 11 - that is the ride from the funeral, and six witnesses as to the movements of No. 8 on the evening of Thursday and during Friday and Saturday when the body was found, and there may be one or two other witnesses just to clear up minor points if necessary.

That is the order in which, with Your Lordship's permission, I propose to place the evidence before the Court.

The first witness I call is Dr. Ogg, whose evidence is to be found at Page 1.

THE CROWN CALLS:

DR. ROBERT CUTHBERT OGG, sworn states.

EXAMINED BY MR. THOMPSON:

Dr. Ogg, you are a Medical Officer stationed at Toyateyaneng? -- Yes.

On March 7th, 1948, did you perform a post mortem examination on the body of a male African adult? -- Yes.

Identified to you by? -- Bethuel and Mokhahle.

As being whom? -- That of Meleke.

As being that of Meleke, yes. Now before we come to details, speaking generally, on your examination what opinion did you form as the cause of death? -- **Drowning.**

Now your detailed observations, Doctor. External appearances? -- The body was covered in fine river sand. It was not decomposed. The hands and feet were blanched, **showing** immersion in water. The upper and lower lip were missing.

HIS LORDSHIP: You say the hands and feet. What about the face?--The face wasn't blanched. The palms of the hands and soles of the feet were blanched.

MR. THOMPSON: You say the face was not blanched. What did you find with regard to the upper and lower lip? -- The upper and lower lip was missing from below the right nostril in a semi-circle.

Could you illustrate on your own lips? -- (Witness indicates.)

That is round from below the nostril below the right edge of the lip down to the middle of the lower lip? -- Right lip, yes.

Now I am coming back to that lip injury later on, doctor, so we'll leave that for the moment. The left nostril,

/that is

that is apart from the cut of the lip? -- The tip of the left nostril was abraded irregularly, probably due to crabs.

Midsternum? -- There was an area one inch by three-quarters of an inch abraded midsternum.

Left leg? -- There were three areas a quarter of an inch each abraded.

Right leg? -- There was one area half an inch abraded. Both eyelids had their superficial skin removed.

That is, all those last five injuries, that is from the tip of the left nostril down to the eyelids, in your opinion, were probably due to? -- In my opinion were caused by crabs.

In your experience in Basutoland and elsewhere (I think we had better get this on record), have you had pretty extensive experience of deceased's bodies which have been nibbled by crabs? -- I have seen several.

HIS LORDSHIP: What was the deceased wearing at the time of the post mortem? -- I'm afraid I cannot remember how he was clothed. The body had been brought into the mortuary from the scene ....

MR. THOMPSON: You did not examine the body at the place where it had been found? -- No.

Now the skull and it's contents? -- There was no bleeding of the scalp. No fracture of the scalp. The brain was congested. There was no fracture of the base.

**Now the only other organs I want to deal with in any detail doctor, are the lungs, the pleurae and the pleural sacs? -- And the trachea and bronchi?**

I'm sorry, yes; the trachea and the bronchi. In fact the larynx, trachea and bronchi? Each contained a fair amount of sand, fine river sand.

And the pleurae, pleural sacs, and the lungs? --

/The right

The right lung was voluminous and heavy. There were some old adhesions. Bloodstained frothy fluid was expelled from the lung tissue which was darker than normal. The left lung was not so heavy as the right and there was less fluid, and it was less dark.

Now this finding of river sand in that organ, did that suggest anything to you from a medical point of view? -- That death was due to drowning, that he was still alive at the time when he was in the water.

Could death by drowning occur if a man were lying face downwards in a very small ... say six inches of water? -- Yes, provided he was unconscious.

Now the remaining organs, doctor, I think either nothing abnormal was observed or nothing was observed which threw any light on the cause of death? -- Yes, that is correct, except the stomach was packed with meat.

Well that I suppose, indicated a meal shortly before death? -- A very heavy meal shortly before death.

In case anybody doesn't follow it, in the post mortem report, where there is a capital 'N' I think that stands for Nothing abnormal detected? -- The 'N' stands for Normal.

Oh, normal. Your additional observation - you have already dealt with that. Now I want to come back to the lips, doctor. If the Crown evidence is that a knife was used to cut the flesh in the very place that you have shown on your own face, underneath the nostril round the right corner to the middle of the underlip, if that is the Crown evidence, was there anything that you found in your post mortem examination inconsistent with that? -- No, except that as I saw the wound crabs had been at it, and I cannot state that the lips had been cut.

Can you state that all the wounds were caused by  
/crabs?

crabs? All the injuries? Put it in the reverse Now? -- No, not definitely. They could be. There was far more eating from the lip area though than from any other.

Does the fact that far more was eaten from the lips suggest anything to you as a medical man? -- It makes the theory of the point of view that you put to me slightly more possible.

That is the suggestion that there was a cut before the body went into the water and the crabs got at it? -- Yes.

If there is also evidence shortly before this man was thrown into the ~~water~~ a hand was placed over his mouth and another hand seized him by the neck, would you have expected at your Post Mortem, some three days later, to have found any signs of that? -- That would depend entirely on the amount of force used on the throat. If a hard grip had been on the throat I would have expected the fingernails to have marked it.

I don't know whether this falls within your province, doctor - if the object of holding a hand over his mouth and holding a man by the throat was not to strangle or suffocate him, but merely to stop him crying out, can you imagine whether the force used for that purpose would be sufficient to show signs afterwards? -- No.

Coming back to the crabs - may I put it this way, in your experience have crabs any predilection for any special part of the body? -- Yes, the angles of the mouth, the tip of the nose, the eyelids and the lobes of the ears.

And if the body bears wounds on it, in your experience would crabs go first for the wounded or the unwounded portions? -- The wounded portions, definitely.

I am not sure if I mis-heard you. Did you say "definitely"? -- Yes, definitely.

/CROSS EXAMINED

CROSS-EXAMINED BY MR. GROBELAAR:

Doctor, would it be correct to say that you definitely formed the opinion that the injuries found by you on the body of the deceased at the time of your Post Mortem were caused by crabs? -- As I saw them, yes.

And up to today you ascertained nothing to make you change that opinion? -- I can't rule out the possibility that a portion of the lip had been removed, and then it was subsequently eaten by crabs. The wound as I saw it, appeared to be crabs.

You put it no higher, then, than a possibility that an assault might have been committed on the deceased? -- I can't rule <sup>out</sup> that some portion might have been removed, and then eaten by crabs.

You found no positive evidence suggesting that an assault of any nature had been committed on the deceased? -- I found no positive evidence.

= Now doctor, if you must assume that the assailants of the deceased had been ordered to kill him, and if you must assume that he was attacked by a number of the accused, dragged down from his horse and throttled, don't you expect that you would have found signs on the throat and neck of such an assault? -- It would depend on the amount of force used. If very great force had been used I would have expected to find marks of fingernails.

If force had been used with the intention of killing the deceased in that way, I take it then that you would have expected to see such signs of throttling? -- Do I understand your question to be if they had attempted to kill him by throttling?

Yes? -- Yes.

/Do you agree

Do you agree with these remarks made in a book on medical jurisprudence by Rhodes, Gordon and Turner, at Page 115, from which I shall now read: (Second edition), this is what the authors say in regard to the injuries in the case of throttling. "External wounds in the form of abrasions and bruises of the skin are usually found on both sides of the neck." Do you agree with that? -- I do.

And I take it that in this case if there had been an attempt to kill the deceased by throttling, you would have expected the marks referred to here by the authors of this book? -- Yes.

HIS LORDSHIP: Perhaps you might tell us the difference between a bruise and an abrasion? - An abrasion is a break in the continuity of the skin and a bruise is a mark where the skin is not broken.

A discolouration? -- Underneath the skin, yes, and an abrasion is an actual break in the skin.

MR. BROBELAAR: The author proceeds to say, "The abrasions may be caused by fingernail impressions and in these circumstances they have a characteristic impression and shape" - do you agree with that? -- Yes.

Now, doctor, in this case, at the Preparatory Examination, the Crown witnesses indicated that the fingers were deeply embedded into the neck of the deceased. The right thumb being on the right side of the throttle, and the left hand holding the deceased behind his neck. Don't you consider that if force was applied under those circumstances, that it was almost inevitable that bruises or abrasions should have been seen by you at the time you examined the body? -- In circumstances such as those described by you, yes.

/Do you

Do you agree with the remarks in this book that, "Dissection usually reveals well-marked bruising in the connected and muscular tissues of the neck and haemorrhages are often found in the substances of the thyroid gland and in the lymph nodes." -- Yes.

Do you agree that in the circumstances suggested by me there would, in this case too, have been marked bruising in the connected and muscular tissues of the neck and probably haemorrhages? -- Yes. If force had been used in gripping, yes. :

Do you also agree that under the circumstances described the hyoid bone would probably have been fractured? -- It might have been fractured.

In this case that bone was intact? -- Yes.

Do you agree that in the case of forcible strangulation that the hyoid bone is usually broken? -- If great force has been used, yes.

The evidence of the Crown given at the Preparatory Examination is that within a fairly short time the deceased, after the throttling, appeared to be dead. Do you agree that that suggests that a great deal of force was probably used, and death appears to follow a short time after? -- I don't know that that necessarily follows. I am thinking of the big meal that the deceased had had.

You are not suggesting that the meal had anything to do with his death? -- No, but he might go unconscious with a distended stomach - he would go unconscious more quickly - shall I put it that way?

It is very improbable that a distended stomach alone could have caused unconsciousness? -- Not alone, no.

Then again, doctor, if the deceased was forcibly pressed to the ground, would you consider that there would probably have been marks or bruises on the back of

/his



body? -- I think that would depend on how he was clothed, and whether his blanket was on or not.

If the ground on which he was pressed, if there were stones, there would certainly have been marks on the back of his body, wouldn't there? -- You mean if he had been held down firmly?

Yes. -- Probably, but again it depends on the amount of clothing he had on.

= If there was only a shirt between his body and the ground, or even a jacket, do you think you would have expected to find bruises under those circumstances? -- One might. It is very difficult to **express** a definite opinion on that.

I take it, it depends on the roughness and hardness of the surface of the **g**round on which he was pressed down? -- And the amount of clothing he had on, and the amount of pressing done, yes.

Doctor, if a sharp knife had been used to cut the lips of the deceased, and if this operation was performed at night with the assistance of a torch, and if this operation took place in a hurry, don't you consider that there would have been an impression on the gums of the deceased? -- There might or there might not. I am not in a position to say.

Assuming the knife was not inserted into the mouth of the deceased, but the cutting was done **f**rom outside, and probably with the point of the knife at right angles to the gums, I think you must concede that the **probability** would be that some marks would have been left on the gums? -- It is possible.

I put it to you that under those circumstances, if the operation had been performed by an amateur, that is an

/ordinary

ordinary native layman, it would have been a miracle if there were no cuts to be seen on the gums immediately after the operation? -- I suggest that depends on whether the lip was held with the fingers or not. If a knife was used without the lips being held and cut like that (witness indicates), without the fingers on the lips, I would expect the gums to be cut. If the lips had been held out and cut down I think it is quite possible that the gums might not have been cut.

But, doctor, even if the lips were held out a bit with the fingers of one hand, and the knife was used in a hurry, then I put it to you that it is more than likely that the knife might have gone through further than the lip itself, and so have injured the gums? -- I said it is possible.

But doctor, surely you must go further. You must go further and say that it is probable, because it all depends whether the knife is held in such a position as not to get in contact with the gums, which would be very difficult? -- I am afraid I am not prepared to go any further than that. On a hypothetical case I just cannot say what would or would not happen. I admit that it is possible that the gums might have been cut if the knife had been used savagely.

Would you agree that if no determined effort was made to do the cutting in such a way as not to injure the gums that the probabilities are that the gums would have been injured to some extent? -- I suppose they would be.

And you found no injury on the gums whatsoever, no indication that a knife had been used? -- No, there was no injury to the gums.

And the gums were in a state of good preservation when you saw them? -- Yes.

If a knife had been used on them you would have seen such an injury at that stage? -- I would.

And if the knife had been used on the lips and gums

/at right

at right angles, then the probabilities are that you would have noticed the marks of an incision on the gums? -- You mean had the lips not been held at all?

No, the lips being held, and at the same time the cut taking place about half an inch above the edge of the lips? -- I think the same remark applies as to your other question in my opinion.

Now what length of the lips had disappeared when you saw the deceased? -- (No reply.)

HIS LORDSHIP: If you are going on to something new now, I think we can adjourn.

MR. GROBELAAR: As Your Lordship pleases.

TEA ADJOURNMENT.

ON RESUMING:

DR. R. C. OGG. (Under former oath.)

CROSS-EXAMINED BY MR. GROBELAAR, (Continued)

Now, Doctor, if a knife had been applied on the lips of the deceased from the outside of the mouth under the circumstances described, do you agree that it would require very skillful handling to avoid the knife coming into contact with the gums? -- Some skill must have been used.

And don't you agree that one would ordinarily have expected the knife to have slipped into the gums at some point or other? -- It is conceivable.

You are not prepared to say that it would have been strange if you saw no mark on the gums under the circumstances? -- I am not prepared to go that length.

If the body of the deceased had been thrown into a donga from a height of say 10 to 15 feet, before drowning took place, don't you consider that bruises or other marks would have been seen on the body at the time you examined it? -- I certainly would expect to find bruises.

And you found no bruises whatsoever excepting those

/that

that you have described? -- That is correct.

And the bruises that you found were probably caused by crabs, as you stated? -- In my opinion, yes.

To be quite correct, you found abrasions, not bruises? -- Abrasions, yes.

And if the body had been thrown into a donga from a distance of about 10 or 15 feet you would have expected other marks on the body than those which you saw? -- Yes.

And in such a throw, bones would have been fractured? -- They might have been; it is not necessary.

I take it then that the condition of the body of the deceased, as you found it, was inconsistent with his having been thrown into that donga from a distance of from 10 to 15 feet? -- I certainly would have expected to find other marks.

In view of that answer, I think it is inevitable for you to admit that the condition of the body was inconsistent with it having been thrown into the donga from a distance of from 10 to 15 feet? -- I think you are correct.

You think that is correct? -- Yes.

That the condition of the body was inconsistent with the body having been thrown into the donga from that distance? -- I think so.

You also examined the throat because you were told that there would be evidence that a sharp instrument had been pushed into the throat of the deceased? -- (No reply)

HIS LORDSHIP: We can't have what the doctor was told.

MR. GROBELAAR: M'lord I am merely mentioning this point to indicate what the accuracy or the object of his examination was and it is only with that view that I put the question.

HIS LORDSHIP: You will have to put the question a little differently.

/MR. GROBELAAR:

MR. GROBELAAR: As Your Lordship pleases. Now, doctor, you did look at the throat of the deceased in order to ascertain whether a sharp instrument had been put down the throat? -- At a later date; at the exhumation.

Yes. And even at the later date when the body was exhumed, the mucus membrane of the throat and mouth were in a good state of preservation, as you stated in your report? -- Yes.

And in spite of that portion of the body being in a good state of preservation you found no signs whatsoever that a sharp instrument had been stuck into the throat of the deceased? -- That is so.

So the condition of the body of the deceased was inconsistent with a sharp instrument having been forcibly pushed into his throat at the time of his death? -- Yes.

Was that the only reason why the body was exhumed, and was re-examined by you, doctor? -- I don't know why the body was exhumed. I was an assistant at the exhumation.

If the lip of the deceased had been cut as is suggested by the Crown, I take it that you would have expected a fair amount of blood to have escaped immediately after the operation? -- Yes, the lip generally bleeds freely.

And in the ordinary course you would have expected that blood to have been deposited on his body on the exterior of the lip, and probably on the clothes? -- Probably. Mind you the body had been in water before I saw it.

But you don't know what part of the body was immersed in water? -- I was told that the head and the right side were found actually in water when the body was found.

But you agree that on the evening of the assault blood would probably have been spilt on the deceased? -- One would expect that.

The condition of the body then, when you examined it,

/was

was consistent with the deceased having walked past this donga and fallen into it by accident and having been drowned in that way? -- Yes, that is ....

HIS LORDSHIP: That question is inconsistent with your cross-examination, because if he had fallen into it then you would have expected to have found injuries on his body?

MR. GROBELAAR: M'lord, it all depends from what height... in my submission there is a vast difference between taking a body and hurling it by force into a donga and a person walking and stumbling and perhaps sliding down the bank.

HIS LORDSHIP: That may be so.

MR. GROBELAAR: Then the evidence is also consistent with the deceased having ridden on horseback near that donga and having fallen off and having slid into that donga? And getting drowned in that way? -- That is possible.

And the injuries are consistent with such a happening?-- Yes, I think they might be.

Do you agree that your examination of the deceased is consistent with his having been in bad health? -- His wife said his health was very bad.

I am asking you that question. -- No.

= Not consistent. If his wife testified that he was a sickly person, then you would not be able to contradict that from your examination of the body alone? -- I found nothing radically wrong with any of the internal organs.

But, of course, you were at a great disadvantage in determining the facts concerning a condition of that kind. It is difficult just from one examination of a dead body to say what the health of a person was? -- Quite. I mean there was no serious disease.

I put this question to you because the wife said, "My husband is a sickly person, and he used to say that he

/had

had pains all over his body and he was a thin man." From your examination you wouldn't say that it wasn't possible that he was the subject to epileptic fits and fainting? -- I couldn't deny the possibility.

HIS LORDSHIP: You haven't got his height or weight? -- I have no facilities for taking weight, Your Lordship.

CROSS-EXAMINED BY MR. MAISELS:

Doctor how many years have you been practising as a Medical Practitioner? -- Since 1924.

And for how many years have you been in Basutoland? -- Twenty one at the end of December.

I suppose in that twenty-one years you must have performed a large number of Post Mortem examinations? -- Yes.

Now, doctor, I want to get one thing quite clear - at the time when you performed this Post Mortem examination you were told that foul play was suspected? -- Yes.

And therefore you particularly looked for evidence, I take it, of assault or of some unnatural way in which the death might have been caused? -- Yes.

Now, doctor, I just want to deal with one answer you gave my learned friend, the Attorney General, when you said that the ... it was possible, I think you put it that way, that the lip had been cut by a knife at some time or other prior to the crabs having eaten it? -- Yes.

You put that merely as a possibility? -- Yes.

And no higher? -- I had no direct evidence, from my findings, that a knife had been used.

Quite. Doctor I understand from your evidence that crabs would normally go for <sup>a</sup> part where there was some kind of wound first? -- If there were a wound they would make for that first.

So that if, for example, the deceased had fallen  
/and cut

and cut his lip, the crabs would normally go for that part first? -- Yes.

Now doctor, I want to put this question to you. I think you agree with me - that you found no signs of assault by human agency on this body? -- That is correct.

And if anything, the condition of the body was inconsistent with an assault having been committed on the deceased prior to his death? -- All the length I am prepared to go is: there were no signs of any assault.

RE-EXAMINED BY MR. THOMPSON:

Doctor, my learned friend, Mr. Grobelaar, put some passages to you from Rhodes, Gordon and Turner? -- Yes.

To which you agreed, but he left out the following passage, dealing with external injuries, and I want to know whether you agree or disagree with it. It follows immediately on the passages that were put to you. "In certain circumstances there may be no external evidence of injury on the neck"? -- Yes, I agree.

And as to the hyoid bone, doctor, is it possible to speak in generalities and say whether that is easily fractured or not? -- A fracture of the hyoid bone generally means that great force has been used.

Also in answer to my learned friend, Mr. Grobelaar, you said that falling from a horse .. whether or not a fall from a horse would cause bruises and so forth would depend on the clothing he had on. I want you to have a look at the blanket, exhibit 2 please. Just have a look at its texture and thickness? -- This wasn't a fall from the horse - wasn't it when he was being held on the ground?

I'm afraid I can't discuss that with you doctor! -- I mean the question put by Mr. Grobelaar...

The pulling from the horse doctor. My learned friend

/put



put it to you that if he were pulled from the horse down to the ground violently you would have expected some bruises, and you said that it would depend on the clothing. I want you to look at exhibit 2 - and will you also please look at the other blanket, exhibit 4. -- Exhibit 2 is a heavy blanket.

Will you look at the blanket exhibit 4 please? -- This is also a fairly thick blanket.

If the deceased had been wearing either or both those blankets when falling from a horse or being pulled to the ground would those blankets have tended to protect him or not? -- I think they would definitely have protected him.

And if in addition - this is all hypothesis, doctor, of course, at this stage - if in addition he was wearing those trousers, exhibit 1 - would you have a look at them, a close look? -- An old pair of army trousers, thick ones.

Fairly thick. Would the wearing of those trousers tend to protect him or not? -- They would tend to protect him.

As to the throwing down into the donga, doctor, is the possibility of bruising dependent in any on the nature of the surface on which the body fell? -- Certainly.

Can you express - I am still on my learned friend Mr. Grobelaar's cross-examination of whether you expected bruising if the body had been thrown down a 10 foot donga. What would you expect on that side of the case if the body had landed in say six inches to a foot of mud? -- From about 10 feet.

The height my learned friend gave you, 10 to 15 feet? -- Landing in thick mud?

Fairly thick mud? -- Very little in the way of bruising; very little - if any.

Further, doctor, on this same subject, would an

/unconscious

unconscious man if thrown down tend to bruise as easily as a conscious man falling or being thrown down? -- I think the bruising would be about the same. I am not an expert on that particular aspect.

Well my learned friends will interrupt me if they think I am leading, but would the state of relaxation of the muscles have any effect on the bruising? -- (No reply)

If a man has got his muscles taut and prepared to withstand the shock, would he be expected to receive more bruising than a body of a man who is completely relaxed? -- Yes.

Which would get the more bruising, the man who is taut, or the man whose body is relaxed? -- The most bruising would come to the man who ~~was~~ taut.

The taut man. Finally doctor, in answer to my learned friend, Mr. Maisels, you said there ~~were~~ no signs of assault or unnatural cause of death. I want to put this to you: if a person came here and ~~gave~~ an ~~otherwise~~ credible story that he saw the lip being cut with a knife in the very place where you saw the injuries, is there any medical reason alone which would cause you to reject that story? -- No.

MR. GROBELAAR: In view of ~~that~~ question - the point of mud was now raised for the first time - may I have Your Lordship's permission to ask a further question?

HIS LORDSHIP: Tell me what the question is.

MR. GROBELAAR: My learned friend put the question that if there were mud at the bottom of the donga, would any bruises be expected. I want to be clear how much mud, an inch of mud, two inches of mud? It is such a vague

question.

question.

HIS LORDSHIP: We can't carry it any further without knowing how much mud there was there. I don't know whether you remember reading about the airman who fell several thousand feet and landed in a snowdrift and escaped. His parachute hadn't opened.

MR. GROBELAAR: I believe he had some bruises on him m'lord.

HIS LORDSHIP: You have probably read about it. I don't remember whether he had bruises ... It can't be carried any further. We some<sup>time</sup>/or other will have some evidence as to what the nature of this mud was.

MR. GROBELAAR: Yes, but with your Lordship's permission I just propose to put this to the witness.

HIS LORDSHIP: Yes.

MR. GROBELAAR: (Further Cross-Examination): If the mud was only say two to three inches deep, and there was a hard surface underneath the mud, you would definitely have expected bruises nevertheless? -- I agree it depends on the depth of the mud. I should say that the mud must be of some depth for the fall to have no effect.

Yes. And a few inches of mud would not prevent bruises? -- Again it is just a question of the depth of the mud.

I am putting it to you: if there were a few inches of mud you would have **expected** bruises nevertheless? -- The mud would take a certain amount of the force.

You would expect some bruises? -- I notice that I have down on my report here that there had been heavy rain on both Thursday and Friday.

That was after the death of the deceased. -- The Thursday and the Friday. He died on the Wednesday.

/That

2

That doesn't help you doctor. He died on Thursday. The Friday it rained. -- Yes.

ASSESSOR: It was said that a hand was put on the mouth of the deceased? -- Yes.

I just want to find out if there is any difference if a person dies of suffocation, or of drowning. Is there any indication which can make the distinction? -- (No reply)

HIS LORDSHIP: I was going to ask the doctor about this question of drowning. Whether this man really did die of drowning at all. Doctor, perhaps I might put this. You see, you can tell whether a man has been drowned or not by the condition of the lungs? -- The condition of the lungs, and the fact that the river sand was found in the trachea and the bronchi, that definitely shows that he was alive when he was in the river.

Yes, but wasn't that perhaps the cause of his death - the river sand? -- No, the lungs definitely contained water, and I have no doubt in my own mind that death was due to drowning.

And you don't think that the absorption, the inhaling of the sand ... -- The sand would come in with the water?

Yes, Yes. Wouldn't it accelerate death? -- It would accelerate death, but death would be due to drowning.

Wouldn't the absorption of the sand contribute to it? -- It ...

It might entirely cause the death if the larynx ... - It wasn't so much in the larynx as down in the trachea and bronchi, and the tubes leading into the lungs.

/I see

I see you said that the larynx, the trachea and bronchi contained a fair amount of river sand? -- Yes, a demonstratable amount.

Yes. Then you say that you found water in the lungs? -- Yes.

Did you find the lungs collapsed? -- No, they were bigger than usual.

Would that be due to the water? -- Yes, that would be due to the water. If death had been due merely to sand being inhaled down into the lungs, the lungs would have been smaller and not so heavy as they were.

Thank you doctor. I just wanted to clear that up. Did the other assessor wish to ask any questions? No. Well, I think we can safely let the doctor go. I am sure that justice will not suffer; you have given your evidence very well and very fully and the cross-examination has been very helpful. I hope you have a good trip doctor? -- Thank you, sir.

---oOo---

THE CROWN CALLS:

CAPTAIN CASTLE, sworn states

EXAMINED BY MR. THOMPSON:

Mr. Castle you are Assistant Superintendent, Basutoland Mounted Police? -- I am.

Stationed at, and in command of the Police Station at Teyateyaneng? -- I am.

Now before we get on to plans, I would like to get this on the record: you know accused No. 1, don't you? -- Yes.

Now you on the 7th March prepared two plans to illustrate the evidence in this case? -- It was some

/time

time during August.

I'm sorry, yes, in August of this year? -- Yes.

M'lord these have not been put in before. We already have exhibit A which was put in at the Preparatory and exhibit B put in at the Preparatory, which I am not putting in here. Now if Your Lordship will put these two plans (C.1. and C.2.) side by side, there is one in which the top right hand corner shows some trees and some huts. That goes on the right ~~my~~ M'lord. The other one on the left, shows a lot of contour lines and the donga. If Your Lordship puts them side by side, Your Lordship will see that there is a road marked "To Fusi's". That is correct is it not Mr. Castle, the two plans are continuous? -- Yes, that's right.

You .. from whom did you get the information on which these plans were based, apart from the physical features that you saw yourself? -- From various Crown witnesses.

**Can we have their names please, just for the record?** -- Mapeshoane Masupha; Ntsane Ntai was one; Pheta was one; Ntlala was one.

Now, to these two plans you have prepared keys Mr. Castle, and unless his Lordship wishes it I don't propose to go through those keys in detail - they speak for themselves - but roughly speaking in the top right hand corner of the right hand plan, - whose village is that? -- That is the village of No.2 accused.

Now the evidence will be that on Wednesday and Thursday there was a meeting at the house occupied by No. 2. Is that house shown on the plan? -- Yes, the round hut in the far corner, and I have marked it Koshlong hut.

Is that the hut pointed out to you as being occupied by No. 2. ? -- Not occupied - in which the conspiracy was held.

Yes. Mr. Castle I think you're pretty fluent in Sesuto, what does "Koshlong" mean? -- I'm afraid I am not as fluent as that!

(Interpreter: It means "kloof")

Well now the evidence will also be, Mr. Castle, that the killing of the deceased took place near Fusi's. Whereabouts is Fusi's on these two plans? -- On plan No.2 the three huts marked "L".

Just to the north-east of Fusi's huts, there is a spot in the road marked J. What does that represent? -- That marks the spot where it is alleged the deceased was caught.

Then to the north-west again is a spot marked K. What does that represent? -- That is the spot where it is alleged the deceased was killed.

Travelling still further to the north-west, spot M.? -- That is the spot where it is alleged the saddle belonging to the deceased was found.

And the travelling directly west from M. there is a place marked "A donga" and there is a spot O. in the donga. -- That is the spot where it is alleged the body of the deceased was found.

And there is a spot P. .... That should be east, I'm sorry. Thank you Mr. Grobelaar. Spot P. in the donga, what is that? -- That spot indicates where it is alleged the deceased was thrown from.

I think all the other references in the key

/speak

speak for themselves. Coming back to the first plan, on the left of the plan, there is an oblong marked "Garden". At the bottom right-hand corner of the garden, there is a spot marked C. What is that? -- That is the spot known as Twai's.

Where the two tracks meet, m'lord. And above the garden on the plan you marked a stable with a little cross, what is that spot? -- That is the stable belonging to witness Moliko Khothatso and the spot in front of the stable marks the spot where he stood when he saw the group pass behind his huts.

And coming back to the garden, on the north-east corner of the garden there is a cross. What does that represent? -- That is the spot to which the witness Moliko Khothatso moved after standing at the stable, and when he heard voices on the road below.

Then there is a dotted line going from E, G, H, right up to the spot on the road J. Is that a recognized footpath, a well-defined footpath? -- Yes, it appears to be a footpath, cattle-track, and sledge path.

All combined. That is well-defined, in other words? -- Yes.

As pointed out to you by the witnesses, Mr. Castle, that is the track along which the parties of men on foot have proceeded, is that correct? -- Yes, the dotted line represents that.

At the junction of the two roads on plan 1, there is a spot marked B. which according to your key is where the motor car stood before the party moved off? -- That is correct.

And it is alleged by the witnesses that car proceeded along the road

/road



road marked "To Fusi's" and finally arrived ~~some~~where near spot T. -- (No reply)

Right away on the second plan, m'lord, where the road curves, - where the footpath joins the road m'lord. Is that right? -- Yes.

You also took the photographs? -- Yes, I took the photographs.

I don't know whether Your Lordship wishes me to go through every point of reference. The key seems to be very clear. Now before I leave the key, you have given certain distances on each key. Were those distances, on plan 1, measured by yourself? -- Yes, they were.

And on plan 2, you have given approximations? -- Yes. I would like to mention to the Court that in plan 1, in the distances there, it says "spot E to road leading into village 5.5. feet". That is a mis-print. That should be 55 feet.

What do you mean there by "Road leading into village"? Is that the lower road? -- That is from the car.

From B to E? -- That is the road yes.

From B to E is 55 feet, is that what it amounts to? -- No. From E to the edge of the road leading into the village.

Is it from E to this thing marked a track? -- Just below.

Just below the track, 55 feet? -- 55 feet.

Now you also took a number of photographs which you have pasted on to seven sheets of paper. Is that correct? -- That is correct, yes.

We have marked those D. m'lord. And to save time

/now

now might I agree that my learned friends' and Your Lordship's photographs are numbered in accordance with ours. Now each photograph has a legend against it showing what it is, what it represents? -- That is correct.

And the references by letter are the same references you have got in the plans; in the photographs corresponding to the letters in the plans? -- Yes, I took the photographs to assist the Court in knowing the type of country it was.

I think there is only one other thing that may be of importance. Where the body was dropped from point P to O. Did you take that height? -- I did yes.

How much was that? -- 13 feet.

It is in the key m'lord. -- The plans are sketch plans, not to scale.

Thank you Mr. Castle - I forgot that. The plans are sketch plans. What is the nature of this donga? -- (No reply)

Is it a stream? -- No. It is caused by soil erosion.

A soil erosion donga. When you were there in August was there any water in it? -- Very little.

Had you had any rain about that time, just before you had been there? -- None at all.

So even after a spell of dry weather, there was still a little water at the bottom of the donga? -- Yes.

Can you estimate the depth? -- I did not, no. Estimate it?

Yes, the depth of the water. Was it a trickle or what? -- It was a few inches.

/How

How wide was it? -- Very narrow - just a trickle.

What was the nature of the ground through which that trickle was flowing? Was it sandy or rocky or muddy or what? -- Muddy.

I should ask you whether you measured the depth of the mud I suppose? -- I did not.

Had you known this donga before? -- No.

There seems to be some grass in one of the photographs, at point O. -- That I think is just due to the angle of the photograph.

Oh, I see.

CROSS-EXAMINED BY MR. GROBELAAR:

Now Mr. Castle, could you tell me whether a person standing at the point marked on plan 1 as "stable" would be able to see a motor car placed on the plan on the spot where you have put it? -- No.

Why not? -- Well he would be standing in front of the stable and the stable would be obscuring his view. And at the same time I have put some trees there, and I have also put trees behind Twai's hut at C. Those trees would also obscure his view.

Yes. There are numerous trees there which would make it entirely impossible for a person standing near the stable marked on the plan to see a motor car placed at position D. on this plan? -- It is impossible. He wouldn't be able to see.

There is also an aloe hedge preventing the car from being seen? -- Yes.

And the hedge is somewhere in line with the stable and nearly parallel with the road? -- Yes, and at the same time spot B. is on a lower level.

/I am

I am coming to that. Spot B is on a very much lower level? -- I would not say "very much lower".

Well a drop of what? -- It is difficult to estimate.

Easily 20 to 30 feet? -- I should say from 15 to 20 feet.

I want you please to describe the nature of the ground at point K. where the deceased is alleged to have been killed. -- Spot K is stony, flat stones with little stones on top.

That means that the surface is uneven? -- Uneven.

And if a person's body was pressed against those stones, and there was not much between the body and the stones you would expect the body to be injured in some way or other? -- I should imagine so.

Then the description which you have given at point K would also fit the nature of the ground at point J. That is where the deceased is alleged to have been dragged off his horse? -- The ground at spot J, was actually on the road, and it was soil. I didn't see any stones on the road. It was sandy at the time I saw it.

I saw the scene yesterday, - I may be mistaken - but I put it to you that the nature of the ground is the same. It is a rocky surface; stones embedded in the ground? Do you deny that? -- I don't deny that; I don't know which spot you actually saw, but the spots pointed out to me by the witnesses - the road was not stony, it was soil. Just off the road it was.

Mr. Castle, the whole area of the road in that vicinity, is simply on a bed of stones? -- Just off the road it is stony, but at that particular spot just off the

/bend,

bend, if I remember correctly, it was soil. I didn't see any stones, and I adhere to that.

But any ground that there may be around that bend is on a surface of stones embedded in the ground? -- If you look at page 7 of the photographs. That photograph...

My photographs are not paged. -- Well, the last one. The single one. Yes.

This one? -- Yes. Now that photograph will give you a good idea, because that photo was taken more or less on the bend, and as you will see there are rocks all off the road, and very little rocks on the road.

And do you say that there are no rocks or flat stones embedded in the ground to the west, or on the right side of the road at point J. Assuming one drives from Mamate's village? -- I did say that off the road there are undoubtedly rocks. On the road, at the spot I where he was caught, I did not see rocks.

Well do you deny that there are rocks beside the road on the side opposite to K.? -- On the side of the road opposite K?

Yes. -- There are rocks there. I said, and I keep on saying, that off the road there are rocks, but on the spot J there was soil. I didn't see any rocks there.

Well I put it to you that you are mistaken. I saw the place myself, and I say this road goes over a rocky surface at point J.? -- Sir, I adhere to what I said on that point.

I'll submit, Your Lordship! Do you know what the distance is from point B. where the motor car is alleged to have stood to Point J? -- Approximately two

/miles.

miles.

Two. Yes, there you are correct. That is precisely two miles! And now would you describe to the Court please the nature of the ground from point J to the donga where the deceased's body was found? -- I think the sixth page of the photographs will give a very good idea of that.

You say the photographs will describe it. I would like.... isn't it true that the ground is full of stones; practically a stone hill, when one comes down from point J. right up to within a short distance of the donga? -- Practically all stone, without any vegetation.

And the fall is fairly steep if one comes from point J. and goes to points P. and O. -- It is in two terraces.

Yes, I think you are ~~wonnetes~~ ~~wonnetes~~. But you agree it is fairly steep? -- Yes.

And the ground is very uneven? -- I agree.

Do you think you could walk down that surface at night without the risk of falling down? -- I think there would be a risk.

Even if it were perfectly dry there would be a very great risk of stumbling and falling ~~several~~ ~~altimes~~ times in one's course from point J. to points P and O.? -- Yes. As a matter of fact when I did take the measurements I did slip once.

And on a dark and rainy night it would be extremely difficult to walk along that course without the probability of falling down or slipping? -- Probably.

/And I

And I take it you concede it would have been an extremely difficult task to carry a dead body down that hill on a dark and rainy night? -- Yes.

Without the risk of falling down? -- Yes.

Now I want to be quite certain as to where point P is. If one walks down from point K would point P be on the left of the donga or on the right of the donga as one goes down? -- In the middle.

Right in the middle. Not close to the left or the right side? -- I should say it is slightly nearer to the left; that is going down,~ looking down at it.

And within what distance of the donga is the intersection of the edge of the donga and the indication of the path used by the accused that night? -- Could I have that again please?

What is the distance between P. and that point of the intersection of the path used, or the route used by the accused, and the edge of the donga? -- About what is it? -- From point P. to the right edge of the donga?

Yes. -- 15 to 20 feet. That is a rough estimate; I didn't take measurements.

But is this indicated here with lines...? -- That indicates the edge of the donga, yes.

Lines running inside from the straight line? -- That's right.

The distance from P. to the edge of the donga is about 20 feet you say? -- From about 15 to 20 feet. As I say that is a rough estimate. I didn't take that measurement.

Then do you say the persons who threw the body  
/down

down must have been at point P.? -- That is correct, yes.

In other words you say that according to the facts pointed out to you the accused must have been on a little island? I think the photograph shows that; it is a little island.

HIS LORDSHIP: How did they get to P.?

MR. GROBELAAR: That is my difficulty, m'lord. -- That is indicated by the dotted line. From R. they walked down into the donga and then climbed up on to spot P. as the dotted lines indicate.

HIS LORDSHIP: Yes, but how did they get to P. from the top? -- They climbed into the donga, and then they climbed up <sup>on</sup> to spot P. the little island in the middle.

I see, yes.

MR. GROBELAAR: That means according to your information the accused first carried the deceased into the donga, carried him out of the donga, and then threw him into the donga? -- That is correct according to the witnesses.

Now you were in Court when the Crown witnesses gave their evidence at the Preparatory Examination on the question as to how they deposited the body of the deceased into the donga? -- I hadn't seen the donga then.

I said you were in Court? -- Yes, I was in Court.

Did you hear any of the Crown witnesses say in Court that they walked into the donga with the body of the deceased, where they took the body, and then came out of the donga again, with the body? -- I did not.

Isn't it a fact that all the Crown witnesses spoke to the throwing of the body into the donga and said that they walked to the side of the donga and threw the  
/body into



body into the donga at once? -- That position could be cleared up with the witnesses themselves, sir.

I am asking you.

MR. THOMPSON: I dislike interrupting my learned friends in cross~~e~~amination at any time, m'lord, but is it quite fair to ask a Police Officer to account for what witnesses said at a Preparatory Examination? My learned friend has now pointed out that they went down into the donga and climbed up again. This can be put to these witnesses when they come to give evidence. Mr. Castle is not responsible for what witnesses said ~~at~~ the Preparatory in another Court.

HIS LORDSHIP: The evidence you are giving now is what these people told you, is it not? -- That is correct.

Who exactly told it to you? -- Mapeshoane.

And no others? -- No others.

Well, now you can proceed.

MR. GROBELAAR: You heard Mapeshoane give evidence at the Preparatory. M'lord with the submission, I am perfectly entitled to ask this question for this reason, a witness at the Preparatory Examination made a statement which was heard by the present witness, and it may be that the Crown may rely on some misapprehension of the evidence. Now I want this witness to tell the Court whether he heard that early evidence, that that is what the witness said, I am perfectly entitled, in cross-examination, to show that a witness, Mapeshoane, who gave a contradictory statement to this witness said something entirely different in Court. I am perfectly entitled to test the credibility of the witness...

/HIS LORDSHIP:

HIS LORDSHIP: You may recall this witness, but it is premature at present.

MR. GROBELAAR: We have got the Preparatory Examination and I am entitled to rely on that, Your Lordship.

HIS LORDSHIP: No, I'll give you the opportunity of recalling this witness if need be, but you are a little bit premature, you want to contradict the witness, but you can contradict him after you have heard the evidence.

MR. GROBELAAR: M'lord with respect: if a witness makes two inconsistent statements to another witness, I am entitled when that other witness is in the box, to ask this witness "Did you not hear this witness make contradictory statements?"

HIS LORDSHIP: You see, this witness may never be called, and then the evidence would be of no value. I see your point.

MR. GROBELAAR: As Your Lordship pleases. I shall leave this point m'lord, and leave it until after that witness.

HIS LORDSHIP: Yes, it seems a bit premature now.

The witness may never be called.

MR. GROBELAAR: I can hardly conceive of the Crown doing that, but I'll wait until he is called. With respect, I adopt Your Lordship's suggestion.

Now do you know what the distance is between point M. where the saddle is alleged to have been found and point K? -- The distances are on the key, sir.

No, I wouldn't have asked you Lieutenant, if it were there. -- From M. to R.?

No, from M. to K. I want the distance between M. and K. more or less? -- About 110 paces.

110 paces. Yes. And the distance between K.

/and

and J.? -- About six paces.

About six. And between M. and P.? -- In a direct line?

Yes. -- You'll see in my key to distances, I have M. to O. approximately 243 paces.

And I think you said that the distance that the body of the deceased would have been thrown from P. to O. was 13 feet, that is correct? -- Yes.

I just want to be quite clear on that point. Now, did you observe certain stones lying at the bottom of the donga, in the vicinity of point O.? -- At the time I saw it I did not; although I wouldn't say there weren't. I didn't notice them.

I put it to you that there are stones there now which show that they must have been there a very long time? When you saw the place there were probably stones there? -- As I said, I didn't notice any stones, but I wouldn't deny that there are stones there.

You might not have noticed it? -- I might not.

You would not deny that there were stones? -- No.

And you think there probably were? -- It is possible, yes.

There are stones, lots of stones, in the vicinity of that donga? -- I didn't notice lots of stones.

Did you notice any stones in the vicinity of the donga? -- Yes, I did.

Where? -- Higher up, just about where O is, and higher up in the donga. There were quite a lot of lumps of soil, broken off from the island, marked P. There were quite a few of those.

/Now will

Now will you agree that the course of the small stream of water in the donga is frightfully narrow, ordinarily? -- Yes.

A matter of inches, not even a foot, near point O? -- Yes, that is correct.

And there is a patch of grass near point O. -- Higher up, yes.

Would you know how long before you visited the donga rain had fallen there? -- I was there in August. We hadn't had rain since May.

You know that about a month ago a fair amount of rain fell in that area? -- Yes.

Do you know how much rain? -- I couldn't tell you.

The grass is green in that vicinity isn't it? -- I was there last in August.

Yes. Now if a fair amount of rain fell in the vicinity of that donga about a month ago would you agree that there would, in all probability, be more water in that donga at the moment, than there was in August when you saw it? -- I, agree, yes.

When you saw this donga in August, there was hardly any mud at all? -- Yes, there was. You can see at O. there, the darkish line, coming down from the spot on the island. There is a light coloured soil and at the bottom there is dark soil. Photograph page 5.

You agree that the stream was probably less than a foot wide? -- Yes.

And at that time there wasn't mud to a depth of say even three or four inches? -- Yes, there was. Soil had fallen down from this island, and had landed in

/the water,

the water, and there was mud.

So if a human body had been thrown down that donga from point B. in August, then parts of that body would have come into contact with hard ground? -- In August?

In August, yes? -- Yes.

The area covered with mud at that time was extremely small? -- Very narrow, that is correct.

And at the widest places not even a foot wide? -- That is correct.

LUNCHEON ADJOURNMENT.

CAPTAIN CASTLE, under former oath

CROSS-EXAMINED BY MR. GROBELAAR: (Continued.)

Did Mapeshoane indicate to you the route which the accused followed in going to the donga, and is that indicated by the dotted line past spot R.? -- That is correct, yes.

Does that mean that from point K. the accused walked in an easterly direction? -- Then turned at spot R. and then went towards the donga; that is correct.

Does it mean that if one looks down from point K. to the donga, that they walked to the left? -- That is correct.

On the left of the donga? -- No, the right.

They walked to the right of the donga? -- Yes.

Is there a foot path in the vicinity of that route? -- I didn't notice.

Didn't you notice a footpath coming from the direction of the place where the funeral was supposed to have been held? -- The funeral was held .. you take the main road beyond Fusi's village, - on the main road.

/But

But aren't you aware of the fact that a person coming on horseback from the place where the funeral took place would in the ordinary course use a bridle path somewhere in the vicinity of this donga? -- I was informed by the witness that they kept on the main road.

Do I understand you to say that you noticed no footpath at all in the vicinity of the donga, within three or four hundred yards of it? -- I did not.

I put it to you that there are several footpaths clearly visible even today near the donga? -- That is possible; I said I didn't notice them.

Could you tell the Court what the distance was from the spot where the blankets were found to the donga? -- Blankets? What blankets?

The blankets of the deceased? -- That spot wasn't indicated to me.

It was not? -- No.

HIS LORDSHIP: What is R. supposed to be then? -- Where the boots and hat were found.

MR. GROBELAAR: So you don't know where the blankets are alleged to have been found? -- What I know is that the blankets were found with the body.

Now do you agree that it would have been extremely difficult for three or four men to climb from the bed of the donga up to the ledge from which they were alleged to have thrown the body down? -- To spot P. you mean?

Yes. That ledge or that bank? -- From O. to P.?

Yes. -- 13 feet, as I have already said.

But on the other side, obscured to the view I took, -- I was looking at it from the front -- on the other side there

/was a

was a slope.

But this wall is almost vertical, from point O. to P.? -- That is correct.

How do you suggest people at night climbed that vertical wall in the rain? Do you think it is possible? -- Sir, I didn't say they climbed on the face from spot O to P. I said that on the other side of P, there is a slope, and spot F. is accessible from the other side, due to the slope.

I thought spot <sup>F</sup>/was on a kind of island in the donga? -- That is correct, and it can be approached from a slope.

But what is the depth of the donga at the lowest point of that slope? -- A couple of inches.

You understand what I mean? You said they went down into the donga and climbed up. Is that what the witness indicated? -- The position is that spot O is down on the side where the bank is vertical, but they climbed up from where there is a gradual slope up to point P and that is the side which they took as indicated to me by this witness Mapeshoane.

Even the wall of the donga which the witness says they climbed up, even that is fairly steep? ... The island?

Yes, in order to get onto the island with the body, as was indicated to you. It is fairly steep up the wall of the donga in order to get to this island? -- It is at a gradient, yes.

On a rainy night then it would be almost impossible to climb up as the witness indicated? -- I think

✓it

it would still be accessible. I don't want you to be mistaken and think it is just a slight slope, there are ledges due to the broken nature of the earth, where one can get firm footholds.

Now what height did these witnesses tell you they climbed with the body in order to come to spot P.? -- How do you mean?

You said they climbed up this bank. Now how high did they have to climb in order to get there? -- The bank is 13 feet high.

They also climbed 13 feet, all of them -- the witnesses who threw the body down? -- I can't answer that for them.

They say so. I want to know from the plan that you have drawn up. You have drawn a plan and said, "Well the witnesses will say that they climbed from this spot up to such and such a spot"? -- Yes.

Now I'd like to know -- I want to understand your plan. They showed you they climbed 13 feet with this body? -- Yes.

And Mapeshoane said so, and who else? -- Only Mapeshoane.

Only Mapeshoane? -- Yes.

You didn't ask the others? -- No.

Was he in their presence when he said this? -- No, I only took Mapeshoane out with me; I thought he was the only one necessary. It was merely a question of pointing out the various spots to me.

Did he say so to you only on one occasion? -- I merely asked him the question "From where was the body thrown?" and he pointed out the spot from where the body

/was



was thrown, and I said "Did you climb up here"? and he said "Yes", and that was all the information I wanted.

You are quite certain you understood him correctly? --  
I am, perfectly.

Was it interpreted to you, or did you understand him? -- I understood him. He speaks English very well.

He spoke in English to you? -- Oh yes.

And there is no question of a misunderstanding? -- I don't think so.

Do you know who the witness was who refers to, or is supposed to have referred to an umbrella stay being used? -- (I reply.)

HIS LORDSHIP: The question is this, really, did they go right down to the bottom? What was the reason of going right down to the bottom and climb right up to P. again? -- I didn't ask that question m'lord. I merely asked him to point out the spots to me.

Then you don't know that they climbed up at all? --  
He stated that they did climb up there.

That they climbed up? -- Yes, to spot P.

From where? -- From the opposite side as the photograph was taken.

You mean that they went down to the bottom and then climbed up? -- Yes.

MR. GROBELAAR: Do you know what the distance is from point O. to the nearest edge of the bank of the donga? -- 27 feet. I have that down here.

HIS LORDSHIP: In a sense O. is at the edge of the donga? --  
You mean the bank at the back?

MR. GROBELAAR: The position isn't quite the same if one

/approaches

approaches it from one side as from the other.

What is the ~~distance~~ from the nearest edge of the opposite side of the donga? To point O.? -- Looking down on the left hand side? That is what I mentioned.

Yes, coming down from the right hand side? Is that further than 27 feet? -- I should imagine so, yes.

Now if this body was thrown from the bank of the donga, and the nearest point on the bank to the point O. do you say that the body would have had to travel vertically for a distance of about 27 feet? -- (No reply)

Do you understand my question? -- To get to spot O.?

Yes. -- No, I can't quite understand the question.

What I want to find out from you is this: assuming you stood on the edge of the bank nearest to point O and you wanted to throw the body to spot O. where it was found, do you agree that in order to get it there one would have to throw it forward a distance of 20 to 30 feet? -- Quite.

You couldn't just drop it. If you did that it wouldn't land at point O.? -- No.

There would be a bank on which it would fall if you merely dropped it vertically? -- Quite.

From the nearest edge of the bank of the donga? -- That is correct. The photograph will show you that.

In other words a great deal of force would have been necessary to throw the body forward first for it to fall at spot O.? -- That is correct.

And why are you reluctant to mention the umbrella stay? After all it's in the interests of

/justice.

justice. Who was the witness who mentioned the umbrella stay?

MR. THOMPSON: M'lord I object to that question. There is nothing in the Preparatory Examination or in this Court which says that any witness mentioned an umbrella stay.

HIS LORDSHIP: Yes. That seems to me completely hearsay which is not evidence. The witness has come here to give evidence about the plan, and you are asking him all sorts of other questions.

MR. GROBELAAR: M'lord the doctor gave evidence to the effect that he was told that an umbrella stay had been used ....

HIS LORDSHIP: No, that question was objected to, and I told you you couldn't put it that way.

MR. GROBELAAR: M'lord if I may explain ... in the interests of .. if a statement is made by a witness to show that that witness is not reliable, then the Court is entitled to know it.

HIS LORDSHIP: You can do it at the proper stage. It may be that the Crown witnesses called may not make that statement.

MR. GROBELAAR: That is exactly why I want to call him. If that Crown witness made that statement before, and we are told by the doctor that he was asked to examine this body with a view to finding out about the umbrella stay being used and if there was an exhumation, as it says in his report, m'lord, I may refer to the doctor's report where he says that ( the report is exhibit D. attached to the record), Dr. Ogg says "This is to certify that we were present at the exhumation of the body of a male African adult at Teyateyaneng at the African cemetery

/on the

on the 29/6/1948 and subsequently examined the body for certain injuries. It had been alleged that the deceased had been throttled and a sharp instrument forced into his nostrils ...."

HIS LORDSHIP: That is not evidence.

MR. GROBELAAR: Yes. ... as Your Lordship pleases.

HIS LORDSHIP: That is not evidence. It shouldn't have been there at all. Dr Ogg may have said it, but he oughtn't to have done so.

MR. GROBELAAR: It is a fact isn't it, that the doctor was asked to exhume the body with a view to ascertaining whether an umbrella stay had been used? -- That is correct.

Those instructions were given to the doctor? -- Yes.

Where did you get those instructions?

HIS LORDSHIP: No you can't give that. You are trying to get round my ruling, and you must accept that. I am not going to allow you to get round it.

MR. GROBELAAR: M'lord, with respect, I didn't endeavour to do that.

CROSS-EXAMINED BY MR. MAISELS:

Mr. Castle do I understand the situation to be - correct me if I am wrong - that four witnesses, Mapeshoane, Sothi Molemohi and Sepalami have been in custody for some time? -- That is correct,

They are four people who gave evidence at the Preparatory Examination. Four people who I think will be witnesses. Four people who we will call, for convenience sake, on their own story, accomplices. You know the four to whom I am referring? -- I do.

/That is

That is for record purposes again, Mapeshoane, Sothi, Molemohi and Sepalami. Will you tell me when the first of these four was taken into custody? -- Sepalami was the first one.

Yes? -- I haven't got the correct date, but it was towards the end of May.

Is that Mapeshoane, was he the first? -- No, that was Sepalami.

Sepalami was the first to be arrested? Who was the second? -- Molemohi.

The third? -- Sothi.

The fourth? -- Mapeshoane.

And were they arrested within a short time of each other? -- The first three were; Mapeshoane was long afterwards. He was in July some time I think.

You say the first three were some time in May? -- End of May and beginning of June.

And Mapeshoane was in July? -- In July, yes.

How many statements did they make, each? -- One statement.

Can you give me the date? -- (No reply)

Of each one? -- Molemohi on the 9th day of June, 1948

Yes. -- Mapeshoane on the 22nd July. Sothi on the 20th July.

Yes? -- Sepalami on the 22nd June.

Now just to get it on the record Mr. Castle, -- I am reading from the record of the Preparatory -- (we'll assume it is correctly recorded for the moment), accused No. 2. was arrested on the 13th July; accused No. 3

/on the

on the 21st July; accused No.4 on the 13th July; accused No.5 on the 14th July; accused No.6 on the 13th July; accused No.7 on the 13th July; accused No.8 on the 14th July; accused No.9 on the 13th July; accused No.10 on the 14th July; accused No.11 on the 21st July; accused No.12 on the 28th July, and accused No. 1 on the 13th July.

HIS LORDSHIP: That is admitted is it?

MR. MAISELS: The dates given are the dates that they were taken into custody is that right? -- Yes.

You have told us that the witnesses were taken into custody in the end of May or beginning of June - three of them, and one sometime in July? -- That is correct.

Mr. Castle, from the time that these witnesses were taken into custody, were they ever together? -- Yes.

They have been together on innumerable occasions, I take it? -- Yes.

They have lived and slept together, haven't they? -- That is quite correct.

Yes. And they certainly lived and slept together before they gave evidence at the Preparatory Examination? -- That is correct.

And insofar as Sothi, Sepalami and Maposhoane are concerned, before they made their statements they had spoken to Molemohi, in goal? -- They weren't in goal, they were kept at the Charge Office.

Well, wherever it was - at the Charge Office? -- They had spoken to Molemohi?

I will put the question again. Molemohi apparently made a statement on the 9th June, according to what you

/have

have told us? -- Yes.

Sepalami made his statement on the 22 June? -- Yes.

Before he made his statement, had he seen and spoken to Molemohi? -- Had he seen and spoken to Molemohi?

Yes? -- Yes.

Before Sothi made his statement had he seen and spoken to Molemohi and Sepalami? -- No.

How do you know that? - Because he was kept separately.

Where was he kept? -- He was at the back, and they were at the front.

Of what? -- The Charge Office.

Do you say that there was no opportunity for them to speak during this time? -- None whatsoever.

Do you say that of your own knowledge? -- Yes.

Were you constantly there? -- Yes.

Well me what separated them? -- Spathi was in a rondavel at the back, and the other two were in the front.

I see. Was Sothi kept in solitary confinement? -- He was kept together with No.9 accused.

I put it to you - we'll get it another way - before Sothi gave <sup>his</sup> evidence at the Preparatory Had he been in contact with any of the other four? -- Yes.

With whom? -- With Molemohi and Sepalami.

And what about Mapeshoane? -- He wasn't there then.

Wasn't he? -- No.

Are you quite sure Mr. Castle? -- Positive. Mapeshoane was only brought in on the 13th.

No, I am talking about before they gave evidence

/at the

at the Preparatory? -- Yes, he was there.

Of course ~~he~~ saw him! They ~~ns~~ slept in the same room didn't they? -- Yes.

He and who? Sothi and Mapeshoane slept in the same room? -- Yes.

For how long had they slept in the same room? --  
reply)

Prior to their giving evidence at the Preparatory Examination? -- About a week.

And the other two, - where were they sleeping? --  
Three of them <sup>were</sup> together, Mapeshoane, Sepalami, and Molomohi.

What about Sothi? -- All four, and Sothi.

So it is not just three - all four were together.  
A very convenient arrangement! Were they kept in custody in the same room up till the time they gave evidence at the Preparatory? -- No, they were free to move about.

In a narrow space? -- No. Right round the Charge Office.

Free to talk to one another as much as they liked.  
Yes.

Yes! And in between the time of their giving evidence at the Preparatory Examination and the next witness being called, take for example Mapeshoane giving evidence on one day, and Sothi on the next day, did they have an opportunity of talking to one another? -- They were together.

Yes. All the witnesses ~~who~~ gave evidence at the Preparatory Examination with the exception of Captain Willson and Dr. Ogg were kept together in the same

/Charge



Charge Office? ~~33~~<sup>33</sup> No, only the accomplices were. The others were called in the day before they had to come down - then they were all together.

The reason why I put it to you that way, Mr. Castle, was on account of the answer you gave me which I misunderstood. I appreciate that. I understood you to say that all the Crown witnesses were kept together? I thought you were referring to when the trial was on.

The Preparatory? -- Yes.

All right. When were other Crown witnesses brought into the Charge Office? That is Ntsane, Makhetha, and the rest of them? -- About .. since the time these people were arrested, about the 14th or 15 th July.

From the 14th and 15th of July. They have been there ever since? -- No. We kept them until after the Preparatory Examination; then they were allowed to go home.

According to the record, Mr. Castle, the Preparatory concluded early in August, 3rd August? -- Yes.

Now I hope I am not putting the question unfairly, - you can correct me if I am - do I understand correctly then, that all the Crown witnesses, with the exception of Dr. Ogg and Captain Williams were kept together in the Charge Office, free to talk to one another, from some time in July to the beginning of August? -- That is correct.

I don't want exact dates, I don't think they matter. And just to round this topic off, to make quite sure, the four accomplices have been in custody ever since they gave evidence at the Preparatory Examination? -- Yes.

/And the

And the same opportunity of easy intercourse has presented itself? -- That is correct.

Mr. Castle, did you get the statements from these people? Were you the Officer responsible? -- Yes.

Did you hold out any inducements to them? -- None whatsoever.

They just voluntarily came? -- That is correct.

All four? -- That is correct.

Did you say to the witness Sothi that if he speaks nicely he wouldn't get into trouble? -- I had Sothi in my office, and I warned him in the usual way.

Now, Mr. Castle, I don't know what the usual way is. Would you mind answering my question? I'll put it again: Did you tell Sothi that if he spoke nicely he wouldn't get into trouble? -- I had Sothi in my office, I told him that I was going to ask him some questions, and if he wished to answer them he may do so, and if he didn't want to he needn't. I said "I want you to tell me the truth of what you know in this matter", then he said that if he did he might be arrested himself, and put in goal. I said "No, if I am satisfied that you are telling me the truth, and what you are telling me is the truth, I'll use you as a witness."

Now as I understand the position - I want to make quite sure about this - Sothi was the third person to make a statement. -- That is correct.

Did you tell him that Sepalámi had made a statement? -- I did not.

Did you tell him that Molemohi had made a statement? -- I did not.

/How long

How long after he was arrested did he make the statement? -- I think about three weeks.

Was that the first time you had spoken to him in that three weeks? -- That was the first time I had spoken to him.

Where had he been during those three weeks? -- He was in the rondavel at the back.

With whom? -- With NO.9 accused.

And Molemohi and Sepalami - where were they? -- They were in the front.

Now at the time you got the statement from Sothi, had Mapeshoane been arrested? -- No.

I think you are wrong aren't you Mr. Castle, if the evidence that you have given earlier is correct? Because the evidence that you gave, according to the note of my learned junior, Mapeshoane was arrested on the 13th July, wasn't he? -- Yes.

If Mapeshoane was arrested on the 13th July, then he was already in custody when you took Sothi's statement? -- I think there is an error there sir, because ...

If there is an error you made it, because you gave the statement Mr. Castle! Would you like to check it? -- Unless there is a misprint there, because Sothi definitely gave his statement before Mapeshoane was arrested.

Then the situation is the following, and let's have no mistake about it: Mapeshoane was arrested on the 13th July? -- That is correct.

Sothi made a statement on the 20th July? -- Actually I think there must be a misprint in the date there, because

/because

because definitely Sothi did give his statement before Mapeshoane.

A misprint where? -- On the date of my statement, - that I have got here.

But I don't follow that, Mr. Castle. Wasn't it written out? Wasn't the date put on when the statement was made? -- Yes, and I have the 20th day of July.

Well? -- Well, from my own knowledge that date must be incorrect, because Sothi gave his evidence, his statement, before Mapeshoane.

Nobody is saying to the contrary Mr. Castle. Mapeshoane gave his statement on the 22nd July? -- That is correct.

And Sothi on the 20th July? -- That is how I have it here.

So the date is correct.

HIS LORDSHIP: You are mixed up between the date of arrest and the date of the statement.

MR. MAISELS: That is correct, Mr. Castle. The date of the arrest was the 13th July. You are possibly slightly confused? -- Yes, that is correct.

Now after Sothi made his statement, what did you do with him? -- I put him in the front with Molemohi and Sepalami.

Where was Mapeshoane on the 13th July until the 22nd July? -- At the back, separate.

You mean you kept him in a separate room or cell?-- Well, he was in a room and kept at the back.

Just let me get this picture clear. There is a

/Charge Office

Charge Office? -- That is correct.

Are there a number of rooms there? -- Yes.

At night people are in different rooms? -- That is correct.

In the day time? -- Some are in front and some are at the back.

What divides them? -- The Charge Office itself.

Is there no passage-way or anything? -- There is.

What is to prevent somebody from the front going to the back? -- Nothing at all.

Nothing at all. What is to prevent somebody from the back going to the front? Nothing at all ! -- But ...

Well if there is nothing to prevent that happening how do you know it didn't happen, that people from the front went to the back and people from the back went to the front? - Because I had my men watching them.

In other words, you are relying on the African constables having completely separated these people - for your statement that there was no intercourse between them? -- That is so.

Somewhat tenuous grounds, I suggest, Mr. Castle! Is that the only reason you have? -- Yes, the only reason.

I want to get that quite clear. And then do I understand the situation to be that once the person had made a statement he was then put to the front? -- That is correct

Now, Mr. Castle, I just want to deal very shortly with the plan - at least with some aspects of the plan and the photographs. M'lord, I wont go over the ssame ground as my learned friend; I just want to clear one or two points.

/Would

Would you mind Mr. Castle, looking at plan No.2, that is the one which shows the donga. There are certain small dots leading from the donga to point R, and from point R to something which is marked "slope"? -- Yes.

What are they supposed to represent? -- The route taken by the group when they carried the body from the top down to the donga.

Who pointed it out to you? -- Mapeshoane.

Was anybody present with you when that was done? -- A trooper was present with me, and numerous other witnesses.

Can you give me the names of the numerous other witnesses who were present when this was done? -- Witness Ntsane was one.

Who else? -- Pheta.

Who else? -- Witness Nonyane.

He wasn't called was he? -- No, he wasn't called. Trooper Hamilton was present. Corporal Nkhetse was present.

I don't want to know the police, I want to know the African witnesses, other than the Police. -- Witness Manpane was there. Those are the only ones I can remember.

Now then, may I take it, to shorten the proceedings Mr. Castle, that the whole of the route and anything else in regard to where they started from and where the groups met and where the motor car was, all that information was pointed out to you by Mapeshoane? -- Yes.

Was there any particular reason why he, and not the other three accomplices, was selected? -- No reason at all.

It just so happened? -- That is correct.

/Was there

Was there any reason why the other witnesses were not asked to - I refer particularly to the three accomplices - to point out where the assault took place, and the route taken? -- Because I thought that Mapeshoane's evidence would be sufficient.

I want to be quite clear. You merely wanted to have some idea as to where the thing happened? -- Yes.

That is the real basis of what you did? -- Yes, I was drawing a plan and I felt that I wanted Mapeshoane's evidence; I was satisfied that he was telling the truth. HIS LORDSHIP: What these people pointed out is not evidence. It was only for the purpose of drawing up a plan and you can check up the credibility of his evidence. It isn't really evidence.

MR. MAISELS: My lord, I merely want to get clear who pointed out certain spots in case the witness gives different evidence at a later stage.

Now, Mr. Castle, do I understand this to be the position: From J. which was where the horse was apparently, ... where the deceased was pulled off his horse, to K. is merely six paces? -- That is how I judge it.

Yes, approximately? -- Yes.

And I suppose a good portion of from J. to K. is over a rocky surface? -- Yes.

Then assuming that the deceased was either rendered unconscious or killed at K. whatever the situation is, he was then taken ~~on a route~~ on a route, a rocky route, is that correct? -- That is correct.

Which must have been very slippery? -- I should imagine it would be after rain.

On, as we have heard, this dark night. Now would

/you

you mind looking at the photograph on page 6, S. indicates where the donga is Mr. Castle? -- Yes.

Now R. gives a pretty good idea, from R. to S. gives a good idea of the nature of the ground. They must have been going down a hill up a donga, down again, and up another donga -- is that right ? -- That is correct.

Now Mr. Castle I haven't been to the scene like my learned friend, Mr. Grobelaar, and I hope you'll assist me. -- Yes.

It looks to me as though they are going down this rocky surface, up a donga, down again, then up again, then down again, then up again? -- To tell you the truth Sir, I can't remember offhand what the position is on the other side.

Other side of what? -- Of S. coming down from R.

But Mr. Castle didn't you go to spot R.? -- I did, Yes.

And didn't you go from spot R. to spot P.? -- I did yes.

Which is equivalent to S.? -- I can't remember how many dongas I went into.

I don't care whether there are two or three, there are dongas? -- Yes.

Is that a fair way?

And then they finally come to one donga and climb up that one and throw the body down? -- That is correct.

Does that not appear to you to be strange? -- Well, I was just interested in drawing my plan at the time; I didn't think anything of it.

/Mr. Castle



Mr. Castle you made a statement with regard to the truth of the ~~wit~~witness, so perhaps it is not unfair to ask you whether you thought that that was strange? -- (No reply)

HIS LORDSHIP: I don't know that we are concerned with his opinion of a witness.

MR. MAISELS: I think it is relevant to ask this witness whether he considered it strange in the light of the next question I wish to ask him. Did you consider that strange? -- At the time, to tell the truth, I didn't.

Do you now think it strange? -- (No reply)

HIS LORDSHIP: What is he supposed to have thought strange?

MR. MAISELS: The fact of going up to the final ...

HIS LORDSHIP: Yes, you mean going into the bed of the donga and then coming up again?

MR. MAISELS: Exactly!

HIS LORDSHIP: From what you have shown, they must have gone to the bottom of the donga and then gone up again? -- Yes, my Lord.

What was the object of that? -- I didn't ask.

Did anything occur to you what the object should be? -- I didn't think of that question at all.

MR. MAISELS: You see Mr. Castle, if you had thought, I suggest you would have asked one of the others, if this was the course. -- I was satisfied at the time.

I will just put it a little stronger, if Your Lordship pleases. Mr. Castle you are actually the Officer in charge of this case aren't you? -- Yes.

Now just look at this photograph on page 6 again please? -- Yes.

/The dots

The dots from R. -- do they continue to where would be approximately K. on the plan? -- That is correct.

Ofcourse it depends on angles at which these photographs were taken, but it is fairly steep going down? -- It is.

Fairly steep? -- Yes.

And after S, is there another donga again? -- I dont quite get your point.

You see I don't know the lay of the land at all. You get a donga and the foot of the donga where the body was found found? -- Yes.

Then a little bit further is there another sort of a cliff or donga? -- Further up - away from the body?

Yes. -- It was all a continuation of one big donga.

One big donga with numbers of little splits? -- Yes.

Is that right? -- Yes.

And they continue after this? -- That is correct.

Which makes the selection of this one even more strange doesn't it? -- It would appear so, yes.

HIS LORDSHIP: This spot where the body was found, is it a good hiding place? -- It is, yes.

RE-EXAMINED BY MR. THOMPSON:

Mr.Castle, this is not the first ritual murder in which you have been in charge where the investigations have been concerned, is that not so? -- That is correct.

What, in your experience, is the favourite place of putting a body in a ritual murder? -- In the most obscure places.

You were transferred from Swaziland to Basutoland about two years ago is that so? -- A year ago.

Since you have arrived in Basutoland you have been  
/engaged

engaged in the investigation of ritual murders? -- That is right, yes.

Now from your experience during that time, what is the usual place where you find the body where ritual murder has been committed? -- Obscure places - most inaccessible.

Is this an obscure and inaccessible place? -- It is yes.

HIS LORDSHIP: How far is this from the nearest dwelling house? -- There is a village on the left, about 600 paces away, I should imagine.

MR. THOMPSON: The nearest dwelling place is that on plan 2, marked L. Mr. Castle? -- I should imagine that that is about the same distance. Fusi's is on one side and the other village on the other.

There is another village on the other side about the same distance as Fusi's? -- That's right.

Now on your plan No.2. there are a series of lines right across the plan on the left hand side. See them? -- Yes.

Are they meant to represent a rough approximation of a contour line? -- Contour lines, yes.

The top being this part which you marked "flat" -- is that correct? -- Yes.

Falling more or less steeply away to this donga? -- That is correct. M. is more or less on a plateau, on a ledge...

Yes, I was coming to that. It falls more or less down to the donga, save that you mark another flat piece, a little less than half way down? -- That's right.

Now this road to Fusi's, as it is called, did

/you

you observe any recognized, or what appeared to be a recognized path or bridle path leading down that slope to the donga? -- I did not.

Returning to the photographs, on page 6, we have an S. on that photograph? -- Yes.

Am I correct when I look at that photograph, I judge that as the beginning of the donga, which you say is an erosion donga? -- More or less, yes.

Like all erosion dongas it starts by being a few inches, and as it goes on, in a very short time it is about 20 or 30 feet? -- It widens out.

It widens out and is 20 or 30 feet deep? -- That is correct.

So that if you come to S. you come down to the slope to the beginning of an erosion donga? -- Yes.

Point P. is a bit of a way down the donga when it has begun to get deep? That you have already told us, by that time it is 13 feet deep? -- Yes.

Looking at the photographs on page 5, the upper photographs, you see from P. to O. is - one might say - almost vertical, judging from the photograph? -- That is correct.

If you wanted to get from the bed of the donga, that is on the level of O. to the top of P. how would you set about it? -- I would go round.

Can you be a bit more explicit, please Mr. Castle. You wouldn't climb up the vertical face - that is obvious? -- No.

Not in your right senses anyway! Which is the easiest way to get up? -- From the right hand corner.

/Is that

Is that more or less from the direction in which the photograph was taken? -- That is correct.

HIS LORDSHIP: According to this plan that you have drawn they went direct to P.? They went down to the bottom of the donga and then climbed up again.

MR. THOMPSON: Mr. Castle, what is the descent from P. to the level of the bed of the donga in the direction from which you took this photograph? What sort of a descent is that? -- You can see the grass on the right of the photograph.

Which photograph are you referring to? -- Page 5.

M'lord my learned friend Mr. Maisels has suggested that an inspection might be necessary in this case, and Teyateyaneng is about 30 miles from here and this place is a few miles beyond - it is accessible by motor car.

HIS LORDSHIP: More evidence must be taken to see whether it is necessary.

MR. THOMPSON: Yes. Just one more question. Is it possible to get to the top of this island at Point P. without making a strenuous physical, almost vertical climb? -- Quite possible.

HIS LORDSHIP: Here is a point one of the assessors would like you to elucidate. Did you merely go to this particular spot, P. and O. or did you go to other portions of the donga; did you go up or down it? -- I went down into the donga.

But down the course of the donga; or up the course of the donga? -- No.

Because you see, the point is this, if there were other places of this nature, where they could have thrown the man down immediately, or was this <sup>the</sup> first place

/they

they came to? You see, assuming that they intended to simulate a fall, then ofcourse you could see why they might want to throw him down from the top in order that they may be sure he had some injuries? -- No, my lord, I didn't examine the dōnga.

Well we might go and see then. If they did do this, then they must have had some further object in disposing of the body, because when they got down, there was no need to go any further. If they went down to P. then they must have had some object. Isn't that so? -- Yes.

It may or may not be that their object was to make assurance doubly sure. That may or may not be so.

Now do the native assessors want to ask questions? No.

MR. GROBELAAR: M'lord, there is a point which I wish to put, which is this: it was only made in re-examination by my learned friend that the place was an obscure and inaccessible spot, and on that point may I be permitted to ask questions?

HIS LORDSHIP: Yes.

FURTHER CROSS-EXAMINATION BY MR. GROBELAAR:

Now Mr. Castle you said this was an obscure and inaccessible spot. Will you deny that within 200 yards of the spot where the body was found there are a few native huts, which are practically on level ground with this spot? -- I said that in reply to the Attorney General. I said that on the level ground there were some huts, which I estimated the distance at about 600 yards.

Now which huts are you referring to now? -- Under the ridge, on the left.

/To the

To the south-east of the place ~~where the~~ body was found? -- Yes.

Well do you deny that there is a place within a few hundred yards of the spot ~~where the body was found~~ where water is drawn daily? -- Higher up, or lower down?

Lower down? -- I answered that question, that I didn't examine lower down.

Well do you deny that this is a place where cattle and sheep are being herded daily? -- When I was there I didn't see any.

HIS LORDSHIP: No sign of cattle or sheep? -- No sign my Lord.

MR. GROBELAAR: Can you give any reasons why they shouldn't be there? Isn't the grazing good? -- The grazing is good; I am merely saying that I didn't see any.

And yet you got the impression that it was a lonely obscure spot? -- That was my impression, yes.

Any more lonely than any other place inhabited by the Africans? -- (No reply)

HIS LORDSHIP: Thank you Captain Castle.

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THE CROWN CALLS:

MASIELE NTAI, sworn states

EXAMINED BY MR. THOMPSON:

Masiele, did you know Meleke Ntai? -- Yes, I knew Meleke Ntai.

Was he related to you? -- Yes, he was.

What was the relationship? -- He was my husband.

And was he any relation to No. 11 accused? -- Yes, he was related to No. 11.

What was the relationship between your husband and No. 11.? -- No. 11 is his first cousin.

/If my

If my learned friends don't mind my saying so, m'lord, cousinships and brotherhoods seem to be the same thing to the Basuto. Do you know the months of the year at all? -- No, I don't know the months.

Do you know the days of the week? -- Yes.

Can you remember what day of the week it was when you last saw your husband alive? -- Yes.

What was it? -- It was on a Thursday.

And what time of the day? -- It was in the morning.

And what was he doing when you last saw him? -- He was riding away.

Alone or in company? -- He was in company with others.

Who werewith him? -- He was in company with Maloi Ntsane, and Makhetha.

Maloi being No. 11 accused? -- Yes.

Were all four mounted, or only your husband? -- They were all mounted, the four of them.

Did you know where they were going? -- Yes, I knew.

Where? -- They were going to Mahleke's.

For what purpose? -- They were going there for a funeral.

And you never saw your husband again? -- I never saw my husband again.

What was the state of the weather on that day when you last saw him? -- It was raining that day.

Raining heavily or just a little? -- It was just a drizzle when they left home.

And later in the day? -- Then there was much

/rain.



rain.

If you don't remember, say so, but two or three days days previously, had you had much rain, or had it been fine? -- No, there had been no rain previously.

But a drizzle and heavy rain on that Thursday? -- Yes.

On the following day when your husband never returned did you do anything about it? -- Yes.

What did you do? -- I searched for my husband because I saw the others had come back.

What others? -- Maloi, Makhetha and Ntsane.

That is the three you mentioned, No.11 accused Makhetha and Ntsane. Did you make any enquiries of anybody?-- I asked accused No.11 where they had left Meleke.

This is evidence against No.11 m'lord, not the others. And what did he reply? -- He said that they left him near Masoeling.

Where is Masoeling? -- Passing Fusi's.

After passing Fusi's. Between Fusi's place and where you were living? -- Beyond Fusi's village.

Beyond Fusi's, from your village, in the direction of ...

HIS LORDSHIP: What is the name of your village? -- Phiri's.

MR. THOMPSON: And No.11 said he had left your husband at Matsoeling. Would that be in the direction of Mahleke's where the funeral had been? -- Yes, it is in that direction.

Did No.11 give you any reason why they had left your husband? -- He did not tell me.

What happened to your husband's horse? -- My husband's horse returned after I had asked No.11 accused

/where

where my husband was.

Was it saddled and bridled? -- There was no bridle and no saddle.

No bridle and no saddle? -- The reins were there but the bridle bit was in the mouth,

And no saddle at all? -- There was no saddle at all.

Did you make an unsuccessful search? -- Yes.

When your search proved unsuccessful what else did you do? -- I found the saddle at Fusi's.

That is No.8 accused?--=Yes.

How did you come to find the saddle? -- I asked if Meleke had not been in that place.

This evidence against No.8 m'lord, and not the other accused. Did you go to Fusi's place? -- I went to Fusi's.

And you spoke to Fusi? -- Yes.

And what did he tell you? -- I asked him if he had not seen Meleke.

Your husband? -- Yes,

And what was his reply? -- He said he had not seen my husband, but that he had seen a saddle.

And as a result of that did you go to look for the saddle about which he told you? -- Yes, I asked him to show me the saddle.

I want you to come down to this bench ... before you come down, did you point out to Lieut. Castle the place where you saw the saddle? -- No, I didn't.

It was another witness, m'lord, who also saw it. Anyway you saw the saddle - was it somewhere near Fusi's place? -- Yes, it was.

/Now I

Now I want you to come down to this bench where these exhibits are, take them one by one, and tell His Lordship whether you recognize any of them? -- I recognize the saddle.

Exhibit No.5. Yes? -- I do not recognize this blanket. It is a blanket which he borrowed from Mahleke's.

What is the next thing? -Exhibit <sup>No.4.</sup>/she does not recognize m'lord. -- I recognize the belt.

Exhibit No.9. Yes. Anything else? -- I recognize the saddle cloth.

Exhibit 8. Yes. -- I recognize the sjambok.

No.7. Yes. -- I recognize the hat.

No.6. -- This pair of trousers.

Exhibit No.1. Yes. -- I recognize the blanket.

Exhibit No. 2. Is that the lot? -- I recognize the boots.

That's No.3. All right. Just go back in the witness box. Now the saddle, saddle cloth, and sjambok, exhibits Nos.5,8,and 7 respectively, where did you see them?-- I saw them in Fusi's village.

In Fusi's village? -- Yes.

In or near? -- Near the village.

Who took you to the spot? -- I was taken there by Fusi.

Just describe briefly, were they hidden in a tree or lying on the ground, or how did you find them? -- They were in the open.

On the ground? -- Yes,

Now the clothing that you have identified, all the rest of the exhibits, with the exception of the blanket, exhibit No.4 - where did you see them? - At Fusi's.

/Were

Were ~~they~~ on a body or where? -- They were not on the body.

Was that after your husband's body had been found or before? -- It was before.

You saw the clothes before the body was found? --(No reply)

Where did you see ~~them~~? -- No, I am referring to the saddle, not <sup>to</sup>/the clothes.

I had finished with the saddle. Now I am talking about your husband's blanket, his boots, his trousers, hat, and belt. Where were they when you saw them? -- I saw them near Fusi's village.

Anywhere near the place where you saw the saddle, or the same place? -- At the same spot ~~where~~ I saw the saddle.

Now was your husband a person who suffered from fits at all? -- He used to have epileptic fits before, but he had been cured.

He had been cured had he? Was your husband a heavy drinker? -- Yes, he used to drink very much, but of late he didn't drink much.

So far as you know, was he a good or bad horseman?-- He was a horseman, but he couldn't gallop a horse.

TEA ADJOURNMENT.

ON RESUMING:

MASIELE NTAI, (under former oath)

CROSS-EXAMINED BY MR. GROBELAAR:

Now isn't it a fact that the saddle was not found at Fusi's huts, but it was found a good distance away in the veld? -- It was found some distance away, but not very far.

/But it

But it was found in the veld and not at Fusi's hut? -- Yes, but near Fusi's.

Yes. And Fusi told you that another woman had seen it there, and had told him about it? -- No. he did not tell me that.

What did he tell you? -- He said that they had seen a strange thing of a saddle.

HIS LORDSHIP: He said "they"? -- "We had seen a strange thing of a saddle".

MR. GROBELAAR: And the saddle, the sjambok, and the cloth were found at the same place? -- Yes, they were.

You told the Court at the Preparatory Examination that "My husband is a sickly person", is that so? -- Yes. I said my husband is sick.

And you also said he used to ~~com~~plain about pains all over his body? -- Yes, he used to ~~comp~~lain of pains in the body and also in the chest.

And that was his condition right up to the time of his death? -- Yes, but all the same he was working.

You got someone to attend to him some time before his death, and to try and cure him, isn't that so? -- Yes.

And that person was Fusi, accused No.8? -- No, not No.8.

But you see Fusi will say that he did attend to him.

MR. MAISELS: I am ~~appearing~~ for No.8. m'lord, and I suggest my learned friend should leave it to me what he should say.

HIS LORDSHIP: Yes.

MR. GROBELAAR: And your husband often got epileptic fits? -- Yes, he had the fits a long time ago, and he was cured.

/Did he

Did he lose consciousness when he got those fits? --  
I don't know because I never asked him.

Didn't you see him at any time when he had those  
fits? -- I used to see him and call people in.

Then on those occasions when you saw him in the  
state when he had those fits, did he collapse and become  
unconscious? -- Yes, he appeared to me to be unconscious.

Do I understand you to say that when he rode on  
horseback he went very slowly because he couldn't ride fast? --  
I said he was no longer able to gallop a horse. He did ride  
all the same.

He wasn't strong enough to gallop a horse; is that  
what you intend to convey? -- Yes.

Now Moloi Ntai was not the brother of your husband? --  
He is.

I thought you said to the interpreter that he was  
a cousin? -- That was a slip of the tongue.

Did they have the same father? -- No.

Did they have the same mother? -- No.

How could they have been brothers? -- I was told  
that No. 11 is a son of our father's elder brother.

~~THE WITNESS~~ They were cousins.

CROSS-EXAMINED BY MR. MAISELS:

Now I want to deal with the day your husband went  
off to the funeral? -- It was on a Thursday.

Yes. Four of them went? -- Yes.

Three came back? -- Yes.

You asked accused No. 11 when you missed your husband  
on the 5th, where he was? -- Yes, I asked him.

That was the Friday? -- Yes, it was on a Friday.

/And

And he told you that he had been left behind? --

Yes.

Because he couldn't gallop at the same rate as the others? -- No, he did not say so.

Did you ask him why or how it had come about that he had been left behind? -- No.

Why did you ask him how he had come to be left behind? -- I didn't ask.

But why not? Weren't you interested in finding out where your husband was? -- I wanted to know where my husband was.

Well then if he told you he had been left behind, didn't you ask him how it came about that he had been left behind? -- I didn't ask him that question as to why he was left behind.

You didn't ask him, I put it to you, because No. 11 accused told you that he had been left behind because he couldn't gallop at the same rate as the others, and it started to rain? -- (No reply)

Isn't that so? -- I did not ask him.

That is no answer to my question. Did he not tell you that? -- I asked him where they had left him behind and he said they left him as they were going towards Masoeling and I didn't ask him any further questions.

And he didn't tell you anything else? -- No, he did not say anything else.

Did you ask him when? -- No I didn't ask him what time it was.

Did you ask him where the other two were? -- No, I did not ask.

/Did you

Did you know where the other two were? -- I had seen them.

And did you ask them? -- I did not ask them.

Why not? -- I had asked one of them.

Well then, did you ask one. Which one? -- Maloi, No.11.

No, no, no. You asked ... I understood your evidence to be that you had seen these two, that is Makhetha and Ntsane ...? -- I saw them before I saw No.11.

That's right. You saw them before you saw No.11? -- I saw them after I had seen No.11.

All right. Were you satisfied with the answer that No.11 gave you? -- Yes, I was satisfied.

That they just left him behind? -- Yes.

How far is this place where they left him behind from where you live?

HIS LORDSHIP: You haven't got it yet, where they left him behind.

MR. MAISELS: As I understood the witness, it was near Masoeling. Could you point it out, outside? -- No, I can't say.

Is it far away? -- Yes, it is very far.

Two and a half miles, I am told m'lord.

Now No.11 accused told you they had left him behind somewhere near Masoeling? -- He said that as they were going towards Masoeling they left him behind.

And you were satisfied with that answer? -- I was satisfied because I could not do otherwise.

You had two other people you could ask. -- I did not ask them.

/I want



I want to know why not. -- I was satisfied with my question to Maloi, No.11.

You were satisfied with the answer you mean? -- I was satisfied with his answer.

Did you see those two people after the horse arrived, Makhetha and Ntsane? -- Yes, I saw them.

Did you then ask them if they knew anything about where your husband was? -- I did not ask them.

Why not? -- I don't know why not.

HIS LORDSHIP: When did the horse come back?

MR. MAISELS: Later the same day, m'lord; the Friday.

Now you found the saddle after the horse had come back? -- Yes, I saw the saddle after the horse had come back?

I just want to get the history of the events clear on that day. When your husband didn't come back on Thursday night, you saw accused No.11 on Thursday morning? -- Yes.

Then you saw the witness Makhetha and Ntsane? -- Yes.

After that the horse came back with no rider on it? -- Yes.

You then realized that something must have happened to your husband? -- Yes, I then realized.

You saw Makhetha and Ntsane again after that time? -- Yes.

And you still didn't ask them whether they knew what had happened to your husband? -- No, I still did not ask them.

Then you went to look for yourself; you went to search yourself? -- Yes.

/And as

And as a result of the search you made you went to No.8 accused, to Fusi? -- Yes.

And you explained to him that your husband was missing and that his horse had arrived home and he wasn't on it? -- I asked him if he hadn't seen my husband.

Yes. -- He said he had not.

You explained to him that his horse had come home but he wasn't on it? -- Yes, I told him that.

And he said to you "Well, I know that a saddle has been found near here"? -- Yes, he said so.

He gave you that information quite freely? -- Yes.

And he showed you where it was? -- Yes, I said that my eyes would not take anybody's property, he must show me the saddle,

Which he did? -- Yes.

Then you went to Gabashane, from Fusi's place? --to accused No.2.? -- Yes, I went there in company with Fusi.

And he received your complaint in the normal way? -- Yes.

And he actually gave you a messenger to take you home? -- Yes.

NO RE-EXAMINATION.

HIS LORDSHIP: This is a question one of the assessors asked me to ask, tell us what clothes~~es~~was your husband wearing when he left? Was he wearing the clothes that you have identified today? -- Yes, the clothes that I identified here today.

That is the trousers? -- Yes.

The hat? -- Yes.

The boots? -- Yes.

Blanket? -- Yes, one.

Only one blanket? -- Yes, one blanket.

And anything else? Belt? -- Yes.

And that day that he went away, what was his state of health - on that day -? -- He was quite well.

When he went to the funeral? -- He was quite well.

And you have spoken about seeing these things, the boots, and the belt, and the blanket, and the trousers, - it has rather been suggested in the questions by Counsel that he was wearing a shirt. Is that so? -- No, he was not wearing a shirt.

Now did you ever see his body afterwards? -- I saw the body after it had been discovered, and it was being brought into camp.

Into Ty.? -- Yes.

And did it have these clothes on it then? -- Yes, it was .. these clothes were on the body although I didn't see the face.

The trousers, and the blanket - was the blanket round him? -- He had blankets on.

That one, No.4.? -- The two blankets.

No.2 and No 4.and the belt, and did he have one boot or two boots on? -- No there was no boot on his feet.

Not one at all? -- Yes.

And the hat? -- There was no hat.

ASSESSOR: I want to ask this question, - she said that her husband used to be a good rider before, and he was no longer able to ride hard, and I would like to know the reason why he was no longer able to ride hard? -- Because of his weak health.

/You said

HIS LORDSHIP: You said he wasn't suffering from any disease, and you said he was working? -- Yes, he was able to work.

What was the weakness this time? What was he suffering from? -- He complained of the pains in the chest and the back.

Do you know what lumbago is? -- No, not lumbago.

Was it rheumatism? -- I don't know.

Is your husband in the habit of staying out at night? -- No.

Well you see, the horse comes without a bridle and without saddle, and no husband, and it didn't seem to worry you much? -- (No reply)

How was that? -- I don't know why.

Where did you think he was? -- I thought perhaps he was looking for his horse.

Yes, but the horse had come home? -- Yes, I thought perhaps he was going from village to village.

COURT ADJOURNED.