

IN THE HIGH COURT OF BASUTOLAND.

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 Griffith Lerothola.
(2) Gabashane Masupha.
(3) Mojautu Nonyana.
(4) Makione Mphiko
(5) Sankatane Masupha.
(6) Mesiua Masupha.
(7) Kemaketse Masupha
(8) Fusi Rakakala.
(9) Saferi Ntsoso.
(10) Ramabanta Mahleke.
(11) Mofoi Ntai.
(12) Titimus Ramashamole

VOLUME: 2.

Reported by:
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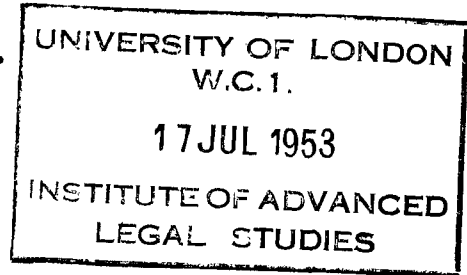
SECOND DAY.

3rd NOVEMBER, 1948.

THE CROWN CALLS:

MAPESHOANE MASUPHA, sworn states

EXAMINED BY MR. THOMPSON:



Mapeshoane where do you live? -- I live in Mamathe's, the village of Chief Gabashane Masupha.

No. 2 ccused? -- Yes.

Are you any relation of No. 2 accused? -- Yes.

What relation? -- My elder brother.

Same father and mother? -- Same father, different mother.

Do know the accused before the Court? -- Yes.

Where does No.1 accused live - do you know? -- I understand he lives at Phamong. I have never been there.

At any rate, he doesn't live at the same village as yourself? -- No he does not live at Mamathe's.

It is admitted that No.1 lives elsewhere m'lord, and the other accused all live at the same village, - except No.8.

Do you know the months of the year and the days of the week? -- Yes.

Do you remember March 3rd this year? -- Yes.

Do you remember what day of the week that was? -- It was on a Wednesday.

I want you to take your mind back to just after sunset on that day. Where were you after sunset? -- I was at my own home, where I live.

At Mamathe's? -- Yes.

Did anything happen that evening? -- Yes.

Now I want you to start from the beginning and

/tell M lord

tell M'lord what happened. -- On that day, the night of Wednesday, there arrived Ramabanta Mahleke while I was in bed.

That is accused No.10.? -- Yes. He said Chief Gabashane, No.2 accused, wanted me.

Yes? -- I got up and went with him, No.10.

Where to? -- Where the Chief was.

Yes? -- I found there Chief Bereng.

No.1 accused? -- Yes. Chief Gabashane Masupha.

No.2 accused. -- Chief Ntoane Lerotholi.

He is the man I mentioned yesterday. -- Masiuoa Masupha.

No.6 accused, yes? -- Kemaketse Masupha, No.7. Sankatana Masupha, No.5. Makiona Mphiko, No.4. Mojautu, No.3 - I don't know his surname.

Yes? -- Titimus Ramashamole, No.12. Then No.10 and myself.

Go on. -- A short while after we arrived I saw Sankatana leave, No.5.

Yes. -- Shortly afterwards I saw him come in accompanied by Maloi Ntai, No.11.

Do you know whether No.5 left of his own accord, or left on instructions? -- He went out on instructions.

Now you say on instructions - whose instructions? -- On instructions from my Chief, Gabashane Masupha, No.2.

He returned with No.11. Then what happened? -- After they arrived Chief Gabashane spoke. He said "There is something that I want. It is something that can be obtained from a person who may be killed, and that this matter must be treated as a secret". Then he directed a request to No.11, Maloi Ntai. He asked if he could assist

/assist

assist him by selling to him his brother, Meleke.

Yes? -- If he agreed to assist he would pay him £100.

Yes? -- Maloi, No.11, said that somebody was dead at Mahleke's and that they would proceed there with the deceased, Meleke ...

Just a moment. He said there was somebody dead at Mahleke's and that they would proceed there with the deceased, Meleke. Right, go on? -- That they would go there next day, with the deceased.

Yes? -- After this we dispersed, to go to our homes, and to carry out the scheme of the following day.

You yourself, agreed to take part in this killing, did you? -- Yes, I agreed to carry out the orders of my Chief and his senior brother.

Did any of those present raise any objection to carrying out the instructions of No.2 in regard to the killing? -- There was no objection.

And was that all that happened on the Wednesday night? -- Yes.

During the day of Thursday March 4th, I think nothing unusual happened? -- No, I saw nothing happen during that day.

After sunset - what happened? -- In the evening Ramabanta again came to me, that is No.10.

Could you tell me approximately the time when he came? -- It may have been about 8 o'clock.

He came to you, and what happened? -- He again said that my Chief wanted me.

Yes? -- I hurried to go as I had been waiting to

/hear

hear when to carry out the plan. I accompanied No.10 to where my Chief wanted me.

Was that the same place where you had been the evening before or a different place? -- It was the same place where I had been the previous evening.

Has that house got a name? -- Yes, it has a name.

Which is? -- Kholong.

And when you arrived at Khohlong what did you do? -- I found Chief Bereng, No.1; Chief Gabashane, No.2; Chief Ntoane.

Yes, go on? -- Mosiuoa Masupha, No.6.

Who were there on the Thursday evening? Yourself and ? -- Chief Bereng, No.1; Chief Gabashane, No.2; Chief Ntoane; Mosiuoa Masupha, No.6; Kemaketse Masupha, No.7; Sankatana, No.5; Makione Mphiko, No.4; Mojautu, No.3 - I don't know his surname.

Yes, and anybody else? -- Titimus Ramashamole, No.12; Ramabanta, No.10; and myself.

And what happened? -- Chief Gabashane, No.2 accused, said " The time has arrived that we should carry out our plan of yesterday."

Now you have given us the names of the people who were there on Wednesday night, and the names of the people who were there when you arrived on Thursday night.

Is it correct that these people were all the same with the exception of No. 11 who was not there when you arrived on Thursday night? -- Yes, No.11 was not there on Thursday.

Now you say No. 2, Chief Gabashane, spoke. What

/did

did he say? -- "The time has now arrived for us to carry out our plan of yesterday".

Yes? -- He said that we should all meet behind the houses of Makione, No.4, and he gave me orders to go and call Soferi, No.9, and Sepalami.

Sepalami Mathibe? -- Yes.

Yes? -- I did go and call them.

And did you find them? -- I found them.

And then? -- They went to where the Chief called them.

What about you, did you go? -- Yes, I accompanied them. We were going to the back of No.4's house where we had to meet.

Yes? -- After all the men had gathered together, we separated.

The three of you went to a place which you had been told about by No.2, is that correct? -- Yes.

Spot E. on the map, m'lord. When the three of you arrived there, did you speak to anybody? -- No. We came to where the Chief was, and there was no talking.

Who were there when you arrived at the spot where you were told to come? -- Shall I name them again?

HIS LORDSHIP: Just put it shortly, tell us whether they were all the people? -- The same people that I have named.

MR. THOMPSON: And what happened? -- At that spot we divided. Chief Gabashane, No.2; and Mosiuo No.6, went down to where a car was standing at the cross-roads, near Twai's.

We, in the group of Chief Bereng, went along the footpath.

Now I want you to name the persons who were in

/that

that were in that group? -- Chief Bereng, No.1; Chief Ntoane; myself; Sankatana Masupha, No.5; Kemaketse Masupha, No.7; Sepalami Mathibe; Seferi Ntsoso, No.9; Sothi Chela; Molemohi Mpiko; Ramabanta Mahleke, No.10; Makione Mphiko, No.4; that was the group.

Now you have mentioned two men, Sepalami and Sothi, who were not according to you at the house of No.2 before you moved out. Do you know how they came to arrive at the group?

HIS LORDSHIP: He fetched Sepalami and No.9, too.

MR. THOMPSON: I have got the two names wrong, Sothi and Molemohi. -- I found them in the group. I don't know how they had been called.

And what happened to this large group of people after Nos. 2 and 6 went down to the car? -- We went on the footpath. When we came to the corner of a garden we stood there.

Yes? -- There Makione Mphiko, No.4 spoke. He said, "The order of the chief is that we proceed to Fusi's. There a person is to be killed." Then he said from that spot we must divide into ^{two} groups, and in the first group there was Chief Bereng.

HIS LORDSHIP: Before you go on, what was the object of your dividing into two groups? -- I don't know the object.

MR. THOMPSON: Well the instruction to divide into two groups was obeyed, was it? -- Yes.

Who was in the first group? -- Chief Bereng, No.1; Chief Ntoane; Sankatana Masupha, No.5; Makione Mphiko, No.4; Ramabanta Mahleke, No.10; Mojautu; No.3; - I don't know his surname.

And anybody else? -- Molemohi Mpiko.

Is that all that were in the first group? -- Yes.

/What

What happened to that first group? -- They went away.

What happened to the men who were left behind? --
May I give the names of the second group?

Yes. -- In the second group were No.7, Fomaketse Masupha.

Yes? -- Sepalami Mathibe; No.9, Seferi Ntsoso; Sothi Chela; then Mapeshoane Masupha.

Yourself? -- Yes.

I want to pause there for a moment. You have given us the names of the first group, the names of the people in the second group, and the names of the people who went down to the motor car. You have not mentioned the name of No.12 accused? -- On Thursday night, we went out to kill the man, Titimus did not go with us, he remained at home. No.12.

Well we can forget about him. Now two groups moved off with two men in a motor car; what happened. -- The first group was followed by the motor car. The second group followed the motor car.

Did two groups and the motor car both proceed along the same route? -- Yes, the same route.

What was that route? -- The main road.

Main road? -- Towards Fusi's.

And then what happened? --

HIS LORDSHIP: How long afterwards did you move when you had seen the ^{second} group in the motor car; immediately afterwards?--
We were very close to one another.

I want to come back to this question of the way the first group and the motor car and the second group went to Fusi's. Did they all go along the same road? --

/The

The motor car was on the main road. The two groups when they came at David's place, they joined the main road, where they met the motor car.

But how did the two groups on foot get to the main road, where they met the motor car? -- The motor car stood still, the first group went past.

Just a moment, I don't want to interrupt you, but I want to get this clear. Did the two groups on foot go along the main road, along a bridle path, or across the veld, or how did they get to the place where they met the motor car? -- From the corner of a garden they followed a footpath to where they joined the main road.

All right, they joined the main road. Now you were going to tell us when the first group joined the main road, what happened? -- The motor car stood there while the first group went past, and the motor car followed that first group.

Yes? -- And the second group came after the motor car.

So you are all on the main road are you? -- Yes.

Right, what happened? -- When we came to Pieta Moshele's place, that is behind Fusi's. we noticed that the first group was standing still, and the motor car was also standing still.

Yes? -- Suddenly I saw a horse come away from the group, so we hurried to get to the group. I didn't notice the colour of the horse, nor did I notice that it had a saddle on, because I was hurrying to carry out the order.

Yes? -- When we arrived we found a person ..

Was it riderless, the horse? -- It came out of
/the group

the group without a rider.

Yes, go on with the story. -- We found a person already having fallen to the ground. As we arrived we had to carry out the order. I pressed him down on the knees.

Wait a moment. Who pressed him down? -- I pressed him down on the knees.

You saw the riderless horse and then you joined the group on the road, is that correct? -- Yes.

When you joined that group you found a man on the ground? -- Yes.

When you arrived there was that man just lying on the ground, or was he being held down on the ground? -- He was being held down on the ground; he was thrown down.

Did you see which persons were holding him on the ground? -- When I arrived there was much confusion and hurry so I just caught hold of his legs.

I want to know whether you noticed who the persons were who were holding this person down or whether you did not notice? -- When I arrived I noticed Makione Mphiko, No.4 accused, throttling him.

You noticed that No.4 was throttling him. I'll come back to that in a moment. Did you notice any other particular person doing any particular thing, when you arrived? -- No.3 was suffocating him.

Was anybody else doing anything in particular? -- No, I didn't notice where each one held, excepting that I know where I held myself.

M'lord, with Your Lordship's permission I am going to ask the witness to tell the story in his own words, and when we come to the end of the killing, before the carrying

/away

away, any details which have been omitted I'll come back and ask him, but I prefer not to interrupt him. No I want you to just go on in your own way - you arrived there you say, and you carried out your orders, and you seized the man on the ground by the knees? Just go and on tell us your story in your own way - everything that you remember. -- While we were holding this man on the ground Chief Bereng ordered Chief Ntoane to go ahead with the work. Ntoane produced a knife and cut the lip of the man.

Yes? -- After he had cut the lip he handed flesh to Chief Bereng.

Yes? -- After Chief Bereng had got hold of the lip he said "This man of yours has no blood; it is clear that he was an unhealthy person".

Yes? -- Then afterwards it appeared the deceased was dead. We were instructed to carry the dead body to dispose of it.

Who gave those instructions? -- Chief Gabashane, No. 2 accused.

Before I come to the carrying of the body, I want to clear up some details. When you arrived you saw persons holding him? -- Yes.

How many of these accused, other than those you have already mentioned, can you identify as having helped to hold the deceased down? -- All the names that I have mentioned were assisting in this work.

All the people in the two groups and the motor car helped to hold the deceased down? -- I had better mention it this way. Chief Bereng and Chief Gabashane and Fusi, whom I saw at that time, (No. 1, No. 2, and No. 8.), they did not hold the deceased. They stood there, Chief

/Gabashane

Gabashane had a torch.

Yes? -- A second torch was held by No.5,
Sankatane.

Yes? -- Besides these names that I have mentioned,
all the others were holding the deceased.

I see. Now you mention No.8. Did you see No.8
arrive, because he was not with either of the groups? -- I did
not see him arrive.

Can you remember at what stage of the proceedings
you first noticed the presence of No.8? -- At the time when
Chief Ntoane instructed to cut the lip of the deceased,
it was at that time I noticed No.8.

That disposes of that! Now coming back to the
suffocating and throttling - who suffocated the man did you
say? -- No.3. Mojautu.

In what manner? -- He had closed his mouth and
his nose, and there was no way he could breathe.

Is it possible for you to demonstrate on your own
mouth and nose? Did No.3 use both hands or only one hand? -- He
used both hands.

Now I don't want the sergeant to lie down on the
floor - nor do I want you to suffocate the sergeant! Will you
put your hands on the sergeant's face, and show us ^{how} No. 3 did it.
He illustrates with his left hand over the upper portion of the
face, and his right hand over the lower portion, including the
nostrils and the mouth. All right. Now you say in addition
the deceased was ... I am not sure this is on the record - who
was this man to whom all these things were being done? -- When
I looked at the person I noticed it was the deceased, Meleke.

/A brother

A brother of No.11 accused? -- Yes.

Well now the deceased, in addition to being suffocated you say, was being throttled - by whom? -- Makione Mphiko, No.4.

Will you please demonstrate again on the sergeant how No.4 was throttling him. The left hand at the back of the neck? -- Yes, in this way.

And the right hand on the throat. I think on this occasion we had better have the sergeant on the ground. (I'm sorry sergeant). On which side of the deceased was he, the right side? -- Yes, he was on this side. He was holding him that way.

We shall have to get that on the record.

HIS LORDSHIP: I'll dictate something. The witness demonstrates on the floor of the Court how the throttling took place.

The sergeant of Police is placed on his back on a bench and the witness takes up a position on the right hand side of the sergeant near his head. He places his left hand under the head of the sergeant with his four fingers towards the left of the neck of the sergeant and his thumb at the right side of the back of the neck of the sergeant. (I think that is correct isn't it?) His right hand he places round the neck of the sergeant across the larynx of the sergeant, with his right thumb on the left-hand side of his neck and his four fingers across the neck from the right-hand side of the neck, the hyoid bone being between the thumb and the first finger.

/HIS LORDSHIP:

HIS LORDSHIP: Yes. Now I've got that he was being throttled by No.4 accused.

MR. THOMPSON: So now you have told us what Nos. 1,2,3,4,5,8, and yourself were doing, which leaves Nos.6,7,9 and 10.

Did you notice what those four accused were doing at the time of the holding and the cutting? -- I said that all who were present there were doing the work, but I can't say exactly what each one was doing.

And that applies also to the other three men who are going to give evidence? -- Yes.

Now you have described to us how Chief Ntcano cut the lip. First of all I want you to demonstrate on your own mouth where the cut took place. Just with your fingers.-- (Witness indicates.)

From below the left nostril across the left of the upper lip and round to the middle of the lower lip opposite the place where the cut started. You have described this cut on the lip, now, and you have also described how the suffocating took place, and in demonstrating the suffocating, you showed how one of the hands of No.3 was completely over the mouth. I want you to reconcile those two facts. How did Ntcano manage to cut the mouth if the hand of No.3. was right over the mouth? -- At the time of the cutting Mojautu gave way with his hand, i.e. No.3. accused.

With both hands, or only with one? -- He moved the hand that covered the mouth and left the hand over the nose.

What happened to No.4. who was throttling while the cutting was going on? Did he continue to hold the throat? -- He continued holding.

/Can you

Can you give us any idea - if you can't just say so; don't guess - can you give us any idea how long the holding by the throat lasted? I don't want a guess; if you can't do anything other than guess, say so. -- I estimate that whole work took about half an hour.

That is from the time you seized the knees to the time when the body was carried away? -- Yes.

How long do you think you have been in the witness-box this morning? -- I can't estimate, because I don't know when I came into the box.

All right.

HIS LORDSHIP: Look at that clock. What is the time now? -- I can't see.

I can see it perfectly.

MR. THOMPSON: Can't you see that clock? Turn round.

HIS LORDSHIP: Turn right round. What is the time now? -- No, I can't see.

MR. THOMPSON: I think my learned friends can do that in cross-examination m'lord.

HIS LORDSHIP: It rather appears to me that he can't tell the time!

MR. THOMPSON: The instructions were given for the deceased to be carried away? -- Yes.

By that time was he dead? -- The deceased was carried dead.

Who carried him? -- Those who carried the dead body were myself; No.5. Sankatane; No.7, Kemaketse; No.6, Mosiuoa; No.10, Ramabanta; Sepalami; Seferi, No.9; Sothi; and Molemohi.

Is that the lot? -- Yes, there were nine people

/who

who carried the body.

Where was the body carried to? -- The body was carried from where the deceased was killed and thrown right down below near the dongas.

Did you have to go you say down below, so you had to go down a hill to get to the donga, did you? -- Yes. There were places where we had to sit down as we were going down.

What was the reason for that? -- Because the place is bad.

You mean it was difficult to walk on? -- Yes, and very dark.

So you had to rest on the way? -- Not actually resting, but moving on our backsides. We couldn't walk. Sliding down.

With the body? -- Yes.

Who chose that particular donga where the body was placed? -- Nobody chose any particular donga in which the body would be thrown. We were only instructed to take the body and dispose of it in the donga.

Well, how did it come about that you did go to this donga where the body was disposed of? -- There is no other donga in that vicinity, except that particular donga.

When you got to the donga, how did you dispose of the body? -- We threw it down face foremost.

M'lord I am not proposing, at the present stage, to ask this witness whether the body was carried to the point P. and thrown from there, because, as I understand, we are going to have an inspection, I believe Your Lordship would wish that this witness should be present and point

/out

out the spots. I think any questions on that subject would be better delayed until such a demonstration has been given. I just wish to cover myself against any criticism from my learned friends. I am deliberately refraining from getting these details at the moment for that reason.

HIS LORDSHIP: Yes.

MR. THOMPSON: All right, you placed the body in the donga; and what happened to all you men after that? -- We returned to the place where we had left our chiefs.

On the road, or just off the road? -- Yes, the spot where the deceased was killed.

Did the killing take place on the road itself, or off the road? -- Off the road - near the road.

And when you got back to where you had left the Chiefs, were they still there? -- Yes, they were still standing there.

And what happened? -- We reported that we had carried out the work.

Yes? -- Then Chief Gabashane, No.2. accused, gave instructions that we may now disperse. Then he said, "He who will report this matter, will remain with the matter alone."

What happened then? -- The Chiefs then rode on the car to return home.

And you other men - what happened to you? -- We returned home on foot.

And you went to bed and slept with an untroubled conscience did you! Are you married Mapeshoane? -- Yes.

Were you living with your wife when these things happened? -- Yes.

/Just one

Just one other thing; you know Mr. Castle of course? -- Yes.

You told us of all sorts of places; the place where the original gathering took place, where No.2. opened the conspiracy to you, right up to the disposal of the body. Did you point out these various spots you have mentioned to Mr. Castle? -- Yes, I pointed them all out to him.

When you pointed them out did you point them out correctly to the best of your recollection? -- Yes, I pointed out exactly what I know.

THE DEFENCE RESERVED CROSS-EXAMINATION.

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THE CROWN RECALLS:

DR. R. C. OGG, (under former oath)

CROSS-EXAMINED BY MR. MAISELS:

You were in Court this morning when the witness Mapeshoane gave a demonstration as to how the deceased was throttled? -- Yes.

He also gave an estimate of time? -- Yes.

I don't want you to base anything on that estimate of time, it may be inaccurate. I want you to assume that a person throttled in that position for a fair length of time, with a fair degree of force, (that is as high as I'll put it at the moment), - would one expect to find bruises on a person who had been so handled? -- I think for a fair time and with fair amount of force I would have expected to have found bruises.

On the neck? -- Yes, on the neck. On the sides of the neck where the fingers and the thumb had been.

/HIS LORDSHIP:

HIS LORDSHIP: And on the back? -- No, not on the back.

I wouldn't expect to find bruises at the back.

MR. MAISELS: And then, doctor, ofcourse, that is quite apart from the possibility or probability of marks caused by finger nails? -- That would depend entirely on the length of the fingernails.

And on the movement of the body? -- Yes. The movement of either the body or the nails.

Now, yesterday evidence was given by the widow of the deceased that he was suffering from epilepsy, and I understand that this morning you took the opportunity of ascertaining from her the symptoms which the deceased showed... I'll put the question this way, doctor. Normally in epilepsy is the position that a person can have a fit and then not have another fit for years and years afterwards? -- That is a possibility. It is not usual, but it is possible.

But it quite a common thing for fits to occur at irregular intervals and after a lapse of time? -- Yes.

MR. THOMPSON: My learned friend is putting the question - he wants to believe that the symptoms described to him are epileptic fits.

MR. GROBELAAR: With Your Lordship's permission, may I be allowed to put one further question to the witness in regard to the significance of the amount of flesh taken from the deceased.

MR. THOMPSON: M'lord, I don't know that Dr. Ogg is an expert on ritual murders!

HIS LORDSHIP: Well, let's hear what the doctor has got to say.

/CROSS-EXAMINED:

CROSS-EXAMINED BY MR. GROBELAAR:

Doctor you have had a vast **experience** in dealing with cases of ritual murder in Basutoland? -- Not vast. I have had several cases of alleged ritual murder.

And in all the cases that you have examined, isn't it a fact that a large amount of flesh is usually removed from the bodies of the victims in such cases? -- I have had some cases where a fair amount of flesh has been removed, and from different parts of the same body; I have had others where only one or two pieces have been removed.

If you compare the amount of flesh removed in this case with the flesh removed in most of the other cases, wouldn't you say that extraordinarily little flesh was removed from the body of the victim in this case, as compared with what happened in other cases that you know of? -- Less flesh has been removed in this case than in any of the other cases in my experience.

As a rule flesh is not only removed from one portion of the body, but from more than one; as a rule? -- Yes, in my experience.

RE-EXAMINED BY MR. THOMPSON:

As a matter of fact doctor, the parts of the body that is cut and the amount of flesh taken depends entirely on the purpose for which the medicine is required, isn't that right? -- On that I am not prepared to express an opinion; I do not know.

Do you know if there have been cases where only blood has been taken - no flesh at all? -- I have no experience of that, no.

/Well, we'll

Well, we'll get down to something that really matters, doctor. This demonstration this morning, is it correct that the thumbs were near or on the carotid artery? -- Yes.

How long would it take pressure on the carotid artery to cause unconsciousness? -- A comparatively short time.

And would the recent partaking of a heavy meal shorten the time still further? -- In my opinion, Yes.

And the answer to my learned friend Mr. Maisels that you would have expected to find bruises, once again depends entirely on how long the pressure of the throat was kept up, does it not? -- How long, yes, and how hard; or what pressure was used.

Which are two factors in the present case of which you have no information? -- Yes.

HIS LORDSHIP: You see, in this case Doctor, according to your evidence, the man died from drowning? -- Yes.

So that means that he was still alive? -- Yes.

Would he have been likely to have been unconscious at that stage? -- Yes, definitely.

When he was thrown in? -- In my opinion, yes.

Doctor I don't know if you were here yesterday afternoon when this woman said that her husband was a sickly man and he couldn't gallop a horse, because he suffered from pains, especially in his back. Can you give us any idea what that would be due to? -- I found nothing organically wrong, but that might be due to rheumatism, but I cannot say definitely.

/You

You found that one of the lungs was affected, didn't you? -- It had adhesions, which showed that he had had a form of pleurisy at one stage.

That wouldn't have caused his pains at that stage? -- That might still cause pain.

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THE CROWN RECALLS:

MAPESHOANE MASUPHA, (under former oath)

CROSS-EXAMINED BY MR. MAISELS:

Mapeshoane, what time was it that you were called on the Wednesday night? -- It was at night, at about 9 o'clock.

What time were you called on the next night? -- It was about 8 o'clock.

Have you a watch? -- No.

Can you tell the time? -- Yes.

Could you tell the time on my watch? -- A quarter past eleven.

That is correct. Did you have a watch available that night? -- No.

So you just guessed the time? -- I am just giving an estimate.

By the way, you speak English very well don't you? -- Very little.

Do you understand English very well? -- I understand it very little.

Mr. Castle gave evidence yesterday and he said that he spoke to you in English at the time when you went out on an inspection? -- That is quite true.

And he said, as far as I remember, that you

/spoke

spoke and understood English very well indeed. -- The way he spoke to me it was easy for me to give him what he wanted.

Mapeshoane, I understood that you are the brother of Chief Gabashane? -- It is so.

You like him? -- I like him very much.

You have a brother's love for him? -- Yes, very much indeed.

Would you like to see him in any trouble? -- No, I don't like to see it.

Tell me, have you ever been publicly flogged by the order of your brother, Chief Gabashane? -- It was he himself who sentenced me to flogging because I had had a fight with the member of the Court.

Just answer my question. Were you publicly flogged? -- Yes, it was publicly.

Did you think that it was a justifiable flogging? -- The sentence imposed upon me by my brother was just, and I accepted it, and that was to show him that I loved him and that I respected him.

You accepted the sentence to show him your love and respect for him? -- Yes, because of the mistake that I had done.

How many strokes did you get? -- I didn't count the strokes.

Was that in the presence of a large number of people? -- Yes, a fairly large number.

Did you regard this as a disgrace? -- Yes, it was a disgrace.

But you bore your brother the Chief no resentment

/for

for having you publicly flogged? -- Not in the least, until today.

Not even today? -- Yes.

Not at that time and not since? -- Even now I still respect him.

And love him? -- Yes, I love him.

And how did it come about that you made a statement to the Police? -- We were arrested with my elder brother.

What is his name? -- Chief Gabashane Masupha.

Were you arrested the same day as your brother? -- Although he was not at home, we were arrested on the same day.

Go on. I want to know how you came to make a statement? -- When I came to Ty I was then told of the charge to be preferred against me. Then it rested with me to state what I knew.

Who told you that? -- Told me about the arrest?

Who told you that it rested with you to say what you knew about him? -- Please listen. I say that after I was informed of the charge, then it rested with me as to what the next step would be for me to take.

Right. Did you then voluntarily go to the Police and decide to make a statement? -- On the day of my arrest I did not give any information. I made no statement that day.

I didn't ask you that question. Did you go to a Police Officer or a Police sergeant, or any Police constable and say you wanted to make a statement at any time? -- No, I did not do so.

/Did

Did the Police Officer or Sergeant or Constable come to you at any time? -- Where I was there were Police who came there.

Do I understand from your answer that you mean that a Policeman or Officer did come to you and suggest you should make a statement? -- When the Police came there they did not speak anything.

Well, how did it come about that you made a statement, you didn't go to the Police, and the Police didn't come to you?-- I made a statement when I had been brought before the Police Officer to state what I knew.

Who brought you before the Police Officer to state what you knew? -- It was Corporal Moeketse.

Did you tell the Corporal you wanted to go to the Police officer to say what you knew? -- No.

He just brought you before the Police officer -- Yes, he called me and said that the Police Officer wanted me in his office.

Then you went to the Police Officer's office. Who was the Officer? -- Lieut. Castle.

Did he ask you questions? -- He asked me what I knew about the deceased.

Did he tell you that you needn't answer the questions if you don't want to? -- He stated plainly that it only rested with me if I knew anything, and if I didn't know anything at all, I need not say anything.

Right. So then you decided to say what you knew? -- It was then the time for me to state what I knew.

With what object did you state what you knew? -- I was an arrested person. I was being charged with having

/killed

killed the deceased man.

Yes? -- Then as I knew that it was true that we had killed Meleke, I thought it right that I should tell the truth.

So the object, - and correct me if I am wrong - the reason why you made the statement was because you were a person who wanted to tell the truth of what had happened, and didn't want to tell any lies? -- Yes. You have heard me. There were just two things for me to choose from, either to deny or to admit.

And you decided to tell the truth? -- Yes, as I have said.

That was the only thing you had in your mind? -- The thing that I had in my mind was to tell the truth, because I was a prisoner.

Did you have in mind the possibility of saving your own neck? -- I don't know, If the truth saves, it may save me; if it does not save anybody, then it will kill me.

At the time when you made the statement did you have in mind that you would not be an accused person if you made that statement? -- I made the statement without knowing what would happen to me.

And did you realize that the consequence of the statement might be very serious for other persons? -- I don't know. I only gave the truth of what I knew. Whether it would be dangerous to other people I don't know.

Did you think that, if what you were telling was true, it might do harm to your brother, whom you respected and loved? -- I stated the truth, plainly,

/as I

as I knew it, expecting that my brother, who was also under arrest would state the truth as he knew it.

You mean you thought you would make a statement and he would make a statement? -- I thought that because of the wrong we had done, now that we had been arrested, it remained for us to speak the truth.

I see. So you really spoke the truth because you realized you had done wrong and you wanted to get your conscience clear? -- As I felt in my mind, in my conscience, I should speak the truth.

When you made your statement did you know whether any other persons had made statements in connection with the events of that night? -- Not in the least.

Do you know Molemohi Mphiko? -- Yes, I know him very well.

Do you know Sepalami Mathibe? -- Yes.

Also very well? -- Yes, I know him well.

Do you know Sothi Chela? -- Yes.

Also very well? -- Yes.

In fact the four of you are bosom friends? -- They are people living in the Chief's village; they are just acquaintances like anybody else.

Are they? I want to put it to you Mapeshoane, that your most intimate friends happen to be Sothi, Molemohi, and Sepalami. -- It is not true.

Would you mind turning towards me a little bit. Thank you. Did you see Molemohi at the place where you made the statement? -- He was not there.

Did you see Sepalami at the place where you made the statement? -- Do you mean in the Police Camp?

/I mean

- 111 -

I mean, .. well, let's get it this way; where did you make your statement? -- Ty camp.

Police Camp? -- Yes.

And who was there? -- Do you mean at the time I made my statement?

Before you made your statement did you see any one of these people in the Police Camp? -- No, I saw none of them, because I was in a hut from which I could not see.

Oh, I see. Were you locked in this hut, day and night? -- No, it was not locked. When I wanted to go out I was allowed to go outside.

There was a yard, a big yard? -- Yes.

And in that yard were these people, Molemohi, Sepalami, and Sothi? -- I cannot say they were not there, but I did not see them.

When were you brought into that yard? -- I was arrested on Tuesday the 13th July.

And you made your statement on the 22nd July? -- At the time the statement was reduced to writing, I don't remember the date.

Well Lieut. Castle gave a date of 22nd July? -- (No reply)

Would that be right? -- It may be so. I didn't note the date.

It was some days after you had been arrested? -- Yes, it is so.

Now we know that all these people, Sothi,

/Sepalami

Sepalami, and Molemohi were in the same camp as you were? --
I do not deny that they were at Teyateyaneng, but I say
that before I made a statement I did not meet them.

Did you see them? -- Not at all.

You neither saw them nor spoke to them, is that
right? -- No.

At the time when you made a statement did you know
that any one of them had made a statement? -- No.

Did you know, or did any-body tell you, they were
in the camp? -- I know they were in Camp.

Oh, you know. Who told you that? -- I knew they
were arrested from home and taken into Camp.

In the same Camp? -- Yes.

And you were in the same Camp, and you made no
attempt to try and speak to them at all? -- Before I made my
statement I was not able to meet them at all.

And after you made your statement? -- After I had
made my statement and signed it, then I was allowed to meet
them.

And then, I take it, you were surprised to hear,
that they also, these three people had also made statements? --
I was surprised, because I didn't know why they were there
and what their position was.

What did you mean by that answer? -- I saw that
although I knew they were in Camp, I did not know that they
had made statements, and what kind of statements, if ever
they had made any.

What do you mean by saying you did not know why
they were in Camp? -- I knew they were arrested before
us.

/Did you

Did you know ~~why~~ they were arrested? -- No, I was not aware as to why they were arrested.

Did you have any idea? -- No idea.

That is very strange isn't it, Mapeshoane, if the evidence is true? ~~Isn't~~ it? You didn't have any idea as to why these people had been arrested? -- I have given my reply.

Nothing further to add? -- On what?

On the question as to whether you had any idea why these people had been arrested? -- Even if I may have an idea, because they had taken part in the killing, the thought ~~didn't~~ occur to me.

The thought never occurred to you? -- Yes.

Do you know why you were arrested? -- I ~~knew~~ on arrival at Ty while the Police Officer explained to me why I was arrested.

And then, to your surprise, you found out .. you found these three gentlemen, Sothi, Molemohi, and Sepalami in the same Police Camp with you? -- When I arrived and was told why I had been arrested I hadn't seen them.

But then you did see them subsequently? -- I have already explained that I saw the three young men after I had made my statement.

Just turn round to me please! Did you ask them what they were doing there? -- No. The policeman was always with us,

Did you never ask them what they were doing in that Camp, and why they were arrested? -- I never asked them.

Did you tell them that you had made a statement? --

/No~~t~~

Not at all.

Did they tell you they had made statements? -- Not at all.

Did you sleep together at night? -- After I had made my statement I was with them in the presence of the Police.

Do I understand the situation to be that you are trying to tell us that at no time were you ever alone with these people, so that you could speak to them without the policeman hearing? -- I say that before the Preparatory Examination there was no opportunity whatsoever of discussing this matter in any way or form without a policeman hearing.

Well, Mr. Castle gave evidence yesterday, was he at the same Police Camp? -- Yes, he was; in his office.

He says that there was ample opportunity for you to talk freely with your colleagues, Sothi, Sepalami and Molemohi after the statements had been taken? -- (No reply)

I'll put another question now. At night time, with whom did you sleep? -- I said that after I had made my statement we slept in the same room, the other young men, and the police.

Now let me understand the situation. Sothi, Molemohi, Sepalami and yourself slept in the same hut as a police constable? -- Yes, in the police office. Not one policeman, sometimes there were two.

Yes. You were kept in a big room together, were you? -- Yes.

And then during the day time you were always

/together?

together? -- Yes, during the day we were together in the yard in the presence of the Police.

Were there lots of other people in the yard? --
You mean the people who have come there to the office?

I don't know - anybody ? -- There are always many people about the office.

Yes, and do you mean to tell me that during the whole of this time you had no opportunity to exchange a single word with your friends? -- I said that before the Preparatory Examination there was no opportunity whatsoever where we could exchange views without a policeman being there.

Not a single moment! Not even a question, to say to your friend, "Sothi, what are you doing here?"? -- I could not ask such a question because I knew he had been arrested with us.

But you told us just now that you didn't know what Sothi was there for? -- That was before I came to Ty, I didn't know why they had been arrested.

Oh, and at Ty you found out? -- Yes, when we were all together then it became clear that we were under the same charge.

Who told you? -- After I had made my statement, the three young men were called, and their statements were read out to me.

Oh, that's what I have been waiting for for a long time! -- It was then I knew that they had also made statements.

Mapeshoane, then is this the situation, that you made a statement to Mr. Castle? -- Yes.

/And then

And then these three men were called in by Mr. Castle?

-- Yes, to read over their statements.

And their statements were read over to them? -- Yes.

In your presence? -- Yes.

And in the presence of one another? -- Yes.

I want to get this quite clear; your statement was read to them, and their statements were read to you? -- They must have heard my statement because they were present when it was read over.

They were present when your statement was read over, and you were present when their statements were read over! Very nice! And this was all before the Preparatory Examination? -- It was shortly before coming down to the Preparatory Examination.

No chances were being taken, were they! Now since the Preparatory Examination you have seen these people daily, haven't you? -- Yes, I stay with them, - also with the Police.

Of course. Have you ever spoken to them since that time about the evidence that was given at the Preparatory Examination? -- Yes, after the Preparatory Examination, as it was publicly known, we used to discuss it.

And I suppose yesterday you had quite a talk about it? -- There was no discussion yesterday.

The day before? -- No.

Do I understand the situation to be that you stopped discussing it when the trial was approaching, as the date of trial approached? -- It was not our habit to

/discuss

discuss this matter wherever we were, because we knew we were bound to give evidence in this case.

So really the subject has become boring to you? -- The case has delayed too much.

Quite! You'd like to get it over wouldn't you? When did you last see your statement that you gave to the Police? -- I last saw it at Ty.

Was the evidence you gave at the Preparatory Examination read over to you? -- Yes, it was read over to me in the Court.

And since that time? -- No, I have never heard it read over again.

I'll tell you why I'm asking you that question, Mapeshoane - I was reading over the evidence that you are alleged to have given at the Preparatory Examination, and I was comparing it with the evidence that you were giving in this Court this morning, and I noticed some remarkable things. You see, I noticed not merely did you give practically word for word what you said when you were allowed to tell your own story (I want to make it clear m'lord, that my learned friend insisted on his telling his own story, but you even gave the numbers of the accused in the same order in which they were given in the Preparatory Examination with one or two slight variations. Is that because you have got a very good memory? -- My intention all the time was to state exactly what I knew, and therefore there was no reason why I should go wrong in what I stated.

Even in giving the order of the persons? You were asked to give the names of the persons who

/were

were present on a particular occasion. You gave those names. You gave them in the same order, with one exception, I think, as you had given them at the Preparatory Examination. You gave that without looking at the accused. That is correct, isn't it? -- That is quite true.

And it is true, is it not, that you gave the names in practically the same order as you did in the Preparatory Examination? -- I gave evidence thinking, "I will give my evidence in the same way as I gave evidence at the Preparatory Examination", but I was not aware that the names of the accused were in the same order as in the Preparatory Examination.

So that is just an accident is it? -- Yes.

Just an accident. It is not because you had learned your evidence off by heart is-it? -- I was bound to give the same evidence, and not to go wrong either by adding to my evidence, or by saying something less than what I said.

Who told you that? -- Told me what?

That you are bound not to add or subtract from the evidence that you had previously given? -- I say that I was bound.

Bound by whom? -- By my own conscience, that I should give true evidence.

And supposing that you left something out at the Preparatory Examination, would you tell us about it today? -- Yes, if I had inadvertantly forgotten something, I would tell you.

Have you had previous experience in giving

/evidence?

evidence? -- Do you mean in the European Courts or ⁱⁿ the Native Courts?

No I mean in European Courts? -- This is the first day that I give evidence in a European Court.

Now I am intrigued about this memory of yours, Mapeshoane - tell me, when you went to Chief Bereng's - to Chief Gabashane - on the first night that you were called - what was the date, by the way? -- Do you mean on the first occasion?

Yes. -- It was on the 3rd March.

When were you first asked to recall the date of the 3rd March? -- Asked by whom and where?

That is what I want to know! -- I want the question in such a way that I may understand it.

I'll put it another way. Who was the first person who asked you whether you remembered the date on which you were called to Chief Gabashane's house in connection with this plot to murder somebody? -- Where?

Anywhere? -- Nobody has ever asked me such a question.

Did Mr. Castle, by any chance, ever ask you what date it was that this happened - or did he tell you the date? -- The statement that Mr. Castle reduced to writing came from me, and I stated what I knew.

Did you give him the date? -- Very well.

You mean "Yes"? -- Yes.

So you always remember the 3rd March? -- There was no way by which I could forget it.

So on the 3rd March, at about 9 o'clock, you were called to Chief Gabashane's house? -- Yes.

/And

And who was there? -- I found Chief Bereng;
Chief Gabashane; Mosiuoa Masupha, No. 6; Kemaketse Masupha,
No.7; Sankatane Masupha. No.5; Makione Mphiko, No.4; Mojautu,
No.3; Titimus Ramashamole, No.12; then Ramabanta, No.10; and
Mapeshoane. I forgot to mention Chief Ntoane.

Now then in order of giving the names - just please pay
attention to the order. It is exactly the same as you gave
in examination-in-chief, and exactly the same that you gave
at the Preparatory Examination, excepting that No.3 was put
in between 10 and 12.

Now I want you to tell me - you came there the second night?--
Yes.

Who were there? - Do you want me to
repeat the names again?

If you don't mind! --The same names that I have
given....

Will you please give them to me again? -- Chief
Bereng: Chief Gabashane; (i.e.Nos. 1 and 2) Chief Ntoane;
Mosiuoa Masupha, No.6; Kemaketse Masupha, No.7; Sankatane
Masupha, No.5; Makione Mphiko, No.4; Mojautu, No.3; Titimus
Ramashamole. No.12; Ramabanta, No.10; and Mapeshoane.

Exactly the same order! -- Yes, that must be the
order because I know what I saw.

Tell me, Mapeshoane, you gave evidence at the
Preparatory Examination last July - I think it was July,
wasn't it? -- Yes.

What was the date? -- Wednesday.

What date? -- 3rd November.

/Right.

Right. Since you gave your evidence on the last occasion, have you thought it over at all? -- I say definitely that this matter did not go out of my mind at all.

Have you thought the matter of your evidence over again? -- All the time after the Preparatory Examination. There was nothing else that I had to do but think of the evidence.

And to think of the evidence you had given? -- Yes, I was bound.

And to think of the evidence you were going to give? -- I was bound not to change from what I had said before.

And you wanted to make sure about this matter? -- Yes, the same way as I have stated. I have no change.

Yes. And that you worked out, of course, again, through your own conscience? -- Yes.

Can you read English? -- Not very much. I could try.

Just see if you can read this. (M'lord^{I am}/showing the witness his own evidence, page 3 (a) of the Preparatory Examination.) Can you see where your evidence begins? -- Yes.

Then you can read it? -- Yes.

Start at the beginning of the line? -- "3rd witness, Mapeshoane Masupha. I am Mapeshoane Masupha.

I am related to Chief Gabashane Masupha, No. 2 accused, also to Nos. 6 and 7, also to No. 5 accused. I stay at Mamathe's in the village of No. 2 accused. I know all the other accused. They also stay in the same village, except No. 1 accused and his followers, i. e. No. 3 accused. and No. 12 accused....."

/HIS LORDSHIP:

Who took the body down after the man was killed? -- Mapeshoane Masupha; Mosiuoa Masupha, No.6; Kemaketse Masupha, No.7; Sankatana Maspuha, No.5, Ramabanta Mahleke, No.10; Sepalami Mathibe; Seferi Ntsoso, No. 9; Sothi Chela.

And? -- And Molemohi.

The same order again, excepting that you put 6,7, and 5, instead of 5,7, and 6. -- Yes.

Is there any reason why you follow this order? -- There is, yes, a very big reason.

I want to hear it? -- The reason that has brought me here.

Perhaps the witness has not understood the question. -- I do understand. I can understand it from your mouth.

In other words you understand it without an interpreter, don't you? -- Yes, I do understand.

So you are having not only the benefit of getting the question in English, but the opportunity of thinking of the answer. -- If I wasn't before the Court where we have a Court Interpreter, I would reply direct to your questions; but then I have to wait for the interpreter.

And you would reply direct because you can speak English very well, and you understand English very well? -- But if I were to reply direct to you what would be the work of the interpreter!

Would you mind answering my question, you understand English very well - or do I take the answer to be "Yes" to the question as to whether you understand English and speak English very well? -- I have replied.

/I am

I am very sorry to trouble you - would you mind replying again? -- If you will repeat the question please, Sir, and I'll answer it.

I suppose eventually you will answer a question. Do you understand ... you could do without the interpreter because you understand English very well, and you speak English very well? -- Is it allowable in this Court that I should reply direct to your questions and not through the interpreter?

Would you mind answering my question? I'll put it for the fifth time? -- If you will repeat your question sir, I'll answer it.

Mapeshoane, don't think you're going to tire me out. You'll have to wait a long time! Is it true that you could do without the interpreter because you speak English very well and you understand English very well? -- I didn't mean to offend you, Sir.

Would you mind answering my question? Just answer the question? -- I said "Yes".

Well it has taken a longtime to get there, hasn't it? What did you mean by telling us earlier this morning that you speak English very little, and you understand English very little, and it was only because Lieut. Castle spoke to you in simple language that you could understand him when he was questioning you? -- Even now I still say that I am not very well educated, but I do understand English.

Well now that we understand one another, would you mind facing me in future? Turn round.

MR. THOMPSON: M'lord the witnesses face the person speaking
/to them,

to them, and that is the interpreter.

MR. MAISELS: M'lōrd I don't think it is unfair to ask the witness to face me.

HIS LORDSHIP: Well, he can't look at the interpreter and look at you at the same time. You can ask him to turn round a little bit further.

MR. MAISELS: Now, Mapeshoane, can we get on to the circumstances under which these events happened that night.

HIS LORDSHIP: If you are going onto something new, I think we can take the luncheon adjournment.

LUNCHEON ADJOURNMENT.

ON RESUMING:

MAPESHOANE MASUPHA (under former oath)

CROSS-EXAMINED BY MR. MAISELS:

Mapeshoane, apart from the trouble which you had with your brother, the Chief, which caused him to have you flogged, has there been any other trouble between the two of you? -- No.

Did your brother ever forcibly dispossess you of your knife? Yes, he did, but not forcibly.

He made you give it to him? -- Yes.

Was that because you had either assaulted your wife or it was feared that you were going to assault her? -- I had a fight with my wife.

Did she fear that you might assault her with a knife? -- May be he thought so, I don't know.

Did you resent your brother's interference? -- I thought he had done right, because I look upon him as my
/father.

father.

So on both occasions you meekly accepted what he had done and bore him no resentment? -- Yes, until today.

Now, Sepalami, did he and you before you were arrested associate together, particularly at night time? -- We used to travel together sometimes.

Quite a lot. Travelling together, going round the place drinking? -- Yes, we used to drink together.

So he is your "drinking pal" Sepalami, isn't he? -- No, we didn't drink together as "pals".

And the other two gentlemen, Sothi and Molomohi? -- We met together seldom. We could have met by accident, but seldom.

You are not so friendly with them as you are with Sepalami? -- No. It is not so. Sothi was the man that I worked with to carry out the Chief's work.

You mean normally, in the ordinary course of business? -- All the Chief's work, I used Sothi.

Do you know No.9 accused, Seferi? -- Yes, I know him very well.

Did you ever have any dispute with him? -- No, we have had no dispute; not for one day.

If Seferi says that he fell out with you because he refused to do something dishonest in regard to the Chief's ploughing equipment, what would you say? -- He would only be stating his own views and what he may have known, but it is not true.

He says that you wanted to use the Chief's ploughing equipment and take the money for yourself? -- There is no truth at all in it.

/Now your

Now your brother, Gabashane, the Chief, is a Christian, is he not? -- It is so.

, And from time to time have there been gatherings where the question of ritual murder has been raised? -- I remember there was a pitso at home.

And was it on that occasion that the Chief read a communication from the Paramount Chief? -- Yes, I think it was on that day, although I didn't attend the pitso myself. I was out in the fields.

I see. But you knew about the instructions from the Paramount Chief? -- Yes, I heard it when people were talking about what was said at the pitso.

The evidence that we have is that you were there.-- It is not true. I was ploughing the Chief's wheatland near the mill.

You know at all events that the Paramount Chief issued instructions that not only were people not to take part in ritual murders, but these had to be reported direct to her if necessary? -- Yes, I heard that that was said at the pitso.

And you also heard that it was said that if any Chiefs gave instructions in connection with ritual murders, that these orders were not to be obeyed? -- Do you mean after the Paramount Chief's instructions, I shouldn't have carried out the order?

I am not asking you about that at all. -- I don't quite understand the question.

Did you hear that the Paramount chief had issued instructions that if any Chief gave^{an} order with regard to ritual murder, that that order was not to be carried out? -- I heard it.

/Yes.

Yes. Now we come to the night of the 3rd March. Just tell us exactly what happened on the night of the 3rd March from the time you were called from your bedroom until the time when you went home. -- The words that have been written down are the same that I shall now repeat.

Yes? Repeat the words that have been written down then? -- I was called by Ramabanta Mahleke, (No.10) who told me that Chief Gabashane wanted me.

Go on. -- I accompanied Ramabanta, (No.10) and when I came to the Chief, I found he was with Chief Bereng; Chief Gabashane; Chief Ntoane; Mosiuoa Masupha, No.6; Kemaketse Masupha, No.7; Sankatane Masupha, No.5; Makione Mphiko, No.4; Mojautu, No.3; Titimus Ramashamole, No. 12; and then Ramabanta, No.10, and Mapeshoane.

Mapeshoane is yourself? -- Yes.

Yes, go on? -- Shortly after our arrival, Sankatane (no. 5) left the room, having been given instructions to go and call No.11, Maloi.

Yes? -- Shortly afterwards he came into the room with No.11. After they arrived in the hut Chief Gabashane then spoke.

Yes. -- "There is something that I want to get, and that something can be got from a person who must be killed, but this must be treated as a secret." And then he made a request of Maloi Ntai, No. 11, if he would assist him by selling his brother to him, Meleke, and that he would give him a price of £100.

Yes? -- Maloi, No.11, said that somebody had died at Mahleke's, and that they were to go there the following day, and that the deceased Meleke would be with
/them.

them. After all this we were told to retire to our beds. I don't know which road was taken by No. 11. That is all that happened on that Wednesday.

Now are you telling today, repeating what you said in examination-in-chief, and what you said in the Preparatory Examination, or are you really giving your recollection of what happened on the night in question? -- What I stated here this morning is what I stated in the Preparatory Examination.

And what you stated this afternoon is what you stated this morning -- is that it? -- Yes, that is in the records.

I am just going to draw the Court's attention to the fact that the account which you now gave is exactly the same word for word, as you gave this morning.

MR. THOMPSON: I would like to point out to my learned friend that in Sesuto the similarity of the translation is greater, and if he suggests that this has been learned off by heart, was it word for word what he was saying in Sesuto this morning and in the Preparatory?

MR. MAISELS: M'lord I suggest that that is a very unfair question from my learned friend, unless he is challenging the correctness of the interpretation.

HIS LORDSHIP: At any rate, there it is. He said that it is the same that he said at the Preparatory Examination. In fairness to the witness you must go on and ask him whether it is a true account of what really happened.

MR. MAISELS: If Your Lordship pleases, the first question that I put was "Are you really giving a recollection of what occurred on the night, or are you now merely repeating what you said before?"

HIS LORDSHIP: Yes, but it may also be a recollection of

/what

what actually happened.

MR. MAISELS: If Your Lordship will allow me, I do suggest that the criticism, notwithstanding my learned friend's interruption, remains. I am now going to test the question as to whether we have heard a story or whether we have heard evidence of facts. Mapeshoane, what was said before No. 5 accused returned with No. 11 accused? -- There was no talk.

Nothing at all? -- After our arrival No. 5 was sent to go and call No. 11.

Well, it took a little while didn't it? -- Yes. They took a very short time.

While they were away was anything said? -- Yes, there was ordinary talk.

Did you ask why you had been sent for? -- It is not my habit if my Chief sent for me, to ask him what he wants.

You were sent for at 9 o'clock at night? -- Yes.

Did you ask the messenger what was the matter? -- No, I did not ask him, because I knew he would not come and deceive me.

So you didn't ask him why he was wanted, nor did you ask the Chief. Right. Now the next night, the 4th. From the time you left the Chief's house, until the time that the groups were separated, was there any talk? -- (No reply.)

HIS LORDSHIP: Are you not going to ask him what happened in between the 3rd and 4th?

MR. MAISELS: M'lord it hadn't really occurred to me, because the witness said nothing happened. I'll put another question. On the way home on the night of the 3rd, did

/you

you go home alone? -- I don't have to go far; I sleep actually in the same skerm. The house in which I sleep is just next door.

Did you go home alone? -- Yes, I was alone.

Next day did you see any of the persons who were there the night before? -- People who were where?

People who were in the Chief's house the night before? -- I found the people whose names I have mentioned.

No, no. During the day of the 4th March, did you see any of the people whom you had seen at the Chief's house the night before? -- Yes, they are the people with whom I stay at the Chief's house.

Who were they? -- I shall have to repeat their names.

Oh, did you see them all? -- In the day time people go about their business and I didn't go to where Chief Bereng was staying.

Do I understand your answer to be you didn't see any of the people you saw the night before in the Chief's house? -- We did meet in the skerm there, but not in that house.

Did you speak to any of them? -- I don't remember, but I think I must have spoken to some of them, because we were living in the same skerm.

Nothing about the events of the night before? -- Not at all.

Were you willing to go on this murder? -- It is clear that I was agreeable to carry out my Chief's orders.

Were you willing to go? Did you want to go? -- If I didn't want to carry out my Chief's orders, I would not have gone.

/So you

So you were quite willing to do it, were you? --
Yes, it appears that I actually did so.

Now the next night you met again at the Chief's
house. -- On Thursday, the 4th.

And you went off to the... on the way to Fusi's. --
Yes.

With whom did you walk? -- Before we divided up into
the groups?

Yes. -- I was with Chief Bereng; Chief Ntoabe;
Makione Mphiko, No.4.

Accused No.1, accused No. 4, and the chief
who is now dead? -- Yes.

Did you talk on the way? -- I haven't finished.

I beg your pardon I don't want to interrupt you.
Go on? I don't want to know all the people who were there,
I want to know with whom you were walking. -- At that time
we were only walking in a group.

Well if you walk in a group, there must be somebody
immediately next to you, unless you were walking in single
file? -- I didn't pay particular notice at that time because
we were in a hurry.

You were walking at a great pace were you? -- Yes.

And Chief Bereng was walking with you too, at this
great pace? -- He was present ...

Yes. How far did you walk? -- We were walking at
a great pace but not running.

Walking as fast as you could? -- Yes.

Where was Chief Gabashane? -- He was not there.

He was in the motor car? -- Yes.

In his motor car? -- Yes.

/In his

In his Buick motor car? -- Yes.

Why didn't Chief Bereng go with him? -- (No reply)

HIS LORDSHIP: I understood the evidence was they went together first, then they split into two groups later, and one group went first, then the second one, followed by the two in the motor car, and then the group in which he was. I think that was the procession.

MR. MAISELS: I was under the impression there were two splits; I may be wrong. First No.2 and No.6 went in the motor car, the rest ^{went} on foot, and when they got to a spot later on the rest of the people were divided into two parties. I think that is correct.

HIS LORDSHIP: Yes.

MR. MAISELS: Now I put the question to the witness, m'lord, as to why Chief Bereng did not accompany Chief Gabashane in the car? -- I don't know how they had made their arrangements.

Can you remember anything that was said, at all, from the time you left the chief's house until the time that the deceased was pulled off the horse? -- There was no talk, excepting that we were told that the time had arrived for us to carry out the orders.

That was told to you before you left the house? -- Yes.

And from that time until the time the deceased was pulled off the horse, was anything at all said by anybody? -- There was no talk. Nothing.

This was quite a good distance that you walked wasn't it? -- Yes, it was.

I am told that the distance is at least 2 miles.-- Well those who told you perhaps told you what they know.

/I have

I have never measured the distance myself.

How long did it take you to get there? -- A long time. The distance is long.

And not a single word was said? -- There was no talk of any kind.

Was your friend Sapalami with you? -- At that time we were not travelling because we were friends.

I just asked you whether Sepalami was with you? -- After the groups had split, he was in my group.

Right. Didn't you talk to him? -- Nothing
Nothing at all? -- There was not talk of any kind.
Were you excited? -- Yes.

Was it the first time you had ever done a thing like this? -- That is so.

You had no weapons? -- I don't know if others had weapons. I had nothing.

Did you ask how this thing was going to be done? --
I did not ask.

Nothing. Well then the next thing, apparently, that happened was when you got to this place, you saw a riderless horse come out of the crowd? -- Yes, it is so.

You didn't see the man pulled from the horse? -- No, I only saw the horse come out of the crowd.

And then you rushed in? -- Yes, I hurried, because I was ready to carry out my chief's orders.

Was Chief Bereng with you? -- He was in the front group.

Who were with you? -- Well, let me repeat their names.

Just tell me the numbers, if you can, Mr.

/Interpreter. --

Interpreter. -- No. 7, No.9, Sothi ...

And yourself. That is the same order again.
Did you know what you had to do? -- We were given no instructions as to how to hold the deceased.

Or how to kill him? -- Yes, it is so.

You were just told to kill somebody? -- Yes, as I have said.

Where was Chief Gabashane at the time when the riderless horse emerged? -- As we had been following them he had already reached the first group.

Oh, I see. He jumped out of the motor car, did he? -- Yes, the car was already at a standstill.

So was the first group there, then the car, and then the second group? -- Yes.

Could you see the first group from where you were following the motor car? -- Yes, we could slightly see it. It was dark.

How far ahead? -- It was not very far.

Will you point out the distance? -- As far as the doorway, then in the middle, the car.

The car was between your group and the first group, and the first group was as far as the door is? -- (Witness indicates.)

36 feet. So now could you say how far ahead of you the car was? -- As far as you are from me.

Halfway. And the group in front, were they together or were they single file, or how were they? -- As there was no light, I think they were just going in a group.

Did the car have lights on? -- Very dim lights.

And it was a wet night was it? -- Yes, the darkness

/was

was caused by the clouds.

And it was a dark night. Now when you got there the deceased was on the ground? -- Yes.

And you found Nos. 3 and 4 accused holding him? -- Those are the people that I noticed.

Yes. Who was the man who held him round the throat again? Tell me. -- No. 4.

And was he holding him tightly? -- Yes, he ~~was~~ holding tightly because the man was to be killed. There was no play about it.

He was using force? -- Yes.

As much as he could? -- Yes.

And the other man, No.3.? -- No.3 closed up his mouth and his nose.

Using as much pressure as he could? -- Yes.

In fact all of you used as much pressure as you could to kill this man as soon as possible? -- There was no other way; The intention was to finish him off.

Tell me, when you got there was the body of this man on the road or off the road? -- It was not on the road.

It was off the road? -- Just off the road, but very near the road.

And it was on a rocky rough surface? -- There were no stones. Very small stones.

I see. And then the man was throttled and at a ~~certain~~ stage you say a knife was pulled out? -- Yes.

Now when did you first see Fusi? -- After the man's ~~lip~~ had been cut, I raised my eyes and saw Fusi. I didn't know when he had arrived.

Now where he had come from? -- Yes.

/He just

He just suddenly appeared? -- Yes.

Did you think it was strange that he was there? --

No, I was not surprised.

Did you ever ask anybody where he had come from? -- No.

And you suddenly saw him there - did he take part in anything? -- No, he did not. At the time I saw him, he did not catch anybody.

Did he say anything? -- I didn't hear him speak.

He neither said anything, nor did anything, is that right? -- No, I didn't see anything. I just saw him there.

Then we have the business about cutting the lip out. When the lip was cut out was the man dead? -- He appeared to just about die; he was still a bit conscious.

Just tell us, who was holding him when his lip was being cut? -- Holding him where?

Anywhere? -- All of us who were holding him, were still holding him then.

So there must have been at least three of you and probably more? -- I said that all the people who were there were holding, although I can not state where each one was holding.

Well then there must have been about eight of you holding him? -- I didn't pay particular attention to that, because I know that all who had gone there, had gone there to carry out the plan to kill him.

And was everybody very excited? -- Yes.

And was this part of the lip cut as quickly as possible? -- Everything that was done there was done quickly.

Hurriedly? -- Yes.

/And then

And then you were instructed to dispose of the body?

-- Yes.

And was it very slippery going down? -- The path is quite undefined, and it is a very bad path, and it was slippery because of the rain.

And there are lots of rocks there, or stones? -- It is all stones as we were coming down. It is a very rugged place.

Have you ever seen a photograph? -- What kind of a photograph?

Any kind? -- I have seen photographs.

Oh. I want you to look at the top photograph on page 5. Do you recognize that place? -- Yes, I seem to recognize this place.

Were you there recently with Lieut. Castle? -- Yes. I was out there with him when I pointed out to him all the places.

Now you see that spot marked P.? -- Yes.

Do you see at the foot there is a spot marked O.? --

No reply)

HIS LORDSHIP: Mr. Attorney, I don't want to interrupt you, but the thing we haven't got yet is when they took this body down, whether they had any light.

MR. MAISELS: I am obliged to Your Lordship. I'll get it my lord.

HIS LORDSHIP: Don't worry about it now, but some time ask him.

MR. MAISELS: Now to get to P. you had to come through another donga? -- Yes, we came down-hill.

Yes, and then you had to go uphill? -- We go downhill, and as soon as we have passed all the flat rocks, then we come to the donga.

/To another

To another hill? -- No, there is no other hill. There is nothing but dongas there.

How did you go? Did you have any light to guide you? -- No, there was no light of any kind as we carried the body down.

It was dark, rainy.... was it raining at that time? -- From the time when we were dealing with the deceased until when we disposed of his body, the rain had stopped.

Oh, I thought that the evidence was that it had been raining? -- It had **rained** before that, but it had stopped.

Was it very dark still? -- Yes, it was dark because of the clouds.

And you went down all this way without a light and you got to the top of P, and then you threw the body down? -- Yes, we travelled all that distance until where the body was eventually found, but more so, because we know the place.

And you threw it down, did you, with full force? -- We threw it by force and then returned.

Now I want to get this quite clear; you got to the top of what you call the donga to throw the body down? -- I shall explain about the donga in this way. As we were coming down we walked between two dongas and down, lower down from these dongas there is a little vlei, a little depression, and beside this depression there is another small donga which ends just about there. Then we stood at the end of this donga, and then threw the body down.

Did you show the route you took to Mr. Castle? -- Yes. everything.

The route you took to dispose of the body? -- Yes.

/That

That part from where the person had been killed is some distance? -- Yes, it is a good distance, particularly because the place is rough; and there are stones.

And to go back, you all walked back together? -- All those who had carried the body returned by the same route.

Did you talk to one another? -- There was no talk of any kind.

No talk going down and no talk going up? -- No.

And then you walked all the way home again? -- We returned to where our Chiefs were.

And then from there you went home? -- We went straight to our homes.

With whom did you walk? -- I was with Sepalami and Sothi, and we were following others.

But the people you were walking next to were Sepalami and Sothi? -- Yes, as we were returning home.

Did you speak to one another? -- We were walking just as the rain was approaching.

Did you speak to one another at all? -- No, there was no talking.

Why not? -- At that time it wasn't necessary to talk with friends. There was much disturbance.

What do you mean by that? "It wasn't necessary to talk with friends"? -- I was answering the question whether I had spoken to the two men who were with me. My answer is, I didn't speak anything to them and they did not speak anything to me.

Nor, since the night of that occurrence, did you speak of the events with these two friends of yours until after you had made your statement to the Police? --

/We

We had taken this matter as a secret, and had taken an oath about it, and there was no way by which we could talk about it.

So you had no more conversation about it? -- Yes.

Now as I understand the situation, there were 7 of you carrying this body down - or more -. Nine. Who was the leader? -- We were all carrying the body. There was no one who was leading.

How did it come about that the body was thrown, was there any discussion about it? Who gave ^{the} orders, if any orders were given? -- The order we had received was that we must throw it away and we did then throw the body away.

And the particular time was just again by mutual agreement; nothing was said? -- Yes, there was no talk.

Was the body swung out and thrown faceforemost, as I understand it? -- No it was not swung round, but it was as we stood on that little rise, we just threw the body down.

Face-foremost? -- Yes.

Did you hear the body roll down or did you hear it come to rest with a thud? -- When the body struck the ground what was heard was something like water, - or it may have been mud.

Just the one sound? -- Yes.

Did you notice how the body of the deceased was clothed when you were carrying him down into the donga? -- I noticed that he had his blankets pinned on to him, he had his trousers and his boots.

When you were carrying him? -- We carried him as he had previously had clothes on.

/And

And you threw him down the cliff? -- I don't understand that question.

How was he clothed when you threw him down the cliff? -- He was still clothed exactly in the same way.

As you have described, trousers, blanket, boots? -- Yes.

HIS LORDSHIP: One blanket, or two blankets? -- Two blankets.

MR. MAISELS: Did he have two blankets on when he was thrown into the water, down the cliff? -- Yes, and the two blankets were still pinned on together.

Did you say this in your examination at the Preparatory Examination: "I see two blankets before the Court, but on account of the darkness I cannot say whether he was wearing either of these two blankets, but I did notice that the deceased was wearing a blanket in the ordinary way and it was pinned in the usual way. I did not notice what happened to the blanket and trousers after the body was thrown down the cliff", now do you mean to say that he was wearing two blankets? By the way, did you say that at the Preparatory Examination? -- I spoke in the same way as I have spoken here. I say he had blankets pinned to ether.

Blankets or blanket? -- I have been saying blankets.

Plural, all right. Mapeshoane, when No.4 accused had the deceased on the ground and was holding him by the throat, did he have his hands on the throat itself, the bare throat? -- Yes, he actually hold the bare throat.

Would you be surprised to hear that Chief

/Gabashane

Gabashane says firstly, that his motor car could not have been anywhere near where you say it was on the 4th March? -- Yes, I am surprised to hear that.

Did you see the number of the Chief's car that night? -- Because of the darkness I could not have seen the number.

You couldn't see the number. -- But because of the torch light I was able to see the number.

Oh, you could? -- Yes.

So was it No. B. D. 2.? -- Yes, I know my Chief's car very well.

There is no doubt it was the Chief's car there that night? -- Yes, that is what I said, and I still say so.

I am going to put it to you that the Chief's car was not there that night, and I am going to put it to you that none of the accused took part in this occurrence, on this night. Do you know whether the Chief's car went away for repairs at about this time? -- At the beginning of March it was at home.

Do you know whether it went away for repairs somewhere in March? -- Yes, I know, the following day it did go away for repairs.

How long after the occurrence of the 4th March? -- About a week or two weeks afterwards.

And if evidence is given that at the time of this occurrence the car was under repair, what would you say? -- That will be their own evidence, but I know my Chief's car, and I know it was there.

How long was it away for repairs? -- No, I don't know how long it was away for repairs,

/CROSS-EXAMINED

CROSS-EXAMINED BY MR. GROBELAAR:

Mapeshoane, I expect you realize that your evidence is of the greatest importance in this case? -- I don't know if it is of the greatest importance.

I expect that you realize that if you state that any of the accused took part in the killing of the deceased, and the Court believes you, then they may probably pay for this crime with their lives? -- Will you repeat the question?

Let me put it this way: I expect that you are in very careful/giving evidence that any of the accused was implicated in the alleged murder of the deceased? -- Yes.

And I take it that you will not implicate any of the accused unless you are absolutely certain that they did take part in the murder of the deceased as you depose to in your evidence? -- What I have stated here is quite true, in the same way as I have kept out Titimus, No.12, that he was not at the killing; and also No.11 he was not at the killing. Those two were only present when the plan was made.

Didn't you say today that Titimus was present on the second occasion, viz. the night of the 4th? -- He was present in the house, and when we went out we left him in the house.

Are you referring now to the evening of the 4th of March? -- Yes. As we went away he remained behind.

Did he say anything when he remained behind? -- No, I didn't hear him say anything.

So as far as you could notice, did the others also notice that he was the only one staying behind? -- All those

/who

who were present at the planning know that he remained looking after the blanket of Chief Bereng.

Was Titimus told by anyone at the meeting on the 4th March that he had to stay behind to guard Chief Bereng's blankets? -- I didn't hear the order. It appeared that he already knew about this.

Now where did the meeting take place on the second occasion? -- We first met in the Chief's Khohlong house. That was where we were told that the time had arrived to go and carry out the work.

So when you referred in your evidence today to the meeting on the 4th March, you clearly understood that you were referring to the gathering of the conspirators in accused No. 2's Khohlong. -- Those who were to go and carry out the work.

And when you gave your evidence at the Preparatory Examination, and you referred to the meeting on the second occasion, I take it that, by using those words, you also referred to the gathering of the conspirators in the Khohlong of accused No. 2.? -- I don't quite appreciate the question.

I want to know from you that if when you referred in your evidence in the Preparatory Examination to a meeting on the second occasion, I take it that you referred to the meeting in the Khohlong of accused No. 2.? -- Yes, I meant that because there was no other meeting.

I am looking at the record, and I find there, you said then, " No. 11 accused was not present at the killing but he was at the first meeting when this killing was arranged". That is correct? -- Yes, that is what

/I said.

I said.

And there can be ~~no~~ doubt that when you used the words "the second meeting" you referred to the gathering in the Khohlong of Chief Gabashane? -- I want that question straightened.

I'll read to you what you are supposed to have said at the Preparatory Examination. Did you say, "The order to first kill the deceased and then get from him what was required was given by No. 2 accused on the first evening that we met and arranged this." Did you say so? -- Yes, that is what I said.

Then did you proceed to say "the order to throw the body at the spot where we eventually threw it was given by accused No. 2?" -- Yes, that is what I said.

Did you also say "No. 12 accused was not present at the killing or at the meeting on the second occasion that we met"? -- He was present at the second occasion, but he was left behind as we left the room.

I am asking you whether you used the words at the Preparatory Examination which I have just read out to you, viz. "No. 12 was not present at the killing or at the meeting on the second occasion that we met". -- No. 12 was present.

HIS LORDSHIP: The question is whether you said ~~that~~ at the Preparatory Examination. The Magistrate has recorded that "No. 12 was not present at the killing or at the meeting on the second occasion that we met". The question is, did you say that at the Preparatory? -- As these are my words, because there was no second meeting. We only met behind the hut of No. 4, here he was not.

/You see

You see you didn't say in the Preparatory Examination that No. 12 remained behind to look after the blankets of Chief Bereng. That is something quite new that you have said today. -- I didn't take the statement so far, but I did say he remained behind, because I knew he remained behind to look after the blankets.

That is what you said today, but you didn't say it in the Preparatory Examination, that he remained behind.

MR. THOMPSON: On page 4, m'lord, he did say that No. 12 was present.

HIS LORDSHIP: What is the explanation? Will you go on?

MR. GROBELAAR: Yes, m'lord, Now this is the way in which the District Commissioner recorded this, viz. that you said "accused No. 12 was not present at the killing or at the meeting on the second occasion that we met". Do you admit that you used those words? -- That is what I said.

And you explained that statement now by saying that actually there was no meeting at the Khohlong on the second evening, March 4th. -- I say this because we did not sit down in that Khohlong house. We were only given an order as soon as we arrived.

Did you meet in the Khohlong on that evening of 4th March? -- The order was given

Maposheane, please look at me, and answer my question. Did you meet in the Khohlong, Yes, or No.? -- We met in the Khohlong house, and that was where we got the order.

So there was a meeting on the second evening in the Khohlong of accused No. 2.? -- A very short meeting.

/I put

I put it to you that when you gave the evidence I read out to you at the Preparatory Examination it was your intention to convey to the Court that, at the meeting in the Khohlong the evening of the 4th March, accused No. 12 was not there, nor was he at the killing. Is that not so? -- He was present in the house.

I am asking you whether you did not intend to convey to the Court by the use of the words, "accused No. 12 was not present at the killing or at the meeting on the second occasion that we met", I ask you that you did not intend to convey that he was not present at the Khohlong? -- That may have been a mistake.

HIS LORDSHIP: You see if your evidence is true, it amounts to this, that you are swearing a lot of men's lives away. It is a terrible thing to swear a man's life away, especially according to your own evidence, that you were one of the persons concerned. It is very important to us to know whether No. 12 was present at the second meeting. -- I have stated before Your Lordship that he was present in the Khohlong house when we were given the order to go away.

When we look at the record of the Preparatory Examination, when you thought over your story and you knew what you were going to say. You say that the names of the people who were there that second evening- you don't refer to meeting - are "accused Nos. 1 and 2, Chief Ntoane, Nos. 6, 7, 5, 4, 3, 10, and myself." So you see you said that he was present on the second "evening". And then, later in your evidence, you are cross-examined, and when the Court wanted to clear that matter up, you said, "The accused was not present at the killing or at the meeting on

/the second

the second occasion that we met". You see you have given two completely contradictory statements.

MR. THOMPSON: M'lord there were two meetings on the night of Thursday. One when they foregathered at the house, and he went off to fetch somebody, and then they met for a second time that evening behind the huts.

HIS LORDSHIP: He did not say, what he said now, and which is entirely fresh, which is that he stayed behind to look after the blankets. He hasn't said so before.

MR. THOMPSON: In fairness to the accused I think I could clear this up. It is true, he hasn't said it in evidence, but, if I may say so m'lord, that is not news to me.

Suppose the District Commissioner put the question in this form

HIS LORDSHIP: Well you'd have to call him you see?

MR. THOMPSON: M'lord the point is, it is not fair to the accused to allege there is a contradiction, if, in fact, the form of the question is such that in reality there is no contradiction.

HIS LORDSHIP: We are doing our best to clear the matter up, because it is of vital importance to No. 12. We are not making any decision on it. It is important to No. 12 - if you are going on against him.

MR. THOMPSON: I appreciate that m'lord. I am probably not.

MR. GROBELAAR: I wish to point out that it is really not quite in order for my learned friend to intervene. I don't say that there should be an argument, if there is an answer, my learned friend can bring it out in re-examination later on.

HIS LORDSHIP: The District Commissioner can be called and
/asked

asked how he put the question, and whether he recorded the answer correctly.

MR. GROBELAAR: M'lord the position is this, the evidence of the witness was read out to him, and then the witness said, "I want to make a statement", so that is really what happened. What actually happened was that the witness was asked whether his statement was correct, and then he voluntarily added

this - I am sure that could be got from other evidence - his statement was read out to him, and then he added this explanation, which is abundantly clear, viz. that the accused was not present at the killing nor at the meeting on the second occasion. I don't wish to argue with my learned friend, but I am merely pointing out there is some misunderstanding, and to be fair to the accused ...

HIS LORDSHIP: Yes; however let us adjourn now.

TEA ADJOURNMENT.

ON RESUMING:

MAPESHOANE MASUPHA, (still under oath)

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

Now Mapeshoane, I think you will understand me better if you look a little bit this way, please. Do you remember that when you gave evidence at the Preparatory Examination, your evidence was read over to you and you said the evidence as recorded was correct? -- Yes.

Do you remember that after you had stated that the evidence was correctly recorded, you said, "But I want to state something"? -- (No reply)

Is that correct? -- No, I did not say so.

Do you deny now that this statement in regard to

No. 12 which you gave at the end of your evidence was not one made by you after your evidence had been read to you as recorded by the District Commissioner? -- I rectified my evidence after it had been read over to me, and I pointed out where there was a mistake in my evidence.

Yes, and the mistake that you pointed out was this: You said, "In regard to No. 12 accused he was present at the first meeting, but he was not present at the killing". -- Yes, that was what I said.

You are certain now that that was the correction which you wanted to make after your evidence had been read over to you, and after you had stated the evidence as read was correct? -- Yes, that was the correction I made after the evidence had been read out to me.

HIS LORDSHIP: Tell us what was the correction? -- I had not explained that accused No. 12 was not present at the killing.

Was that why you made the statement? -- Yes, I wanted to explain to the Court that he was not present at the killing.

Then you said that No. 12 was not present at the killing, but then you went on to say, "Or at the meeting on the second occasion that we met". -- I didn't take that as a meeting because we came there and were only given orders, and we left at once.

What did you not take as a meeting? -- The second occasion when we were called.

At the Khohlong? -- Yes.

MR. GROBELAAR: Why do you say that the coming together at the Khohlong on the second evening, viz. the evening of

/the 4th

the 4th March was not a meeting at all? -- We stood there only for a short time, and were given orders to go. That is the reason why I did not consider it as a meeting.

But don't you refer to an occasion as a meeting when people come and meet together? -- That occasion I did not take as a meeting.

Would it be correct to describe the coming together of the persons mentioned by you at the Khohlong on the evening of Thursday 4th March; would it be correct Sesuto to call it a meeting? -- As you may wish to describe it, but I did not consider it as a meeting.

Answer my question. Is it correct Sesuto to call the gathering as described by you a meeting? -- According to my interpretation it is not correct.

If you walk outside the Court and someone comes along the street and approaches you and greets you, can you say that is a meeting? -- No, I cannot.

If you go to a friend's house, and seven other people come there together, would ^{you} call that a meeting? -- I'll take that as a meeting.

Now would you say that it is necessary for a meeting to take place that people should sit down? -- I do not say so, but I say that the second occasion I did not consider as a meeting.

Why did you not consider the coming together of the persons mentioned by you on the evening of the 4th in the Khohlong as a meeting? -- Because as soon as we arrived we were given an order and we left.

How long did that meeting at the Khohlong of accused No. 2. last? -- I didn't pay attention as to how

/long

long it took.

You are a clever man with watches - how long do you think it took, half an hour, twenty minutes? -- No, I can't say how long I think it took.

You must be able to say whether it was ten minutes, an hour, - or longer than those periods that I have indicated? -- It is difficult for me to do so.

What do you think? Would you say five, or ten, or twenty minutes. You can say anything you like - but you must give an estimate? -- No, the estimate is too difficult for me to make.

Was it longer than five minutes or shorter than five? -- I didn't pay particular notice as to the duration.

Now do you say that that coming together was not a meeting because it was too short? -- This is the third time I have been asked, and I still say that I did not consider it to be a meeting.

Now will you please answer my question. Did you not consider it a meeting because of the fact that the coming together, or the remaining together, was too short? -- I have answered that question.

You haven't. Will you please answer it now. Did you consider the time too short to consider that occasion as a meeting? -- I have explained that that was how I considered it.

HIS LORDSHIP: His answer is "Because as soon as we arrived we were given an order and we left". He has answered that question already.

MR. GROBELAAR: Was the coming together too short? Is that your answer? "Yes" or "No".?

/HIS

HIS LORDSHIP: That is his answer. "As soon as we arrived we were given an order and we left".

MR. GROBELAAR: M'lord, but I want him to say what the essence of the objection was. Do you say that you were together for too short a time on that occasion to constitute a meeting; I want you to answer me "Yes" or "No"? - This is the fifth time I am asked the question. I have answered the question.

M'lord I am entitled to know what the essence of what he calls a meeting he is merely trying to be impertinent

HIS LORDSHIP: No, I don't agree with you. I think he feels he has answered the question. He is not bound to answer you "Yes" or "No." You are not entitled to demand an answer "Yes" or "No", as he has answered that question, and substantially answered it.

MR. GROBELAAR: But m'lord I would like to know whether the objection was because an order was given, or what the object is. With respect, I am entitled to know....

HIS LORDSHIP: He says " Because when we arrived, we were given an order and we left". That is an answer to the question that you put.

MR. GROBELAAR: M'lord the order is nothing to do with it. I want to know whether his objection is that the time was too short.

HIS LORDSHIP: You can do it if you like, but he has answered the question. Answer the question now Mapeshoane? -- Because of the shortness of the duration that is why I did not consider it to be a meeting.

MR. GROBELAAR: How short was the duration? -- I don't know what time ...

/HIS LORDSHIP:

HIS LORDSHIP: Now you are going back to the same thing again. You are asking him the same question, about the time, and he is going to say the same thing again. You have asked him to look at watches, and have detailed the time, and he says, "I did not pay attention as to how long it lasted"; "I can't say how long it lasted"; "It is difficult for me to do so"; "The estimate is too difficult for me to make"; "I did not take particular notice", and so on. You must really stop asking that question. You can't go over it again.

MR. GROBELAAR: Mapeshoane, I want to know from you how long the staying together of the party behind the hut that evening was? -- I did not pay attention to the time because as soon as we met there we got the order to go.

So you went away from Makione's hut the moment you got together at that place? -- Yes.

And that was also a short stay that took place at Makione's hut? -- Maybe you did not understand my evidence. As soon as I arrived with the people I had gone to call, we were given the order straight away.

So you did not stay any length of time behind Makione's hut? -- We didn't stay any length of time.

So that occasion was also too short to be referred to as a meeting? -- There was no meeting there. The meeting might have been made by those people that I found there, waiting for us.

But so far as you observed things that evening, there was no meeting at Makione's huts, or behind the huts? -- Only waiting for me to arrive with the other people.

So up to the point that you left Makione's hut

/you

you say that there was no meeting at all on that evening? --
No.

Nor was there a meeting afterwards on ~~that~~ evening?
-- No, no meeting at all.

I put it to you therefore, that when you told the District Commissioner at the Preparatory Examination that the accused was not present at the killing or at the meeting at the second occasion, you tried to convey that he was not present ~~at~~ any point of time on the evening of the 4th March? -- Which accused?

Accused No. 12.? -- I plainly stated that No. 12 remained in Chief Gabashane's house, Kholong.

HIS LORDSHIP: You didn't say so. -- I stated that when we left to go he remained in the house.

Yes, you have said ~~that~~ today, but it ^{is} the first time you have said ~~it~~? -- Even on the first occasion I did make that explanation.

No, you didn't. You said that ... I have noticed ^{at} that/page 8 he hasn't used the word meeting at allbut you say that the names of the people who were there that evening 6, 7, 5, 4, 3, 12, 10 and yourself, but you didn't say that he remained behind. -- I thought that I had explained and that the explanation had just been read. When I explained then that he ~~was~~ not present.

MR. GPOBELAAR: Now if you thought at the Preparatory Examination that you had explained that accused No. 12 remained behind in the Khohlong, why did you consider it necessary to correct your evidence by stating, " Accused No.12 was not present at the killing or at the meeting on the second occasion that we met"? -- When I corrected

/my statement

my statement it was to make it clear to the Court that when I said he was not present it was because he had remained at the Khohlong.

HIS LORDSHIP: Perhaps I can help you. No. 12 was not present at the killing but he was at the first meeting. Then it follows that there was another meeting. When was the second meeting? -- It was on the 4th, this gathering together, which I didn't consider as a meeting. Thursday 4th March.

Yes, but what did you consider the meeting - where was it? -- We were called to the house, Khohlong.

Yes. -- Where we were given an order as soon as we arrived.

Yes, now you have told us that wasn't a meeting. When you all met together behind this house of No. 4, you have told us, that was not a meeting. Where was the meeting that you referred to. You referred to a meeting on the second occasion. I want to know where the second meeting was? -- I said that we were called to Khohlong only for a short while.

No, now I want you to answer a question: where was the second meeting? You have told us that the second meeting wasn't at the Khohlong, it wasn't at the back of the huts of No. 4, where was the second meeting? -- We were at Khohlong ...

No, you must answer this question. Tell me, now, where was the second meeting? -- It was in the Khohlong house, where we were given the order, although I didn't consider that as a meeting.

So far as you could you were out to exonerate

/No. 12.

No. 12. That was the object. -- I did not take the meeting at Khohlong as a meeting.

Then where was the second meeting? Because you say "or at the meeting on the second occasion that we met". There was a second meeting. Where was that meeting? -- It was in the Khohlong, which I did not consider as a meeting.

We'll leave it at that. As a matter of fact you didn't say anything then that the man was left behind to look after the blankets? -- I did not explain about the blankets, but I said the man remained behind.

You said that for the first time today? -- Yes, I knew about the blanket.

Why do you say it for the first time today? -- It is because I know he was guarding that house in which the Chief's effects were kept.

MR. GROBELAAR: I am indebted to your Lordship. Now you know, don't you, that there is always a guard at the Khohlong of Chief Gabashane? -- No, I don't know there is a guard there.

Don't you know that at that time David Bale was in charge of the Khohlong? -- I don't know that he was a guard over the Khohlong; I know he was a guard over the other houses where the Chief sleeps.

And this was one of the houses that Bale should have guarded? -- No, I don't agree. If he therefore guards that house, he must be guarding our own houses as well, where we sleep, because we are all together.

And you say Chief Gabashane did not ask Titimus to stay behind? --- I did not hear him say so.

/Nor did

Nor did Chief Bereng ask him? -- I didn't hear him.

Did he say that he was staying behind to guard the blankets of Chief Bereng? -- I took it that he must have been given orders to remain behind.

But what did Titimus do or say to make you think that he was staying behind for the reason mentioned by you? -- By his remaining behind, I took it he must remain behind to guard the house.

When you left you didn't know that he did not come out of the house within a minute, perhaps, after you had left? -- I hadn't heard anything at all, either that he would be following, or that he was not going to follow.

Now who was the first to leave the Khohlong of accused No. 2.? -- I didn't pay particular attention to see who it was that left first.

Who was the second person that left? -- I didn't observe the second person.

Were you one of the first or one of the last to leave? -- I can't say, I don't know as to where I was, but I was not one of the last.

You were not one of the last? -- Yes.

When you left how many people were still in the Khohlong? -- When the order was given we all moved to go out and even the Chiefs moved towards the door. Therefore in that way I could not observe the people who remained behind.

So when you left a number of people were still in the Khohlong? -- They had left but not all, and I was hurrying to where I had been sent.

So you walked fast out of the Khohlong with some of the other conspirators? -- After I was in the skerm

/I hurried

I hurried to carry out the mission that I was sent on.

So you can't even say that Titimus did not come out of the skerm with those that came out after you? -- If he did go outside of the skerm I don't know, because I had already left.

Did you say at the Preparatory Examination, (m'lord I am referring to three lines from the end of the examination-in-chief), "I returned with Chief Bereng while Chief Gabashane returned in his car with Mosiuoa?" -- Yes I said so, but after the evidence had been read out to me I rectified that mistake.

Yes, I admit you did rectify the mistake, and that is true, but ^{how} did you come to make such an important mistake as to say " I returned with Chief Bereng, while Chief Gabashane returned in his car with Mosiuoa"? -- I am a human being. It is possible that I may make such a mistake.

And you only discovered this mistake after having had a whole evening to think about it, because we adjourned shortly after you made the statement that Chief Bereng did not travel in the car, and only the next day did you correct this. -- It is so; that is quite true. That was the reason why, when it was read out, I said that it was a mistake.

When did you discover for the first time that you had made a mistake? -- I discovered it when the evidence was read out.

Now you are not telling the truth Mapeshoane? -- What I am telling is true, because if I had not noted the mistake I would not have rectified it until now

/Yousaid

You said so before the evidence was read out to you. -- What did I say?

You said you wanted to correct it. Infact I am wrong, you didn't say you wanted to correct it, you said, in answer to the Prosecutor, "I admit that it was a mistake". Apparently the Prosecutor was clever enough to detect this inaccuracy. -- That was how I replied to the Prosecutor.

I am asking you, when did you discover for the first time that you had made this mistake? -- It was when the Prosecutor questioned me, when I noticed that there was a mistake.

Was it the next day only? -- That day.

And in spite of the fact that you understand English and your words were interpreted in Court, you nevertheless did not realize when the evidence was recorded that you stated in evidence-in-chief that it was only Mosiuoa and Chief Gabashane that got into the car, and that you and Chief Bereng walked? -- If I had noticed that mistake I would have rectified it at once.

I put it to you that someone spoke to you that evening and said that you had made a blunder, and that is why you corrected it? -- No, it is not so.

Now, is it true that you do not know how Sothi Chela and Molemohi came to join your party on the evening of 4th March? -- It is true, I don't know whether they were sent for or not - I don't know, but I found them already in the group.

And do you mean to tell the Court that you at no stage had any knowledge as to how they came to join the

/party

party of the accused on the evening of the 4th March? -- I am certain I didn't know. I hadn't gone to call them. I don't know how they came. Whether they were sent **for** I don't know.

Did you^{know}/at any time who went to call them, or did you never have that knowledge? -- If I had known how they had come there, I would have explained.

But it always was a mystery to you, and today it is still a mystery, as to who should have called those two men to join the party? -- But they have themselves explained as to how they came there, but I haven't known myself.

Don't you know at what stage an order was given that they should be fetched? -- I didn't hear the order.

Didn't you ever hear an order that Makione should go and fetch these two, and aren't you hiding that fact from us? -- I have answered that question by saying that I heard nothing with regard to those two men.

Did you not at the Preparatory say that No. 4 accused was sent to fetch the other two men, one named Sothi and the other Molemohi Mpiko? -- I don't remember that I said so.

And you say that you have no **recollection** that you knew how they came to join the party? -- Yes, because I didn't know anything. I found them there when I arrived.

And you still adhere to the statement that you never heard an order **given** that these two men should be fetched by Makione? -- (No reply.)

THE LORDSHIP: He went on to say he went to fetch those two men and returned with them. -- Who was it?

No. 4. That is what you have said. Then you said he went to fetch the other two men, Sothi Chela and Molemohi Mpiko. He went to fetch these two men and returned with them. -- If that is recorded, I may have said so, and it may be that I have forgotten that I said so.

MR. GROBELAAR: Isn't it a fact that you were making statements at the Preparatory Examination of facts that you did not witness yourself, but you made statements of things heard from other people? Is that why you made this mistake? -- No.

When you demonstrated this morning how Makione stood when he throttled the deceased, do you remember that you stood on the right hand side of the Policeman who demonstrated? -- Yes.

I want you to think back again on the events of the evening when the deceased was throttled and to recollect whether in fact Makione did stand on his right when he throttled the deceased? -- At the place where the deceased was killed?

Yes. -- Yes, I noticed he was on his right.

And do you say now that the position you took up at the demonstration was relative to the position Makione took up and relative to the body of the deceased was correctly demonstrated to us by you in Court this morning? -- Yes, I take it I demonstrated very well, because he was on the right of the deceased.

Did you not give a different demonstration about your position at the Preparatory Examination? -- I demonstrated on the right, a policeman was standing here on that occasion. (Witness indicates). The Policeman was right down on the floor.

/But

But on that occasion you demonstrated differently, you showed that Makione stood on the left hand side of the deceased. -- I was never on the left hand side of the policeman that was demonstrating here.

HIS LORDSHIP: It is suggested that the position was that he was looking at him, he was on the left hand side.

MR. GROBELAAR: "Placing all four fingers of the right hand on the left hand side of the deceased's throat".

The demonstration was taken down by the officer who recorded the proceedings. Now I put it to you that you stood on the opposite side when you gave the same demonstration of the same act at the Preparatory Examination. -- I don't agree. I was on the right hand side of the policeman at the Preparatory Examination.

Well, but how could this mistake have arisen? This is a most vital point in the case. -- I don't know if there is a mistake in the record that I was on the left hand side of the policeman, because I demonstrated being on the right hand side of the Policeman.

We can probably get the policeman to come and give evidence again, so you must be careful what you say now. -- Yes, the Policeman may be called and he must be in exactly the same position where he was when I demonstrated.

And you see the District Commissioner took this down. This is a demonstration which he recorded in his own words. One cannot imagine that such an experienced officer of the law should make such a simple mistake! -- If he has recorded that I was on the left hand side, then he must have recorded wrongly.

/I put

I put it to you that I saw you there myself, and everybody in Court saw that you were standing on the left hand side of the person demonstrating. -- Yes, it was quite plain, I never passed to the Policeman's left hand side. He was here.

Well, it seems to me, you will deny anything, Mapeshoane, how ever many witnesses see a thing in Court, you will still deny it? -- I shall not admit where there is no truth.

Is this statement as true as every other statement that you have made in the witness box? -- (No reply)

HIS LORDSHIP: This can be very easily cleared up, either by the officer who recorded it, or by the policeman.

MR GROBEIAAR: Yes, my Lord. Mapeshoane, I just want to know from you whether you are as certain about this evidence given by you on this point now as about your other evidence; or are you less certain on this point than about the other evidence that you gave? -- All that has been recorded as my evidence is true.

Are you equally certain about this evidence as about your other evidence? -- Yes, I say that I will never pass on/^{to}the left hand side of the policeman.

And you are as certain about this evidence now as about the other evidence you gave in regard to the killing of the deceased? -- Yes, I shall not alter.

All right. You see, if you are doubtful about this evidence, please say so now. -- I say that as I was on the right hand side of the policeman, that is a perfect example of what happened on that night.

Can you tell the Court what the instructions were

/on the

on the evening of the 4th March as to where the deceased should be killed when you set out on your journey from the village Mamathe? - - The order was given by No. 4 to the effect that we are going to Fusi's to kill a person there.

Do you know whether any instructions had been given that the person that you were about to kill should be detained at Fusi's? -- I don't know if that order was given but the way that the order was given that the person be killed at Fusi's, it is possible that that was so.

Now by the strangest co-incidence, then, the very moment that you got to a spot near Fusi's hut, the deceased appeared on the scene, at the very place that it was said you should kill him? -- That is why I say it is obvious that this had been known before, because we could not have gone straight towards Fusi's without knowing where we were going.

The point I am putting to you is this: Doesn't it strike you as strange today that a few miles away from Fusi's place you were told that you were to kill a man at Fusi's and at the very moment you came to a point in the road next to Fusi's house, this person appeared at the very spot where you were instructed you would find him?

HIS LORDSHIP: How far from the spot K, is Fusi's house? Is Fusi's merely in a cavity? Is it a collection of huts?

MR. GROBELAAR: M'lord it is within 100 yards, if I may venture to recollect.

HIS LORDSHIP: They probably knew that the man was coming that way, didn't they?

R. GROBELAAR: M'lord that is so, but it is strange that

/it

It happened that way. Mapeshoane, did you think ... you did not wait at all near Fusi's place for the deceased to appear on the scene, but before you had got to the point near Fusi's house, you saw that the deceased had already been dragged off his horse? -- I saw the horse going away from a crowd of people. I hadn't seen the person being pulled off the horse.

In fact you were on the move all the time up to that point, you hadn't stopped? -- Yes, I was in the second group.

And apparently the deceased had been dragged off his horse within a moment or two before you saw him? -- I don't think it was 10 minutes after he was pulled off then we arrived.

They must have met him on the way, the first party.

But could you tell me where the horse was when you saw it for the first time? -- As we came towards the group, I saw the horse going in the opposite direction, coming out of the crowd.

Did it appear to you that, just a moment before you saw the horse, the rider had been removed from it? -- Yes, that I can agree to, because we found him on the ground although I don't know how he was taken down from the horse.

Isn't it a fact that you were one of the first persons to drag the deceased from his horse? -- It is not true. If that had been the case, I would have admitted it.

I put it to you that it is a fact that you were one of the men that pulled the deceased off his horse? -- That is not true.

Molemohi is a friend of yours, isn't he? -- Not at all.

all. He is not a friend.

Is he an enemy? -- He is not an enemy.

You get on quite well with him, and he has no reason to do you any harm? -- We have had no quarrel at all, no differences.

You see, Molomohi told the Court at the Preparatory

....

MR. THOMPSON: M'lord, I just want to point that the Preparatory Examination record is not a proper record of this case.

HIS LORDSHIP: You must say, "If Molemohi suggested"

MR. GROBELAAR: M'lord I am perfectly entitled to take this line. I don't see why my learned friend must object.

I can't understand my learned friend's objection. I'll just put this to the witness. Now Mapeshoane, will you deny that Sothi said at the Preparatory, "I saw Mapeshoane"

MR. THOMPSON: I wish to have this on record: (it has happened time and again in this Court, and I would like a ruling from Your Lordship), a witness, not this witness said something at the Preparatory Examination. He has not yet been called here, we don't know whether he is going to say the same **thing** here; all that my learned friend can say is, "If somebody comes and says that, would it be right"? To say that this witness is responsible for what another witness, not yet called, said at the Preparatory Examination, is absurd on the face of it, and it is equally absurd to **suggest** that a Preparatory Examination in itself is part of the record of this Court.

I would like a ruling from Your Lordship.

HIS LORDSHIP: Yes, I'll rule on that. What do you say

Mr. Grobelaar?

MR. GROBELAAR:

MR. GROBELAAR: M'lord, my submission is this: that according to the practice of our Courts, if a statement is made at the Preparatory, which suggests that a witness made a statement different from what he may make now, or if one of the other Crown witnesses makes a statement which is contradictory to a statement made by a witness under oath, one is entitled, as we always do in fact, to bring that to the notice of the witness and to give him an opportunity of contradicting it. That happens every day and I fail to understand my learned friend's objection to my putting to a witness a statement which was made, whether it be at a Preparatory or at any other moment, I am entitled to say to the witness, " No. so-and-so has said in Court at a Preparatory this is a fact. You say so-and-so, are you not mistaken?" It happens every day. I fail to see how my learned friend can suggest to your Lordship that it is improper to refer to such a record and to bring such a statement to the notice of the witness. If this were not so, then one would have to let a witness go and then wait until a statement is made by the other witness and then recall him again on every point, but this is a well-known practice, and in my submission, I am perfectly entitled to put it to the witness.

HIS LORDSHIP: I am not concerned with the practice, I am concerned with what is right. You must put the question in a different form. I don't see what your objection to putting it in that form is.

MR. GROBELAAR: Yes, m'lord, but if ...

HIS LORDSHIP: If you will put it in that form, but the Preparatory Examination is not before the Court, and you

/can't

can't assume that the witness said that, because apparently the record would have to be proved by some Magistrate producing it, that the witness did say it, and it would have to be proved in the proper way. The record of the Magistrate's Court doesn't speak for itself. If you will put it, "If this witness said so-and-so at the Preparatory Examination that you.." I don't see what your objection is.

MR. GROBELAAR: I am perfectly willing m'lord to put it this way

HIS LORDSHIP: Yes.

MR. THOMPSON: If Molemohi says in this Court "so-and-so", not that he said that at the Preparatory Examination. If he says in this Court when he gives evidence "so-and-so", would you deny it?

HIS LORDSHIP: Yes, but what is your objection to putting it that way?

MR. GROBELAAR: I am perfectly willing to do it sir.

HIS LORDSHIP: You may get this witness Molemohi before the Court now, and he may say that he never said it!

MR. GROBELAAR: I'll put it in a different way, m'lord. Now, Mapeshoane, if Molemohi said at the Preparatory that he saw you and Sothi Chela pull the deceased from his horse, do you say that that statement was not correct? -- That is not true, but if that is the statement he made, he may be asked questions about it.

Right. You say it is not true. Then you can tell the Court on which side of the road, if one comes from Mamathe's place, going to Fusi's, the deceased was pulled

/off his

off his horse? -- On the way from Mamathe's place, to Fusi's place, the deceased was pulled off his horse to the left hand side of the road.

Can you point how far from the road on the left hand side, the deceased was pulled off? -- He was not removed far from the Main road, he was just at the edge of the Main road, because his legs were in the Main Road.

Isn't it true that the road goes over a rocky area at that point? -- There are some flat rocks round about that area, but not at the place where the deceased was killed. There were no rocks there.

You agree that there are a number of flat stones embedded in the ground just about that area, and near the place where the deceased was pulled off his horse? -- Flat rocks are far from this place where the deceased was killed, but there are flat rocks near the Main Road.

The flat rocks are far from the place where the deceased was killed, but there are flat rocks near the place? -- No, near the Main Road.

Near the road. And you can't say whether the deceased did not land on one of these flat stones when he was pulled off his horse? -- What I am giving to you is what I know. The deceased did not fall on a flat rock.

And were there not any small stones in the vicinity of the place where the deceased was held down? -- There are very small stones, pebbles near the road.

Could you indicate the size? The size of these pebbles? -- Very small stones.

Would you indicate the size? -- That is at the

/spot

spot where he was killed?

Yes, I am talking about the spot where he was killed. Now could you indicate with your fingers how big those little stones are? -- They are different sizes.

What is the largest? Can you point out with your fingers? -- I can't estimate, but there are no big stones there at all. If you know of any other place, then that was not the place where the deceased was killed. If any other person has indicated another place to you, well, he has done wrong, and he has pointed out to you a thing that he didn't know.

When the deceased was lying on the ground as you pressed him down, can you say what the position was of his blanket? -- As he was on his back, he had his blanket between him and the ground.

And in spite of the fact that he was forcibly pulled off his horse, you say the blanket still afforded protection, and it wasn't removed? -- I explained that I did not see how deceased was pulled off his horse. I had not yet arrived.

Could you demonstrate to the Court how the knife was used when the lip was cut? -- I did demonstrate this morning.

HIS LORDSHIP: No, you demonstrated with your fingers, now they want you to do it with a knife. (Interpreter: He says he doesn't want to see a knife near him). But we want him to do it. -- I ask that I may be allowed not to use a knife.

MR. GROBELAAR: Well, if he doesn't want to use a knife,

/I don't

I don't mind . Look this way Mapeshoane, and tell me, did Makione take a knife in this way and take it down and bring it this way? -- Makione did not use the knife at all.

Chief Ntoane? -- Yes, there as well. If you want me to show you let me show you.

Will you demonstrate? -- (Witness indicates.)

HIS LORDSHIP: Did he cut downwards? Yes, go on. Below the nose. Which hand did the man use? -- He had the knife in his right hand.

What did he do with his left hand? I didn't notice the left hand.

MR. GROBELAAR: Do you remember that you told me at the Preparatory that there were two torches that were shining in the face of the deceased at the time that he was throttled and when his lips were cut off? -- I still say so, that there were two torches.

And did you say that the light of these two torches were shining on the face of the deceased all the time that this assault took place? -- Yes, because of the light from these torches, the working was good, but because I say that I must not be understood to mean that I must have seen everything that took place there.

But you certainly saw very clearly how the lips of the deceased were removed? -- Yes, I saw when it was cut ,as I have demonstrated.

And it was a terrible thing to see wasn't it?--
You can imagine yourself how terrible it is to kill a person:

Yes. And for that reason the cutting of the lips
/would

would stand out very clear in your memory, because it is so horrible, so gruesome? -- Yes, the actual killing cannot be removed from my mind.

And so far as your memory goes, you are quite certain that Ntoane used only one hand and made a semi-circle with his knife?

HIS LORDSHIP: He didn't say that, he said that he didn't notice what he did with his other hand.

MR. GROBELAAR: I am just putting the question m'lord. -- I said that I did not notice the use he made of his left hand.

Did anyone else have his hand on the face of the deceased at the moment that Ntoane cut his lips? -- It was Mojautu, No. 3 accused, who had his hand on the face of the deceased.

If at that moment when the cutting was being done, Ntoane had also put his other hand on the face of the deceased, you would have seen it? -- I said that I did not see what use Ntoane made of his other hand.

HIS LORDSHIP: I think we had better adjourn now.

COURT ADJOURNED.