

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 Lerotholi.
(2) Gabashane Masupha.
(3) Mojautu Nonyana.
(4) Makione Mphiko.
(5) Sankatane Masupha.
(6) Mosiwa Masupha.
(7) Kemaketse Masupha.
(8) Fusi Rakakali.
(9) Saferi Ntsoso.
(10) Ramabanta Mahleke.
(11) Moloi Ntai.
(12) Titimus Ramashamole.

VOLUME: 5.

Reported by:
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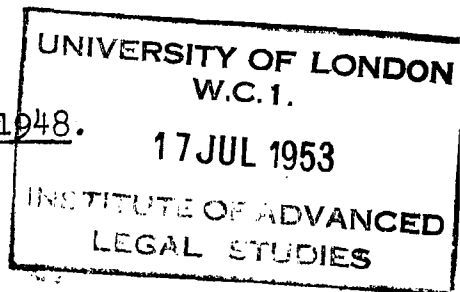
SIXTH DAY.

• MONDAY, 8th NOVEMBER, 1948.

THE CROWN CALLS:

SEPALAMI MATHIBE, sworn states

EXAMINED BY MR. THOMPSON:



Sepalami, where do you live? -- I live at Mamathe's.

Is that No. 2's village? -- Yes.

Did you know the man Meleke, now dead? -- Yes, I knew him very well.

Do you remember the day he died, or the night he died? -- Yes, I do.

What month was it, do you remember? -- It was during the third month of this year.

What day of the week was it? -- It was on a Thursday.

Where were you after sunset on that day? -- I was at home.

What happened to you? -- In the evening I was returning from Maneria.

You had been visiting somebody, had you? -- Yes.

Then what happened? Is that a man or a woman, Sepalami? -- A woman.

Well you were returning from this woman, and what happened? -- As I came near Maklone's houses, I saw a group ...

No. 4? -- No. 4., yes. I saw a group of people.

You saw a group of people. Yes? -- They were there and Mapeshoane came out of the group and came to me.

Yes? -- When he came to me, he said, "I've been looking for you."

Yes? -- He said "Here is the Chief's order for

/which I

which I wanted you".

Yes? -- He said, "The Chief asked me to tell you we're going to Fusi's".

Yes? -- I went up to the group.

Whom did you find in the group? -- I found my Chief, Chief Gabashane, amongst the group.

No. 2. Who else was there? -- Chief Bereng, No. 1. Chief Ntoane, No. 4. No. 4 Makione, Ramabanta (No. 10), Kemaketse (No. 7), Mosiuoa (No. 6), Sankatane (No. 5), Seferi (No. 9), Sothi, Molemohi, Mapeshoane, and myself.

You found all these people there, and what happened? -- Chief Gabashane went to the motor car which was standing in the corner of Toae's garden.

Yes? -- He sent with Mosiuoa, No. 6.

Before these two men went to the motor car, was there any talking? -- No, I had heard no speaking when they left.

Then what happened? -- The rest of us walked with Chief Bereng on foot.

Where did you walk with Chief Bereng on foot? -- I didn't know what had been spoken before I arrived.

What did you think you were going to do? -- Mapeshoane had told me what was to be.

HIS LORDSHIP: We can't have what Mapeshoane told him.

MR. THOMPSON: Where was Mapeshoane when he told you something? -- When he left the group and came to me as far as that corner away from the group.

He had given you some information, had he? -- Yes, about the killing of this person.

Well, you went off with these people? -- Yes.

/What

What happened? -- When we passed the village and came to the corner of the garden near David's place, No. 4 accused told us to stop there.

Yes? -- He said, "The Chief has asked me to tell you that we are going to Fusi's to kill a person there," and that was the Chief's order.

Yes? -- Then he said to divide into two groups at the spot.

What was your reaction when No. 4 told you you were going to kill a person? -- I felt that I had to carry out the chief's order.

You say No. 4 said you must divide into two groups. Did you divide into two groups? -- Yes.

Do you remember who was in the first group? -- Yes. Chief Bereng, Chief Ntoane, No. 3 accused (Mojautu), Ramabanta (No. 10), Makione (No. 4), Molemohi.

Anyone else? -- These were the people who were in the first group, those I have mentioned.

Which group did you join? -- I was in the second group.

You have given us the names of the persons who were in the big body when you first joined them, when you were called to them by Mapeshoane? -- Yes.

You told us that two of them went to the motor car? -- Yes.

Did any of them leave or did all of them go on to Fusi's? -- That whole group went to Fusi's.

The remaining people were in the second group, were they? -- Yes.

All right. What happened to the motor car after
/you divided?

you divided? -- The motor car went on the main road down below.

No. 2 group moved off, did they? -- The two groups were on the footpath.

What distance was there approximately? Point out the distance between the two groups. -- That red building.

100 yards. What happened? -- As we came to near Fusi's, I saw a horse leaving the group.

Which group? -- The first group.

When you saw the horse leaving the first group, was the first group still in movement or had it come to a stop? -- No, it had stopped.

The first group had stopped. You saw a horse. Was there any rider on the horse? -- No, there was no rider on the horse.

Did you notice whether there was any saddle or bridle on the horse? -- I saw that there was no saddle.

No saddle. Then what happened? -- When we arrived we found a person being held.

Where? -- At Fusi's.

I mean, standing up or lying down, or held up in the air? -- He was on the ground.

Who was holding him? -- No. 4 accused, Fusi, (No. 8), Mojautu (No. 3), and Mapeshoane also held him. The Chief said, "Catch hold of him".

Which Chief? -- Chief Gabashane.

Which part was No. 4 holding? -- He held the neck, throttling the deceased.

Which part was No. 3 holding? -- At that moment he was holding his left hand.

/At that

At that moment he was holding his left hand. What do you mean by that? -- It is because later he suffocated him.

Which part did he hold when he suffocated him? -- He put his hands on his nose and mouth. (Witness illustrates with his hand over his mouth and nose).

Did you say hand, or hands? -- Both hands.

And which part was No. 8 holding? -- He was holding the right hand.

Which part was Mapeshoane holding? -- He was pressing down the knee.

Chief Gabashane, No. 2 accused, ordered others to hold him? Which part did you hold? -- I was holding the legs.

What did the other men do? -- There were many people there, and I didn't quite notice where each one was holding him.

More particularly No. 1, Chief Bereng. What was he doing when all this holding was going on? -- I saw him bending.

He did not hold? -- He did not hold.

HIS LORDSHIP: Nor No. 2? -- No, he only held the torch.

MR. THOMPSON: No. 2 held a torch. Now you've told us that No. 8 was holding. No. 8 was not a member of the original party - do you know where he came from? -- He was not in our party at all, but I saw him holding the deceased there when the torch was lit.

The first time you saw him he was holding the deceased at the scene of the assault? -- Yes.

Most of you were holding - what happened then? --

/Chief Ntoane

Chief Ntoane cut the lip.

What did he use? -- He used a knife.

Will you please demonstrate on your own face which portion was cut by Chief Ntoane? -- (Witness illustrates).

HIS LORDSHIP: The same way as Mapeshoane.

MR. THOMPSON: What happened to the flesh that was cut? -- He handed it over to Chief Bereng.

What happened then? -- And Chief Bereng said, "This person of yours is useless, he has no blood".

Yes? -- Chief Gabashane said, "The best thing to do is to kill this person and finish him off altogether, otherwise he'll report".

Yes? Then what happened? -- Mojautu, No. 3 accused, suffocated the man and Maklone (No. 4) throttled him and the deceased then died.

Yes? -- Chief Gabashane told us to carry the body and dispose of it down below the donga.

Yes? -- We took the man down to the donga and threw the body there.

Were you one of the men who carried the body down to the donga? -- Yes.

Which members of the party remained behind when the body was carried down to the donga? -- Chief Gabashane, Chief Bereng, and Chief Ntoane, and I didn't notice the others. There was much confusion.

You helped to carry the body down, and was it thrown into the donga? -- Yes.

When it was thrown into the donga, did you hear the body fall? -- I heard the body fall and there was a sound as if there was either mud or water. As if it had been raining.

/After the

After the body was disposed of, what did the carrying party do? -- The party returned to where Chief Bereng and Chief Gabashane were.

What happened there? -- Chief Gabashane said that nobody should report this matter. Anybody who reported this matter would be answerable to himself.

Anybody who reported the matter would be answerable to himself. What happened then? -- We dispersed to our homes.

You say it had been raining - had it been raining hard that day or in the evening? -- It was raining but not much.

What sort of rain, thunderstorm or drizzle? -- Just a drizzle.

Can you give me some idea as to the time when you were called by Mapeshoane to join this group. It was after sunset, wasn't it? -- It was in the evening.

Was it early in the evening or late in the evening? -- It was late in the evening.

You don't know the time? -- No.

CROSS-EXAMINED BY MR. MAISELS:

Sepalami, you moved off, I understand, in two groups and the motor car? -- Yes.

Were you all travelling on the road? -- We joined the main road when we were further on.

For some distance you were all on the main road? -- Yes.

What was the order of the procession? -- The motor car followed the first group. We came after the motor car.

How near was the motor car to the first group? -- No, I don't know because I wasn't in that group.

Would you see the motor car? -- Yes, I saw the motor car because I was behind.

/Did the

Did the motor car have any lights? -- Yes.

Did it have good lights burning? -- Yes.

Did the motor car have its lights on when the killing was done? -- No, there were no lights on.

Did the motor car have its lights on the whole time, I suppose, until it stopped? -- Yes.

How far ahead of you was the motor car? -- The first group was where that red building is, then the motor car was immediately behind.

The red building is 100 yards, so the motor car was just behind the first group? -- Yes.

How were the groups walking, in single file or all together? -- Just in a group.

Just in a group? -- Yes.

Were the groups walking very fast? -- Yes.

Chief Bereng walking very fast? -- Yes, he was.

He was walking very fast - he was the leader of the first group? -- Yes.

The motor car was going - how was that going - at quite a good speed? -- No, not a good speed.

Just keeping up with the men? -- Yes.

Approaching the place where the deceased was killed. The first group, was that on the main road? -- Yes.

The motor car was on the main road? -- Yes.

Just behind the first group? -- Yes.

And you were on the main road? -- We were on the footpath, then when the motor car arrived, went round along the main road, then we took the footpath again.

Let me get this quite clear. Did you continue on the main road some time before you came upon the riderless horse? -- It was just as we joined the main road.

/Just as

Just as you joined the main road that you came across the riderless horse? -- Yes.

I see, and the first group, what route did they take? -- They also took that same path.

And the motor car? -- The motorcar took the main road.

So the situation now is, as I understood it, perhaps wrongly, that the first group was not in front of the motor car but was in a different direction? -- There is a path which joins the main road immediately after passing David's place, but when we come to Khaiso, we again go off the main road and follow the footpath.

HIS LORDSHIP: Just repeat that.

MR. MAISELS: "There is a path which joins the main road immediately after passing David's place ..." and then? -- And then go off the main road again, after passing Khaiso.

You go off the main road again? -- After passing Khaiso, we follow the footpath.

Did they get on the main road at all that night until the time that they got to the place where the fight was taking place? -- Yes, we did get on to the main road after passing David's place.

After passing David's? -- Yes.

Just after passing David's? -- Yes.

And then did they continue on the main road until the place where the assault took place? -- No.

Did you get on the main road and then go off it again? -- Yes, we went off the main road again.

Now, I understand this to be the position, let me try and summarise it. The motor car, I take it, was
/on the

on the main road the whole time? -- Yes.

And the motor car continued on the main road up to the time when the assault took place? -- Yes.

Do you know whose car it was? -- No, I didn't take particular notice.

Do you know if it was Chief Gabashane's car? -- Yes, I know his car, but I didn't come near that car.

You didn't come near the car? -- Yes.

Did you see the car ... weren't you right next to the car at certain stages of the proceedings? -- No.

Weren't you right next to the car when the killing took place? -- No, the lights were out so I couldn't see.

Didn't the motor car have a white number plate behind? -- No, it was dark. I couldn't see any white.

If it had had a white plate behind, would you have noticed that? -- No, I would not have noticed it.

You didn't recognise the car at all? -- I did not recognise the car.

Now, the first group, you told us, was the distance from where that red building is from here, namely, 100 yards away? -- Yes.

And the motorcar was just behind it? -- Yes.

Was that now on the road? -- Yes, that was ...

The first group also on the road? -- Yes.

The motor car had its lights on? -- Yes.

Right. And then you carried on the same pace behind? -- Yes.

Now, how close to the first group did you come when you saw the riderless horse emerging? -- Close up to the first group.

How close? -- (Interpreter) He doesn't know how
/to answer

to answer. -- It was downhill, just as I show here, I saw the horse emerge from the group.

What did you then do?-- I hurried to where I was ordered.

Were the others with you? -- They also hurried.

Did you find somebody lying on the ground? --

Yes.

Was he alive? -- Yes, he was alive at that time.

Was he struggling? -- Yes, he was struggling but we pressed him down.

Did you use a lot of force? -- Yes.

Was this on the side of the road? -- Yes, near the edge of the road.

Were there stones there? -- There were no stones there.

No stones. Did you notice that? -- Yes, as the torch lit the place, I saw there were no stones.

Did you notice that particularly at the time? -- Yes.

Tell me, why were you so concerned about noticing whether there were any stones there? -- Because I saw where the person was lying.

Why were you concerned whether there were any stones there? -- I was looking on. I saw the place where the man was being killed.

HIS LORDSHIP: What do you mean by "stones"? -- I mean big stones.

MR. MAISELS: How big? -- Big stones as big as this table or bigger still.

Rocks? -- Yes.

But, what I want to get from you is that the ground was stony, with stones all over the place? -- I didn't watch the small stones. /There may

There may have been? -- Yes, either ^{they}/were there or not, I don't know.

Then you rushed in and whom did you find holding the deceased? -- No. 4 accused, No. 3, No. 8 Mapeshoane who had been coming along with me, also pressed the deceased down.

I'm talking about when you arrived there.

HIS LORDSHIP: Yes - the evidence he has given before was dealing with the incident as a whole.

MR. MAISELS: Whom did you see when you arrived there holding his body? -- As I arrived, I saw No. 8, No. 4, No. 3 and many others of the first group.

And many others of the first group. Just a minute. Many others of the first group, doing what? -- Yes, they were holding, but I didn't see exactly where each one was holding.

I didn't ask you where each one was holding. Did you see No. 1 accused holding? -- No, he wasn't holding.

Did you see Ntoane holding him? -- No, I saw him cut the lip of the deceased.

Please tell the witness I'm talking about the time when they first arrived on the scene, when he first arrived on the scene and the man was on the ground. -- No, he was not holding at that time. I only noticed when he cut the lip.

Please tell me again. No. 1 accused you say was not holding? -- Yes.

At that time? -- Yes.

Molemohi? -- I did not notice where he was holding.

/Did you

Did you notice him holding? -- No, I didn't notice. There were many people there.

Did you notice Ramabanta? -- I did not see him.

Didn't see him? -- I didn't see what he did. There were many people.

How many were there in the first group, these "many people"? -- There were six in the first group.

There weren't so many. Who was the first of the second group to arrive? -- I didn't see who arrived first, because we were all hurrying to get there.

You were all walking together, not in single file? -- Yes.

And you all rushed up together? -- Yes.

And then the cutting started? -- Yes.

Did you see ^{where} Fusi had come from by the way? -- No, I didn't see where he came from, I saw him holding the deceased.

Did he continue holding the deceased for a long time? -- Yes, until the deceased died.

Did he hold him throughout the whole operation of the cutting of the lip? -- Yes.

And was that apparent to all the other people there? -- I don't know if they saw it all, but I saw it myself.

Tell me, who held the deceased while the lip was being cut? -- I was holding him also, and other people I have named.

I want you to tell me the names of the people who were holding the deceased at the time the lip was being cut? -- We were all holding him. I can't say who it was who was not holding him.

/Were you

Were you all holding him? -- Yes.

I take it you mean all except the Chiefs? -- Yes, besides the two chiefs who I saw standing there.

That is besides Chief Bereng and Chief Gabashane? -- Yes.

That means there must have been over a dozen people? -- Yes.

And all holding him while this operation was going on? -- Yes.

HIS LORDSHIP: Not quite all I think - because No. 4 was throttling him, No. 3 was suffocating him and the others

MR. MAISELS: I'll give the benefit of a couple.

HIS LORDSHIP: Ten to twelve.

MR. MAISELS: Well now, there must have been plenty of room for the surgeon to work wasn't there? -- There was plenty of room because I saw him cut.

Tell me, how did he do the cutting, did he hold - he took a knife did he? -- Yes, I saw a knife.

And you were right next to him, weren't you? -- I was not next to him.

How far away was he? -- I was down on the legs.

On the legs? Well, that's not too far away, is it? Did you see the cutting with your own eyes? -- I saw him cut but not as to how he got hold of the lip.

Did you see the cutting with your own eyes? The cutting which you have described? -- Yes.

Right. You saw that by the light of the torch? -- Yes.

Was there any blood? -- I saw no blood.

No blood? Do you shave? -- Yes, I shaved this morning.

/Do you

Do you ever cut yourself, sometimes? -- No.

Never at any time? -- No.

Were you surprised to see no blood coming from this man whose lip was being cut? -- Yes.

He was still alive when his lip was being cut, was he? -- Yes, I saw him looking, his eyes were open.

Trying to struggle? -- Yes, he tried to struggle but we pressed him down.

And there was no blood? -- Yes.

How do you account for that? -- I don't know.

Well, then you decided, after having found out that the lip showed that the man was no good, to throw the body down the donga? -- Yes.

How many of you carried that body down? -- There were many of us, with the exception of Chief Bereng and Chief Gabashane who remained behind.

Ntoane? -- I didn't quite notice whether he remained behind or whether he accompanied the body.

And Fusi? -- I didn't notice him.

What do you mean, you "didn't notice him"? Did not notice him where? -- At the time when the body was carried down.

He might and he might not have been there? -- Yes.

What happened to Fusi after you saw him holding the right hand of the deceased? Did you see him again after that? -- No, I didn't notice him.

He was just suddenly there and you didn't notice him again? -- Yes.

Well now, was it an easy job to take this body down -- No, it was a hard job.

/Was it

Was it dark? -- Yes, it was dark.

Slippery? -- Yes.

Raining? -- Yes.

And did it take you a long time? -- Yes, it took a long time, but I can't estimate how long.

Did you go over very narrow ledges? -- Yes.

And it was very dark? -- Yes.

Anybody fall? -- Yes, they did fall, but I don't know who.

Did they drop the body? -- No, they did not drop the body.

Although people fell, from time to time, the body never touched earth? -- Yes.

Was it a hard thing to get rid of that body? -- Yes.

Very dark? -- Yes.

No light? Of any shape or kind? -- No.

And when you got back, were the two chiefs still waiting for you? -- Yes.

With their motor car? -- Yes, they were still waiting at the spot where we killed the person.

Are there houses at the spot where you killed? -- Yes, there are some houses there but some distance away.

Aren't there some houses within (points to some men standing near) that distance off the road? -- No, (Interpreter) He thinks further on, near the horse.

Near the horse? -- Yes, this side of the horse.

That's about 60 yards away. And they were waiting there the whole time until you returned? -- Yes.

And when this man was being killed, was there any noise? -- No, there was no noise.

/Just silent

Just silent work? -- Yes.

And how long after the sun had gone down did this happen? -- It was at night.

How long after. Was it far in the night? -- Yes. It was at night.

How far in the night - long after the sun had gone down? -- Yes.

Very dark? -- Yes.

Who was your best friend among all those people that night? -- Well, I haven't any particular friend. All those people who were there are friends because they are neighbours.

Isn't there one of them who is a particular friend of yours? -- No.

May I remind you - your friend Mapeshoane? -- He is not a friend. He is only a friend because we were together with him after the chiefs left.

Just happens to be a working acquaintance of yours? -- Yes.

There is just one point I overlooked and want to come back to. When the operation took place, did you see with what hand Chief Ntoane cut the lip? -- No, I did not look at the hand.

You don't know whether it was his right or his left hand? -- No, I don't know.

Do you know what he did with his other hand? -- I only noticed the knife and the cutting.

That's all? -- Yes.

CROSS-EXAMINED BY MR. GROBELAAR:

Where were you when Mapeshoane called you that evening? -- I was on my way from Maneria, a woman.

/I would

I would like to know on which road you were? --
I was coming from Maneria on my way to my home.

Could you point out how far you were from your home when Mapeshoane met you? Could you point out outside and show us the distance? -- It was a distance away from my house.

From here up to Frazer's place, or from here to the Gaol? -- It was the house out there, you can't see it because of those people in the doorway. That ^{red} / building with a window. That was my house, the distance.

You were 100 yards from your house? -- Yes.

Were you walking on the footpath or were you walking on the main road? -- On the footpath.

And when you approached your house, where did you see Mapeshoane emerge from? -- Perhaps you didn't quite understand me, I wasn't anywhere near my house when I saw Mapeshoane.

I asked you point out how far you were from your own house when Mapeshoane met you and you pointed out the house outside? -- Yes, but the distance I pointed out just now was the distance where Mapeshoane met me.

Were you that distance from your house? -- Yes. That was when I met Mapeshoane, that is the distance from my house.

When you saw Mapeshoane, from which direction did he come? -- He came from a group of people behind Makione's hut.

Did you see him come from that group before you actually met him? -- Yes.

I would like to know from which direction you were coming, were you coming from the direction of Fusi's,
/or were

or were coming from the opposite direction when Mapeshoane met you? -- Maneria's place is in the village and I was down below the village, in fact I was facing Fusi's. I was facing Fusi's.

Were you anywhere near the "koshlong"? -- The "koshlong" is in the Chief's place.

Yes. Were you near it? -- No, I was far from it.

Now, when you saw Mapeshoane at a distance coming from the place you call Makioane's, did you recognise him when he left that group of people? -- No, I recognised him when he came close up to me.

How do you know that he had been with a group of people? -- I saw him come out of the group, but I did not recognise him then.

Now, at that time, was it nearer the time of sunset or was it nearer midnight, when you saw Mapeshoane the first time? -- It was in the evening.

Yes, I know, but was it closer to sunset or closer to midnight? -- When I say evening, I can't estimate which was nearer midnight or nearer sunset.

Was it very late in the evening? -- Yes, it was late evening.

How far was Mapeshoane from you when you recognised him the first time? -- He was near me.

And in which direction was he walking? -- He was coming to me.

HIS LORDSHIP: Were you above Makione's hut or were you below it? -- I was above.

MR. GROBELAAR: Oh, you were above Makione's? -- Yes.

And you say you were walking in the direction of your home? -- Yes.

/MR. THOMPSON

MR. THOMPSON: I'm not quite clear.

HIS LORDSHIP: Here is the plan. There's Makione's hut.

Yes, it is "D" in the plan.

MR. THOMPSON: I am afraid I am misunderstanding, I just want to clear it up.

HIS LORDSHIP: It is "D" you see and the answer that I got was that he was somewhere near "E" - he must have been above "E".

MR. THOMPSON: I don't know what "above" means to him.

HIS LORDSHIP: Well then, the top side, I think it's reasonably clear and may not be to him. There's Makione's hut, was it on the top side of Makione's hut or the lower side? -- The top side.

The top side. Now we get it "above", it becomes the "top side", Now do we want anything else?

MR. GROBELAAR: Thank you. Now when you saw Mapeshoane walk, in which direction did he appear to be going? -- He was coming direct to me, when he saw me.

Did he walk in the direction of your house, before you saw him? -- No.

So before Mapeshoane saw you he did not walk in the direction of your house? -- I don't know if he had been to my house before, but at that time he did not.

He was walking from this group in a direction opposite to where your house is? -- Yes.

How near did you pass from that group? -- I did not pass the group, I went into the group.

What were you going to do in that group of people before you were called to join it? -- After Mapeshoane had explained to me the orders.

Before you were told to join that group, how

/far did

far did you pass it? -- I hadn't passed it, and I didn't pass it, I went into the group.

When you saw a person leave the group, whom you afterwards recognised as being Mapeshoane, how far were you from that group? -- I was at the corner over there That corner.

12 yards. And do you say that Mapeshoane had left the group before you came near it? -- I just saw him come out of the group.

But the moment he left the group, did you recognise him? -- I said that I did not recognise him as he left the group.

And how near was Mapeshoane to you before you could recognise him? -- He was as far as that policeman.

About 25 feet. Did you recognise him from his stature, or the way he was walking or his voice? -- I recognised his stature and his way of walking.

Then did he shout at you? -- No, he did not shout at me, he was coming to me.

How far was he from you when he spoke the first time? -- He spoke to me when he came close up to me.

And before you were called, were you walking in the direction of the group or away from it? -- I was walking in the direction of the group.

How far were you from the group when Mapeshoane spoke to you? -- I pointed to that corner.

Oh, yes. Now then you joined the group at once?
-- Yes.

Are you certain Sothi was there? -- I saw him.

Are you surprised to hear that Sothi did not join in this group? That he did not join in that group, he

/went straight

went straight on along the main road to Fusi's. He was never in that group. -- The truth is, I found him in the group.

Isn't it strange now that Sothi is a person who should know what he did that evening and Sothi tells us he was never in that group there, but you say that you saw him there. You must be mistaken. -- I saw him there in that group.

And did you keep in Sothi's company from there up to the time that the murder was committed? -- Yes.

Well, if I remember correctly, Sothi says that he walked in the main road all the time, so do you see that there again your version as to how you walked differs from that of Sothi's? -- I am telling the truth when I say that all those in the second group travelled on the footpath.

You see Sothi also told the Court that Chief Bereng and Chief Ntoane went into the motor car. Aren't you mistaken when you say that they did not? -- Not on the forward journey. I am quite correct in what I say.

Sothi also said that the motor car drove ahead of all the people who were walking on foot, is he also mistaken there? -- There were two groups.

I'm asking you, did the motor car drive ahead in front of both groups? -- The motor car followed the one group.

Did the motor car always remain behind the one group and precede the other group? -- When we came to opposite Khaiso's, the motor car went by the main road.

Yes, I know. At that stage when the motor car

/went on

went on the main road after Khaiso's, was there one group still behind the motor car? -- Yes, our group was behind.

And, at that stage, the motor car was not far in front of you? -- The first group as far as that red building, then the motor car immediately behind that.

Yes, but I want to know how far was the motor car in front of you when you came to Khaiso's? -- The motor car went by the main road and then we took the footpath there.

How far was the motor car in front of you? -- The distance I have just indicated - that red building.

I thought you said that the other group in front of the motor car was so far away from you? -- Yes, and then the motor car^{was}/immediately behind.

HIS LORDSHIP: I have the note that the motor car was immediately behind the first group.

MR. GROBELAAR: Would you say how far the motor car was behind the first group? -- I cannot estimate that.

What is the nearest you came to the motor car that evening while it was travelling along to Fusi's? -- I was never anywhere near it when it was travelling.

You say the lights were shining clearly, the lights of the motor car? -- Yes.

How is that you could not see the number plate of the car as the car was in front of you? -- I didn't care for the number plate I had nothing to do with it.

Did you know that after you had left Maklone's that you were going to commit a ritual murder? -- I didn't know it was going to be a ritual murder.

Did you think that Chief Gabashane had a grievance against Meleke? -- I hadn't even known that it was Meleke who was to be killed.

/You say

You say now that you didn't know for what purpose a person was going to be killed? -- Yes, I didn't know.

When did you realise for the first time that it was Meleke? -- When I saw him I also held him.

And was Meleke a person who was well known to the whole group of people? -- Well, I knew him very well myself.

Did you know whether he was known to the other members of the party? -- All my people who were there knew him.

All your people knew him. Do you mean to tell us that it was very easy to recognise Meleke the moment you saw him being held down? -- Well, it was easy with me.

Meleke was well known to Ntsane wasn't he? -- Do you mean at that time? At the time of his killing? Ntsane was not there.

He was in the village - I know he was absent. Was he well known to Kemaketse? -- They all know him.

Molemohi? -- He knew him.

When Meleke was being held down, I expect someone made the remark that it was Meleke? -- No, I didn't hear anybody make that remark.

You consider that Molemohi, too, should have been able to recognise Meleke by the light of the torch? -- Well, whether or not he didn't recognise him, but I did recognise him.

And the moment ... before you saw the man being held down, you tell us you saw a horse running away? -- Yes.

Didn't you see the deceased being dragged down from his horse? -- No.

/Molemohi said

Molemohi said Mapeshoane and Sothi were in your group and dragged the deceased down from his horse. As you were in Mapeshoane's group, you should have seen the deceased when he was pulled down from his horse. -- No, I did not see him pulled from his horse, maybe he saw it himself, but I didn't see it.

When you saw the horse, how far was it from the spot where the deceased was being held down? -- As far as the horse outside there - that was where the deceased was being held down. I was here.

How far was the horse at that time from the place where the deceased was being held down? -- I don't quite understand.

I want to know, how far the horse was from the person who was being held down, when you saw the horse for the first time? -- It was emerging from the group.

Right. And how far was it? When you got near the place where the person was being held down, how far ~~was~~ the horse then, from the deceased? -- It had gone, I wasn't looking.

Was the horse out of sight then? -- Whether it was out of sight or not, I don't know, I wasn't looking.

Was anyone holding the horse? -- I did not see anybody holding the horse.

Do you know if Ramabanta held the deceased down? -- The whole group was holding the deceased, I did not notice whether Ramabanta was holding the deceased.

And as far as you remember the horse was running away into the distance? -- Yes.

When the horse was running away, did you notice whether a torch was at the scene of the alleged crime

/already, or

already or hadn't you yet seen the torch? -- I saw the torch being lit.

At what stage was the torch lit? --

HIS LORDSHIP: I just want to ask you this question.

When we look at the plan, I don't see if there is a record of the distance between "K" and "M". I don't see it anywhere I don't see any record of that distance and I would like to know what it is. It may be in the evidence but it is not on the plan.

MR. THOMPSON: We have "J" to "M", it is 116 paces.

MR. GROBELAAR: There is not much difference between "J" to "M" and "K" to "M" m'lord.

MR. THOMPSON: It is a fair 100, m'lord.

TEA ADJOURNMENT.

On Resuming.

SEPALAMI MATHIBE (under former oath)

CROSS-EXAMINED BY MR. GROBELAAR (Cont'd)

Now, Sepalami, will you tell the Court, please, when the torch was lit during the assault that evening as you put the point? -- I saw the torch being lit at the time when the person was being held down.

Did you see the torch alight first or did you first see the person being held down and the torch being produced after the person had been held down for some time? -- I saw the torch first being lit and then I saw the person being held down.

When the torch was lit, the horse was already some distance away? -- The horse had left.

Now, did you and Mapeshoane and Sothi stick together in the group as you walked along the place where the deceased was eventually assaulted? -- We

/were together

were together, but it is just possible that one may have arrived on the scene before the others.

Just before you saw this horse run away from the group, do I understand you to say that you and Sothi and Mapeshoane and others were still together? -- We were hurrying to the scene, so that even if they may have left me behind, I would not have observed it.

But when you saw the horse run out of the group, can you tell the Court whether any of the people walking in your group, were far ahead of you? -- No, I can't say who were already in front of me at that time.

Did you see any members of your group well ahead of you at the time you saw this horse run away? -- We were hurrying to the scene so that I can't say who was in front of me.

Was the motorcar still in front of you? Between you and the first group? -- The motor car was standing still.

Was the car in darkness? -- Yes.

How far ahead of you was the motor car when you saw the horse run? -- I had passed the motor car which was standing on^a/flat rock.

You had passed the motor car? -- Yes.

Seeing that Mapeshoane and Sothi were alleged to have been in your group, don't you think that if either Mapeshoane or Sothi had dragged the deceased from his horse, you would have seen it? -- I didn't see him drag the man from his horse, but when I arrived the man was on the ground.

Did you take it that the first group had dragged the deceased from his horse? -- Yes.

/And you

And you did not think that any members of your group were near the horse when the deceased was being dragged down? -- No I did not think so.

Are you certain the deceased was alive when his lips were being cut off? -- He was alive because his eyes were open.

HIS LORDSHIP: He was alive when the lips were being cut because his eyes were open. That's the answer.

MR. GROBELAAR: Do you mean to suggest that the eyes of the deceased were open at the time his lips were cut and you could see from the way they were looking that the deceased was alive? -- Yes.

And I think you also said that he was breathing, didn't you? -- Yes he was moving a bit.

I think you also said that he was still making a noise? -- He was still making a noise.

Did you say so? -- No, I did not say so.

When did you hear the deceased make the last noise before he expired? -- As I pressed him down I felt that he no longer moved.

I know, but when did you hear him make his last noise? -- I did not hear the deceased make any noise, but I felt that he was dead because he no longer moved.

Do you say that the deceased at no moment of time made any sound even when he was first being held down? -- No, I did not hear any sound.

You see, Sothi and other witnesses told the Court that when the deceased's lips were cut, he was absolutely cold and he was clearly dead. Aren't you mistaken when you say he was clearly alive? -- No, I am not making a mistake.

Are you certain that Gabashane said after his

/lips had

lips had been cut that the deceased should be killed; otherwise he would make a report? -- Yes.

I questioned you about this, because you are the only one of all the witnesses who have given evidence that referred to any matter of that kind. -- It is because I heard that statement made and I am stating what I heard and what I saw.

So Sothi and Molemohi are wrong when they say that the deceased was cold at that stage? -- I don't know. That is, perhaps, what they know, but in my view the deceased was still alive.

When do you say the deceased died? -- After the cutting of the lips.

Did you then feel that his heart was not beating any more and that he was cold? -- Yes, I felt that he was no longer moving where I was pressing him down.

Were you holding him by two legs? -- Yes, I pressed down the two legs. There were many of us.

If Mapeshoane says he held him by his two legs, would he be wrong? -- He states what he did and I am stating what I also did.

Did all those who went with the body of the deceased, that party, to the place where he was thrown down into the donga, carry him at the same time? -- We carried the body and kept on changing on the route.

How many of you were carrying him at the same time? -- I did not count the people.

You can tell us, more or less. Were two carrying him, or three or four or more than four? -- No, I didn't pay particular attention to the people who were carrying him.

/Do you

Do you think there might have been only two carrying him at once? -- No, there were many.

More than five? -- Whether there were more than five or less than five, I don't know.

Now, was the body of the deceased put down at any point of time from the moment that you took him from the place where he was killed, up to the time that you threw him into the donga? -- No, it was never put to the ground anywhere.

Was there any reason why you didn't put him down on the ground at all before you threw him into the donga? -- I don't know of any reason, we carried him until we threw him into the donga.

Was the reason because you were in a very great hurry to dispose of the body as quickly as possible and that you were walking very fast? -- Yes, that was so.

And did you walk fast all the time? Were you in a hurry to finish the job? -- Yes.

Didn't any of you fall in your haste to get rid of the body? -- Somepeople did fall and slip on the ground, but I didn't see who they were.

Did people while you were also carrying the body? -- Yes, while I was carrying the body.

The people who fell, were they in front of you or behind you? -- Some were in front of me, but I didn't know who they were.

And I take it when those people fell in front, seeing it was dark, the whole lot of you fell on top of each other? -- No.

So the body was kept up and you say the body did not come into contact with the ground? -- No, at the time

/I was

I was carrying, that body did not come into contact with the ground.

When you left the place where the deceased was killed, did you know precisely where the body was going to be thrown into the donga? -- No, I did not know.

Who was directing the course to be taken by the bearers of the body? -- We just walked to that donga, but I didn't hear anybody give orders that it should be thrown into that particular donga.

What I would like to know is this - there were a number of people carrying the body, and, from what I understand from you, there was no one to direct the course of the persons who were carrying it? -- The order was given that the body should be thrown into a donga down below.

Did you understand that the order was as soon as you came to the donga, the body should be thrown into it? -- Yes, that was the order, but I don't know even if the people who were carrying the body with me, knew that donga.

Did you know the donga at all? -- No, I didn't know it.

So, seeing that you didn't know the donga, I take it that it was very dangerous for you to walk as near to the donga as you did that evening? -- Yes, it is.

Could you go and point out the place where the body was thrown into the donga that evening? -- Although it was at night, I can point out the area.

Did you point it out to any of the officers? Any Police Officers? -- No.

HIS LORDSHIP: What does he say? That he could point it out?

/MR. GROBELAAR .

MR. GROBELAAR: Point out the area.

HIS LORDSHIP: No, point out the spot

MR. GROBELAAR: The spot where the body was thrown into the donga. Now tell me, did you walk on the right or the left side of the donga that evening, as you carried the body down?
-- We threw the body on to the left.

But did you walk on the ...? -- As we walked between the dongas we threw the body.

Oh, I see you say you walked between the dongas?
-- Yes.

Now, did you see that donga at all, after you had thrown the body into it? -- No.

And you tell me that you walked between two dongas as you carried the body to the place where you threw it down? -- Yes.

Was anyone leading the way when you were walking between the two dongas, as you call them? -- No, I didn't observe it.

When you were walking between the two dongas, do you know if a warning was given to you that you must walk carefully, because there is a precipice on the one side or the other? -- No, I did not hear it.

If a warning was given, I take it that you would have been warned with the other people? -- (No reply).

Do you know whether you walked within a few feet of a dangerous precipice more than 20 feet deep and going straight down in your course to this place where you left the body. While you were walking between the two dongas?
-- Yes, I know because it was at night.

Did you realise that evening as you were walking
/between the

between the two dongas, that you were walking on the brink of a precipice over 20 feet deep? -- No, I didn't know.

And when you walked down from the place where you had left the body of the deceased, you didn't realise that you had walked along such a dangerous precipice? -- No, I did not.

Do you know whether anyone walked in front as you came back on your way after having thrown the body away, to show you how you should walk on your return journey to the motorcar? -- No, we walked anyhow on our return.

Did you walk by yourself, alone, when you came back from the place where the body had been deposited? -- We walked in the whole group.

Did anyone hold your hand and show you the way to go home? -- No.

Now, you see the Court has seen this place where the other Crown witnesses who were with you say the body was deposited, and I put it to you that if a stranger walked along that bank, indicated by your fellow Crown witnesses, then it is nothing less than a miracle if he escapes falling down a precipice at night in the dark.

Did anyone fall down the precipice that evening? -- Nobody fell. If anybody had fallen over that precipice, you would have known about it.

Certainly. And you would have known about it too? -- Yes.

Now, when you walked back from the place where you had thrown the body away, did you walk in a group and together? --

HIS LORDSHIP: The witness said they walked "anyhow" and they returned in a group. I don't think you ought to go

/on asking

on asking the same question time and again; it only makes it very tedious; he's already answered that question.

MR. GROBELAAR: As Your Lordship pleases. Did more than two of you walk abreast immediately after you deposited the body? -- I didn't notice that.

Did anyone give an instruction that you should walk single file at any point on your journey back to the motorcar? -- No, I did not hear that instruction.

Do you know how deep the donga is at the place where the body was thrown down? -- No, I have never seen that donga in the daytime.

MR. THOMPSON: No re-examination.

HIS LORDSHIP: Do you know what kind of lights the motorcar carried? -- Yes, I have seen the lights of the motorcar, they are white.

Yes, but is it one set of lights, or two sets of lights? -- I never paid particular attention.

ASSESSOR MOKHEHLE: You say, that when you met No. 4, Makione gave orders that you should divide into two groups? -- Yes.

Did he give the reason why you were to divide into two groups? -- He said we must divide into two groups and that we must not make a very big group.

All that way, did you see Molemohi anywhere? -- No, I did not see Molemohi.

MR. THOMPSON: The next four witnesses to be called by the Crown ~~were~~ witnesses against No. 11 alone, and do not involve the other accused represented by my learned friend, Mr. Grobelaar, in any respect.

/THE CROWN CALLS:

THE CROWN CALLS:

NTSANE NTAI, sworn states,

EXAMINED BY MR. THOMPSON:

Ntsane, where is your home? -- My home is at Phiri's under Chief Gabashane.

What did you call the place? -- Phiri's.

Phiri's. Is that the same as Lepai's? -- Yes, one and the same place.

Were you working in Johannesburg at the beginning of this year? -- Yes.

When did you return home? -- I arrived back home on the first day of March.

1st March. Are you any relation of No. 11 accused? -- Yes.

What relationship? -- My grand-uncle.

And Meleke, now dead, what relation was he? -- He also, was my grand-uncle.

Do you know anything about the way Meleke came by his death? -- Yes.

What is the first thing you know? -- Maloi Ntai, No. 11, said that we should leave Meleke on the way - it was afterwards I heard that he was dead.

Before that? -- Maloi Ntai came to me one night ...

No. 11 came to you one night, and what happened? -- ... with Makhetha.

Who was Makhetha with, you or Maloi? -- Makhetha was with Maloi, No. 11.

Well, these two came to you one evening and what happened? -- Maloi knocked at the door. I enquired who it was. He answered and said, "I am Maloi".

Yes? -- He said, "I have come to wake you up".

Yes? -- He said, "Your grand-uncle, Makhetha, is /also here.

also here. Outside".

Yes? -- He said, "Both of you are wanted by the Chief".

Did he name the Chief? -- He said Chief Gabashane.

Yes? -- But before I got up I enquired of him, "What does the Chief want us for so late at night?"

Yes? -- He said, "Get up, you will hear from the Chief". We went to the call.

Went to ...? -- We went to the call.

To the call? -- To the call. Answered the summons.

Answered the summons. Yes, where did you go then? -- We went to Chief Gabashane's place.

Who? -- There were three of us.

Who were they ? -- There was Ntsane Ntai, Makhetha Ntai and Maloi Ntai.

That was yourself, Makhetha and Maloi. When you got to Gabashane's place, what happened? -- We came to the Court house. He told us to stop there.

Who told you? -- Maloi, No. 11 accused.

What did Maloi do? -- Then he went on to the Chief's house. We waited there to be called.

You and Makhetha waited outside? -- Yes.

And what happened? -- After a long time, he returned.

What did the three of you do then? -- When he returned, he said to us, "Let us go back home".

Did you go back home? -- Yes. On the way home he told us, he said, "In the house of Chief Gabashane, where I have been"

Yes? -- He said he had found Chief Gabashane in the house

Yes? -- And Chief Bereng, Mapeshoane and their /people

people.

Yes? -- And that they were discussing the killing of a person. He said that had not specified who was to be killed.

Yes? Is that all that he said? -- Yes.

After that - after he told you these things, what happened? -- We returned to our homes.

Now, remember the last time you saw your relative, Meleke? -- Yes.

How long before the occasion you last saw Meleke, did this ride to Gabashane's and return, take place? -- I saw Meleke every day.

Right, I'll come back to that later. Might I inform Your Lordship that this witness' evidence is only relevant against No. 11. It is slightly relevant against Gabashane in that No. 11 paid a mysterious visit one night to him, but it is not very great.

Did one of your relatives die just about the time that you and Maloi visited Mapeshoane's village at night time? -- Yes.

What was his name? -- Meleke Ntai.

Besides Meleke? -- He died on Wednesday that same week.

Who died on Wednesday of that same week? -- Tlatsinyane.

What do you mean? The same week as what? -- It was on that Wednesday that we were informed of the death of that relative of ours. The evening of which we were called to the Chief's village.

Now, you returned to your home from Johannesburg on

/March 1st

March 1st, what day of the week was that? -- It was on a Monday.

And you say on the Wednesday two things happened, you heard of Tlatsinyane's death and you paid a visit to Gabashane's village? -- Yes.

Now on the Thursday, what did you do? -- We went to the funeral of Tlatsinyane.

Who went? -- Maloi Ntai, No. 11 accused, Meleke Ntai, the deceased and Makhetha Ntai.

Maleke, Makhetha, Maloi and yourself? -- Yes.

You all went to the funeral? -- Yes.

At what village was the funeral? -- The village of Mahleke

Mahleke. When you travelled from your village to Mahleke's village, what villages do you pass through? -- We passed Gabashane's village.

Passed Chief Gabashane's village? And immediately after Chief Gabashane's, whose did you pass? -- When we left home for the funeral, we scattered.

What do you mean by that? -- I alone went to the shop.

You went to the shop. What happened to the other three? -- Maloi and Makhetha Ntai took a straight route which passes through Chief Gabashane's village.

And did you eventually catch up No. 11 and Makhetha? -- Yes.

And the deceased, Meleke? -- And Meleke, yes.

Apparently you got to Mahleke's? -- Yes.

Did you attend the funeral of Tlatsinyane? -- Yes.

After the funeral, did you have food and drink? -- I didn't have any drink, myself, I don't know if the

/other men

other men had any.

Well, food and drink was available, was it? -- Yes.

Did you notice if Meleke had anything to eat or drink? -- No, I did not notice.

You started on your way back home, did you? -- Yes.

Who was in your party when you started on your way home? -- Maloi, Noll, Makhetha, the deceased, Meleke, and myself.

That is the same four who set out in the morning?

-- Yes.

Did you four remain in company all the way back home? -- No, we did not all reach home together.

What happened? -- After we left the place of the funeral, we left the deceased on the pass.

You left the deceased on the pass. Who left him?

-- We three.

That's yourself, Maloi and Makhetha? -- Yes.

Why did you leave him? -- We left him because his horse could not walk on the flat rocks and again because he was a sickly man and could not race his horse as much as we did our own.

Why did you race your horses? -- Maloi, No. 11, said that we should race our horses.

Did you agree to that? -- We asked why should he leave the deceased behind.

Was there any reply to that? -- He said "If you do not leave him behind, you will see what will happen".

Did he say anything else? -- After this, we raced our horses after he had started racing his horse.

/Maloi? --

Maloi? -- Yes.

So you three went on racing your horses, leaving the deceased on his horse following you? -- Yes.

What is the next thing that happened as far as you were concerned? -- When we came to Ntsi's ...

HIS LORDSHIP: Where?

MR. THOMPSON: Ntsi's, m'lord. Do you know where No. 8 lives? -- Yes.

Where is this place Ntsi's in relation to No. 8's village? -- On the western side of No. 8's village.

On the road or off the road? -- Near the road. These villages are next to the road.

What happened when you got to Ntsi's? -- We met a group of people.

Did you recognise any of them? -- I did not recognise any of them.

Were they on the road or off the road? -- They were on the footpath. And they were following the footpath parallel to the main road.

Were you on the main road? -- I was on the main road.

Was this group of people a small or a large group? -- A small group.

I suppose you couldn't give us an approximate figure. If you can't, say so? -- No, I can't say how many there were.

When you came across this group of people off the main road on the footpath, what happened? -- No. 11 accused, Maloi, remained there.

And then? What did he do? -- He went to them.

That is he went from the road to the footpath? -- Yes.

/And did

And did you see what he did when he went to the footpath? -- No, I did not see what he did because we continued on our way.

You and Makhetha? -- Yes.

When you and Makhetha continued on your way, did you keep on the main road all the time? -- Yes.

Did you see No. 11 again that night? -- Yes, he came and caught us up.

Was there any conversation when he caught you up? -- Makhetha asked him who the people he had gone to were.

What was the reply, if any? -- He said, "What do you want to do with them?"

Yes, what else did he say, if anything? -- He said we continued wishing to know other people's affairs.

Yes? -- The way he spoke to us, we did not answer him back again. We continued on our way.

So you went home? -- And to bed.

That was on Thursday night, was it? -- Yes, it was on Thursday night.

The following day, Friday ... do you know what horse Meleke was riding on the Thursday? -- Yes.

What colour horse was it? -- I would say it was a bay.

A bay horse. And who is the owner of that horse? -- Ananias.

After you left Meleke behind on the Thursday night, when did you next see that horse again? -- I saw it on Friday at sunset.

Where? -- At our home.

Was it kraaled or stabled or whatever you do with your horses? -- It was grazing.

/Grazing

Grazing. You didn't see the horse returned? -- No, I did not see it returned.

I want you to have a look at these exhibits, will you come down to this bench please? I want you to go through these exhibits and any that you recognise, hold them up, one by one, and tell us what you know about it. -- This saddle belongs to the deceased.

That saddle belonged to the deceased - keep that saddle in your hand - Exhibit No. 5. Will you have a look at that saddle please. Is that saddle damaged in any way? Girth straps broken or anything like that? -- No, in my view it is quite all right.

All right, you recognise the saddle as being Meleke's. Anything else that you recognise? -- This blanket.

Exhibit 4. Whose blanket was that? -- That blanket belongs to Kogja.

What has that to do with this case, do you know? -- I know that he lent it to the deceased.

When? -- When we were arranging for the funeral.

On the day you went to the funeral? -- Yes.

Anything else you recognise? -- I know this blanket belongs to the deceased.

Exhibit 2, m'lord, belongs to the deceased. Was he wearing it the day he went to the funeral? -- Yes, he was wearing it.

Anything else that you recognise? -- The trousers belonged to the deceased.

Trousers, Exhibit 1. And anything else? -- I can't identify the hat.

/You tell

You tell us that Meleke had two blankets in his possession - one his own and the other belonging to somebody else? -- Yes.

When you last saw him, that is on your return from the funeral, was he wearing both those blankets, or wearing only one of them or neither of them? -- He was wearing both those blankets.

And how had he got them fixed on? -- He had them pinned.

Just have a look at No. 8's blanket - see how that is pinned on to him. Pinned on the same way as No. 8's - somewhere near the right shoulder, is that right? -- Yes.

Did you point out these spots, that is, where you saw the group and where Maloi left you to speak to the group, to Mr. Castle? -- Yes.

You pointed them out correctly to the best of your recollection? --

HIS LORDSHIP: Where Maloi left the group?

MR. THOMPSON: No, where Maloi left this witness and the other man, Makhetha, to go and speak to the group. Point "I". Point "I" m'lord, where, it is alleged, No. 11 left the witness and went across to them.

CROSS-EXAMINED BY MR. MAISELS:

When were you asked to make a statement to the Police for the first time? -- On the second day after my arrival at the police camp.

When was that? -- In March.

How long after the death of Meleke? -- About three days.

Did you then make a statement - to whom? --

/Before the

Before the police officer.

Who? Mr. Castle? -- Yes.

That is the statement dated early in March? -- Yes.

What did you tell Mr. Castle? -- The statement
just
that I have/made now, before the Court.

You told him that in March? -- Yes.

Who was with you when you made that statement? --
The police officer, the sergeant and the corporal Moeketsi.
Makhetha? Where was he? -- He was kept away from
there.

Was he at the police camp too? -- Yes.

And did you tell Mr. Castle about the visit to
Chief Gabashane's house? -- Yes.

And did you tell Mr. Castle about Maloi leaving
you on the way back from the funeral? -- Yes.

And this was all within a few days after the death
of Meleke? -- Yes.

Was that statement signed by you? -- Yes.

Now, do you know the accused, Ramabanta? -- I
don't know him.

Just look at him. -- I don't know him.

Can you say whether or not he was at the funeral
you attended? -- I did not see him.

Do you deny that he was there? -- I say I did
not see him.

In other words do you imply that he may have
been there but you did not see him? -- I say I did not see
him.

Does that mean that he wasn't there? -- I did
not see him.

/I want

I want to try and get quite clear from you, sometimes a person can be ... for instance there can be lots of people in this room and you mightn't see them here, that is not to say they are not here. Now were there a lot of people at the funeral? -- Yes.

So is it possible that No. 10 was there and you didn't see him there? -- I did not see him.

What time did you leave the funeral? Was it dark or was it light? -- It was still light when we left the funeral.

And then you went to have something to eat? -- Yes.

And when you left the place where you had something to eat, was it still light or was it dark? -- It was at dusk.

Dusk. That's when you left after having something to eat? -- Yes.

Now, this witness can tell the time can't he? -- No.

You've been working in Johannesburg, haven't you? -- Yes.

Have you got any idea how long you were on the road, from the time you stopped eating till the time you got home? -- No, I can't say.

M'lord, I ask my learned friend, Mr. Thompson, the Attorney General, to make available to the Defence the date on which this witness made a statement to the police. My learned friend informs me that the date is the 23rd July, but he makes it quite clear to me, M'lord, that that is the statement in the dock which is sworn. There may or may not be another one, m'lord, and that matter I suggest, Your Lordship, be left over till Mr. Castle is /available again

available again. That matter must be cleared up, m'lord, but may I pursue the cross-examination on that for the moment.

HIS LORDSHIP: Oh, yes.

MR. MAISELS: How many statements did you make to the police? -- One.

Was that sworn before somebody? -- Yes.

Only one statement to the police? -- Yes, I have said so.

And if I tell you that that statement was the 23rd July, what do you say now? -- I say I made the statement in March.

You only signed your name to one statement? -- I have said so.

LUNCHEON ADJOURNMENT.

-----oOo-----

On resuming.

NTSANE NTAI (Under former oath),

CROSS-EXAMINED BY MR. MAISELS (cont.)

Did you make any statement to the police in July? -- I made my statement in March.

I want a specific answer to the question - did you make any statement to the police which you signed in July of this year? -- As you like. I made my statement in March.

And not in July? -- No, not in July.

And when you made your statement, were questions put to you and did you answer them? -- No.

Did you just volunteer? -- Yes.

/Did you

Did you tell the police, in March, about your being called to Chief Gabashane's the night before the funeral? -- Yes.

Did you, at that time, connect your being called to Gabashane's with the death of Meleke? -- Yes.

Why? -- Because the deceased was found dead after we had been travelling together and his elder brother had said we should not report that we had left him **behind**.

Yes, go on? When did he say that? -- On our return from the funeral.

Did the fact that the rain was coming, have anything to do with your leaving the deceased behind? -- We left the deceased behind because of what was said and not because of rain.

The fact that the rain was coming had nothing to do with your leaving the deceased behind? -- Yes, it had nothing to do with it.

Was it a fact that the deceased could not ride very fast? -- Yes.

And did you ride very fast because the rain was coming? -- Not because of rain, but because of what was said.

Did you say this to the District Commissioner, (page 27 m'lord), "On the way back we rode very fast as the rain was coming". -- There was rain as we were riding, as a matter of fact, we left home in the rain.

Did you say that you "rode back very fast as the rain was coming"? -- Yes, I said so.

Was that so? -- Yes.

Did the fact that the rain was coming have anything to do with you riding **back** ~~very~~ fast? -- We

/rode very

rode very fast particularly because of what was said and not so much about the rain.

Were there any other reasons why you left the deceased behind? -- Yes.

What were they? -- We left him on the flat rock where his horse could not walk quickly enough on the rock.

And because he could not gallop? -- Yes.

He was a sickly man? -- Yes. .

What time was it that you left the funeral? -- Early dusk.

It was not quite dark? -- Yes.

How long after that was it that you saw No. 11 accused go to this group of people? -- It was a long time after.

What was it like at that time, was it very dark or dusk, or early dark? -- It was dark.

Just after dusk? -- It was dark.

Had it been dark a long time? -- Yes, because the place where we met the group of people was far away from where we left Mahleke's.

How far away, have you any idea? -- It was out of sight.

Now you had been going on a path had you? -- On the main road.

You saw this group of people, was it a big group or a small group? -- As far as I could see it was a small group.

Did you tell the District Commissioner it was a big group? -- I said it was a group, I didn't qualify it as being either big or small.

/He's got

He's got you recorded as having said this, (page 27): "When we reached Ntsi's we met a big group of people". Is that a mistake? -- What I said was a "group".

So he must have made a mistake. You didn't make a mistake? -- No, I did not make a mistake, I said we met a group of people.

How many groups did you see? -- I saw one group.

Did you see a motorcar? -- I did not see a motorcar.

You were travelling on the main road? -- Yes.

The spot where you saw this group - you were travelling on the main road and the group was on the path, I understand - what distance was this group from the road when you saw it? -- I can't estimate the distance.

Just point it out? -- I can't estimate it.

Can you give me no idea? -- No.

Why not? -- I did not pay particular attention to this group nor did I measure the distance from where I was to where the group was.

Was it a long way from you? -- Not a long way away.

To the red roofs? -- No.

Nearer? -- Yes.

About half way? -- It was very near.

Then you'll have no difficulty in pointing it out at all? -- I can't point out because I didn't pay much attention to the group.

Well you could tell us it was a small group. Was it walking slowly, or fast, or on bicycles, or on horses? -- They were walking on foot.

Fast? -- No. I didn't notice. I did notice that they were walking very slowly. They were walking slowly.

/Not very

Not very slowly? -- I didn't pay much attention to them.

Did you see No. 11 accused ride over to meet them?
-- Yes, he rode over to them.

And did you see him meet them? -- Yes.

Did they all stop and talk to him? -- When they stopped I disappeared over the hill.

Did you see them stop? -- I didn't see them stop. He went to them, entered the group, then I went on my way.

Weren't you curious to see what he was doing? -- No.

Why not? -- I didn't care much.

But he rode off and left the two of you? -- Yes.

Didn't you look to see what he was doing? -- No.

Why not? -- I didn't care much.

You were all going hometogether, weren't you? -- Yes.

You all lived in the same village? -- Yes.

Did you wait to see if he would be a long or a short time? -- No.

How was this group walking? Was it walking in single file, or all together? -- Just walking ordinarily.

You mean one behind the other? -- No.

Was there more than one group? -- No.

As I understand the position, the path is south of the road? -- Yes.

And did you see this group of people come from some distance ahead? -- No.

You were going away from Fusi's? -- Yes.

And the group was coming towards Fusi's? -- Yes.

Well now, when did you see the group, when it was opposite you? -- Yes, at the time when No. 11 rode over
/to them

to them.

Was that when it was directly opposite you? -- Yes.

Looking at the shape of the road, it is remarkable that this group wasn't seen before, isn't it? -- It must be remembered that it was dark.

Was it very dark? -- Yes, very dark.

So the accused No. 11 just rode off and you continued on your way? -- Yes.

Did you speak to Makhetha when No. 11 accused rode off? -- No, I did not speak.

Didn't you think it strange? Didn't you ask Makhetha what he was doing there? -- No.

Did you, in fact, think it was strange that he went off the road? -- No, it was not strange for him to go off the road.

To talk to some people? -- No, it was not strange.

But you didn't pass any comment to your ... to Makhetha ... is Makhetha your brother? -- Uncle.

You passed no comment to him? -- No.

And in fact, the three of you arrived home together, didn't you? -- Yes.

And you were met on your arrival by the daughter of No. 11? -- No. Nobody met us.

Is the daughter's name Moleboko? -- Moleboko.

Do you know the daughter of No. 11 accused? -- I know his daughters.

His daughters. Well, there's one of about sixteen here. Do you know the daughter Moleboko? -- Yes.

Did you see Moleboko when you came home that evening? -- No.

She says she saw you coming? -- I don't know if

/she saw

she saw us coming, but I didn't see her.

She says you came there just after dusk? -- That is not true.

You came there much later? -- Late in the evening.

Now I want to go back to the night before. Did you see No. 5 accused, that night? -- No, I didn't see him.

Had Sankatana been there with No. 11, Maloi, would you have seen him? -- When?

When you were called to the Chief's? -- We remained outside near the Court, he passed on to the house.

Who did? -- Maloi.

I want to know whether Maloi was with No. 5 at any time that you saw him that night? -- I don't know.

The reason why I'm asking you that question, is that Mapeshoane says that No. 5 was sent to call No. 11 and returned with him? -- I don't know. That is Mapeshoane's statement.

You did not see No. 5 and No. 11 together? -- I saw Maloi by himself. I did not see Sankatana, No. 5.

What time of the night was it that you were called to the chief's house? -- It was at night.

What time of the night was it that he was called at his house by No. 11 accused? -- It was at night. I had no watch so I don't know what time it was.

Was it a long time after sunset, or was it a short time after sunset? -- It was at night.

Was it a long time after sunset, or was it a short time after sunset? -- I have already said, it was at night.

Are you not prepared to give me any estimate as to how late it was? Would you regard it as very late in /the night?

the night? -- It was at night.

You are not prepared to take it further than that?

-- No.

How far is your house from the Khohlong? --

Which Khohlong?

The one at Mamathe's? -- There are many kloofs at Mamathe's.

You don't know the house called the Khohlong? -- I have heard about the house called the Khohlong.

You've only heard about it? -- Yes.

Have you ever been there? -- Yes, I've been there.

Then you know about it? -- Yes.

Tell me how far your ^{house} / is from that house? --

It is far away, I can't give you an estimate.

About two miles? Isn't it? -- I don't know what the mileage is.

A long way, isn't it? -- Yes.

Did you see when you got to the village of the Chief, of Mamathe's village, where accused No. 11 went to? -- When we returned from where we had been?

No. The witness has told us that he was summoned by No. 11 accused one night. Remember that? -- Yes.

What night was that? -- Wednesday night.

And do you know where No. 11 went to? -- When?

That night? -- We went with him to the Chief's village.

Do you know where, particularly, No. 11 went to ? -- No, because we were left at the Court house.

He just left the two of you standing there? -- Yes.

Have you seen Makhetha since that night? -- I saw him the next day when we went with him to the funeral.

/Have you

Have you seen him since? -- Yes.

Seen him every day? -- Yes.

Have you seen him since the accused was arrested?

-- Yes.

Have you spoken to him about the events of the Wednesday night and the Thursday night? -- Yes.

And you agree on what happened? -- What happened where?

Did you tell him what you remembered about those two nights and did he tell you what he remembered? -- We spoke about the matter at that time and it ended there.

You mean since that Thursday night in March, you haven't spoken about it? -- Yes.

Not since? -- We did speak about it.

When? -- On Friday of that week.

And since then? -- After that then Makhetha was placed in custody.

When was he placed in custody? -- I can't remember the date but it was at the end of that week.

Do you mean the end of the following week? -- That same week.

Where was he placed in custody? -- Teyateyaneng.

And you? -- I was also placed in custody.

So you were both placed in custody? -- Yes.

And for how long... were you in custody together? -- No, we were not together.

Were you in the same camp? -- Yes.

And when were you released from custody? -- I can't remember when we were released.

Was it in July? -- I don't remember.

Could it have been in July after you made a certain statement to the police? -- I made a statement

/in March

in March.

Can you remember what month you were released? --

No, I don't remember.

Was it after the Preparatory Examination, or before the Preparatory Examination? -- Before.

How long before? -- I can't remember.

Can you give me no idea of the month or months in which you were kept in custody? -- No, I can't remember.

Was it months? -- Yes.

And Makhetha? -- Makhetha, he also.

Also ? -- Yes.

And you don't know when he was released or when you were released? -- We were released the same day.

What month was the Preparatory Examination held when you gave evidence? -- I don't remember what month it was.

Don't remember the month. What month is it now? -- November. I am told it is November.

Who told you it was November? -- The people outside here speak about it as being November.

That's why you know? -- Yes.

And who told you it was March when these events happened? -- My master, when I left him.

In Johannesburg? When did you leave him? -- I left on a Sunday.

In what month? -- I don't remember. It is the month which precedes March.

You don't even remember that month? -- The month before March.

Have you got a pass from your work in Johannesburg? -- Yes.

/Have you

Have you got it on you? -- No.

Do you live in the same house as Makhetha? -- No.

Does he live near you? -- In the same village, yes.

Do you know what^a/month is? -- Yes.

Can you say it was a month before you gave evidence at the Preparatory Examination that you were released from custody? -- I can't remember.

Have you often been in custody? -- No.

Is this the first time? -- Yes.

Well then, can you tell me, have you got no idea of how long you were kept in custody? Was it a week or a month or a year?-- It was not a year, it was months, I can't say how many.

Two, three, four or five? -- I can't estimate how many months.

Can you tell us why you were kept in custody for so many months? Have you got any idea? -- That is for the police officer to say.

How long after the death of Meleke were you taken into custody? -- About a day after Meleke's death.

Then you can remember pretty well?'-- I think it was one day after.

That was on the Saturday - the Friday? -- Yes, it was on Saturday when I was taken in custody.

And you were kept in custody until you made a statement? -- I was in custody on Saturday, three days afterwards when I was questioned then I made my statement.

When you were questioned, you made your statement. What questions were put to you? Just a moment ... before that. The statement that he made on that day was it taken down in writing? -- I don't remember.

/Was the

Was the statement ... what/^{do}you mean, you don't remember? Did you sign it? -- Yes.

Well, that was the only statement you made? -- Yes.

Therefore, was it taken down in your presence?

-- Yes, it was taken down before the police officer and the sergeant.

And you signed it then and there? -- Yes.

Now, did the police officer ask you whether on the way back from the funeral No. 11 accused had gone to meet the group of people? -- No, he did not ask.

Did he ask you whether you had been at a meeting at the Chief's house on the night before the funeral? -- No, he did not ask.

Now, as a matter of fact, when you started off for the funeral, there were three of you, isn't that so? -- Yes.

And you only met up with ...? -- There were four of us.

I want to suggest that when you went off to the funeral, there were three of you, originally? -- There were four of us when we went to the funeral.

And I want to suggest that when you left the village there were three of you and then you met Meleke on the way? -- Yes, we caught him up.

That is, there were you, the accused and Makhetha who left together? -- Yes.

And after you had been to the store, you followed No. 11 accused and Makhetha and you caught up with them at Seoka's. Is that right? -- Yes.

And it was at Seoka's place there were three of them. That was, No. 11, Makhetha, and Meleke? -- Yes.

/No. 11 will

No. 11 will say that he went with you to the funeral and that on the way back it started to rain very hard and Meleke, the deceased, was left behind. And he says that the three of you returned to the village together and it was just after it had got dark. Is that correct or not? -- It is not true when he says it was just after dark.

And he will also say that it is not true that he left the two of you on the way back at all? -- Then he does not wish to speak the truth.

He will also say that your evidence about the night before is a fabrication? --Who will say this?

The person I told you would say it, No. 11? -- That is not true.

Where have you been since the trial started? -- I am with the police.

And Makhetha? -- And Makhetha also.

Together. When were you taken into custody again? -- I am not under arrest.

Are you staying in the police camp? -- Yes.

Since when? -- After making my statement.

What is today? -- Thursday.

Today is Thursday? -- I can't just remember.

"I can't just remember". But you can remember the Wednesday and Thursday in March? -- (No reply).

CROSS-EXAMINED BY MR. GROBELAAR:

Did you say that when you left the funeral, it was still light? -- It was at dusk, but there was sufficient light.

You mean when you started on your journey back? -- Yes.

When you left, what pace did you ride at? --

/We galloped

We galloped.

All of you? -- The deceased was behind, walking slowly.

You have already told us that it was raining at the funeral when you left, so I take it that you rode very fast in order to escape the storm? -- We rode fast to avoid rain, but that was useless because we were already wet.

Seeing that you were already wet, why did you gallop? -- We galloped to return home.

All right. Did you gallop for a long while? -- A short distance then we came to the pass.

Is that pass nearer to Fusi's or nearer to Mahleke's where the funeral was held? -- Near Mahleke's

I take it, it was still dusk when you got to the pass? -- Yes.

Which are the nearest huts to the pass you have just mentioned? -- I don't know whose huts they are.

I would like to get an idea as to where this pass is. Could you indicate the spot in some other way, is it known by any special name? -- I don't know.

You say there is a pass; now, would you describe the nature of the road or the scenery near it, in any other way? -- (No reply).

What do you mean by a pass? -- It's a path.

Now what does the path go through? Does it go between two hills? -- It is going up a hill.

You go up hill? -- You go up a flat rock.

Don't you know any huts that are near that flat rock? -- I don't know any.

I take it that because it was raining, you

/didn't stop

didn't stop your horses at any time - you kept on the move all the time? -- We did stop our horses when we came above the pass.

Then you say that from the pass, you rode at a gallop again? -- After the statement that we should gallop and leave the deceased behind, then we galloped.

Can't you tell us how far the pass is from Mahleke's? Is it as far as the bridge in the direction of Ladybrand from the Courthouse? -- I can't estimate.

You could tell us, more or less, how far it is. Is it further than the bridge is from the Courthouse, or is it nearer than the bridge which goes to the Free State on this Ladybrand side is from the Courthouse? -- I don't know the bridge.

Have you never gone to Ladybrand from Maseru? -- I don't even know Ladybrand.

Could you point out outside how far this pass is from Mahleke's? -- I can't estimate and I didn't care to measure the distance.

Now, when you left the pass, did you ride at a stiff gallop? -- Yes, after the statement that we should leave the deceased behind, we galloped.

And how far did you keep up that fast gallop, to what point? -- I don't know where because I didn't mark the places.

Did you gallop fast, in the same manner up to Ntsi's place? -- Yes.

Without stopping, even once, in your journey from the pass to Ntsi's? -- No.

Where did you stop? -- We walked slowly at Ntsi's when he went off the road.

/That is

That is the first time from the moment that you left the pass that you slackened your pace from a fast gallop? -- Yes.

And as you told us that it was still dusk when you left the pass, I expect that when you came to Fusi's, it wasn't quite dark yet? -- I said that we came to Ntsi's in the evening.

Yes, but I'm talking about Fusi's, now, not Ntsi's. -- It was the evening when we came to Fusi's.

As it was still dusk when you left the pass, and you galloped very fast, I take it that when you came to Fusi's, darkness had just set in? -- I said that we came there in the evening.

Do you know what day of the week your master paid you off in Johannesburg? -- Yes.

What day was it? -- Friday.

When did you come to Basutoland? -- I have already stated that before the Court.

I want to know. Did you leave that Friday for Basutoland? -- I have already answered the Court.

Tell me this, was it the Friday before the Wednesday that you have been telling the Court about? -- I got my pay on Friday and I arrived in Basutoland on Monday of that week.

Do you know what date of the month it was that you got your pay? -- No, I forget.

Don't you usually get your pay on the same date in the month? -- I get paid every Friday.

But you don't remember what date it was. Do you know the days of the week and the months of the year? -- Yes.

RE-EXAMINED BY MR. THOMPSON:

Tell me, irrespective of the names of the days of the week, you have described to us one night when Maloi, No. 11, called you and you went to Chief Gabashane's village?
-- Yes.

You have described the events of another night when you and others accompanied Meleke to a funeral and left him behind on your return? -- Yes.

How many days and nights elapsed between those two series of events? -- You want me to say how many nights passed?

Perhaps you don't understand me. I want to know whether a week passed in between, or whether a couple of days, or whether it happened on successive nights ... Might I suggest, m'lord, Your Lordship put the question as to whether the witness knows the name of the Chief's residence to which No. 11 went. That should clear up this point.
HIS LORDSHIP: Yes. When you were left outside some building when Maloi, No. 11, went on that night, what was that building? -- It was the Court house.

Where did Maloi go on to? -- He passed on to the Chief's house.

Did you see him go into the Chief's house? -- No.

You just saw him pass on that way? -- I saw him go in that direction, in fact, he told me he was going to the Chief's.

Do you Assessors want to ask any questions?

ASSESSOR JONATHAN: You had attended ^{the} / funeral of your relative?
-- Yes.

What made you return to your home so soon after the funeral when it was raining? -- Maloi, No. 11, said

/we should

we should return.

I quite appreciate that Maloi is a relative of yours and the other men with you. How is it, while you had gone there to console with the people who had lost a relative, why then did you return the same day as the funeral? Why did you run away? -- Maloi, Noll, said we should return home.

But you knew that Meleke was sick? -- Yes.

You knew that Meleke could not ride well? -- Yes.

How is it that you seem to listen to Maloi so much? -- He is our elder brother.

What is the relation between you and the people whose man you went to bury? -- I can't just explain.

Who was going to care for the children of the deceased, seeing that Maloi is the senior man? -- Maloi.

The funeral was yours as well as Maloi's. The person you buried was your relative as well? -- The person who had power and who had all knowledge was Maloi, No. 11.

Didn't you say Maloi came and called you out of your house where you were sleeping? -- Yes.

By that do you mean that you are already a married man? That you had your own house? -- Maloi called me out of my house.

Therefore you say you are a man and therefore you went to the funeral as a man, not merely to play. You are not head boy of Maloi? -- No, all the same I am Maloi's son.

Did Maloi explain to you the reason why you should leave Meleke behind? -- He said we should leave him behind, and when we asked him why, he said, if we

/didn't leave

didn't leave him behind we would see what would happen to us.

Why were you to see? -- When a person says, "you will see what will happen", that means you will be killed.

Who had been killed previously? -- Nobody had been killed.

You ran away for fear of being killed? -- I ran away from the statement that "I would see".

Yes, that alone in Sesuto means you will be killed. -- Therefore, I was doing well then, by running away.

And you left Meleke behind. Where is he? -- He is dead.

Who has killed him? -- I don't know.

You should have been with your brother so you could have seen what killed him. -- Those who were present at the killing of the deceased have given the names of the people who killed him, I can't give the names myself.

To whom did you report when you got home that you had left Meleke behind and that Maloi had threatened that you would be killed? Did you report to Chief Gabashane that Maloi had threatened to kill you if you had waited for Meleke? -- We had been summoned the previous night by Maloi to appear before the Chief and when he returned from the summons he explained that somebody was about to be killed. He didn't mention the name of the person to be killed and he said that if we reported the matter we would be responsible ourselves. That is what he said.

Haven't you heard that the Paramount Chief, Chief Gabashane and many other chiefs have issued a proclamation to the effect that anyone who hears about the killing of another person must report at once? -- Yes,

/I heard

I heard that lately from the pitso that was held recently
- a circular letter.

It's a long time since that circular was out? --
It's about a year.

Whom did you tell, when you got home? -- I did
not report to anybody that Meleke remained behind or that
we had run away. We were afraid that Meleke might be
killed.

Is it not that you knew of this plan? Knew that
Maloi had this plan? You seemed to be hiding Maloi's plans?
-- No.

Why were you afraid to tell people that Maloi
had said this? -- I have explained several times. The
words were used, "If you report this matter you will be
held responsible yourselves".

Have you no headman of your own? -- We have.
Setabataba is our local headman.

What did you say to Setabataba? -- I didn't say
anything.

Why? -- I have explained several times, the words
he used were, "If you report this matter you will be res-
ponsible yourselves".

Were you afraid when you heard Maloi say this?
-- Yes.

Therefore you should have told Setabataba,
otherwise you would be killed yourself. -- Well, I did not.

Why not? -- I have explained.

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/THE CROWN CALLS

THE CROWN CALLS:

MAKHETHA NTAI, Sworn States,

EXAMINED BY MR. THOMPSON:

Makhetha, are you any relation to the last witness, Ntsane? --Yes.

What is the relationship? -- He's the son of my elder brother.

A nephew? -- Yes.

And Maloi, No. 11 accused, was he any relation? -- He is a son of my grand-uncle.

And Meleke, now dead, was he any relation of yours? -- He was the son of my grand-uncle.

Another grand-uncle? -- Another grand-uncle.

Do you remember when you last saw Meleke? -- Yes.

Was it day or night time? -- I last saw him after sunset.

After sunset one evening. I want you to take your mind back to the night before that, what were you doing the night before? -- What day.

I am not worried about the days of the week. The night before you last saw Meleke alive? -- You mean the day I was out herding.

What happened that day you are talking about -- the day you were out herding? -- It rained that day.

When you went home that day, what happened? -- I heard that my elder brother had not returned.

Who is your elder brother? -- Meleke.

And did you ever see your elder brother, Meleke, again? -- No, I have not seen him since.

You know that Meleke's body was found dead? -- Yes.

Do you know anything which might have anything to do with the cause of his death? -- No, I don't know.
/You don't

You don't know anything at all? -- I don't know what caused his death.

Did you have a relative by the name of Tlatsinyane? -- Yes.

Is he alive or dead? -- He is dead.

When did he die in relation to Meleke's death? -- He died on a Wednesday.

Who died on a Wednesday? -- Tlatsinyane, he died on a Wednesday.

And did you go to the funeral? -- Yes.

Who went with you to the funeral? -- Maloi, Ntsane and Meleke.

And yourself? -- Yes.

Now, do you remember the night before your four men went to the funeral? -- Yes.

Did anything happen to you that night before you went to the funeral? -- Yes.

What was it? -- Maloi came to me.

Was he alone? -- He was alone.

And what happened? -- He said we were wanted at the Chief's place.

What chief? -- Chief Gabashane.

And then? -- We went.

Just the two of you? -- There were three of us. We went and woke up Ntsane.

How many people woke up Ntsane? -- No. 11 woke up Ntsane.

And when Ntsane joined you there were three of you were there? -- Yes.

What did you three men do? -- We then left.

Where did you go? -- We went to the Chief's place.

/Gabashane's

Gabashane's place? -- Yes.

What happened there? -- When we arrived, he left us near the Court house and he went to the houses.

Who was that? -- Maloi.

No. 11. He left you and Ntsane outside the Court house. You say he went to the houses? -- Yes.

Did you see which particular house he went to? -- No, I didn't see, because it was so dark.

At any rate, it wasn't the Court house because you and Ntsane were outside the Court house? -- Yes.

What happened then? -- He was away for some time. Then he returned.

Yes? -- When he came to us he said, "Let us go" and then we left. On the way he said that ... while we were walking he told us that a person was required to be killed.

Required by whom? Did he say? -- The Chief.

Did he say anything else? -- There was no talk, we were frightened and we went home.

Now, you've told me that was the night before the funeral. The following day you went to the funeral accompanied by whom? -- I went with No. 11, Ntsane, myself and Meleke.

Do you know if No. 11 went direct to the place of the funeral, or whether he called in anywhere on the way? -- He went to some other place on the way.

You say Maloi called in somewhere on the way, what was that place? -- He called at the Chief's place.

He called at Chief Gabashane's place on the way to the funeral? -- Yes, he called at his village.

He called at Mamathe's on the way to the funeral. Did you go with him to Mamathe's, that is, No. 2's village, with No. 11? -- Yes, I went up with him when Ntsane went

/to the

to the shop.

Ntsane had gone to the shop and just the two of you went to Mamathe's, is that it? -- Yes.

Did you see whether No. 11 spoke to anybody at Mamathe's? -- No, I didn't see him because the village is big and he caught me up after I had left the village.

Do I understand then, when you arrived at the village, he left you? -- Yes, as soon as we entered the village he left me.

And what did you do? -- I continued on my way alone.

And who was the first person who joined you or whom you joined? -- The first person was Meleke. I joined Meleke.

You joined Meleke, the deceased, who was ahead of you? -- Yes.

That's two of you. And who was the next to join the party? -- Then No. 11 came.

That made three of you. And then? -- Then Ntsane came.

And then Ntsane, making four.

HIS LORDSHIP: I don't quite see the sense of testing the recollection of the different way they went and how they joined up, except as a question of remembrance ...

MR. THOMPSON: Well, it wasn't of very much importance. What was important, m'lord, was that No. 11 called at Gabashane's village and evidently went into the village alone. That's the importance.

HIS LORDSHIP: Oh, yes.

MR. THOMPSON: How they rejoined afterwards doesn't matter very much.

/HIS LORDSHIP

HIS LORDSHIP: Yes.

MR. THOMPSON: On the way to the funeral No. 11 apparently chose to go and see somebody in Gabashane's village.

Your Lordship asked me this morning if I intended calling Dr. Whitworth. I did not intend calling Dr. Whitworth and I understand from my learned friends, appearing for the Defence, that they did not wish to call Dr. Whitworth, but if Your Lordship wishes him to be called, he is here, available now, although for some reason or other I think he is the only medical officer on duty in Maseru at the moment.

HIS LORDSHIP: You see the result of the exhumation was not put in ...

MR. THOMPSON: Purposely m'lord. - I didn't regard it as relevant until my learned friends ...

HIS LORDSHIP: Well, the exhumation was to further the examination to see whether there were any injuries particularly in the throat.

MR. GROBELAAR: Perhaps my learned friend misunderstands my attitude towards Dr. Whitworth. Personally, I consider he is rather an important witness to state the facts, whichever way he may state them, and I thought that if Your Lordship wanted to call him there there are certain points which confront ...

MR. THOMPSON: May I say this m'lord, that Dr. Whitworth is here. He is a very busy man at the moment. Could Your Lordship call him immediately after the Tea Adjournment, he'll only take a few minutes I think.

HIS LORDSHIP: We weren't going to come back.

MR. THOMPSON: Could Your Lordship call him now?

HIS LORDSHIP: Yes, how long is he going to be?

MR. THOMPSON: I don't know what my learned friend wants

/with him

with him, m'lord.

THE CROWN CALLS:

DR. B.D. WHITWORTH, sworn states,

EXAMINED BY MR. THOMPSON:

Dr. Whitworth, you are a Medical Officer stationed in Maseru? -- Yes.

In the company of Dr. Ogg, you were present at the exhumation of a body at Teyateyaneng on the 29th June, 1948? -- Yes.

And the body by that time was far gone in decomposition, is that correct? -- Yes.

I think my learned friend, Mr. Grobelaar, wishes to cross-examine you; I have no questions.

CROSS-EXAMINED BY MR. GROBELAAR:

Doctor, with what object were you asked to examine the body ... to have the body exhumed and examined? --

MR. THOMPSON: Highly irrelevant, the police asked Dr. Whitworth to examine it. Object is not relevant.

MR. GROBELAAR: M'lord, with great respect, it IS relevant, and I am submitting a case and if Your Lordship doesn't wish me to say this, well, Your Lordship can do so.

HIS LORDSHIP: Go on.

MR. GROBELAAR: With what object ... do you know with what object the body was exhumed? -- To look for certain injuries.

What injuries were to be examined especially? -- Any evidence that deceased had been throttled or any evidence that a sharp instrument had been forced into deceased's nostrils.

Do you know which police officer gave those instructions? -- No.

/Did you

Did you examine the body with a view to ascertaining whether a sharp instrument had been pushed into the nostrils of the deceased? Did you make a very careful examination of the body in order to look for such injuries? -- In the throat, nose and neck, yes.

And what was the result of your examination? -- We found no sign of these injuries/^{we}were looking for.

There were no signs of throttling? -- No signs of throttling or any instrument having been forced into the nose or throat.

I take it that you came to the conclusion that the deceased was not throttled and there was no sharp instrument forced into his nose or into his throat? -- Not necessarily.

HIS LORDSHIP: What do you mean by that doctor? What do you mean by "not necessarily"? -- Well, in the first place, the mucous membrane of the nose was completely destroyed. I can't say there hadn't been an injury there before it was destroyed. Also you can get throttling without there being any signs of it - bruising of the nostrils.

MR. GROBELAAR: Could a sharp instrument have been pushed into the throat of the deceased without you seeing any signs of it?-- Yes.

Was the mucous membrane of the throat and the mouth in a bad state of preservation? -- The mucous membrane of the throat was not - no , it was well preserved.

It was well preserved? -- Yes.

So if a sharp instrument had been forcibly thrust into the throat, I take it you would have expected to see some signs of it? -- If it had made a large wound but it might have made a very small wound.

/If something

If something like an umbrella stay had been forcibly pushed into the throat of the deceased, don't you think you would probably have noticed signs, Doctor? -- Not necessarily.

Doctor, I want to know from you whether it is probable that you would have noticed those signs? -- I would say in a fresh post-mortem, yes, but in the exhumation I did, I just can't say.

Now, in view of the fact that the mucous membrane of the throat and the mouth was well preserved, don't you think it is more than probable that if an injury with an umbrella stay had been made to the mouth or the throat, you would probably have seen signs of it? -- I don't think so, necessarily, at all.

I'm asking you Doctor, whether it is probable or not? -- I should say possible.

Just faintly possible, is that as far as you can put it? Now come Doctor. Any of these Doctors will tell you that if a thin instrument, such as an umbrella stay, is put into a man's mouth and the mucous membrane is in a good state of preservation, you would **probably** have seen it. Dr. Ogg said so too.

MR. THOMPSON: M'lord, any medical man would say so? My learned friend can't invent things.

MR. GROBELAAR: I'm putting it. This is an umbrella stay, like a thin bit of wire.

MR. THOMPSON: An umbrella stay about the thickness of a bit of baling wire?

MR. GROBELAAR: Yes. Assuming something like that was used don't you think you would probably notice some injury? If you looked of course? -- I did look.

/Don't you

Don't you think you would probably see? -- In a first post-mortem, yes.

Well, I understood from Dr. Ogg if an umbrella stay had been used, in view of the fact that the mucous membrane of the mouth was well preserved, he would have expected such a mark. Would you disagree with the Doctor who said so? -- I feel that if an umbrella stay had been used and just, as it were, stabbed the mucous membrane in a matter of three months before the exhumation, we might find no signs of the wound at all.

If it had been such a deep injury, Doctor, do you expect you would have noticed such a mark? -- I don't think it matters how deep it struck, it is whether the membrane was torn or not.

If the membrane was torn do you expect that you would see? -- Yes.

Now, Doctor, if the deceased had been throttled for a considerable time, and great force had been used by a person using both hands, one hand at the back of the neck and the other hand on the throat, don't you expect that you would probably have seen signs on the deceased's throat of such throttling? -- Yes, if great violence had been used.

And you saw no signs of throttling whatsoever after your examination of the body. Now if the body of the deceased had been thrown before the deceased met his death, from a height of about 10 to 13 feet and the body had fallen on the ground, do you consider that you would have seen any bruises caused by such a fall? -- Probably.

And if the deceased had come into contact with a hard object, such as a stone, in such a fall then, I

/take it

take it, you would certainly have expected to have seen a bruise? -- A sharp stone, or a flat stone?

Any kind? -- Definitely if a sharp stone, but not necessarily if a flat stone.

Even if the body was thrown from a great height, such as 13 feet? Have you any experience with bodies that fell or that were thrown, forcefully, for a distance of 13 feet on to a stone and did not show any bruises? -- I haven't had any experience with a body being thrown but I have much experience with bodies that have fallen.

And would you say that a person could fall from a height of 13 feet on to a stone without showing any bruises? -- Yes.

Where did you have that experience? -- I've had it in Maseru, here.

What was the distance the body fell? -- I am not sure of the exact distance, but it was a great height.

But you were not present when the body fell? -- No.

So you don't say from what height the person fell? -- No, from what I was told.

MR. MAISELS: No questions.

RE-EXAMINED BY MR. THOMPSON:

Well, the obvious thing about this bruising in falling, would clothing tend to decrease bruising? -- Yes.

And you know how the Basuto wear their blankets - at least one of these two blankets before the Court - pinned round the body before it was thrown 13 feet, would that tend to protect the body from bruising? -- Yes.

HIS LORDSHIP: Doctor, could you tell us whether what you saw at the exhumation, whether the neck had been examined to see whether there were signs on it? I mean in Dr. Ogg's

/post mortem

post mortem I don't see that he says anything about the throat. He doesn't say anything specifically about the throat, and now, could you, from what you saw when the body was exhumed, say whether the throat had been opened up or not? -- It had been opened up below the chin.

It had been opened up? -- Yes, all the way down.

So that it had been examined? -- Yes.

So the Doctor would have seen if there were any marks on the throat? -- Yes.

We want to ask you about bleeding. We have the evidence of several witnesses in this case that this man Meleke's lip had been extensively cut with a knife and a piece of the lip had been removed. Now, would you expect bleeding? -- If it was done with a knife, yes.

Is it a certainty there would be bleeding? -- Yes.

Even if the man was in a semi-conscious or unconscious condition, would you have bleeding? -- As long as his heart was beating there would be bleeding.

Would it have been any different if the man was a sickly man or subject to epileptic fits? -- No.

If he was wearing a blanket round his neck, would you expect to find blood on the blanket? -- Yes.

And would it fall down his neck? -- Probably.

MR. MAISELS: I don't know whether Dr. Whitworth would suggest I am being unfair to Dr. Ogg, but he doesn't mention finding any blood.

HIS LORDSHIP: What?

MR. MAISELS: This witness has been told m'lord, that the face was lying in water - cold water.

MR. THOMPSON: Doctor, if it is correct that this body had
/been lying

been lying in cold water, for at least something round two days before it was found, would the cold water tend to wash away the blood or not? -- It would.

Even a small trickle? -- Yes.

And similarly taking away the blood from the garments as they were in the cold water, it would tend to wash them, to clean the blankets? -- Yes.

On this question of bleeding, generally, Doctor, would anaemia ... suppose a man suffered from anaemia, would he tend to bleed less than if he were an ordinary, healthy man? -- No, that would be another colour, but he wouldn't bleed any less.

MR. MAISELS: I just want to deal with one questions, m'lord.

HIS LORDSHIP: Yes.

MR MAISELS: The question of the blood being washed away, Doctor, the blood on the face you would get washed away, I take it, quite easily, with cold water? -- It would depend on how long the blood had been clotted on the face before the body was put in the water.

Yes, but there is the probability that it would be removed more easily from the face than it would be, say from the blanket? -- Yes.

So that even if a blanket had been lying in water for some time, you'd expect to find some blood stains or marks, on the blanket? -- Yes.

MR. GROBELAAR: No questions.

HIS LORDSHIP: If Dr. Ogg said, according to the evidence, that the pressure had been on the carotid artery, would that make any sifference? -- It would lessen bleeding, yes.

NOTE: His Lordship made a note on the record that at this stage it was noticed that Assessor Makhele had left the Court and Mr. Maisel's last question was repeated when he

/returned.

returned, and that the Assessor had not missed any of the evidence.

MR. MAISELS: Doctor, I understood you to answer to His Lordship that the pressure on the carotid artery would lessen bleeding. That means pressure at the time that the lips would otherwise be bleeding, is that what you mean? -- Yes.

And if pressure is released, what happens then? -- The bleeding starts.

And the pressure, as I understand it, Doctor, merely has the effect of diminishing the flow, it can't stop it entirely? -- It is possible with pressure in the right place to stop the flow entirely and render the man unconscious.

And when the pressure is taken away, as long as the man is alive, the bleeding will start again? -- Yes.

I am intrigued about this bleeding of the lips. That part of the anatomy bleeds rather easily, doesn't it? -- Yes.

That is the part below the nostrils? -- Yes.
HIS LORDSHIP: Doctor, if a man is unconscious, would the bleeding ... would he bleed? -- Yes.

He would still go on bleeding? -- Yes, as long as the heart is beating.

ASSESSOR MAKHELE: It was said that the person was sick and that he also was weak and that the man got cold after getting wet as it was said that it had rained. Would the blood flow freely, in spite of the throttling? -- Whether he bleeds or not depends on how much pressure is being exerted on the carotid artery while he is being throttled.

My question really is, seeing that the person
/is cold

is cold and he is wet after the rain, would the blood flow easily? -- It would flow, but it would not flow as easily as it would if he was well and hot.

HIS LORDSHIP: As soon as the pressure is removed, as long as his heart was beating, he would bleed? -- Yes.

Any more questions?

Thank you, Doctor.

COURT ADJOURNED.

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