



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

VOLUME: 6.

Reported by:
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S E V E N T H D A Y

TUESDAY, 9th NOVEMBER 1948

THE CROWN RECALLS:

MAKHETHA NTAI (under former oath),

EXAMINED BY MR. THOMPSON (contd).

UNIVERSITY OF LONDON
W.C.1.
17 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

Makhetha, yesterday afternoon when you left the witness box, you had told us how No. 11 had visited No. 2's village, then he joined you and the others on the way to the funeral. Did you four men go to the funeral? -- Yes.

What time did you, personally, leave the place where the funeral was? -- After sunset.

Did you leave alone or in company? -- We all four of us left together.

The same four? -- Yes.

What happened on the journey homewards? -- On the way we left someone behind.

Who? -- Meleke.

In what circumstances? -- Maloi, No. 11 accused, ordered us to leave him behind.

How did you leave him behind? -- We galloped our horses and left him.

We've been told by other witnesses that Meleke was a sickly man and was unable to gallop. Is that correct? -- I don't know. He wasn't sick.

In any case, did No. 11 give you any reason for this order, as you call it? -- He said if we did not leave the deceased behind, we would see what would happen.

Why did you agree to do it? -- I agreed to do it because of fear when he said we would see what would happen.

So the three of you galloped off leaving the deceased behind? -- Yes.

/What happened

What happened to you three? -- We returned home.

Anything happen on the way? -- We met a group of people walking on foot.

Whereabouts was that? -- Near Ntsi's.

You say you saw a group of people when you were near Ntsi's. Did you recognise any of them? -- I did not recognise any of them.

Were they on the main road or off the main road? -- They were on the footpath. We were on the main road.

What happened when you noticed this group of people? -- No. 11 accused, Maloi, went up to them.

And you and the other man? -- We passed on.

Did you see No. 11 again that evening? -- Yes, he caught up to us on the way.

Was there any conversation after he caught you up? -- I asked him who the people were. He asked me what I wanted to do with those people.

Any further talk about it? -- No, then we passed on - there was no further talk.

And you went home and went to bed.

CROSS-EXAMINED BY MR. GROBELAAR:

Now you left Mahleke's at dusk and it was raining at the time? -- Yes.

You were in a great hurry to escape the storm; to get back to your home? -- Yes.

Is Ntsane correct when he says that when you left Mahleke's you galloped your horses at a fast pace? -- That is his own statement.

He said you and he galloped, is that correct? -- Yes, by the order that we received that we should gallop.

/I'm referring

I'm referring now to the time when you left the place of the funeral, Mahleke's, do you understand me?

-- Well, I am speaking about Mahleke's.

Who ordered you to gallop fast as you left Mahleke's -- Maloi, No. 11.

Did the deceased gallop with you? -- He did not gallop.

Did you say that so far as your knowledge goes, he was not a sickly man? -- No, he was not a sickly man, he was working.

In the land? -- Yes.

So his state of health did not prevent him from galloping? -- Not at all.

Were you surprised when you noticed that the deceased did not join in the gallop as the two of you left Mahleke's? -- Yes.

In fact you expected him to join in? -- Yes.

Now, is Ntsane also correct when he says that you galloped for, what I understood to be, a considerable distance, I may be wrong, but I'll just put this to you. Is it a fact that you galloped for a considerable distance after having left Mahleke's? -- Yes, it is true.

Would you tell us, more or less, what distance you galloped after having left Mahleke's? -- I can't see where to estimate it here.

You passed the bridge from Maseru as the road proceeds to Ladybrand, haven't you? -- No, I do not know Ladybrand.

Will you tell us now what distance did you gallop if you start from Maseru and you go towards Teyateyaneng? -- From here to across the Myametalana

/stream.

stream.

From here across the ...? -- The Myametalana - the first bridge.

Between two and three miles. Now having galloped as far as the point that you indicated, what did you do then? -- Yes, we went on our way home.

And you kept up your gallop?-- No, we just walked our horses.

And I take it, seeing it was still raining, you didn't walk your horses for a long time? -- We walked our horses until we reached home from that point.

HIS LORDSHIP: What point? -- From the point where we stopped galloping.

But where was that? -- That was after crossing Patso.

MR. GROBELAAR: In other words you galloped first for a distance which we now understand to be a distance from two to three miles, as far as the place which is as far from Mahleke's as the Myametalana bridge is from Maseru? Is that correct? -- Yes. But we had gone past the pass at Mahleke's. We were on the top.

As a matter of fact the pass that you refer to now, is on the Mahleke side - it is nearer to Mahleke's village than it is to the point where, you say, you stopped galloping? Is that correct? -- Yes, it is nearer Mahleke's.

In fact, you galloped fast, going past the pass and you continued for a long distance beyond the pass when you brought your horses ... when you reduced your pace to a walking pace? -- Yes.

/Then, are

Then, are you quite certain that once you reduced your pace to a walk, that you kept up that slow pace up to the time when you got to your home that evening? -- Yes.

From the moment that you reduced your speed to a walking pace, you didn't see the deceased, because he was left behind near Mahleke's? -- Yes.

You say, No. 11 accused spoke to a group of persons near Ntsi's place? -- Yes.

Now in which direction was that group of persons proceeding? -- It was proceeding in the opposite direction from which we came.

Ntsane said that you stuck to the main road all along, from your journey to Mahleke's up to the time you went past Mamathe's. That is correct, isn't it? -- That was Ntsane's statement.

But that is correct isn't it? -- Ntsane knows about that.

Then could you tell us, this group of persons we are talking about, was it a large group or a small group? -- It was a small group.

How many persons would you say were in it? -- I can't say how many persons, it was dark.

Was it more than three or more than four? -- I can't say, they were some distance away, I can't say how many.

I expect when you saw these persons, you were inquisitive as to who they were? -- No, I wasn't inquisitive at all.

Didn't the fact that Maloi went across the street to speak to them, make you inquisitive? -- I

/wasn't inquisitive

wasn't inquisitive because I was afraid - it was at night.

Your safety surely has nothing to do with your state of being inquisitive or not. A person who is afraid is very often very inquisitive? -- I don't quite understand that.

Why would you not have an inquisitive state of mind as well as fear of the group which you saw? -- I did ask him when he caught up with us.

So you were inquisitive as to who those people were? -- Yes. I was afraid of those people to whom we went; I was afraid to ask who they were..

What were you afraid of? Did you think if you spoke to them, they might do you harm? -- I didn't know what their intention was.

Do you mean to tell the Court that, ordinarily, a Mosuto who sees other people on the road at night, presumably Basuto, would be afraid that those other people would do him harm even if he is on a horse and if he has someone with him? Is that natural in Basutoland? -- Yes, if it is at night, one should be afraid.

As you proceeded at a walking pace and went beyond Mamathe's did you see anything else in or near the road excepting this small group of persons? -- I did not see anything else.

You are quite certain about that? -- Yes, I say so.

Didn't you see a motorcar? -- Not at all.

If there had been a motorcar in the road, coming from the opposite direction passing you, I expect you would have seen it? -- Yes, I would have seen it.

/Now I

Now I want to take you to the previous evening. You say that you were called by Maloi when you were in your village? -- Yes.

Who is your headman in that village? -- Setabataba.

Will you agree that it is customary that if Chief Gabashane wants to deliver a message to you that he always does it through Setabataba? -- Yes, he does, but he uses Maloi, No. 11, at times.

Now I put it to you that this custom is a very firm one? -- We get all our orders through Maloi, all the orders from the Chief through Maloi, No. 11 accused. Setabataba passes the orders to Maloi and Maloi passes the orders to us.

Isn't it customary for Setabataba to give them to you personally? -- He has never done so.

Did you go on horseback to Chief Gabashane's when you were called by Maloi that evening? -- I was not mounted.

Did Maloi tell you, after having called you and before you got to the village of the Chief Gabashane, that he had been at a meeting and that he had seen certain persons whom you mentioned yesterday, at that meeting in Chief Gabashane's company? -- No, he did not tell me.

Ntsane told us that the two of you were called, that you accompanied Maloi to one of the houses of the Chief, that you waited a long time and that after Maloi had been away for a long time, came back and then he told you that he was at a meeting at the Chief's and gave you certain information. Do you agree with that statement? -- That is what Ntsane says.

Do you agree that Ntsane gave the correct version as to what happened? -- That is what he says.

/Now, is

Now, is it correct that you were called by Maloi, and you and Ntsane accompanied him to Chief Gabashane's village? -- Yes.

And that Maloi absented himself for quite a while, leaving the two of you standing in the village? -- Yes, it is so.

And after having been away for some time, Maloi came back and then said, "Well, I've just been to a meeting where Chief Gabashane and others were present"? -- Yes.

And then he gave you certain information about what happened at that meeting? -- Yes.

I put it to you that what you have just been telling us, is not the truth, because Mapeshoane told the Court that he was present at that meeting and he said that Sankatana was sent to fetch Maloi and brought Maloi there in a very short time? -- That is what Mapeshoane says, I am making my own statements.

Was Ramabanta at the funeral? -- I did not see him.

CROSS-EXAMINED BY MR. MAISELS:

I just want to ask you a few questions relating to the time when Meleke died. You heard he died? -- Yes.

Shortly after he died you were called to the police station? -- Yes.

And you saw Mr. Castle? -- Yes.

You told Mr. Castle that you had been travelling home from the funeral that night with Meleke? -- Yes.

You told Mr. Castle that you wanted to get home before it was dark? -- Yes.

And that you left Meleke behind because he could not gallop? -- He could not gallop.

/I am

I am not concerned with what he could do, I am concerned with what you told Mr. Castle - that you left Meleke behind because he could not travel fast enough with you? -- He was able to gallop.

Did you explain to Mr. Castle how Meleke came to be left behind? -- Yes, I told him.

What excuse did you give him? -- I gave him exactly as I have stated before this Court.

I put it to you that you told him nothing of the kind. The first time you told him anything like the story you told in Court, was months afterwards. Isn't that so? -- How many months afterwards?

Just answer my question. You know very well what I mean? -- I don't know the months.

I put it to you that the first time you told Mr. Castle anything at all like you are telling in Court today, was after Chief Gabashane and the others had been arrested? -- When I said that he couldn't ride?

You saw Mr. Castle a few days after Meleke died? -- Yes.

And you told Mr. Castle on that occasion that you were hurrying home because it was raining and you wanted to get home before it was dark? -- Yes, I agree.

And the reason why you left Meleke on the road was because he couldn't keep up with you? -- There was a plan that we should leave him behind.

Did you tell Mr. Castle that immediately ... a few days after Meleke died? -- Yes, I told him that.

Did you tell Mr. Castle a few days after Meleke died, about the meeting at Gabashane's hut? - About Mafoi having called you the night before the funeral, to go to

/the meeting

the meeting? -- Yes, I told him.

And did you tell Mr. Castle about how No. 11, Maloi, stopped to talk to this group of people? -- Yes, I told him.

You told him all this a few days after Meleke died? -- Yes.

Do you know the difference between a few days and a few months? -- A few days means three or four days.

Yes. And a few months? -- I don't know the months.

Do you know the difference between a month and a day? -- No, I don't know. I know the days.

Do you know that there are roughly 30 days in a month? -- I don't know the months.

When you made the statement to Mr. Castle, was it taken down in writing? -- It was taken down; as I repeated my statement it was written down.

Was this statement that was written down taken after Chief Gabashane, Chief Bereng and the others were arrested? -- Yes.

Right. Well that couldn't have been in March. It couldn't have been three days after Meleke's death, because Chief Gabashane and the others were arrested in July. I want you to go back to the first interview you had with Mr. Castle, not the interview you had after these people were arrested. As I understand the position, you saw Mr. Castle a few days after Meleke died, is that right? -- Yes.

And after you had spoken to Mr. Castle, Mr. Castle let you go, is that right? -- Yes.

And then you spoke to Mr. Castle again after the Chiefs and the other accused had been arrested? -- Yes.

/And it

And it was then that you made a written statement?

-- It was written on the occasion when I was arrested myself.

When were you arrested? -- On a Friday.

Was it at the same time, or about the same time, as the Chiefs were arrested? -- No, I don't know if they had already been arrested.

You made one written statement to the police, is that right? -- Yes, I made one statement.

That was after you had been arrested? -- After I had been arrested.

That statement was made in reply to questions put to you by the police? -- Yes.

Where was Ntai - where was Ntsane at that time?

-- Ntsane was not yet there, he was arrested on the following Saturday.

Now, that statement that you made to the police after you were arrested, was quite a different statement to the statement you made to Mr. Castle a few days after Meleke's death, is that not so? -- No, it was not different.

I am going to put to you specific points of difference. I am going to tell you that you never said a word to Mr. Castle about it being a plot to leave Meleke behind, on the first occasion. -- I told him and his police.

On the very first occasion that he asked you questions? -- Yes.

If Mr. Castle says differently, what will you say? -- If he doesn't say so, it may be that I have forgotten.

I see. I am going to put to you another point of difference. I am going to tell you that you told Mr. Castle on the first occasion, nothing at all about being

/called to

called to a meeting at night at the Chief's place? -- I told him.

And if he says differently, what will you say? -- I will not say.

And I'm going to put it to you that you told him nothing at all about No. 11 accused stopping to talk, or meeting, this mysterious group of people? -- I mentioned that.

On the very first occasion when you spoke to Mr. Castle? -- Yes, I did.

And if he doesn't say so? -- He will say so.

We may take it then ... supposing he says that the first time you told the story you told the Court today was after you had been arrested. What would you say then? -- No, he would not say so.

And supposing he says that you gave him a perfectly innocent explanation as to how Meleke came to be left behind, on the first occasion. What would you say then? -- He will not say that I didn't tell him all I have told the Court.

On the very first occasion? -- Yes.

A few days after Meleke's death? -- Yes.

I am underlining that because I want no mistakes about it at all. Do you understand me perfectly? -- Yes.

Right. Now tell me, how long were you kept in custody, before you made the statement? -- I don't know the time.

The days? -- Many days.

How did you come to make a statement? -- As I have just told you.

But how did it come about? Did the police send
/for you

for you to make a statement or did you walk over to the police and offer to make a statement? -- The police called me.

And asked you questions? -- Yes.

And where have you been since the time you made the statement? -- I have been kept where they have kept me.

You mean you have been kept by the police ever since that time? -- Yes.

And Ntsane? -- He also.

And Mapeshoane? -- And he also.

You've all been kept together -- all you witnesses? -- Yes, with a policeman.

Of course no policeman ever let you out of sight?

-- No.

Yesterday you were at Court, Mapeshoane was here too? -- Yes, I was here yesterday.

Mapeshoane was here too? -- He was not here.

I saw him yesterday afternoon, outside the Court with you and Ntsane. -- I don't know.

What do you mean, you "don't know", you were standing with him at the tent, you, Ntsane, and Mapeshoane.

-- It is not so. I didn't see Mapeshoane.

Tell me, did you speak to Ntsane yesterday afternoon? -- Yes.

Did you ask Ntsane how he got along in the Court?

-- No, I did not ask him.

Did you ask him what questions had been asked him in this Court? -- No, I did not ask him.

Or, did he tell you? -- He did not tell me.

Weren't you curious? -- No, I wasn't curious because I was going to give evidence myself.

/Now, I

Now, I want to come to the night of the meeting.
How long before Meleke died, was that meeting held? --
What meeting?

You were called out one night by Maloi? -- Yes.

How long before the death of Meleke were you
called out that night? -- I don't know what you mean by
how long.

How many days? -- Meleke died on the Thursday.

How many days before Meleke's death were you
called out by Maloi? -- Maloi called me on a Wednesday.

What is today? -- I don't know.

Who told you that Maloi called you on a Wednesday?
-- I know, I noted that.

How many days are there between Wednesday and
Thursday? -- I don't know.

Who told you that it was Thursday that Meleke
was killed? -- That was the day on which he did not arrive
back home.

Who told you it was a Thursday? -- People.

What people? -- The people of the village.

What people? Was it Mapeshoane? -- I don't live
in the same village as Mapeshoane.

Was it Sepalami?-- I don't live with Sepalami.

Was it Ntsane? -- It was not Ntsane.

Who was it? -- The people in my village.

Who told you that it was a Wednesday that Maloi
called you? -- I knew that day, that it was a Wednesday
People told me it was Wednesday.

Who told you it was a Wednesday? -- You want their
names?

/Yes, I

Yes, I want to know who told you that it was on a Wednesday that Maloi called you? -- All the people of my village.

How did they come to tell you it was a Wednesday that Maloi called you? -- I thought you were speaking about Thursday.

RE-EXAMINED BY MR. THOMPSON:

You've been asked by my learned friend, Mr. Grobelaar, about something Ntsane said about travelling on the main road back from the funeral, and the answer was "Ntsane could talk for himself" or words to that effect. Now, I want your own version. From the time that you left the funeral to the time that you arrived home, did you remain on the road all the way? -- No. Leaving the village where the funeral was, is a footpath.

That was one deviation from the main road, was that the only one? -- And then we joined the main road on the top.

Did you depart from the main road at any other place? -- No, we didn't deviate from the main road from that point.

MR. GROBELAAR: When my learned friend asked the witness how many days elapsed between Wednesday and Thursday, then perhaps the Interpreter can tell the Court, in Sesuto, the Wednesday before the Thursday or the Thursday before the previous Wednesday.

HIS LORDSHIP: Yes, it would be a matter of common knowledge.

When you say Maloi went off the road to this group, were the three of you, Makhetha, Maloi and you all riding together on the main road? -- Yes.

/Near one

Near one another? -- Yes.

Well then, that group must have seen you three horsemen? -- Yes, they must have seen us.

Can you account for it that not one of these people have spoken of seeing more than one horseman? -- I don't know why they didn't see us.

Not one of the witnesses for the Crown has spoken of seeing more than one horseman, you say you were all three together? -- There were three of us, yes.

And we also have evidence that there were two groups. -- I didn't see the second group.

How is that? -- I don't know, perhaps it was not on that path.

Can you count? -- No.

ASSESSOR JONATHAN: Why was it you left Meleke in the veld, why did you do it to your brother? -- It was at night. We left him behind because of the order that we should leave him behind.

Did you not think that you would be asked to say where the man had disappeared? -- We were afraid.

Did you leave him in Ntsi's village? -- We did not leave him at Ntsi's.

Did you say at Mahleke's? -- It was not at Mahleke's

Where did you leave him? -- Before we joined the main road.

Was there no village nearby? -- There is a village.

Why did you not hand him over to the villagers, saying "here is a man we are going to leave behind"? -- No, we did not do so.

Why were you afraid to say where this man was? -- We were ordered to leave him behind. That if we did not leave him behind we would see what would happen to us.

/Where is

Where is he now? -- He is dead.

Who then, do you say, killed him? -- I don't know.

Didn't you know you would be asked about him as you had been travelling with him? -- Well I knew I was to be asked about him.

Did you tell your chiefs about this? -- No.

Did you tell the wife of the deceased when you arrived at home, that you had left the deceased behind? -- No.

Did you tell anybody in the village? -- No.

Why did you not do so? -- I have told you that we were told to leave him behind.

Didn't you know of pitsos that were held that it was said that if somebody ordered you to leave a person behind, you should report at once? -- No, I don't know anything about that.

Don't you know that the Paramount Chief has issued a circular to that effect? -- No, I don't know anything about it.

ASSESSOR MAKHEHLE: Have you got your own horse? -- Yes, I have my own horse. I have only one horse.

How do you know that you've got one horse if you can't count? -- I can see it is one.

Have you got children? -- No children.

Have you got a wife? -- Yes. I have no children.

Were you called in by the police or were you arrested? -- I took a letter to the police then I was arrested.

Were you told why you were arrested? -- Yes, the Sergeant told me.

Did he ask you as to whether you had been travelling with Meleke? -- Yes, before he arrested me.

/By the

By the time you were before the Sergeant you no longer feared No. 11 accused? -- Yes, I was not afraid of No. 11 when I was before the Sergeant.

Did you tell the Sergeant as to how Meleke remained behind? -- Yes, I told the Sergeant that same day, the following day - I arrived at night.

Did you tell the Sergeant, at that time, that Maloi once called you to Chief Gabashane's at night? -- Yes, I told him.

I mean at that very time? -- Yes, the following day I told him.

HIS LORDSHIP: That will do.

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THE CROWN CALLS:

KOCHA KOCHA, sworn states,

EXAMINED BY MR. THOMPSON:

Kocha Kocha where do you live? -- Under Chief Gabashane.

Village? -- Mahleke's village.

Were you related to Maleke, the deceased? -- Yes.

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

Did you have another relation by the name of Tlatsinyane? -- Yes, he was my brother, my younger brother.

Is he still alive? -- No, he is dead.

Do you remember when he was buried? -- Yes.

Do you know what month it was? -- Yes. March.

Do you know the days of the month? -- Yes, sometimes.

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

What day of the week in March was it when he was buried? -- It was on Thursday.

Was Meleke present at the funeral? -- Yes.

/Was Maloi

Was Maloi present? -- Yes.

Was Makhetha present? -- Yes.

Was Ntsane present? -- Yes.

And those four men left together? -- Yes.

That was on a Thursday. When next did you see No.
11 accused? -- On Saturday.

At your village or at his? -- At my place.

Did he speak to you? -- Yes.

What did he say? -- He said he had come to tell me
that a person had died.

A person? -- I asked him who, what person.

And what did he say? -- He said Meleke.

And what did you say to that? -- I said what has
killed him. He said he had been killed by the people.

Yes? -- I said, "but where were you?" and he said
"we left him behind and galloped our horses".

Yes? -- I said, "But why did you leave him behind?"
He said, "we were in a hurry and he refused to gallop his
horse".

Yes? -- I said, "You deliberately left him behind".

Yes? -- As I said so, Maloi struck me with a
clenched fist, he said that I was speaking badly.

And a fight nearly ensued but you two were
separated, is that correct? -- I said, again, "You left him
behind purposely". He struck me a second time, I caught hold of
him and also hit him.

And then persons separated you? -- Yes.

Do you remember what time of the day on the Saturday
this was when he told you that persons had killed Meleke?
-- It was round about nine o'clock, in the morning.

/Can you

Can you tell the time? -- Yes.

What is the time by that clock? -- Quarter to eleven.

That's very good.

CROSS-EXAMINED BY MR. MAISELS:

When were you first asked if you remembered the time No. 11 accused came to see you? -- Where?

Anywhere. Was it today for the first time? -- No, it is not the first time I have been asked.

I mean the exact time, whether it was 9 o'clock in the morning or in the afternoon? -- Please repeat the question, I don't understand.

When Meleke died - what month? -- Meleke died in March.

The month now is? -- November.

Now, the Attorney-General asked you this morning what time of the day it was that Maloi came to tell you that Meleke was dead. -- Yes, I have explained that - you heard me explain.

You told him that it was 9 o'clock in the morning? -- Yes.

Has anybody else, before today, asked you what time of the day on that Saturday, Maloi told you that Meleke was dead? ^{else} Nobody/asked me.

And you had to throw your mind back to that Saturday morning, didn't you? You had to think about the time? -- Yes, I said so.

Now you were at Mahleke's when he came to report to you, weren't you? -- Yes, I was at my own house in Mahleke's village.

/And Maloi

And Maloi came to tell you the news? -- Yes.

Of course, I take it, you are not binding yourself to 9 o'clock in the morning, it might have been later in the morning? -- Maybe, perhaps you know better, because you may have sent Maloi to tell me about it.

HIS LORDSHIP: Well, I don't expect you to pretend to be courteous to counsel, but you were very discourteous. Now answer the questions and don't make personal remarks.

MR. MAISELS: I just want to put this to him. I'm just suggesting to you that it was possible it was later than 9 o'clock in the morning? -- No, according to my own knowledge it was not so; it may be so according to your own knowledge.

Was it 9 o'clock exactly? -- I have no watch and I have said this is an estimate.

Oh well, that's all right. Then we are agreed on that. It was some time during the morning? -- Yes, in the forenoon.

Now, he came to tell you that Meleke was dead, is that right? -- Yes, I have said so.

And did you ask him who was responsible for Meleke's death? -- No.

Did you ask him who killed Meleke? -- Yes, I asked him who killed Meleke.

Did he tell you he didn't know? -- He said he didn't know - he was killed by people.

He didn't know who killed him? -- Yes, He said I don't know - he was killed by people.

Did you ask him what people? -- No.

Why not? -- I said, "But where were you?"

I want to know why you didn't ask him what people?
-- I did not ask him.

/Because I'm

Because I'm going to suggest to you that the reason why you didn't ask him what people, because he told you he didn't know, isn't that so? -- It is not so.

Don't you think it strange that you shouldn't ask him who killed him? -- I had no question because we had already fought.

No, you only fought afterwards. -- We fought before we finished our conversation.

Did you tell us what conversation took place after you fought? -- No, I did not.

The position is, I'm going to put it to you, he told you he didn't know who killed him and you then asked him where he was and he told you that he had left Meleke behind because the rain came, Meleke wouldn't gallop, and they wanted to get home. Isn't that what he told you? -- No, he did not say so.

What did he tell you? -- He said they left Meleke behind.

Why? -- He said they were galloping their horses and he refused to gallop.

They were in a hurry to go and he wouldn't go? -- Yes, that was what he said.

And then, to go a bit further, you then accused him of having left him behind deliberately? -- Yes.

And he resented the insinuation? -- Yes.

And he struck you? -- Yes.

And you fought together? -- Yes.

And you were separated? -- Yes.

Do you know No. 10 accused? -- Yes.

Did you see him at the funeral? -- No.

Do you deny he was there? -- I don't deny because

/I wasn't

I wasn't paying particular attention to all the people there.

Do you know where Ramabanta lives? -- Yes.

At your village? -- Yes.

Mahleke's? -- Yes.

CROSS-EXAMINED BY MR. GROBELAAR:

On that occasion when you asked about the death of Meleke, you did not know how Meleke met his death? -- Yes, I didn't know.

And you had no suspicion whatsoever as to how Meleke met his end? -- Yes.

Now, if you had no suspicion whatsoever as to how Meleke met his death, how is it possible for you to put the accusation to Maloi that, "you left him behind purposely"? -- It is because he remained while he was with them.

But how did you know that? -- Maloi told me.

Don't you think it's a very nasty and unfriendly suggestion to make to a person that he left his own brother behind in order that he should meet his death? -- (No reply).

I put it to you that seeing that you had no suspicion as to how Meleke met his death, it was a most unnatural and a most unkind thing to say to a brother that he left his brother behind in order that he should die? -- No, I feel that I said the correct thing to him. The unkind thing which he, himself, did was to leave the deceased behind.

When you made that statement, did you mean to suggest that he was the cause of his brother's death? -- No.

What ^{did} / you mean by it? -- I was objecting to leaving him behind.

HIS LORDSHIP: Any questions?

TEA ADJOURNMENT.

ON RESUMING:

KOCHA KOCHA (Recalled) (Under former oath)

CROSS-EXAMINED BY MR. MAISELS (contd).

I would like to recall the last witness, m'lord,
I wish to show him two people who say they were at the
funeral.

Do you know these two men now being brought into
Court? -- I know them.

Do you know their names? -- Yes.

What are their names? -- Setotojane and Mahla.

Did you see them at Tlatsinyane's funeral? --
Yes, I saw them.

They were both there? -- Yes. Setotojane also
had a paper which I asked him to read out.

That will do.

-----oOo-----

THE CROWN CALLS:

MOLIKO KHOTHATSO, sworn states

EXAMINED BY MR. THOMPSON:

Moliko, do you live at Mamathe's? -- Yes.

What is the date today? -- Ninth.

Ninth of what? -- Ninth of November.

Do you remember Thursday, March 4th, of this year?
-- Yes.

Were you at home after sunset on Thursday 4th
March? -- Yes.

Anything happen? -- That night?

Yes. -- About 10 o'clock I heard the dogs barking.

Your dogs? -- Yes.

Yes? -- I went out. I saw a group of people walking
above the houses. The dog barked and went towards the people..

Were these people - in which direction were
/these people

these people going? -- They were on the plateau in the direction of Fusi's.

On the road, or not? -- They were on the footpath parallel to the main road.

Did you recognise any of them? -- No.

Did any of them speak? -- One of them struck my dog and I said to him, "Why do you strike my dog?" He asked if I kept that dog for people.

Did you recognise the voice? -- No, I did not recognise the voice.

Besides this group of people about whom you have told us, did you see anybody else that night? -- Afterwards I heard some person down below the garden on the main road. I heard his voice, the voice of Maloi, No. 11.

At that time, when you heard No. 11's voice, did you have any people in sight at all? -- I heard him speak to people.

Did you see the other people? -- Yes, I could see people but it was dark. It was raining.

And what were those people doing? -- They were passing. He was speaking to them.

What else did you see? -- Shortly afterwards there came a motorcar.

From which direction? -- It stood still at the cross-roads where one goes into the Chief's village and another goes on to Mahlapa.

That apparently, m'lord, is spot "B" on plan 1. Did you recognise the car at all? -- No, I did not recognise it.

You say this car was at the cross-roads where one road goes on and the other goes up into the Chief's village. Is there anybody living at those cross-roads? --
/Toae

Toae.

Your Lordship will see spot - just above spot "B" - "C" which is referred to in the plan as the spot known as Toae's. Plan 1, m'lord. The motorcar is shown at the cross-roads and going up, say, 11 o'clock from "B", there's a hut shown, marked "C" and in the key, that's the spot known as Toae's.

HIS LORDSHIP: Is the evidence about Toae's?

MR. THOMPSON: The witness has just said, m'lord, that the cross-road to which he is referring is the cross-road where Toae lives.

Did you see this motorcar in motion at all or only when it was stationary? -- After the car stood there I saw two or three persons going towards it. After they got to the car, I heard the sound of the doors of the car being closed so I took it they must have got on to the car. And then the car went on the main road and went in the direction of where the group had gone.

Went in the direction of Fusi's? -- Yes, in that direction.

Were the lights of the car on or off? When it moved off? -- I saw as if only one light was on.

Would that be one of the front lights? -- Yes.

Was it on bright or on dim? -- No, it was on dim, not very bright.

You told us you saw a group going towards Fusi's on foot and the motor car going towards Fusi's? -- Yes.

And you heard the voice of No. 11 speaking to somebody? -- Yes.

Did you, at any time, see any persons going in the other direction, away from Fusi's? -- Not at that time.

/From which

From which, I take it, you did see at some time or other? -- No, I did not see anyone that day.

And is that all that you heard and saw that night? -- Yes, that is all that happened that night.

Did you point out spots to Mr. Castle? -- Yes.

Did you point out your hut to Mr. Castle? -- Yes.

Spot "F" on Plan 1, m'lord. Were you at the same spot when you saw the men on foot as when you saw the motor-car? -- No, a different spot.

And did you point out to Mr. Castle, the spot where you were when you saw the group on foot? -- Yes.

That's near the stable? Isn't it? -- Yes.

If Your Lordship will see hut "F", that is the witness' hut, m'lord. Immediately below that is a stable with a cross- that's where he was when he saw the pedestrians. At the stable, is that correct? -- Yes.

And then you pointed out to Mr. Castle the spot where you were when you heard No. 11 talking. If Your Lordship will travel down the plan from "F" through the stable down to the corner of the garden, Your Lordship will see a cross, that's the spot that was pointed out.

In what direction from you was No. 11 when you heard his voice? -- He was on the main road, passing on the main road.

Where were you when you saw the motorcar? -- I was at the corner of the garden.

The same spot where you were^{when}/you heard the voice of No. 11? -- Yes.

I think that covers all the spots on the plan, m'lord.

HIS LORDSHIP: Yes.

/MR. THOMPSON

MR. THOMPSON: Now you heard, on the evening of the following day that Meleke was missing, did you? -- Yes.

Did you have a discussion on that matter with anybody? -- No, I did not speak to anybody that evening.

I don't mean that evening, at any time? -- On Saturday I went to the mill. I met Maloi on the pass.

You met Maloi. And, what happened? -- I asked him where he was going to. He said that he was going to look for Meleke who was missing. I asked him as to when he became missing. He said he became missing on Thursday, as they came from the funeral at Mahleke's.

Yes? -- I said to him, "I heard you passing on Thursday evening". I said, "Where was he, Meleke"; he said he had left him behind. I asked him where he had met a group of people. He said he had not met a group of people.

Yes? -- I said, "I saw you passing." And I said, "When you passed you must have met those people at Ntsi's."

What was his reply to that? -- He admitted, when he heard me say so.

And then? What passed between you? -- Then I asked him, "Who were those people?" He said he did not recognise them. He said that he had mentioned to those who were with him that if this group meets people they might kill them. I then asked him where he had met the motor car. He said he had not met the motorcar.

Yes? -- I said, "You must have met the motorcar before you reached your home".

Yes? -- He then changed and I could see that he was frightened. He said he was going away.

Anything else happen? -- Then I left.

And is that all you know? -- Yes.

/CROSS-EXAMINED BY

CROSS-EXAMINED BY MR. MAISELS:

What was the night when these events happened? -- Thursday.

What was the date? -- Fourth.

When were you first asked by anybody whether you had seen anything on the Thursday, 4th March? -- I was not asked. When I saw the policeman, I reported.

When did you see the policeman to tell him what you had seen that night? -- On Monday.

Did you tell the policeman on Monday that you had seen No. 11 that night? -- Yes.

Was that the Monday following the Thursday or was it another Monday? -- Yes, the Monday following the Thursday.

Did you make a written statement? -- Yes.

On the Monday following that Thursday? -- No, the policeman went on, he left me alone.

To whom, ... what policeman did you make the statement? -- It was Mahlomola, Trooper Mahlomola.

When did you make a written statement? -- I made a written statement long after I made this report.

I want to know whether in your verbal report you mentioned about No. 11, Maloi? -- You mean when I made the statement.

No, in your verbal report? -- Yes.

Well now, just let's test that statement. Where were you standing when you heard No. 11's voice? -- At the corner of my garden.

That is the spot that you pointed out to the policeman? -- Yes.

And what time of the night was it? -- I had no watch but I estimate it was about 10.

/Was it

Was it dark? -- It was very dark.

And where did the voice come from that you heard?

-- The voice came from the direction of Fusi's.

How far away did it appear to you that this voice came from, far away? -- Not very far. If it hadn't been because of the darkness, I would have been able to see the people who were with him.

You said it wasn't very far. Would you mind pointing out how far - look out there. -- I can't estimate.

As far as that fence? -- I think it may have been as far as that far fence, or the white house.

60 yards. Was it a loud voice? -- Yes.

Very loud? -- No, but as it was at night I could hear.

You see some people have given evidence in this Court who were within a few yards of this horseman, and they couldn't hear what was said.

MR. THOMPSON: Of course we don't know whether they are talking ^{about} / the same conversation.

MR. MAISELS: M'lord, as I understand the evidence, my ^{but} learned friend may be quite right, / we've only heard evidence of one occasion upon which No. 11 accused is supposed to have gone to a group of people.

HIS LORDSHIP: That is a bit misleading.

MR. MAISELS: Yes.

MR. THOMPSON: I did not hear, m'lord, this witness say he went to a group of people, all he heard was a voice and he recognised No. 11. He might have been talking to himself.

MR. MAISELS: Just one moment. Was there a group of people there? -- No.

/No group?

No group? -- Only those who were travelling with Maloi, No. 11.

Who were travelling with Maloi? -- I did not recognise them.

You heard No. 11 talking to some people travelling with him? -- Yes.

Going in the same direction as he was? -- Yes.

So you heard him talking to this group of people - how many people were with him? -- I couldn't say how many there were but I could see there were people there.

Were they on horseback? -- They appeared as if they were on horseback.

It appeared to you that there were some people on horseback? -- Yes.

Did it appear to you to come from the road, the main road? The voice? -- Yes, I estimate that the voice came from the main road.

And the figures that you saw - the horses - could you see they were on the main road? -- Yes.

You heard certain voices from the main road? -- Yes.

What particularly makes you remember this? -- How do you mean, remember?

Do you often see people on the main road? -- Not at that time. It was the first time I saw them at that time.

The first time you've seen any people at night? -- At that spot.

The first time in your life you've ever seen any people at night at that spot? -- Yes.

Well now, tell me, you then saw ... what did /you see

you see first, the group of people or did you hear No. 11's voice first? -- I saw the group of people first.

Where did you see this group of people? Where were they walking? -- Behind my hut, higher up.

Where? -- On the footpath leading to Fusi's.

Where were you standing? -- At the stable.

Are there huts in front of the stable? -- The stable is not facing any huts.

There are huts in between the stable and the main road? -- Yes.

Where did you see these people, on the footpath?
-- Yes.

Is that the footpath above the track into Mamathe's?
-- Yes, the track that goes into the village.

Is that the footpath on which you saw these people?
-- Yes.

Between that footpath and the stable, are there huts? -- Yes. No, the huts are between the main road and the stable.

Do you know the south? -- No, I don't.

Do you know what north is? -- No, I don't.

Do you know the months of the year? -- Yes, I know them when I look at the almanac.

Did you look at the almanac this morning? -- No, I did not.

Who told you it was the 9th of November? -- I know that.

I want to get it clear if we can, where you were standing, and where this group of people you saw going, were? -- I was standing at the stable ...

/And the

And the group of people, where were they? --
Higher up on the footpath the other side of the main road.

The other side of the main road. Now, what do
you call the main road? Is that the road to Fusi's? -- Yes,
it is the old main road, it is no more used.

HIS LORDSHIP: I suggest we put it this way. Which is the
main road, the one above or below your garden? -- Above
the garden.

That's the old main road. Now did you see those
people on the old main road or above the old main road? --
I say they were not on the old main road, they were on the
footpath near the old main road.

Right. Further away, on the other side of the
road, from where the stable is? -- Yes.

Now, in between your stable and that old main
road are there not huts? -- My hut, yes.

Several huts? -- Yes, my huts are in a line and
also the huts of another person.

And how far away from you were these people when
you saw them? -- They were not far - I could hear them
speak.

Point out. -- I won't be able to estimate how ^{far.} far.

Do you know this track very well? -- Maybe,
perhaps, as far as that red building, or the other side of
the red building.

100 yards. Do you know this track very well?
Could you see those persons? -- I said that I could not
see them because of the darkness.

Do you say you did not see those persons? -- I
did not see them well, because of the darkness.

Did you see ... do you now say that you saw them,
/or that

or that you did not see them? -- I say that I saw a group but was not able to say who they were.

Can you say whether they were going on foot? -- I could see that they were not mounted.

Was it a very dark night? -- Yes.

No light at all? -- No light, it was raining.

Dark night, cloudy? -- Yes.

Can you see people 100 yards away on a dark rainy night with no light? -- They could be seen because of the rise high up where they were.

Where were your dogs barking? -- They were behind the huts as I came out of the huts.

These people, were they some distance from the huts? -- Yes.

Were the dogs interfering with them in any way? -- I say they hit the dogs when the dogs got to them.

Did you see that? -- I heard the dog scream.

Where do you say they hit the dog? -- On the path on which they were travelling.

So the dogs were up at the path? -- Yes, the dogs got right up to them on the path.

Did you ever tell anybody else, before this minute, that you heard the dog screaming and that you knew they hit the dogs? -- I say that there is no other person I have told except the person I spoke to on Saturday and the policeman

Who did you speak to on Saturday? -- Maloi.

Now tell me, you heard the dogs barking and the people moved on, is that right? -- Yes.

And was it raining at that time? -- Yes.

Did you go back into your hut? -- No, I did not go back into my hut.

/Why not

Why not? -- I stood there to see where they were going to.

Could you see them going away? -- I could see they were going in that direction, but I didn't follow them up.

How long did you stand watching them in the rain? -- I put on my overcoat and came and stood outside and watched.

Came and stood outside where, to watch? -- When I came out I stood in the middle of the garden.

In the middle of the garden? -- Yes.

Further away from where they were going? -- Yes, I was going down below, I was not following them up.

Well, that's very interesting. You deliberately stay outside to see where they are going and then you go away from the direction in which they are travelling so that you can't see where they are going? -- I watched to see where they were going.

But your garden is away from the path? -- Yes, you hear, I say I did not follow them up.

In fact you went away from them? -- Yes.

And you stood there in the rain? -- Yes, and when I heard other people coming I went down towards the other part of the garden.

When you heard the other people coming, were those people still in sight? -- No, I could not see them because of the darkness. Whether they stood still or whether they were still moving, I don't know.

What did you go to the garden for? -- Just for no reason.

For no reason at all? -- The reason was to see where those people were.

But you couldn't see? -- Yes.

/And just

And just at that moment, the other people came?

-- Yes.

You were then standing in the garden? -- Yes.

Just standing there in the rain? -- Yes.

Then you heard No. 11 pass? -- I heard his voice.

You heard his voice. Did you see his horse? -- I saw he was on horseback with those who were with him.

What road were they on? -- On the main road below the garden.

They were on the new road? -- Yes.

At that time, the others had just disappeared out of sight, is that right? -- They had just passed.

And by a lucky chance, there were some other people down below, on horseback? -- Yes.

What is the distance between these two roads, that is the road below your house and the road above your house? -- I have never measured it. I can't say, the other road is behind the house.

Don't you ever look at it? -- I have seen it but I have never measured it.

I don't want you to give me the exact measurement, just give me a rough estimate? -- I can't give you an estimate.

And were you standing at that garden before you heard the voice of No. 11? -- I don't know what to say now. All along I was saying I was standing at the corner of the yard when I heard Maloi's voice.

Isn't that the garden? -- Yes.

You happened to be standing there when you heard Maloi's voice? -- Yes, I say so.

Then you saw the motorcar? Is that right? --

/Yes, the

Yes, the motorcar arrived while I stood there.

Now, where was the motorcar? -- I said that the motorcar was at Toae's on the road leading into the village.

You saw the motorcar - the motorcar was standing at the cross-roads at Toae's, is that right? -- Yes.

And it was standing still? -- Yes.

Did you see the motor car there before or after you heard No. 11's voice? -- After Maloi had gone past I saw the motorcar.

Did you see the motorcar drive up? -- I saw the motor car stopping.

Did you see from what direction it came? -- I saw that it came from the direction of the shop.

And you saw it stop? -- Yes.

How long after No. 11 had gone, did you see the motorcar? -- It was a time I can't estimate.

A long time? -- No, I don't say so.

I want you to tell me, was it a short space of time, a matter of seconds, or was it a matter of minutes or was it a matter of hours? -- I didn't estimate, but it wasn't a long time.

Was it five minutes? -- No, I didn't measure it.

Was it a very short time? -- It was a short time.

Well, would No. 11 and the two persons with him have seen this motorcar? -- Yes, I'm sure they must have seen it.

Would it be interesting to hear that none of them say anything about a motorcar - the two persons who were supposed to have been with No. 11? -- Well, I'm not surprised, because that is what they say. I am giving my own estimate.

What made you stand there after No. 11 had passed,

/was it

was it still raining? -- I wanted to stand there.

Was it still raining? -- Yes, it was still raining.

So you were standing out in your garden in the rain that night, waiting for something to turn up? -- Well, that is what you say. I wasn't waiting for anything.

Just standing there? -- Yes.

And it just so happened that at that time the motorcar passed as well? -- Yes.

And did the motorcar stop there for some time? -- It stopped for a short while.

Did you see some people come towards the car? -- The people coming from the village.

What village? -- Chief Gabashane's village.

You saw them coming from the village. Along what road? -- The road coming out of the village.

Out of the village of Gabashane. Now I want to know, was this the road to Fusi's that they came along? -- No.

The road from the store? -- I said the road from the village.

Not the road from the store? -- The road that joins the main road to the store.

That is, the road that comes down on the West side of your house? -- Yes.

And you saw those people walking down? -- Yes.

Did you see them before the car came there? -- I saw them after the car stood there.

The car was there and then these people came up? -- Yes, I saw the people go to the car.

How many were there? -- although it was dark, I saw there were at least two or three persons.

How far is it from where you stood to the car?--

/Some distance

Some distance, because there is another person's garden on the other side and the main road passes near that garden.

Can you point out roughly the distance from the garden to where you saw those people? -- I am not able to estimate.

Give me some idea. You know where your garden is. You know where the main road is. You know where it joins on. -- No, I can't do it.

Are you not able to point out any distance at all although you know where your garden is and you know where the main road is? -- Well, if we were at the spot, I would show you.

I want you to estimate it please. -- No, I can't estimate it.

As a matter of fact there are quite a lot of trees in between your garden and this road on which you saw you saw the people coming, aren't there? -- Where?

Between the spot "X" where you say you were standing at the spot in the garden, and the main road, there seem to be trees, bushes and there seems to be a fence? -- From the corner where I stood to the corner of my garden, there is not one tree. Even the trees belonging to Toae are not in the way at all.

And what ^{about} / the aloe hedge? -- The aloe is only at the corner. From there to Toae's is a fence.

Then you can tell me how far the road is, can't you? From where you were standing? -- I said that I can't estimate, I can only point out the spot if I was up there.

Then these three or four people, or two or three, came to the car? -- Yes.

/Did they

Did they go in the car? -- I heard the closing of the door, I couldn't see.

So they all disappeared? -- They entered the motor-car.

And in what direction did the car go? -- It moved in the direction of Fusi's.

HIS LORDSHIP: Along which road? -- The main road, the main motor road.

MR. MAISELS: And then? - Apparently m'lord, that is the lower road - and then? -- I stood there for some time and then went back to sleep.

What did you stand there for some time, for? -- I have said that I wanted to stand there.

May we take it that the only reason you were standing outside that night in the rain was because you wanted to stand there? -- Yes, because I had seen that group of people going in that direction.

What group? -- I have mentioned, the group on foot.

What time of the night was this?-- I have said that I had no watch, but I estimate it was about 10.

Now you say you saw No. 11 later ... before I come to that. Did you say that the lights of the car were on? -- As far as I could see it appeared as if only one light was on .

Bright or dim? -- I say it wasn't very bright.

Did you tell the District Commissioner that it had a bright light on? -- I did not say so.

Did you say this? -- "As the back of the car was towards me, it appeared as if only one of the lights was a bright light"? - - I told the District Commissioner that

/only one

only one light was on, as far as I could see.

You didn't say anything about it being bright? --
No, I did not say so.

Now, when did you next see No. 11 accused? -- On
the Saturday.

Can you tell us what time of the day it was? --
It was in the morning.

Can you tell us what time? -- I have no watch.

Well, I know you have no watch, but you were able
to estimate 10 o'clock the night before, on the Thursday
night. Tell us what time on the Saturday? -- It is not a
mistake that I am able to remember what time it was on
Thursday. I can't remember that Saturday time.

Was it early in the morning, was it late in the
morning? -- It was after the cattle had gone out to feed.

Very early in the morning? -- I can't say that.

Where was the sun? -- I didn't measure, but I saw
it was in the morning.

Can you give me no idea of what time of the morning
it was that this conversation is alleged to have taken place?
-- No, I can't say what time it was because I did not measure.

Can you give me no idea at all of the time, other
than that it was some time after the cattle had gone out? --
I don't want to deceive you, I want to tell you the truth.

Now, tell me, what did he tell you that for? Tell
us again what he told you that for? -- I said that when I
met him, I asked him where he was going to and he said he
was going to search for Meleke.

Yes, go on. -- I asked him what had happened to
Meleke, he said, Meleke was missing, got lost on Thursday
when they returned from the funeral. I asked him if

/Meleke had

Meleke had accompanied them, he said "Yes". I asked him where he had left Meleke, and he said they left him on the route. I asked him where he had met the group on foot on Thursday when he passed, he said he had met them at Ntsi's. I asked him where he had met the motor car, he said he had not met the motorcar.

Yes, go on. -- Then I could see that he did not want to speak to me any longer. He said he was going away. Then I left.

Is that all? -- Yes, that is what I have been saying.

Did you say in examination in chief that No. 11 accused had said that he did not recognise the people who were on foot? -- Yes, I have been saying that.

And that he had mentioned to those people who had been with him that if this group met people they might kill them. Did you say that? -- Yes, I said that.

Was that true? -- It is true.

Why didn't you say it just now? -- Well, I may forget what I said.

Did you tell the District Commissioner anything about that? -- In exactly the same way

I am going to put it to you that you never did say a single word of that sentence to the District Commissioner, not one. -- As I wasn't recording the evidence myself, I can't point out anything to you.

Was the evidence read over to you? -- Yes.

Did you listen to it? -- Yes.

And you added to it? -- No, I did not add to it, but I made a correction.

Quite. Did you draw the Commissioner's attention

/to the

to the fact that this sentence had not been written down?
-- The words which were not written correctly I drew the District Commissioner's attention to.

I want to suggest to you that this sentence, in common with the rest of your evidence, is a complete fabrication. -- That is what you say, I don't say so.

CROSS-EXAMINED BY MR. GROBELAAR:

There are quite a number of huts that one would meet if one travelled from Mamathe's village in the direction of Fusi's? -- Yes, it is so.

Now if one started in a motorcar from the point where you saw the motorcar on this night in question, one would pass the huts of David, Feosa's, Seoka, Majani, Moshesha, Pito's and others? -- (No reply).

HIS LORDSHIP: I understood from this witness that the car didn't travel along the upper road.

MR GROBELAAR: No, perhaps your Lordship will see my point. Now, when you tried to indicate the direction in which you saw this group go, why did you particularly say that they were going in the direction of Fusi's, why didn't you say they were going in the direction of David's or Seoka's?
-- Well I am mentioning the name of the person who I see here, being Fusi.

You mention the name of the person that you see here. I want to know why didn't you say that they were going in the direction of David's, or Feosa's, or Seoka's, because they were going in that direction? -- Yes, but then you cannot argue about that because the path was going in that direction.

I just want to know why did you pick out Fusi's name? Why didn't you pick out the names of the owners of

/these other

these other huts that are also in that direction? -- I just thought of that name.

Were you asked by the police whether they were going in Fusi's direction? Is that why you say so? -- No, they did not ask me that question.

Isn't it a fact that from the point near your garden where you allege that you saw this motorcar, the car is, in fact, invisible if it stood where you say on that occasion? -- I said that the car was standing there. I saw it as it stood there, just a little below Toae's hut.

Could you see the whole of the car from that point that you have just described? -- No, I didn't see the whole of the car, I heard by the sound made by the doors of the motorcar that people were entering it.

So you didn't see the car at all, but merely heard it? -- I don't say so. I saw the motorcar, part of the motorcar.

Did you tell the court below that you saw only a part of the motorcar? -- There was no question that asked me how much of the motorcar I had seen.

I put it to you that if you couldn't see the whole motorcar, then you would have told the Court, "I saw part of the motorcar", instead of "I saw the car". -- That is what you think. I didn't think so.

I put it to you that the car was standing in a dip and from what you have described to me you couldn't possibly have seen it? -- You know what you say and I know what I say.

Is it true that the back of the car was towards you? -- No, I don't say the back of the car was towards me while it stood there.

/Well, this

Well, this is what you said at the Preparatory Examination: "As the back of the car was towards me, it appeared as if only one of the lights was a bright light". Now was the back of the car facing you when you saw it in a stationary position? -- I say as the car was stationary it was facing towards me.

When does this remark apply, namely, "As the back of the car was towards me, it appeared as if only one of the lights was a bright light"? -- As it passed. As the car was moving past.

And you're quite certain that when you spoke to Maloi, he looked like a guilty person? -- No, I didn't say so, I said he appeared to be frightened.

When you heard a person speak to you at night and ask you whether you kept the dogs for human beings, did you ask him what his name was? -- No, I did not ask him.

Weren't you inquisitive to know who the voice belonged to? -- Yes, I did want to know, but there was no way by which I could know.

Why didn't you ask him, and say, "Who are you?" -- I did not like to ask him.

Seeing the person spoke to you, I expect you had a perfect right to speak to him? -- I did not want to ask.

You didn't want to know? -- I did not want to know.

But I put it to you that any man in the world who was asked a question like that at night would say, "But, my dear man, who are you talking to me?" -- People do not think alike.

/Yes, I

Yes, I expect people don't think alike, but if a person speaks to you at night and you hear his voice, I put it to you, you would ask him. -- Well as I had spoken to the man, I didn't want to speak any more to him.

Did you see this man beat your dog? -- I heard the dog scream as soon as it reached them.

Were you annoyed because you heard your dogs screaming and you assumed they had been beaten? -- I heard the dog scream and I have said here that it was being beaten.

Yes, I put it to you, because you were annoyed you would have asked the man what his name was? -- I asked him and he said that I was keeping the dogs for people, therefore I didn't want to ask him further questions.

LUNCHEON ADJOURNMENT.

-----oOo-----

ON RESUMING:

MOLIKO KHOTHATSO (Under former oath)

ASSESSOR JONATHAN: You live in Chief Gabashane's own village? -- Yes. :

The group of people that you saw, where was it?
-- It was on the path that I have mentioned.

What did you suspect that group were going to do?
-- They were talking and they hit the dog.

What had aroused your suspicions so that you remained outside after the group had gone? -- I suspected because of the speech that they made.

Were your suspicions not aroused because of the orders of the Paramount Chief to the effect that if you saw suspicious people in the village wishing to kill another person, you must report? -- No, I knew about that order afterwards.

/Did you

Did you inform Chief Gabashane that you saw a group of people at night and a motorcar coming from his place? -- I could not inform him because I did not know where the group was proceeding to.

It is all the more reason why you should have informed him because you had seen these persons travelling through the Chief's village at night. -- I have not been instructed to stop people travelling on the road.

If you had not yet been informed, why did you wait there for such a long time? -- I have said that I wanted to do so.

What did you want to find out, why did you have suspicions? -- I told you the reason for my suspicions.

I am not able to see where your suspicions were. -- I don't say you don't see.

Didn't you know that there have been reports of people who have been killed at various places? -- Even if I had had such reports, on that occasion I did not have that suspicion.

The following day you spoke to Maloi ...? -- No, on the Saturday. I had heard that a person was dead.

What did you say to your Chief? -- I am not to report to the Chief if any of the Chief's men are dead.

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THE CROWN CALLS:

MANPANE MOTHOBI, Sworn states,

EXAMINED BY MR. THOMPSON:

Manpane, where do you live? -- I live under Chief John Moshoeshoe.

Do you know where No. 8 accused lives? -- Yes.

Is it possible for you to point out some distance between Fusi's village and John Moshoeshoe's village where
/you live?

you live? -- Yes. (Witness indicates).

Is that all? 700 yards between Fusi's and the witness' village, m'lord. Has Fusi ever visited you at night time? -- Yes.

How many times? -- Once.

Do you know the months of the year? -- Yes.

What month was it, do you remember, when Fusi visited you at night? -- It was in March.

Do you remember the day of the week? -- Yes.

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

Can you tell me approximately what stage of the night it was - early, midnight, or very late? -- It was at night. I can't say what time it was at night but it was dark.

Can't you give me some idea as to whether it was very late, or early in the night, late in the night or getting on towards dawn? -- I can only say it was at night. The cocks hadn't crowed.

The cocks hadn't crowed for the first time? -- No.

Well, the first cock crow had not happened. And what happened? -- A man arrived. I did not know who it was. He knocked at the door. I asked, "What is it", he said, "Father, come out and help me, here is a man on the main road. A man has been thrown by a horse, he is drunk". He said, "These people have left him behind". I asked, "Where is his home". He said, "His home is at Lebina's." I asked him again, "Who are you?" He said "I am Fusi".

All right. He said he was Fusi? -- Yes.

And then? -- I said, "Go to the Headman". I said I had no power.

By the way, are you a Headman or in any position
/of authority

of authority? -- No, I am not a Headman.

You told him you had no power and you told him to go to the Headman? -- Yes.

Did you say anything else? -- Then he left.

You didn't see this man, of course? -- I didn't see him, I spoke from inside my hut.

When this man said he was Fusi, did you believe him or did you not believe him? -- I believed him.

At what stage did you recognise him to be Fusi, before he told you or afterwards? -- I recognised him when he spoke.

Before you asked him who he was? -- Yes.

How long have you known Fusi, No. 8? -- A long time. We grew up as boys.

So you knew his voice well? -- Yes.

On that evening of the visit from Fusi, when you heard him speaking, did you hear anything else? -- Yes.

What did you hear? -- I heard a motorcar.

From what direction? -- I heard a motorcar as if coming from the direction of Fusi's.

Of Fusi's village? -- Yes.

That is, you heard a motor engine in motion? -- Yes.

Is it usual for motor traffic to be about on that road in the middle of the night, or late at night? -- Yes, motorcars often go past there.

Often go past there? -- Yes.

Did you know the man, Maleke Ntai, now dead? -- Yes.

Did you hear a report of his death? -- Yes.

Did you hear the report of his death before or
/after this

after this visit of Fusi's? -- Afterwards.

You heard of the death afterwards? -- Yes.

CROSS-EXAMINED BY MR. MAISELS:

Tell me, when was the last time anybody visited you at night? -- That was the last time.

When was the time before that? -- Nobody ever paid me a visit at night.

It was the first time in your life you ever had anybody call at your hut at night? -- The first time in my life.

Can you tell the months of the year? -- Yes.

What was last month? -- November.

What is this month? -- December.

Since when have you been in custody? -- From the month of July.

What date? -- From the month of July.

What date? -- I don't know what date.

What date was it that Fusi came to your house at night? -- A Thursday.

That's the day, do you know the date of the month? -- It was the fourth of the month.

What date was it that you were taken into custody? -- I don't know, I forget.

Was it ^a more important event in your life that Fusi should call at your house one night or that you should be taken into custody? -- (No reply)

MR. THOMPSON: My learned friend, this witness was not in custody.

MR. MAISELS: I'm sorry, I thought he was. I'm sorry m'lord. I did not know that, I thought that all these witnesses ...

HIS LORDSHIP: Taken to the police camp, yes, but that's a
/very different

very different matter.

MR. MAISELS: Very well, I'll suit my learned friend, I'll get it that way and if there's any difference between the two we'll find out. When were you taken to the Police Camp? -- I don't know, I forget.

From the time you were taken to the Police Camp, have you been kept there? -- No, I went back to my home.

Were you kept there for any length of time? -- No.

When were you sent home? -- I don't quite understand the question.

You were taken to the Police Camp did you stay there any days? -- I was there for a day.

A day. Was that all? -- Yes.

And you don't know when that was? -- No.

Was that a day in July? -- I don't understand your question. Please explain the question.

You were taken to the Police Camp on a certain day, was that day in the month of July? -- Yes.

Was it then, for the first time, that you were asked to remember whether Fusi had called at your hut, one night? -- Yes.

And were you able to tell the policeman when they asked you, without any difficulty, that it was Thursday the fourth of March? -- Yes.

Was the date of fourth of March suggested to you? -- No, it was not suggested to me.

What is today? -- Tuesday.

The date? -- The ninth.

How can you remember it was the fourth of March? -- It is because I know.

/Can you

Can you remember anything else that happened on the fourth of March? -- Yes.

What? -- I remember about the death of the deceased.

When was that? Were you there? -- I was not there.

Did somebody tell you it was the fourth of March? -- I was not told.

Well, how do you know it was the fourth of March? -- I heard from the police when the body was carried away.

They told you he had been killed on the fourth of March? -- They didn't tell me.

When was the body carried away? -- On Saturday.

Your village is the one you showed to Mr. Castle, is that right? -- No.

Are there a number of huts there where you live? -- Yes.

Do you know where the body was found? -- I was told
Were you told where the man was pulled off the horse? -- No.

Are your huts near to where the man was thrown into the donga? -- No far from there.

There are huts much nearer to the donga than yours, aren't there? -- Yes.

Has Fusi ever been to your hut before? -- What time?

Any time? -- Yes.

When? -- I can't specify the date. He passes there any time.

He passes there, of course? -- Yes.

That's a different thing to visiting you, isn't it? -- Yes.

/Can you

Can you suggest any reason why he should call on you at your hut for assistance? -- I don't know.

Fusi says he knows nothing at all about this visit paid to you by some person at night. What year was it, this visit? -- I don't quite understand.

What year was it that this visit took place at night? -- This year.

ASSESSOR JONATHAN: You say that Fusi came to your house, knocked at the door, and asked you for assistance as a man had been thrown from a horse, being drunk, is that right? -- Yes.

What did you do? -- I refused.

Why did you refuse? -- It was dark.

That was the time for you to have assisted because it was dark. -- You say I should have assisted?

Yes. -- But was I bound to go and assist?

Yes. Why didn't you assist? -- Because it was dark.

Why didn't you call out to some other person in the village for help, tell him that Fusi wanted help? -- Where was I to call a person from? There are only women there.

Women are people. -- No women could go out in such darkness. I, as a man, was afraid to go out.

Couldn't you raise the alarm from within your house and shout to people to come and assist? -- I asked him to raise the alarm.

You should have raised the alarm yourself, shouted that Fusi wanted help. -- I did not think of doing so.

/MR. THOMPSON

MR. THOMPSON: At the Preparatory Examination, m'lord, the witness following this one was Mapoloko Mothobi, his wife. She gave precisely the same evidence and I don't propose to call her unless my learned friends wish to have her.

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THE CROWN CALLS:

PAULUS KAHLOLO, sworn states

EXAMINED BY MR. DAVIDSON.

Paulus where do you live? -- I live at Matholoano Masaleng.

What work do you do Paulus? -- I was working for the Doctor.

Which doctor? -- Fusi.

What functions did you perform under Doctor Fusi? -- I was looking after lunatics.

Do you know the months of the year? -- No, I don't

What jobs did you do with the lunatics when you were at Doctor Fusi's? -- I used to look after the lunatics so that they should not run away.

What jobs did you do with them in the early morning? -- Sometime during the day I used to take them to the stream.

What stream is this, is this the donga near Fusi's village? -- Yes.

Do you remember seeing anything peculiar in that donga on any particular morning? -- Yes.

What was it? -- I saw a person.

Was the person alive? -- When I saw him he appeared to be dead.

Where abouts in the donga was the person? -- He was inside the donga.

Was he standing up or lying down? -- He was lying
/down

down.

How was ^{he}/lying? Will you just indicate to His Lordship how he was lying? -- I didn't look carefully at him to see how he was lying.

Do you remember what day of the week it was that you saw him lying there? -- Yes.

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

Did you do anything about it after you had seen the body there? -- I reported to my master.

To Doctor Fusi? -- Yes.

And what did Fusi do then? -- He asked me to saddle up his horse.

Did he say anything else? -- He said he was going to raise the alarm at the Chief's place.

Whereabouts was Fusi when you reported to him? -- He was appearing on the top of the mountain.

Can you remember what time of the day it was that you found this body and reported to Fusi? -- It was very early in the morning.

Was this your usual hour for going to wash in the stream? -- No.

What was it, earlier or later than your usual hour? -- It was just as the sun rose.

Was that earlier or later than your usual hour? -- It was earlier than the usual hour.

Was it Fusi's custom to stand on the hill when you went down to wash? -- No, he did that for the first time.

Do you remember the season of the year that it was when you found the body? -- It was Autumn.

/And can

And can you remember the month? -- No, I don't know what month.

Did you point out to Lieutenant Castle the spot where Fusi was standing that morning? -- No, he didn't ask me to point it out.

CROSS-EXAMINED BY MR. GROBELAR:

This body appeared to be naked, as you told the Commissioner at the Preparatory, wasn't it? -- When I saw it, I saw as if there were trousers on it.

Apart from the trousers, the body was naked? -- I saw that there was nothing else. It was naked.

HIS LORDSHIP: Didn't you see any blankets there? -- I didn't notice.

ASSESSOR JONATHAN: Was it you who discovered the body? -- Yes.

You say that the body was naked? -- Except for the trousers.

Was there nothing on the upper part of the body? -- When I saw the body, it appeared as if there was nothing on the body.

How near did you come to the body? -- I didn't come anywhere near. The body was as far as from here to the corner of the house.

HIS LORDSHIP: You didn't go up to the body? -- No, I did not go near it.

ASSESSOR MAKHEHLE: Did you say that you went to the spot where you used to wash early in the morning when the sun was rising? Had you been ordered to do this? -- Yes, on that day Fusi gave me orders early in the morning, to go and wash the lunatics.

You said that he appeared on the hill, does he

/usually come

usually come to assist you if the lunatics run away? -- No, he never assists me.

MR. MAISELS: I would like to ask first of all, m'lord, whether the African Assessors have before them a copy of the Preparatory Examination which they can read, because the question I put, m'lord, arises out of something that was said at the Preparatory and not said here. May I now, m'lord, be permitted to examine the witness?

HIS LORDSHIP: Yes.

CROSS-EXAMINED BY MR. MAISELS:

Did you go to wash in this stream on many occasions?
-- I used to go with them there to bathe but not because I had orders to take them.

It was the normal thing for you to do every day, wasn't it? -- Yes.

HIS LORDSHIP: That will do.

MR. THOMPSON: M'lord, I have been informed that the witness, Ntlala Nchakha, is reputed to be in the mountains and it has been impossible to serve^a/subpoena on him, so he will not be available, m'lord.

My learned friend wishes to recall Mr. Castle.

MR. CASTLE (Recalled) (Under former oath)

CROSS-EXAMINED BY MR. MAISELS:

Mr. Castle, you know the witness Ntsane Ntai? --
I do.

You know the witness Makhetha Ntai? -- I do.

Did you interview these two witnesses soon after the discovery of the body of the deceased? -- I did.

/Did you

Did you ask them whether they had accompanied the deceased to the funeral? -- I did.

Did you ask them whether they had returned with the deceased? -- I did.

Did they tell you the deceased had been left behind on the road? -- They did.

Did you ask them why? -- They stated that they wanted to attend their cattle before it got too dark.

Is that the reason they gave for leaving him behind on the road? -- That is the reason they gave.

Did they suggest to you, at that time, either of them or both of them, that the deceased had been left behind on the road at the special instance, or suggestion, of No. 11 accused? -- They did mention that.

What explanation did they give? -- What they said was that No. 11 said they must gallop their horses. When asked why they did leave the deceased behind, they stated they wanted to attend to their cattle.

No. 11 said they must gallop their horses, and when asked why the witnesses stated because they had to attend to their cattle before sunset? -- Yes.

Was the suggestion made at that time that he was left behind for some ulterior purpose? -- None whatsoever.

Did they, or either of them, tell you anything about them being summoned the night before the funeral by No. 11 accused? -- No.

I understand that you took written statements from these people in July? -- That is correct, from Ntsane. I didn't take Makhetha's.

Who took Makhetha's statement? -- I believe one of the policemen.

/At the

At the same time as Ntsane's? -- Afterwards.

After Ntsane's. Sometime in July? -- Towards the end of July.

Was that after the accused had been arrested? -- That is correct.

I want you to give me some assistance, Mr. Castle, in regard to this plan. Would you mind turning to plan 1. Mr. Castle. The distance from the stable where there is an "X" to the nearest spot on the footpath to the south of the road marked "track/ⁱⁿto Mamathe's" -- Do you mean from the stable to the nearest point of the actual place?

That's right. Assume you're looking directly south from the stable. -- My estimate would be about 25 paces.

About 25 paces? -- Yes.

HIS LORDSHIP: That's on the road. We want the path - the "track into Mamathe's".

MR. MAISELS: Yes, from "X" to the footpath? -- The foot - path alleged to have been taken by the group you mean?

That's right. -- About 45 paces, because from "X" to the route alleged to have been taken by the group is 38 paces and the stable is a little way back and I estimate it to be about, say, 45 paces.

Now from "X" on the side of the garden, do you see where that is marked? -- Yes.

To "B", what is the distance? -- As the crow flies?

Yes. -- I should estimate it to be about 50 paces.

50 paces. And from "X" to the road marked "to Fusi's" - the nearest spot? -- I would estimate it to be about 35 paces.

Thank you. Now, Mr. Castle, you've got the

/report in

report in front of you. A statement by the witness, Moliko Khothatso, what is the date of that? -- 23rd day of July.

That is the date of the first statement made to your knowledge? -- That is the only statement I have.

Were there any other statements taken, to your knowledge? -- No.

The statement by the witness, Makhetha, what is the date of that, according to your record, Makhetha Ntai? -- 29th day of July.

And Ntsane Ntai? -- 23rd of July.

Are those the only statements taken from these witnesses? -- According to record.

Now, Mr. Castle, a number of witnesses have been kept by the police, shall we call it under protection, and I'm going to read out the Crown witnesses and will you tell me how many of them have been kept, as we call the term, in police protection. Mapeshoane? -- Yes.

From approximately when, I don't want the exact date? -- The 13th July.

Sothi? -- I can't quite remember, somewhere near the end of April.

Molemohi? -- A little before.

Sepalami? -- About the same time as Molemohi.

Ntsane? -- Originally when investigations first started, he was brought in and that was the time when he told me he had gone to the funeral. Then he was allowed to go home and then he was brought back after the arrest.

After the arrest? That would be in July? -- Yes, then after the Preparatory Examination he was allowed to go home.

/Makhetha

Makhetha? -- The same applies to Makhetha.

Any of the other Crown witnesses? -- They were all allowed to go home.

CROSS-EXAMINED BY MR. GROBELAAR:

M'lord, I propose^{putting}/to this witness, the instructions which we were told were given to the Doctor, and I want to find out from him whether those instructions came to him and from which witness.

MR. THOMPSON: M'lord, apparently the police have certain information, it is not part of the Crown case and I submit that information is privileged and cannot be elicited by the Defence.

MR. GROBELAAR: May I refer m'lord to Gardner and Lansdowne, page 418. Now the rule, m'lord, is that as a rule statements are privileged, but when a statement will have the effect of discrediting a witness and if that statement will operate "in favorom innocentiae", in other words if it would tend to establish the case for the Defence and weaken the effects of the Crown witnesses, then if such a witness will assist the Defence the rule of privilege is relaxed. I would refer to page 480 of the last edition of Gardiner & Lansdowne where it says, "There will be a relaxation of the rule when, in the opinion of the Court, such a relaxation is necessary in the interests of justice in Criminal Administration, or, as is usually put, "in favorom innocentiao", for as was said by Esher, Master of the Rolls, in Marks vs. Beyfus, if , upon the trial of a prisoner, the Judge should be of opinion that the disclosure of the name of the informant - and that also applies to the contents of his report - is necessary in order to show the prisoner's innocence, then the public policy is in conflict with another public policy /and that

and that which says an innocent man is not to be condemned when his innocence can be proved is the policy that must prevail". In other words that is the stronger rule of public policy that if there is anything in favour of the accused and even if an inconsistent statement was made, then the Court will, in such a case, relax the Rule. The learned authors say, "See, too, ex parte Minister of Justice in Rex vs Pillay and Others", and a few other cases are referred to, it was said, "the rule was extended to a witness in a civil case whose credit was impugned and who was the informer was cross-examined as to the previous statement made by him to the police." That is the very point that happened there. There a previous inconsistent statement was made and what I propose to ascertain here to elicit from this witness is, that one of the witnesses told him, and, m'lord, I've the best reason to believe that this is one of the witnesses who gave evidence in this court, namely, that this witness told the police that an umbrella stay was used and that he saw it being used at the time of the assault. I'm just continuing my reading of this page. Then the authors say, "And, it is not unusual for the prosecution to assist the testing of the witness' credibility in such a case by rendering the previous statement available to the Court." And that is all that I am asking here. And after all, as these authors tell us, that "it is not unusual", and m'lord especially when we deal with a murder case and a murder case where there is such a wholesale charge, such an important charge in this Territory and so many people concerned, if ever there was occasion for the relaxation of this rule, then, in my submission, this is the occasion, because it is the most important charge that can be brought, it's not only against one person, and for that reason I

/trust Your

trust Your Lordship will allow it to be used. The further case I refer to is Rex v Clarke 1920/22 Criminal Appeal Reports. There it was held that the Defence in a criminal trial was entitled to see a written description of the alleged offender given by a police officer to his superior so that there might be cross-examination of the officer on discrepancies between the description and the offence.

MR. THOMPSON: There appears to be some misunderstanding, m'lord. I have no objection to my learned friend putting this question, "Did any of the accomplices, or any of the witnesses in this case, make a statement", to Mr. Castle personally, not to anybody else, "that an umbrella stay or some such weapon had been used"?

MR. GROBELAAR: That's what I want to get the evidence of m'lord.

MR. THOMPSON: I have no objection to Mr. Grobelaar putting this question: "Did any of the witnesses who gave evidence in this Court state to you personally or in your presence, that a weapon such as an umbrella stay was used?" That's all I want to do M'lord, to limit the inquiry to that.

MR. GROBELAAR: Now Mr. Castle, you've heard the remarks made by my learned friend? -- I have.

And is it a fact that one of the witnesses who gave evidence made a statement to the effect that at the assault committed on the deceased, on the evening of 4th March, an umbrella stay was thrust into his nose or throat? Was it said to you? -- That is correct.

Now what remark was made to you in regard to an umbrella stay? -- That an umbrella stay had been poked in the nose and throat.

The throat of the deceased? -- That is correct.

That is, at the time of the assault? -- That is correct.

/When he

When he was throttled and his lips were cut? --
Correct.

And the person who made that statement to you? --
Witness Molemohi.

And it was for that reason that you ordered the
body to be exhumed in order to verify the said statement
made by Molemohi to you? -- Correct.

And the statement was made in all earnest to you
in your usual enquiry? -- Correct.

HIS LORDSHIP: Was Molemohi asked that question and did he
deny it?

MR. GROBELAAR: Oh, yes, m'lord, I put it very pointedly to him.

HIS LORDSHIP: Anything more?

MR. GROBELAAR: M'lord, just one question on distance, if
you will bear with me. Do you know the distance between
Mamath's and Mahleke's -- I measured the distance by car
as far as I could, and it came to about six miles.

And the distance from Fusi's is two miles, isn't
it? From Fusi's to Mamathe's two miles, is that right? -- Yes.

And the distance from Mahleke's to the point where
the last witness, Makhetha, says he stopped galloping? --
Approximately four miles.

HIS LORDSHIP: How far is it to the pass? -- I don't know,
m'lord.

I want to ask you a question^{or}/two. This plan
No. 2 is really a continuation of No. 1 isn't it? -- That is
correct m'lord.

Well now, if you put these two plans together
you carry on the footpath that starts from "E" - you've
got that as a continuous footpath above this road down
right to the point "P" -- Yes, m'lord.

/Well, who

Well, who gave you that information that that was the route followed that night? -- Witness Mapeshoane, m'lord.

Did you hear the evidence of the other witnesses?-- No, m'lord.

Because one of the other witnesses has said that at David's, they came down on to the road, then they walked along the main road and got back on the footpath further on. -- The track or the route that I have put on the plan, m'lord, is what was indicated to me by Mapeshoane at the time when I was asking.

By Mapeshoane, not by anyone else? -- No, m'lord.

And then this point "G", what does that represent? -- "G" represents the spot outside the village, m'lord, - if you put the two plans together - where they are alleged to have broken up into two groups.

Alleged by whom? -- By Mapeshoane.

I understood that was the evidence given by Sothi, wasn't it? - I understood previously that these two groups had broken up at "E". What is "E"? -- No, m'lord, spot "E" is where they originally congregated that night, then the group, the pedestrians, led by No. 1 accused walked through the village to spot "G" and that was where they broke up into two groups.

What is the distance between "E" and "G"? -- Seven to eight hundred paces, that is my rough estimation.

But at E the people congregated who were supposed to have gone down to the motor car at "D", weren't they? -- That is correct, m'lord.

And who gave you that information? -- Witness Mapeshoane, m'lord.

So he was the person who really told you that? -- Correct m'lord.

/And now

And now, with regard to the witness whose house is at "F", he said that he came down ... he pointed out the mark "X", didn't he? -- Yes, m'lord.

From where he had seen the motorcar, is that where he stood when he saw the motorcar, at "B" ... -- Pass on the road, m'lord?

No, I mean where was he when he saw the motorcar at "D", he saw the car standing still, you've marked the car standing still there at "B". Where was he when he saw that car? -- At spot "X" M'lord.

Could he see it? -- No, m'lord, he could see it pass the road below spot "X", but he could not have seen it at spot "D".

Could he have seen it from anywhere else? -- No, m'lord.

And he could only see the car when it passed? -- That is correct, m'lord.

Well now, I see you've got this bottom road, "the road to Fusi's"? -- Yes, m'lord.

According to that witness's evidence, he saw the car come - this lower road you've got as the "road to Fusi's" is that the main road? -- Yes, m'lord.

If that is so, you take that road right up to the point "P" don't you? -- That is correct m'lord.

Now you cut short this other road - it suddenly stops just below point "G" - that is the track to Mamathe's - well, as I understand the evidence for the Crown - the motor car was on that road. -- No m'lord, that is the footpath, cattle track and everything combined. I just merely stopped it there just to show the direction in which it was going.

/Yes, but

Yes, but then I understand, according to the evidence of the witnesses who were going along that footpath, they saw that car coming behind them. It could only be then from about here on the plan - you see, there it is - it would only be about here where it approaches the footpath. -- The footpath is visible to the road the whole time, M'lord.

To the "Fusi's road"? -- Yes, m'lord.

I understand then the motorcar was along Fusi's road for some time? -- That is correct, m'lord.

RE-EXAMINED BY MR. THOMPSON:

Coming back to this man, Moliko, he said that he moved down from his hut at point "F" to the stable and then to the corner of the garden. Were you in Court when he was cross-examined, by the way? -- I was.

Do you remember that he told my learned friend, Mr. Maisels, that he moved down there partly in order to observe these pedestrians moving along the footpath towards Fusi's. On the face of it on the plan of course he is moving away from the pedestrians, not nearer to them, but in fact, how would the view of a body moving along that footpath from, say, "F", compare with the view from the garden? -- He would have a better view from the corner of the garden.

Of persons moving along the footpath towards Fusi's? -- Yes.

From the corner of the garden, spot "X" to the nearest spot on the footpath, can you estimate that, please? -- I should estimate roughly about 65 paces.

Which would mean from the stable to the garden

/about 20?

about 20? -- That is correct.

Now from that same spot in the garden, you say you cannot see a motorcar stationary at "B", I take it that is because of the trees? -- Because of trees and the house, Toae's house.

Would you be able to see lights of a motor car through the trees at night time? -- That is possible.

I don't know whether you can answer this Mr. Castle. If he was standing at the corner of the garden there and motorcar doors were slammed at "B" at night time, would it be easy to hear them or not? -- In my opinion, I should think one would be able to hear them.

Now about these witnesses being in, so to speak, protective custody, Mr. Castle. When they are in the police camp are they allowed, more or less, to move about freely? -- Yes.

Are they allowed to leave the police camp and go shopping, for instance, within reason? -- Under escort.

And as little restriction on their liberty of movement is placed as possible? -- Quite.

Did any of these Crown witnesses in this case make a request to be placed under protective custody? -- All four.

All four accomplices. And the others, the non-accomplices? -- They were all allowed to go home.

Does this question of going shopping under police escort apply to the non-accomplice witnesses? -- They could go, even when they were in the police camp, they could go out and come back again whenever they liked.

The accomplices are dealt with slightly differently from the other witnesses? -- Quite.

/First of

First of all they are there at their own request aren't they? -- That is correct.

Possibly for that reason, they are not allowed out unless they have some escort. So far as the non-accomplice witnesses are concerned, you have already said to me, they were allowed to go to the store without escort, and eventually allowed to go home? -- Correct.

On this question of statements in March, and written statements in July, Mr. Castle, and the variation between what was told you, particularly by Makhetha and Ntsane, in March and what was given you in a written statement in July. In your experience of investigating ritual murders in Basutoland, is it easy to get witnesses to talk at the outset? -- Very difficult.

MR. MAISELS: Is that evidence permissible? I suggest, m'lord, that it is not. What happens in other cases, m'lord, is not permissible in this respect.

MR. THOMPSON: Well, I'll put it this way, m'lord. Was it in this particular case of ritual murder, easy to get statements at the outset? -- No, it was not easy.

When did the difficult situation ease? -- After the arrest.

HIS LORDSHIP: I just want to ask you one question I didn't ask you before. I've put these two plans together, you see, and show the spot "G". Then if this witness saw a group of people on the footpath, it would be before this group had divided into two? -- That is correct, m'lord, because he would see them on their way to spot "G".

And that is what Mapeshoane told you - that's where they had divided? -- That is correct.

/CROSS-EXAMINED BY

CROSS-EXAMINED BY MR. GROBELAAR:

Arising out of my learned friend's last few questions, I want to ask one or two questions. Now, isn't it a fact that all the witnesses who were in protective custody could easily converse with each other on whatever topic they liked and that you didn't restrain the liberty of speech? -- I did have a policeman with them most of the time in order to prevent them from speaking about the case. Those were my instructions.

Now, this remark that you have just made, does it refer only to the accomplices or to the other witnesses? -- Only to the accomplices.

But do you know, Mr. Castle, that the accomplices on many occasions, were together under such circumstances as to be able to discuss this case? -- It was ^{very} difficult for the accomplices to be alone because I had a policeman with them most of the time.

Most of the time, not all the time? -- Well, all the time.

Didn't the policeman sometimes have occasion to leave their company even for a short while? -- No, I had a special man on duty and if he went off he was relieved.

But you were not always with them, so you don't know. You can only tell about your instructions? -- Those were my instructions.

I am asked to ask you to tell the Court, please, how far it is from "G" to "H" - Have you got the map in front of you Mr. Castle? How far is it from "G" to "H", more or less? -- 300 paces.

About 300 paces. And from "H" to "I"? -- Approximately 100, or slightly less.

/HIS LORDSHIP

HIS LORDSHIP: Is "H", in height, above "I" - I mean are they both level, on the same level, or is there one ...? --

It is undulating ground at that spot, m'lord.

Yes, but is "I" lower than "H"? -- About the same level - it is on the rise more or less.

Does the ground fall away the other side of "H"? On the top side? -- "H" is more or less, on the rise.

Thank you.

TEA ADJOURNMENT.

ON RESUMING:

THE CROWN CALLS:

MALINEO RAMATEKOA, Sworn states,

EXAMINED BY MR. DAVIDSON:

Malineo, do you know Fusi, No. 8 accused? -- Yes.

Did you take your daughter to Fusi for treatment?

-- Yes.

When was that? -- It was in March.

Do you remember the date in March? -- It was on a Thursday.

Do you remember the date? -- It was on the fourth day of the month.

Thursday, the fourth of March. Now, what was the weather like that day, do you remember? -- It was raining.

Where did you sleep that night? -- I slept in the same hut as Mathabo and her husband Mothibeli and also Mantoa and my daughter Lineo.

Anyone else in the hut that night? -- Myself and Doctor Fusi.

Did anything happen during the night? -- Fusi went out that night - at dusk.

/Did he

Did he come back again? -- He returned, finding us already in bed.

Was he out for a short time or a long time? -- For a long time.

Were you asleep when he came back? -- Yes, but we were not fast asleep.

Did Fusi talk to you? -- When he arrived he asked for food, but we told him there was no food. Then he takes some peaches.

Did you notice whether Fusi was sick that night? -- No, he was not sick.

CROSS-EXAMINED BY MR. MAISELS:

How long were you at Fusi's? -- I arrived on that Thursday. I had brought my child ...

When did you leave? -- I was there for two weeks and when my child was better, I left.

What was the date? -- I don't remember.

Who told you it was Thursday, the fourth of March that you came there? -- I knew that when I left home.

When were you first asked to remember what night it was that these things happened? -- I was asked a long time afterwards, I don't remember when.

Months afterwards? -- Months afterwards.

Who asked you? -- I was sent for by the police to come to "TY" camp.

And they asked you whether you remembered the night of the fourth of March? -- Yes, I still remembered the date.

What was the name of last month? -- I don't know it.

I suppose you know that the date of today is the

/ninth of

ninth of November? -- I don't know.

Do you know this month? -- No, I don't know it.

As a matter of fact Fusi has got his own wife, hasn't he? -- Yes, he has his own wife.

Does he sleep in the same hut with her? -- No.

Does he come to see his patients every night before they go to sleep? -- When I arrived there, he was sleeping in there.

Sleeping in where? -- In that hut in which we slept.

I'm asking you whether Fusi comes to see his patients every night? -- Yes, he visits them if they are very sick.

He's a herbalist, is he not? -- Yes.

RE-EXAMINED BY MR. DAVIDSON:

Malineo do you know anything about the finding of a body in the donga near Fusi's house? -- No.

HIS LORDSHIP: While you were at Fusi's, was a body found during that fortnight? -- Yes.

Why did you say you did not know about a body being found? -- I heard while I was there, that a body had been found.

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

Do you know the particular days of the week by their names or by numbers? -- By the names of the days.

What day is today? -- Tuesday.

Why do you say it was March 4th? -- It was the day on which we arrived.

Was that the only night that Fusi slept in that hut ... did he sleep there that night? -- Yes, he slept in that hut that night.

/Did he

Did he sleep there other nights? -- Yes.

ASSESSOR MAKHEHLE:

Did Fusi go away after having laid down on his bed or did he go before he went to bed? -- He left at dusk before he had gone to bed while we were still sitting.

Were all the patients in that same hut? -- Some patients were in other huts.

It was possible, therefore, that he might have gone to see other patients when he left you? -- I don't know.

Is it possible that he might have gone to see other patients? -- I don't know, that is his own home.

THE CROWN CALLS:

MATHABO MOTHIBELI, Sworn states,

EXAMINED BY MR. DAVIDSON:

Mathabo, do you know No. 8 accused, Fusi? -- Yes.

Did you ever take your husband for treatment to Fusi? -- Yes.

When was that? -- During Autumn time.

Do you remember that month? -- It was the third month of the year.

That would be March. Do you remember the day of the week? -- No, I don't remember the day of the week.

Well, did you sleep in one of the huts at Fusi's? -- Yes.

And who else slept in the hut? -- My husband, Malineo Mafusi, and Mantoa.

How many days did you stay at Fusi's? -- I was there for a month.

Do you remember anything peculiar happening on any night when you were staying at Fusi's? -- Yes.

/Well, tell

Well, tell us about it ...? -- A dead body was found.

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

Now, did Fusi sleep in the same hut as you did at that time? -- Yes.

Did he stay in the hut all night that night? -- On Thursday he left the hut at dusk.

Did he come back again later? -- He came back at night while we were already in bed.

He'd been away some time? -- Yes.

And what did he say when he came back? -- He said he was hungry.

Did you give him any food? -- We told him to eat peaches.

Did he? -- Yes.

Was he sick that day? -- No.

You say on the Thursday he went out, was that before or after the Saturday when they found the body? -- Before.

How many days before? -- Two days.

CROSS-EXAMINED BY MR. MAISELS:

When were you first asked to remember this night? -- I don't remember.

Who asked you? -- The police.

Did they remind you that on the Saturday a body had been found? -- No.

When did the police ask you? Can you tell me what month it was? -- No, I don't know.

Was it many months after March? -- It was in the
/winter time

winter time.

What month is it now? -- I don't know.

What day is it now? -- Tuesday.

How is it you don't know what^{the}/month is? -- I don't know.

How many nights did you stay at Fusi's? -- I don't know, I was there for a month.

Did you stay in the same hut as Fusi the whole time? -- No.

How long did you stay in the hut with Fusi? -- Four days.

And was there a child called Lineo staying in the hut? -- Yes.

What nights did you sleep in the same hut with Fusi? -- Monday, Tuesday, Wednesday, Thursday.

What did he do on Monday night? -- That night my husband got a fright and I went for Fusi.

What did Fusi do that night? -- Well, he came in and

Wasn't he sleeping in the same hut? -- No, that was the first night that he came to sleep there.

Tuesday night? What did Fusi do? -- He slept in that hut.

Wednesday night? -- He slept in there.

Thursday night? -- He left the hut at dusk.

Did he come back to the hut? -- Yes.

Did he sleep in the hut? -- Yes.

Did he get up early next morning? -- No, he got up at the usual time.

HIS LORDSHIP: Do you remember the day that Maleneo arrived? -

How do you know that? -- Because it was raining and she was wet when she arrived. She was wet and she was ordered to go to the hut to warm herself.

That will do. Next?

THE CROWN CALLS:

PHETA MOSEHLE, Sworn states,

EXAMINED BY MR. DAVIDSON:

Pheta, do you live at Mamathe's? -- Yes.

Is your village near the village of Fusi, No. 8 accused? -- Yes.

Now, Pheta, would you look at that saddle down on the bench there, have you seen that before? -- Yes. .

Where did you see it? Explain the circumstances in which you saw it? -- I saw that saddle down below my village and the village of Fusi.

Did you find it by yourself? -- I didn't find it by myself.

Well how did you come to see it? -- Fusi called out to me. He said, "Come here brother-in-law".

Yes? -- When I came to him, he said, "My brother-in-law there is a saddle here which is a miracle". He said, "Look here, brother-in-law, they throw this saddle here so that they must think we are killing people with you."

Did he say anything else? -- He said, "Guard this saddle while I go to raise the alarm to the Chief".

Do you remember the day of the week it was when you were called by Fusi to the saddle? -- It was on a Friday.

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

How long did you guard the saddle? -- I guarded the saddle till the dusk.

Of the same day, was that? -- Yes.

/Whathappened

What happened then? -- Fusi did not return.

Bouman came.

And what happened when Bouman came? -- He said, "It is late, I have been ordered to come and see this saddle."

And did you leave the saddle there? -- He said we should continue to guard the saddle. He gave me two men, Tokotse and Nonyane to help guard the saddle.

Did you remain with the saddle? -- Yes, we guarded the saddle that night.

What happened the next morning? -- That morning while we were waiting for Fusi to arrive, we saw him appear on the hill.

What was he doing? -- We saw him standing there on the hill. In the end, he came down to us and told us that his mental patients had discovered a body in the donga.

Did he say anything else? -- He said, "You, brother-in-law, Pheta, should consider yourself and Nonyane".

What did he mean by that? -- I said, "What should I consider?" He said that this matter has happened between us both, most probably the Government may ask us about this. I said to him, "Do you think that I can stab myself with an assegai in the stomach?"

What does that mean? -- By that I mean, do you think I can murder a person and then place his body in front of my house. Can't I be arrested if I do a thing like that.

Did you see a sjambok and a saddlecloth in the same place? -- Yes.

Did you guard them with the saddle? -- Yes.

When you saw Fusi standing on the hill on the Saturday morning, was it early in the morning or late, or what time was it? -- It was early in the morning as the sun rose.

/Do you

Do you know what time the patients normally go down to wash in the stream? -- No, I don't know.

Did you point out the spots where you found the saddle and the sjambok and the saddlecloth, to Lieutenant Castle? -- Yes.

M'lord that is point "M" on plan 1. Pheta, can you tell me how far away approximately was the sjambok from the saddle when you found them on the veld? -- About 2 paces.

6 feet, m'lord. And whereabouts in relation to the saddle was the saddlecloth found? -- Near the policeman stand-in the door.

25 feet, m'lord.

CROSS-EXAMINED BY MR. MAISELS:

Finding a saddle and a saddlecloth in a place like that would be very unusual, wouldn't it? -- Yes.

It would be a very proper thing to report such an occurrence to the Chief? -- Yes.

Because one would naturally expect that some harm had come to the person who was the owner of that saddle? -- I don't know.

Well, wouldn't you if you found the saddle and the sjambok and the saddlecloth lying there, wouldn't you think that something had gone wrong somewhere? -- Yes, I would suspect.

And you would report it to the Chief? -- Yes.

Yes, and that was what was done in this case? -- Yes.

The matter was reported to the Chief and the Chief sent two messengers? -- I know Bouman.

Bouman. Wasn't he the Chief's messenger? -- Yes, it was.

/And that

And that messenger was Chief Gabashane's messenger? -- Yes.

And those things were guarded. What time in the afternoon were those things found? -- In the afternoon.

Yes, but what time was your attention drawn to them? -- In the afternoon.

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

Did you think it a proper thing to draw his attention to them? -- Yes, it was a proper thing.

MR. DAVIDSON: That was Chief Gabashane to whom the matter was reported?

MR. MAISELS: Yes.

HIS LORDSHIP: Did you examine that saddle to see if anything had happened to it? -- No, I did not examine it before the Government people arrived.

Did you look at it? -- I looked at it from a distance.

Did you look to see if it was wet? -- Yes, it was wet.

The saddlecloth? -- It was wet also.

COURT ADJOURNED.