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36, 1949

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IN THE HIGH COURT OF BASUTOLAND.

8 - 1949
UNIVERSITY OF LONDON

3 APR 1951

INSTITUTE OF ADVANCED
LEGAL STUDIES

CRIMINAL SESSIONS

2nd NOVEMBER 1948.

BEFORE:

Mr. Acting Justice Sutton.

ASSESSORS:

J. Elliot.
F. I. Parnell.

AFRICAN ASSESSORS:

George D. Makhehle.
Moramang Jonathan.

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

VOLUME: 7.

Reported by:
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31191

E I G H T H D A Y.

WEDNESDAY, 10th NOVEMBER 1948

THE CROWN CALLS:

MAMASELA THOTHE, Sworn states,

EXAMINED BY MR. DAVIDSON:

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Mamasela, do you know No. 8 accused, Fusi? -- Yes,
I know him.

Did you go to his place for treatment? -- Yes.

While you were there, did you see a saddle, a
handkerchief, a saddlecloth and a sjambok lying on the veld?
-- Yes.

Would you look at these exhibits on the bench here
and see if you can see them? These exhibits, the saddle,
the sjambok, the saddlecloth, the handkerchief. No.5. the
saddle, exhibit 7. the sjambok, the saddlecloth exhibit 8,
and the handkerchief exhibit 10. -- These are the things.

Did you tell Fusi about it? -- Yes.

HIS LORDSHIP: Did you leave the things as they were? -- Yes.

CROSS-EXAMINED BY MR. GROBELAAR:

When you saw the saddle, was it neatly placed on the
ground according to the way in which a person puts a saddle
down who deliberately unsaddles a horse, or did you find it
in such a way as to indicate that it had just fallen? -- The
saddle had the inside upwards.

In other words was it lying with the part of the
saddle on which one usually sits on the ground? Just tell
the Court how it was lying? -- (Witness indicates.)

And the saddle-cloth - where was the saddle-cloth? --
They were in a line on the path.

Just within a small distance of the saddle? -- Yes.

And the sjambok also lying close? -- The sjambok
was also on the path. They were in a line.

/Do you

Do you know the place where the body was alleged to have been found? -- No, I was not there.

Do you know the donga not far from the place where the saddle was found? -- No, I don't know the donga.

MR. MAISELS: No questions, n'lord.

HIS LORDSHIP: What time of the day was this? -- It was in the afternoon, on Friday

Is that an open place? -- Yes, it is an open place.

Do people often pass there? -- Yes.

Did you point out this place where you found these things, to a policeman? -- No.

MR. THOMPSON: This place was pointed out by Pheta, M'lord.

.....oOo.....

THE CROWN CALLS:

TROOPER HAMILTON: Sworn States,

EXAMINED BY MR. THOMPSON:

Trooper Hamilton you are a Trooper of the Basutoland Mounted Police stationed at Teyayeyaneng? -- Yes.

And on Saturday March 6th of this year you went to Mamathe's to investigate a report about a body having been found? -- Yes.

When you got to Mamathe's did you go and see Chief Gabashane? -- Yes.

And from there, were you taken to the spot where the body was? -- Yes.

Who took you to the spot? -- Fusi.

No. 8 accused? -- Yes.

Did you point out that spot to Mr. Castle a while ago when he went there to prepare a Plan? -- Yes.

And did you point out the spot again to His

/Lordship last

Lordship last Friday afternoon when the Court held an inspection? -- Yes.

Now I want you to describe all the details you can remember. How the body was lying? -- The body was lying on it's right side. Almost the whole of the right side was " in the mud" and I examined the body to see if there were no injuries on the body.

Just a moment please Trooper. The body was lying on it's right side. What was the position of the right arm? -- It was a little stretched forward.

I think you'd better demonstrate. I want you to lie down on these benches precisely, so far as you can remember, in the position in which you saw the body lying. (Witness demonstrates.)

The body was lying on it's right hip and right side and right elbow right thigh and hip and right elbow, with the right arm stretched at practically right angles with the right hand supporting the head. The head facing towards the left shoulder. The left arm... the lower portion of the left arm from the elbow to the hand lying on the ground in front of the face..... lying on the ground stretched out in front of the face. The legs were stretched out not quite taut. In this position, the mouth or nostrils would not be in water or mud m'lord, unless the water was three or four inches deep.

MR. GROBELAAR: You said the mouth and nostrils would not be in water unless the water was three to four inches deep.

Do you mind adding this: "that is if the surface of the ground upon which the body was lying was absolutely level". Would you add that please.

MR. THOMPSON: Yes. Did you examine the deceased was
/the body

the body clothed or naked? -- It was clothed. The blanket had fallen in front of the head.

How many blankets? -- Two blankets.

Have a look at these two blankets before the Court - Exhibits 2 and 4 - please. -- Those are the blankets.

How were those blankets on the body? -- They were still pinned on the neck but they had fallen in front of the head.

Does this look like the pin that you saw? -- Yes.

The two blankets were still pinned round the body but they had fallen over the head. Any other clothing on the body? -- The trousers were still on.

Trousers, Exhibit 1. Are those the trousers? -- Yes.

The trousers held up by the belt, Exhibit 9.? -- Yes, hold by the belt - that belt.

And the feet? -- There was no other boot.

What do you mean, "there was no other boot"? -- When I examined the body there was no boot on the left foot. I found only one boot.

When you examined the body there was no boot on the left foot, but there was a boot on the right foot, is that what you mean? -- Yes.

Have I got it the right way round? -- Yes.

Now you examined the body for injuries? What injuries, if any, did you find? -- When I looked, I saw there was an injury on the mouth.

Which side of the mouth? -- On the left side of the mouth.

On the upper lip or the lower lip? -- Both the lips.

The upper and lower lips. Did you move the body? --

/Yes.

Yes.

What did you notice when you moved the body? --
As I moved the body I saw crabs.

Whereabouts were the crabs? -- I saw the crabs
where the body had been lying.

Yes, but near what part of the body? -- The
shoulder on the right side.

How many crabs did you notice? -- There were
about four.

What size? Big ones or small ones? -- Small ones.
(Witness indicates with his hand - about the size of a half-
crown piece.)

That same day did you take possession of the
exhibits - saddle, exhibit 5; sjambok exhibit 7; saddlecloth,
exhibit 8; handkerchief, exhibit 10; which were pointed out
to you by Fusi? -- Yes.

Where was the handkerchief pointed out to you? --
In the same vicinity as the saddle and saddlecloth.

Now, you say the body had a boot on only one foot.
How does it come about that the second boot is here? -- The
second boot was found by Fusi's wife on Sunday.

Did you go back to Teyateyaneng on the Saturday?
Did you remain out there on the Saturday night? -- Yes.

Were you there on the Sunday? -- Yes.

Were you present when the boot was found? -- As
soon as she saw the boot, as I was in her house, she reported
it to me.

Fusi's wife made a report to you as a result of
which you went and found a boot? -- Yes.

Which appeared to be the missing boot? -- Yes.

Was it still lying out on the veld when you saw
it? -- Yes.

/And did

And did you point out to Mr. Castle, the spot where you saw it, from where you took possession of it? -- Yes.

Where does that hat come from? -- The hat^{was}/with the boot.

Hat, exhibit 6, was with the boot. On the Sunday did you make an inspection for spoor in the vicinity? -- Yes, I made an inspection for the spoor.

Did you do that on the Saturday or the Sunday? -- On Sunday.

At the place where the body had been found the previous day, did you find any spoor there? -- Yes.

What sort of spoor? -- I found some spoor there. There was some long thatching grass.

Was that spoor at the bottom of the donga..... of the bed of the dongaor on top on the banks? -- Inside the banks.

Do you mean on the bed of the donga? -- Yes.

How do you know that that spoor had not been made by the party that carried away the body the previous day? -- I knew this because the people who went there with me did not get to that place at all, according to my instructions.

I want to be quite sure about this Trooper. The spoor was in the bed of the donga and not on top. Because if it was in the bed we needn't worry about it. --- Yes.

Down near where you were standing the other day when you showed His Lordship where the body was found? -- No, not on that side of the donga - on the right side.

On the other side of the island? -- Yes. On the Southern side of the island.

Do you remember that island was pointed out the other day? -- Yes.

/Is it

It is precipitous on the side at the foot of which the body was found? -- Yes.

It has a fairly steep slope down the other side? -- Yes.

Where did you see the spoor in relation to the slope that you can walk up? -- On the side on which one can walk up on to the high

There was spoor there of what? -- No.

Spoor of what? -- It appeared as if it was spoor of people.

And you are sure that your carrying party had not moved up that side of the island the previous day? -- No.

Have you examined the spoor carefully? -- Yes.

Did you form an opinion as to whether it was the spoor of booted feet or bare feet? -- Unfortunately there had been much rain that day and there were no footprints. The grass had been disturbed.

You mean the grass had been trodden down? -- Yes.

And that's all that you saw near where the body was found? -- Yes.

Were there marks up on the top? -- No.

Was there grass on the top? -- No.

HIS LORDSHIP: What is the nature of the ground on the top, is it rock or sand? -- There's no rock there.

MR. THOMPSON: There's no rock there. Black clay soil we saw round most of the donga on Friday, was it? -- Yes.

You say it had been raining on the Saturday you were there, was there much water on the bottom of the donga? --

There was not much rain on Saturday. The previous days there had been much rain.

/Previous days?

Previous days? -- Yes.

During that week? -- Yes.

Did you observe much water in the bottom of the donga? -- No.

Can you give us any idea how much there was? -- When I raised the body there was much water underneath it. It appeared to me as if when the body rested there, there was not much water. The water collected there afterwards.

The body formed a sort of a dam causing the water to collect? -- Yes. That is what appeared to me to be the case.

Now is that all that you observed near the body? -- Yes.

Did you observe any marks or spoor or anything of that nature anywhere else? -- Yes.

Where? -- On the Main road.

Near Fusi's? -- Yes.

What did you see on the Main road? -- There were tracks to show that there was a motor car standing there some days ago.

How did you know it was a motor car and not a lorry? -- The motor car tracks can always be distinguished from the tracks of a lorry, particularly when it had been raining.

These tracks which you were sure were motor car tracks, what course did they pursue? -- The tracks I saw showed that the car turned round and came back this way.

From the direction of where? -- The tracks came from this direction.

Which direction - give us the name of the village? -- They came from the direction of Mamathe's and there
/were signs

were signs that it had turned round and had gone back in the direction of Mamathe's? -- Yes.

What made you think that these were not - you saw them for the first time on Sunday did you not? -- Yes.

What made you think these were not fresh tracks? --

When I looked at the spoor it was not fresh spoor.

Why did you come to that conclusion? --- When I saw the spoor, I didn't attach any importance to it at the time, but on further investigation I had further information...

We're not interested in your information you saw the spoor on Sunday morning. Did it appear to be fresh , spoor made that Sunday morning? So far as you remember? -- No.

Why not? -- I observed that it was not fresh spoor that had been made that morning, because the tracks were dry.

The tracks were dry? -- Yes.

What do you mean by the "tracks were dry"? -- It showed that the car had travelled there while it had been raining.

Do you mean that it showed that the car had been standing somewhere and it had been raining all round and where the car had been standing it was dry? Is that what you mean? -- (No reply.)

HIS LORDSHIP: You must not put a leading question - it's rather suggestive of lots of things.

MR. THOMPSON: What was the nature of the road surface there?-- There was ash that may have been thrown there by a road party.

Were these tracks of a motorcar, tracks in dry soil or in soil that had been wet? -- It was on earth which

/showed it

showed it had been wet.

You told us it was not raining on the Saturday.
Was it raining on the Sunday? -- No.

The tracks must have been made while the soil was wet. Can you tell us approximately whereabouts these tracks were where the car turned round and went back? Before you answer, I want to get some point in the vicinity we can start from. Were you present with Mr. Castle when Mapeshoane pointed out the spot where he alleged the deceased was pulled off his horse? -- Yes.

That is spot "J" on the plan m'lord. Now, I'm only taking spot "J" as a jumping off place. Do you remember in your mind, now, whereabouts that spot was? -- Yes.

I want you to tell His Lordship, first of all, in what direction from that spot, did you see the turning point of the car? -- Before coming to the spot where Mapeshoane stated the deceased had been pulled off his horse.

Before you arrive at "J", that is, coming from Mamathe's? -- Before coming to that spot, there is a place where the water collects after the rain. That is why it showed the motor car that had been there, there was water when the motor car stood there and when the water dried it showed the spoor of the motor car.

Let's get to the point. Remember spot "J" - that is the spot Mapeshoane pointed out as where the deceased was taken from his horse? That was, we all know, in the road. Now, from that spot there are four possible directions, towards Fusi's, towards Mamathe's, on the right hand side coming from Mamathe's and on the left hand side of the road coming from Mamathe's. From "J" Fusi's is in one direction, Mamathe's in another, the right hand side of the road is one side and the left hand side of the road is the
/other side.

other side? -- On the road coming from Mamathe's, on the right hand side of the road.

What was on the right hand side of the road? -- That is where I saw the tracks.

You saw the tracks on the right hand side of the road, coming from Mamathe's. How far from point "J" as pointed out by the witness? -- From where I stand to the gate outside.

20 yards M'lord. From the witness box to the gate which is 20 yards. That is from point "J", pointed out by Mapeshoane to the point on the right hand side of the road where the Trooper found the signs of a motor car having turned.

HIS LORDSHIP: Before you get to "J", or after you got to "J".?

MR. THOMPSON: He says, M'lord, coming from Mamathe's, 20 yards before you get to "J".

Was the turning point on the surface of the road or off the surface of the road? -- Off the road.

Very far off the road? -- Not far off the road.

For Your Lordship's information I may say the spot pointed out by Mapeshoane is spot "T", where the car was parked.

CROSS-EXAMINED BY MR. MAISELS:

Did you point out the spot to Mr. Castle where the car was supposed to have stood? -- Yes, I pointed it out to him.

If Mr. Castle says you didn't? When did you point it out to him? -- When he went out there to make a plan.

Oh, I see, in August? -- I think so.

With Mapeshoane? -- Yes.

/You heard

You heard Mapeshoane say that the motor car was standing there? -- I say so.

You heard him say so too, didn't you? -- No, I did not.

Weren't you there when Mapeshoane was pointing out spots to Mr. Castle? -- I was present.

Were you there when he pointed out the spot where the motor car was supposed to have stood? -- Yes, I was there.

Then you heard Mapeshoane say that this was the spot where the motor car stood? -- Yes, I heard.

And then you told Mr. Castle the same thing? -- Not on that day.

On what day? -- I don't remember what day it was when I told him.

It was after Mapeshoane had told him? -- When I told the Police Officer, Mapeshoane had not yet been arrested.

You told us earlier Constable, that you pointed out the spot/to Mr. Castle when he went to make the plan. -- I pointed out I told him about it before he went out there.

When did you tell him about it? -- I don't remember what day it was when I told him.

Did you tell him that you'd seen marks which indicated that a car had stood still there? -- I told him that there were signs that a motor car had turned round there.

Not stood still? -- No.

When did you first show him the spot where the car was supposed to have turned round? -- On the day on which he made the plan.

That was after you had given evidence at the Preparatory Examination? -- Yes.

And that was the day when Mapeshoane was there? --

/Yes.

Yes.

And did ~~two~~ of you point out the spots together?

-- Yes.

Exactly the same spot? Yes.

Who pointed/^{it}out first? -- I pointed it out first.

And then Mapeshoane? -- Yes.

And Mapeshoane saw you pointing it out? -- Yes.

And then he pointed it out? -- Yes.

You saw these tracks, did you? -- Yes.

How far did they go? -- I saw that the car turned there and went in the other direction.

I know all about that. I want to know from what part you started and from what point you stopped looking for spoors. -- I saw the spoor which is very close to the main road, I saw it whilst standing in the middle of the road.

How far did you follow it? -- I did not follow it.

Did you see whether the motor car had come from Mamathe's and had turned round ...? -- I thought so when I saw that the car had turned.

Could you see whether the car had come from Fusi's and turned round, or had it come from Mamathe's and turned round? -- No, the car came from Mamathe's.

Now tell me how you know that? First of all, before you tell me that, tell me what was the length of the spoors that you saw? -- Not very long - as far as the people immediately behind me.

7 yards. Now tell me, how were the spoors. Straight? -- It was not straight.

Well, show me, were they spoors of four tyres or two tyres or one tyre? -- I don't understand the question.

Well, how many tyres has a motorcar got? -- Four.

Well, how many tyre marks did you see? Four?
/Two or

Two or One? Or Eight? -- The motorcar has four tyres.

Well how many spoors did you see? -- I saw the spoor of one motor car.

How many tyre marks did you see? -- Of one motor car.

How many spoors has one motor car got? -- One spoor.

Did you see one line, two lines, three lines or four lines of motor car tyres? -- I say that there was one, because if there were two there would have been two motor cars.

You saw one tyre mark, therefore there was one motor car? -- (No reply.)

HIS LORDSHIP: He didn't say that.

MR. MAISELS: Well, M'lord, I don't know how to get it out of him. I put it as clearly as I could.

HIS LORDSHIP: Well, what you want to ask him is how many wheel marks.

MR. MAISELS: I've put that to him already, M'lord, I said how many lines. I'll put it again. How many wheel marks did you see? -- I saw a sign indicating that a motor car had travelled there.

How many wheels has a motorcar got? -- I have explained that a motorcar has four wheels.

How many tyres has it got? -- There are four tyres.

Did you see the marks of four tyres or four wheels, or one tyre, or two tyres, or three tyres? -- I can't answer that question because a motor car has four tyres - no motor car can travel on one tyre.

HIS LORDSHIP: Did you really go and examine those wheel marks at all? Because you said that you didn't realise there was any significance attached to it. Did you really go - how far off were you? -- I came right up to where the wheel marks were.

/Mr. MAISELS:

MR. MAISELS: Well, then, how many wheel marks did you see? --
I saw that one motorcar had been there.

And how many days old did those marks appear to be? -
I estimated that the car had been there either three or two
days previously.

Tell me, are you an expert on motor ^{tyre} car/tracks?-- I
am not an expert but I can see.

You can see the age of tyre tracks? -- Yes, I can
see by estimating as to when the car travelled either that
day, or yesterday, or the day before.
Or four days before? -- Yes.

Or a week before? -- That was only according to my
observations.

But you are the kind of person who can tell the
difference between track marks of three days old and seven days
old? -- It is easy for me to do it.

And between two days and four days? -- Yes, I can
distinguish.

And between three days and four days? -- Yes, I can
distinguish.

And between three days and two days? -- That is
easy to distinguish.

What was the difficulty in this case, you can tell
me almost exactly how old the tracks were? -- (Interpreter.)
He wants the question repeated.

Well, how many days old exactly were those tracks,
seeing you're the expert who can tell the difference between
tracks two and three days old? -- I said about two to three days
previously according to my estimate.

You are not prepared to be more definite than that? --
No.

/Well now,

Well now, tell me, did you follow the tracks along the road? -- No.

Neither Fusi's way, nor Mamathe's way? -- No.

What did you mean by this evidence that you gave before the District Commissioner; "the tracks seemed to come from the place of Accused No.2, and when the tracks came near the place of No.8. accused, they turned and seemed to go back to where the car had come from"? -- I still say so, even today

Now tell me, Hamilton, what time on Sunday did you see this? --I can't say what time it was.

Morning or afternoon? -- In the morning.

You removed the body on the Saturday, did you? --
Yes. And did you have a number of people helping you?--
Yes.

And I suppose there were a number of curious sight-seers? -- Yes.

People walking all over the place? -- Yes.

CROSS-EXAMINED BY MR. GROBELAAR:

Where were you on Thursday the fourth of March and the next Friday ..let's take you back to Wednesday, where were you on Wednesday, the third of March and Thursday, the fourth of March and Friday ..? -- I was at Teyayeyeneng.

Did it rain on the Wednesday? -- No.

On the Thursday? -- Yes, very much.

Hard? -- Not very sharp rain but it was

Did it rain practically all day on Thursday? -- It rained on the evening of Thursday.

Did it rain all night? -- No, not all night.

But it rained that evening a lot? -- Yes.

/You couldn't

You couldn't say whether it was an inch of rain, or more than an inch? You wouldn't know? -- No, I don't know.

Did it rain on Friday? -- It rained in the morning on Friday.

Much? -- Not much.

Friday evening? -- I think it did not rain.

You couldn't say if the same amount of rain fell at Mamathe's as it did at Teyateyanong? -- No, I can't say.

On the Saturday, could you tell us how deep..... to what depth the ground was wet near Fusi's place? Was it wet for four or five inches or to a deeper extent? -- I can't estimate that. According to my observations, as much rain had fallen there as at Teyateyanong.

I expect sufficient rain had fallen to enable one to plough with ease in that area? -- Yes.

So you consider the ground was wet very deep? -- Yes.

Now, you know that cattle and sheep, horses and goats graze on the banks of the donga practically daily, where the body was found? -- I don't know, that is not my home.

When you were there, did you see cattle and horses grazing about in that area? -- Not one.

On the day when this Court had it's inspection, did you see cattle and horses grazing in the vicinity of the donga? -- No, I didn't see.

Now, you didn't see any animals at all near that donga on the day the Court held it's inspection? -- I don't remember seeing even a horse or not even a cat.

Now, you didn't see any animal there? -- I saw the horse that was loaned to His Lordship.

There is nothing to prevent animals such as horses
/or goats

or goats entering the donga where you found the body of the deceased? -- Animals cannot reach that spot and couldn't go down that donga.

Why not? -- At that time when I found the body of the deceased, the animals did not graze at that spot. That is why I say that no animals could reach that spot, at that time.

I know you said the same about the day when the Court went out there, do you also say there was not a period of time when cattle would ordinarily graze in the vicinity of the donga? -- Yes, it was at a time when that was a reserve pasture.

You say even at the time when this inspection was on, it was a reserve pasture? -- No, not now.

How do you know it was a reserve pasture? -- I saw much grass when I went out to see the body, and that ordinarily, in Basutoland, is an area of spare veld.

Is that the only reason why you say that that grazing was being spared at the time. Namely, the fact that the grass was green and there was a lot of it? -- (No reply.)

Is it so that the only reason why you say that the grazing was not being used at the time is because you saw plenty of grass there when you held your inspection on the sixth of March? -- Yes, I say so.

Did you notice any footpaths in the vicinity of that donga when you held that inspection? -- No, I did not notice any paths.

HIS LORDSHIP: Which side, the side we held the inspection?

MR. GROBELAAR: You didn't see any footpaths on any side? --

A small path which branches off from the main path coming in the direction of where the body was but not up to within reach of that spot.

/You say

You say you noticed one path which branched off from the main road and then came in the direction of the donga for a certain distance, is that what you say? -- You are wrong when you say the main road, Sir, I mean the main path. And before it reaches the donga it branches off.

What is the nearest point .. how far does it branch off from the donga? -- (Interpreter) He asks what do you mean,

100 yards or less? -- I don't know what 100 yards is.

What is the nearest point that approaches the donga. How far from the donga does it branch off? Can you point it out? -- The end of the path from where he stands to the main road .. that is where the path ends.

And how near does that path come to the donga? -- From here where I stand to the place outside.

30 yards. Did you see a cattle kraal very near to the donga on the day you inspected? -- There is no cattle kraal there.

Did you see huts on the left of the donga on the day when we inspected? -- Yes.

Oh, you saw those huts. And didn't you see a cattle kraal near those huts? -- No.

Well, I put it to you there is a very large kraal which is there for everyone to see, and it's between those huts and the donga. -- Yes, you may have seen it, but I didn't go there to inspect the kraal, I went there to see the body.

So you don't even know if, on the day you inspected the scene, there were not animals in that kraal? -- No.

/HIS LORDSHIP:

HIS LORDSHIP: Did you examine the blankets? -- Yes.

At the time you found the body, which blanket was inside the other? Just take it and show it to us. -- That was the one inside (witness indicates.)

Did you examine it carefully? -- Yes, I examined it carefully.

Was it wet? -- It was wet and muddy.

Well, I suppose we ought to see the mud on it still, oughtn't we? -- Yes.

Well now, what did you examine it for? -- I examined it for blood.

What did you find? -- I did not find any blood stains. Did you do that carefully? -- Yes.

You examined both blankets? -- Yes.

Did you examine it carefully where it was pinned on to the body? -- No, I unpinned the blankets and examined them.

Did you examine the whole of the blankets? -- Yes.

Did you take the body into "Ty",? -- Yes.

With the blankets? -- Yes.

And the trousers? -- Yes.

The boot? -- Yes.

Both boots? -- No, one boot. The other boot was carried by me.

Well, we've got it from the Doctor that the blankets were not handed over to him. -- That may be so, because when the Post Mortem was held, I was not at "TY", I remained at the scene of the murder, and I just sent him the body, but I sent him the blankets at the same time as the body.

Did you take the body in yourself? -- No.

/ASSESSOR MAKHEHLE:

ASSESSOR MAKHEHLE:

Some witnessos state that when the deceased's lips were cut he was lying on his back, so that if perhaps the blood trickled from the wound, it would have got on to the back side of his head. Did you examine the back of the head? -- Yes, I did. There was hair on the head, it had not been shaved.

There was no blood at the back of the head? -- In the hair there was no blood.

HIS LORDSHIP: Anything arising out of this?

MR. MAISELS: Would Your Lordship ascertain how the body was taken to Teyateyaneng by a motorcar or lorry?

HIS LORDSHIP: How was the body taken to Teyayeyneng? -- By small scotch-cart, two wheels.

TEA ADJOURNMENT.

ON RESUMING:

MR. THOMPSON: M'lord, the shorthand-writer has prepared a record of the points that mattered in the inspection on Friday afternoon last which I understand has been submitted to Your Lordship and approved and has been submitted to Counsel and approved, subject, I think, to one remark which my learned friend Mr. Grobelaar, wants to make and I suggest I hand this form in to form part of the record, M'lord, and my learned friend Mr. Grobelaar, can say what he wants to say and it can be taken down and put on the record.

MR. GROBELAAR: Perhaps that can be done later.

HIS LORDSHIP: Vey well.

MR. THOMPSON: That is the case for the Crown, M'lord.

CASE FOR THE CROWN.

MR. GROBELAAR:

MR. GROBELAAR: I call Titimus - he was Accused No. 12, M'lord.

MR. THOMPSON: I should like to know, M'lord, just as a matter of convenience, is my learned friend Mr. Grobelaar going to call his clients first and close his case, or ...?

MR. GROBELAAR: Yes, that is our intention. I will call my clients if I may, and then my learned friend will call his.

HIS LORDSHIP: Yes.

THE DEFENCE CALLS:

TITIMUS RAMASHAMOLE, Sworn States,

EXAMINED BY MR. GROBELAAR:

Titimus, you were the accused No. 12 in the present case and you were discharged a few days ago? -- Yes.

Are you a Councillor and Advisor of Chief Bereng? Accused No. 1. in this case? -- Yes.

And you live in his area at Phamong? -- Yes.

Now do you know whether at the beginning of this year you accompanied him to any place? -- To what place? He is my Chief, I always travel with him.

Now, do you know whether at the beginning of this year you went with him to Matsieng? -- I was with him at Matsieng.

Do you know what month of the year this was? -- I think it was in February.

Who was in the Chief's party when you went to Matsieng at the beginning of this year about February? -- Chief Bereng, Chief Ntoane. Mojautu came later.

Accused No. 3. -- Then myself.

And at Matsieng, who did the Chief see there? -- What does that mean?

Do you know if he had an interview with anyone, or do you know the object of his visit there? -- He had

/been called

been called there by the Paramount Chief.

Then did he stay at Matsieng for some time? -- He was at Matsieng for some days. I forget how many days.

From Matsieng, where did your party proceed? -- The Chief came down to Maseru, and even there he stayed a few days which I cannot remember.

And then from Maseru, where did he proceed? -- He left Maseru to go to Chief Gabashane's.

Were all of you still together, those names you have mentioned, or did he have different attendants when he went to Chief Gabashane's? -- There were three of these people and he was the fourth. The three that I have already mentioned.

Do you know how long the Chief stayed at Chief Gabashane's - that was at Mamathe's village? -- I think he stayed two weeks and two days.

While he was at Mamathe's, do you know if he went to any town in the Free State? -- Yes.

Did you go with him? -- Yes, I went with him.

And what town was it? -- Ficksburg.

Do you know what he did there? -- He had gone there to buy clothes for children.

Did you see him buy clothes for the children? -- On that occasion when I was with him, he merely found the clothes but did not buy them as the children were not with him.

You've heard the evidence of the Crown witnesses who testify that on a certain evening, they say the 3rd March, a meeting was held in the village of Mamathe's and at which you and Chief Bereng and Chief Gabashane were present and where a discussion was hold to the effect that a man should be killed. Now was such a meeting held? -- It is a sheer flat lie.

/Was such

Was such a meeting held at any time during your stay with Chief Bereng at Mamathe's? Were you present at any meeting where a conspiracy to kill anybody took place? -- There was never such a meeting.

Do you know how Chief Bereng spent his evenings at the time when he was staying at Mamathe's with Chief Gabashane? -- Yes, I ought to know, because I was present.

How did he spend his evenings? -- He stayed in the house in which he used to live. Sometimes, if he left that house, he went to Chief Gabashane's house to listen to the wireless.

And when he went to Chief Gabashane's, did you always accompany him or did you so times stay behind? -- I always went with him.

When he stayed in the quarters where he slept, did you leave him alone some of the evenings? Were you away from his company? -- I could only leave him perhaps if I was going to relieve nature, but I never left him for any length of time because I never go about.

You heard the evidence to the effect that on a certain Thursday, the Chief joined the other accused and certain Crown Witnesses, and that they went along and killed Meleke, now did the Chief have an opportunity of doing such a thing without your knowing it? -- If he had been away, I would have known.

Was the Chief ever away in the evening from the place where he was staying at the time, without your being present? -- No. He came there one evening, returning from Ficksburg after he had bought the clothes for the children, the children were then present.

That day, did you accompany him to Ficksburg,

/or not?

or not? -- No, I remained behind.

Did he come home late that evening, or early? -- Early in the evening he returned.

Was it a long time, or shortly after dusk that he came from Ficksburg that evening? -- I say he arrived back at dusk.

Now, when Chief Borong left Namathe's where did he go? -- He came down to Maseru.

From Maseru where did you go with him? -- From Maseru he went to Ladybrand to obtain more clothes for the children which he was not able to find at Ficksburg.

After that, did he proceed home again? -- Then he took his children to the school at Roma.

Do you know whether the Chief is a man who does a lot of walking? -- He can walk a short distance on foot but not a long distance.

Why doesn't he walk a long distance? -- He is sick. He suffers from gout.

Do you know whether he is a man who is likely to walk in the rain? -- No, I don't think he is likely to walk in the rain as he always said that he suffers from sore feet - from gout.

MR. MAISELS: I have no questions.

CROSS-EXAMINED BY MR. THOMPSON:

Tell us, you've heard this Chief's Ntoane's name mentioned throughout the case? -- Yes.

Is it a fact that he was one of No. 1's closest friends and Councillors? -- He was a subject of No. 1. accused and he was a Councillor.

Was he one of his closest friends? -- He was his subject and his advisor.

/Was he

Was he one of his closest friends? -- He was his subject and his advisor.

You've refused to answer the question three times, so we'll go on to something else. In fact Chief Ntoane has been associated with Chief Bereng ever since Chief Bereng was placed many years ago? -- Since that time he became his subject.

Since that time he became his subject. Chief Ntoane was an older man than Chief Bereng, somewhat, wasn't he? -- I don't know whether Chief Ntoane was an older man than Bereng. I think Chief Bereng was older than Chief Ntoane.

When a Chief is placed in Basutoland, it is very often customary for his father to give him a special Councillor to guide him in his early days and help him with his administrative difficulties? -- Yes, it is the custom.

And I put it to you that Chief Ntoane bore that relationship to Chief Bereng? -- No.

Who did? -- It was Sello Makeke.

What was the object of the visit of Chief Bereng and three of his followers to Chief Gabashane? -- He was going to Ficksburg to obtain clothes for his children and he called at Chief Gabashane's.

Why should he stay at chief Gabashane's a week or two? -- He waited for the children to arrive as they had not yet arrived.

When did the children arrive? -- The children arrived while the Chief was already there. I think it was during the second week. It was the end of the second week.

Was the whole purpose of the trip round the country just to buy children's clothes? -- Yes, that was how I knew about it. His intention was to buy clothes for

/the children

the children at Ficksburg.

And Ladybrand? -- I said Ficksburg. He came to Ladybrand when he could not obtain all the clothes at Ficksburg.

Why did he not take the children with him? That was the sole purpose of the trip, to buy clothes? -- He was called by the Paramount Chief at Matsieng. He had to call at Matsieng so the children had to remain behind.

What was the obstacle to him fetching his children or sending for his children when he left Matsieng? -- When he left Matsieng to come here?

When he left Matsieng to come to Maseru why could he not send for his children? -- He sent for his children on his arrival at Maseru.

At Maseru, did you say? -- On his arrival at Maseru he sent for the children.

That's the second arrival at Maseru on his return from No. 2's.? -- No, I don't remember.

Did he send for his children on his first arrival at Maseru on his way to No.2's, or on his second arrival at Maseru on his way back from No.2's.? - I said that I don't remember.

Now we're coming to the actual incidents. Is it correct that No.1 and his three followers, including yourself, were at No.2's on March 3rd and March 4th? -- I don't remember the days that we were there, but I have already said that we were at Chief Gabashane's.

During the first week of March of this year? -- I think it may be so, but I have said that I don't remember the dates.

How did the Chief's party get to No.2's, by motor-car? -- Yes.

/No.1's own

No.1's own Motorcar? -- No.

Whose motorcar? -- I don't remember whose car it was, whether it was a taxi, but I think it was a taxi, because I know his car was not with him.

Where was his car? -- His car was in the garage.

Where, in Maseru? -- No.

Where? -- Mohale's Hoek.

You mean his own garage where he keeps it, not a servicing garage? -- At the garage to be repaired.

How did you get from No.2's to Ficksburg and back?--
By motorcar.

Whose car? -- I don't know whose car it was.

I suggest to you that No.1 borrowed Gabashane's car? --
I don't know. That is perhaps what you know.

Do you know this man Mapeshoane? -- Yes.

How long have you known him? -- I knew him when the
Chief
Chief visited/Gabashane.

Was this the first occasion - in March this year--
you have met or seen Mapeshoane? -- When Chief Bereng was at
Gabashane's, it was the first time I knew Mapeshoane.

We are both talking, are we, about the visit when
Chief Bereng went to buy clothes for his children at Ficks-
burg and stayed at Gabashane's? -- You mean when you asked
me when I saw Mapeshoane?

I want to know if you first met Mapeshoane on this
visit you've been telling us about in March of this year to
Gabashane's? -- Yes, that was when I first met him.

Did you have very much to do with him on that
visit, with Mapeshoane, that is? -- No.

And there is no reason whatsoever why Mapeshoane
should have tried to involve you in a wicked conspiracy, is
/there?

there? -- He may because of lies.

Why should he lie about you, personally, forget all about the others? -- To try and give that lie as he has already lied by saying I am a person of Mamathe's.

It may interest you ^{to know,} Titimus, that I was the person who, by mistake, said you were a person of Mamathe's, not Mapeshoane. -- The reason why I say it is Mapeshoane who says I am a person of Mamathe's is because it is Mapeshoane who mentions my name, and not you.

You can give no motive whatsoever, however slight, for Mapeshoane trying to involve you in a wicked conspiracy to murder? -- I want to add, to show that he is liar, he says I am 38 years of age, he doesn't know when I was born. This therefore, shows that he tells lies.

That's the only reason that you can think of, of proving he is a liar? -- Yes.

When is Mapeshoane supposed to have said you were 38? -- I saw that on the charge sheet.

How long have you been associated with Chief Bereng? -- It is a long time, I don't remember how long.

A matter of, at any rate, years and not months? -- Yes, many years.

During the whole of that time, how many visits has Chief Bereng paid to Chief Gabashane? -- I don't quite remember.

Was this the first visit? -- I have said that I don't remember.

You must remember whether there was more than one visit. Was there more than one visit? -- I have said that I don't remember. I'm not the only follower of Chief Bereng, he has other people with whom he may go away.

This is the only visit of Bereng to Gabashane
/that you

that you can call to mind at the moment? -- This the only visit that I can remember.

You and your Chief, of course, live at Mohale's Hoek? -- Phamong.

That is in the Mohale's Hoek district, isn't it? -- Yes.

Towards the Southern portion of Basutoland? -- Yes.

And your nearest shopping centres in the Free State are Zastron and Wepener? -- Yes.

Can you suggest any reason why this shopping expedition did not go to either of those two towns? -- I think that can be explained by the buyer as to how his wishes were.

When you stayed this two weeks and two days at Gabashane's, what house did you live in at Gabashane's village? -- We lived in the outhouse of Chief Gabashane.

Do you know a house called "Khohlong"? -- No, I was not told that name.

Do you know the Chief Gabashane's own residence? -- I know the house in which Chief Bereng slept.

Do you know the house in which Chief Gabashane sleeps in his own village? -- Yes.

You don't know it's name? -- No.

Have you ever been inside that house? -- Yes.

At night time? -- In another room in the evening.

What do you mean "in another room"? -- Because that house has different rooms, and I went into the room where there was a wireless.

That was a different room from what? -- We went into the room where the wireless was.

Why did you use the expression, a few moments ago, that you "went into a different room" in the house? -- I meant that where the wireless was, that is where I entered.

/Why did

Why did you use the word "different"? -- We did not go into the room in which Chief Gabashane sleeps. We were in the room where there is a wireless.

You did not go into the room where Chief Gabashane sleeps but into the wireless room. How many times have you been in that room with the wireless? -- I don't remember how many times.

Finally, about the state of health of your Chief. Bereng. He has been in Hospital hasn't he? -- When?

During the last two or three years. -- Yes, he was sick and admitted to Hospital.

In fact, at one time, he very nearly died under an anaesthetic, didn't he? -- Well, I hear that from you, I don't know.

But I put it to you the ailment from which Chief Bereng went to Hospital and from which he's been suffering for many years is piles not gout. -- a different part of the anatomy altogether. -- I hear what you tell me.

Do you deny it? -- I know that Chief Bereng went to the Doctor suffering from gout.

Did you ever hear the name of the Doctor? -- If I remember rightly, it was the Mohale's Hoek Doctor, Doctor Jacobs.

NO RE-EXAMINATION.

HIS LORDSHIP: Why did you stay at home when Chief Bereng went to Ficksburg to shop? -- He was accompanied by the children so I did not go on that occasion.

Why? -- He was also accompanied by the person who had brought the children. The car was full.

No, but on the first occasion that he went to Ficksburg, he wasn't accompanied by his children. Did you

/go with

go with him on the first occasion? -- Yes.

And the second time? -- I was not with him, he was accompanied by the children.

Are you a loyal subject of Bereng's? -- Well I think I am but it is for my Chief to know if I am loyal or if I am not loyal.

It is the duty of a loyal subject to carry out his Chief's orders? -- Yes, if a person is given orders by his Chief, he must carry out the orders.

Whatever the order may be? -- No, you have to refuse if the order is bad.

ASSESSOR JONATHAN:

You say you stayed for two weeks and two days? -- Yes, I said that I estimated that we stayed for two weeks and two days.

As you lived there did you meet Chief Gabashane every day? -- Yes.

On the day on which Mapeshoane says you were present at the Chief's house, called "Khohlong" when he was sent out, is that true? -- I don't know the house, and I have already denied what Mapeshoane says, that there has never been such a meeting.

Is he not telling the truth when he says you were left in the house when they all went away? -- It is a lie.

ASSESSOR MAKHELE:

You said that you used to be with Chief Bereng when he went to listen to the wireless? -- I always went with him. There was no day that I remained behind.

I heard you say that you were waiting for the children, where did the children come from? -- They came
/from Phamong.

from Phamong.

How did they come? -- They came on the lorries.

Do you know on whose lorry the children came? -- No, I was not there, the person who accompanied the children may know on whose lorry.

Were they children who had been attending school or were they going to school for the first time? -- They are children who have been attending school, but it was the first time for them to come to the school at Roma.

Do you remember which car brought you down from Mamathe's to Maseru? -- No, I don't remember.

When you were there, at Mamathe's, did you ever see Chief Gabashane's motorcar? -- I don't quite remember because I don't know his car.

But you know that he has a motorcar? -- I have heard it said, but I don't know the car. I can't identify it.

You say that a loyal subject of a Chief carries out all the orders except bad ones only? -- Yes.

What are bad orders? -- Unlawful orders.

Like which order, and whoever refuses such an order? -- I didn't say that the Chief ever gave an order which was refused.

When you say that a person can carry out good orders and refuse bad orders, when were such orders ever given? -- I was replying to the question whether a loyal subject can carry out orders and I said all orders except unlawful orders.

When was such an unlawful order ever given? -- If the Chief gives me an order to go and steal, I refuse to carry out that order because it is unlawful.

/Do you

Do you know that, according to your own knowledge, Chief's do give orders to people to go and steal, and the people do steal? -- No, I don't say that Chief's give them orders. I don't know that the Chiefs give them such orders.

.....

THE DEFENCE CALLS:

BERENG GRIFFITH LEROTHOLI, Sworn States,

EXAMINED BY MR. GROBELAAR:

You are Chief Bereng Griffith Lerotholi? -- Yes.

And you are the accused No.1. in this case? -- Yes.

You are a son of the late Paramount Chief, Griffith Lerotholi? -- Yes.

Are you the senior representative of all the male sons of Moshesh? -- Yes.

And next to the Paramount Chieftainess, how would you describe your order of seniority as Chief? -- I am immediately after the Paramount Chief, succeeding the Paramount Chief.

Now, do you know when you left Phamong early this year in order to go to Matsieng? -- Yes.

What date was it? -- I think it was on the 15th of February.

With what object did you go to Masieng? -- I had been called there by the Chieftainess.

And did you go there in the company of your attendants, Chief Ntoane and your councillor, Titimus, and Mojautu, 3rd accused? -- I left home with Ntoane and Titimus. Mojautu followed later on.

And where did Mojautu meet you? -- At Matsieng.

And who conveyed you to Matsieng? -- Mr. Russ of Phamong conveyed me, driven by his son.

/AEuropean

A European trader. Now when did you have the plan, or intention, to come to Mamathe's? When did you make up your mind to come to Mamathe's? -- When I left Matsieng I came to Maseru and I sent a message back home to the effect that my boys should come down when I intended sending to school and I passed on to Mamathe's to wait there.

Which school were you sending your children to? -- To Roma.

Where is the school at Roma? -- Roma is towards the East.

Is it near Maseru? -- Yes, it is not very far from Maseru.

You couldn't say the number of miles? -- No.

Had your children ever been to this school at Roma? -- No.

Was that the first occasion that you sent them to Roma? -- Yes, that was the first occasion.

Do you remember when you passed through Maseru, on your trip from Matsieng, what date do you think that was? -- I think it was on the 19th.

Where did you go on the 19th? -- I came from Matsieng to Maseru.

When did you leave Maseru? -- I think it was on the 23rd.

Where did you go to on the 23rd? -- I was going to Mamathe's to Chief Gabashane's.

Now what was your relationship with Chief Ganashane, accused No. 2.? -- Gabashane is my junior brother as well as a friend of mine.

Did you go and stay with him then, on the 23rd of February? -- Yes.

/Accompanied by?

Accompanied by? -- Ntoane, Titimus and Mopheke, otherwise called Mojautu.

While you were at Chief Gabashane's, did you come into Maseru? -- Yes.

How did you get to Chief Gabashane's place from Maseru? -- I used Mr. Steven Pholo's taxi car.

Is it a private car or taxi? -- (Interpreter) He said a taxi car.

Thank you. And did you come into Maseru during your stay at Chief Gabashane's? -- Yes.

How long did you stay at Maseru? -- We returned the same day.

Do you know what day of the month it was? -- I think it was on the 26th.

Perhaps you might refresh your memory by looking at your Post Office Savings Bank Book. What reference do you find in your book? -- That shows the day on which I deposited money in Post Office on the 26th.

On the 26th you say you deposited money and you say that is the day on which you came to Maseru and left for Mamathe's again? -- Yes.

How long did you stay with Chief Gabashane on that visit? -- I estimate two weeks and a few days.

Do you know when your children arrived? -- Yes, I remember.

Well, do you know the date? -- It was about the 6th of March.

So your visit at Chief Gabashane's lasted from about the 23rd of February till after the 6th March? -- Yes.

Do you know whether your children accompanied you
/to any

to any town in the Free State during that visit? -- Yes.

Which town was it and when did you go there? -- The town was Ficksburg and I went there on the 8th and on the 9th.

9th of March? -- Yes.

You can refresh your memory from sales slips.

Now you've got in your hands some sales slips, what do they show? -- These are the same slips which were handed to me after I purchased the goods.

You've looked at those sales slips and you say you see the date the 8th of March, 1948, and the 9th of March, 1948.? -- Yes.

And where did you get those sales slips? -- I obtained them from the shops where I purchased goods.

Was it on the dates indicated on those slips? -- Yes.

And what did you buy at Ficksburg on those two dates? -- Goods, trousers, overcoat, shirt and so on.

And these are all articles required for your two sons? -- Yes.

Do you know when you left Mamathe's? -- Yes.

What date was it? -- On the 10th March.

Where did you go? -- I came to Maseru.

Did you go to Mamathe's again after having come to Maseru? -- No.

You heard the Crown evidence to the effect that you were engaged in a conspiracy which formed on the 3rd of March at Mamathe's with the persons mentioned and that you conspired to kill the deceased, Moleke. What do you say about that? -- It is all a lie, that is, a fabrication.

You also heard the evidence to the effect that on

/Thursday, 4th

Thursday, 4th March, you accompanied the Crown witnesses and the other accused and that you killed Meleke, ordered his lips to be cut and took his lips, what do you say about that? -- It is not true - there is no truth in that.

Did you leave the village of Mamathe's where you stayed, during any evening of your stay there between the 23rd of February and the 10th of March? -- Not once.

You deny that you killed Meleke or counselled anyone to kill him? -- I never thought of doing such a thing.

Do you remember in whose car you went to Ficksburg?-- Yes.

Whose car was it? -- I took the car of Mr. Pholo.

Was the car of Chief Gabashane available on the dates when you went to Ficksburg? -- No.

If the car of Chief Gabashane was there at the time, what would you have done? How would you have got to Ficksburg?-- I would have used his car and left alone the taxi of Pholo.

Where was Chief Gabashane's car at that time? -- I passed it at Mr. Dere's shop, below the road on our way to Ficksburg.

In which town was Chief Gabashane's car? -- At a shop.

And what was the car doing at that shop? -- Well I shall only be telling you what I heard from Chief Gabashane.

No you know whether the car was in order then? -- No, it was not in order.

Do you know when the car was taken to any particular place immediately before the 8th or 9th of March this year? Was the car at Mamathe's the last few days before the 8th or 9th of March this year? -- No, it was not at Mamathe's.

/Do you

Do you know, more or less, how long the car had been away from Mamathe's?-- I last saw the car there on the 26th of February.

Are you in a very good state of health? -- No.

What is wrong with you as far as your health is concerned? -- I suffer very much from gout.

What part of your body? -- I suffer very much from my feet.

What is the trouble with your feet? -- The big toe swells up then the whole foot swells up. I heard experts say it is gout.

Do you walk any long distances? -- When I used to play football and tennis, I was able to walk like anybody else.

And now? -- No.

What would happen if you walked long distances? -- This will bring about the disease of my feet again.

MR. MAISELS: No questions.

LUNCHEON ADJOURNMENT.

.....oOo.....

ON RESUMING:

BERENG GRIFFITH LEROTHOLI, (Under former Oath)

EXAMINED BY MR. GROBELAAR:(cont.)

Chief do you remember how you came to Maseru on the 26th of February when money was deposited in your Post Office Bank account? -- Yes.

How did you come to Maseru from Mamathe's? -- I came by Chief Gabashane's car.

How did you go back to Mamathe's? -- I went back by that same car.

/How far

How far did you go back in that car? -- As far as Teyateyaneng.

Why only as far as Teyateyaneng? -- It no longer pulled properly on our return.

What did you do with the car at Teyateyaneng? -- We left the car at Pholo's, and he took me on a different car of his own to Mamathe's.

Do you know whether Chief Gabashane's car was ever returned to him during the time that you stayed there after you'd left it at Teyateyaneng? -- From that time I did not see the car until I left Mamathe's - I never saw the car at Mamathe's.

MR. THOMPSON: M'lord I'm asking leave to postpone the cross-examination of this accused until tomorrow morning as I have asked for certain information which, I believe, will not be available until after five o'clock this afternoon.

HIS LORDSHIP: Any objection?

MR. GROBELAAR: It would have been more convenient if we could finish m'lord, but if my learned friend can't go on, then I won't object.

MR. THOMPSON: I could do my cross-examination in two bits, M'lord, but that's very unsatisfactory.

HIS LORDSHIP: Yes, I think it would be better left till tomorrow.

MR. GROBELAAR: As Your Lordship pleases.

.....oOo.....

THE DEFENCE CALLS:

MOJAUTU, Sworn States,

EXAMINED BY MR. GROBELAAR:

What is your full name Mojautu? -- Mpoetse.

Is that all? Have you only got one name? -- Mpoetse Monyana.

/Are you

Are you also known as Mojautu sometimes? -- Yes.

Now, Mojautu, you are accused No.3.? -- (No reply)

HIS LORDSHIP: I think for the purpose of the record, we ought to have the name correct, I mean to say now. In the end we've got to do something one way or another, then even if he has to be discharged, he has to be discharged as a particular name.

MR. THOMPSON: The reason why we did not put his proper name was we didn't know it. I am very glad to hear it. I'll ask for an amendment to Mojautu alias Mpoetse Monyana,

HIS LORDSHIP: Yes?

MR. GROBELAAR: Now, are you a personal servant of Chief Bereng, accused No.1.? -- Yes.

And you live at Phamong? -- Yes.

You heard the evidence of the man who was accused No. 12, Titimus? -- Yes.

And you heard the evidence of Titimus especially when he referred to your movements from the beginning of the year and on that trip on which you accompanied Chief Bereng to Mamathe's? -- Yes.

Is that evidence correct insofar as it refers to your movements? -- Yes.

You did accompany Chief Bereng to Mamathe's when he visited Chief Gabashane? -- Yes.

Did you stay there with Chief Bereng all the time until he left? -- Yes.

You heard the evidence of Mapeshoane to the effect that you were one of the conspirators in a certain room of a certain hut of Chief Gabashane on the 3rd March, Wednesday, 3rd March, where you all decided to participate in the

/killing of

killling of Moleke? -- That is a lie.

So you deny that you conspired with anybody to kill Moleke - kill anybody at the time you were at Chief Gabashane's at the beginning of this year? -- I conspired with no persons until I left that place.

Did you also hear the evidence to the effect that you were in the party of the accused and others that killed Moleke on the road near Fysi's on Thursday, the 4th of March. Did you participate in the killing of anybody at the time you were at Chief Gabashane's on the visit described by Titimus? -- I heard that but it is all a lie. I saw Fusi's place for the first time the other day when we went on the inspection in loco.

I expect you heard the remarks of Mapeshoane where he said that you even suffocated the deceased Moleke, that you had your hand on his face when he was being killed. Did you do anything of that kind? Did you touch Moleke at all? -- Mapeshoane is lying. I never travelled with Mapeshoane at night while I was there with the Chief.

MR. MAI SELS: No questions.

CROSS-EXAMINED BY MR. THOMPSON:

Mojautu, when you were staying at Gabashane's with your Chief, Bereng, did you meet Mapeshoane? -- Yes.

Did you have any trouble with him? -- No.

Any motive why he should get you involved in this alleged crime? -- He is strange. To have done this is a strange thing.

You can give no reason? -- I can give no reason.

Sothi, has he got any reason? -- I don't even know him.

When was the first time you ever saw Sothi; to

/your knowledge?

your knowledge? -- I saw him for the first time in Maseru.

At the Preparatory Examination? -- Yes.

And does the same apply to Sepalami and Molemohi? --
The same applies to Sepalami and Molemohi.

And you can give no reason why any of these four should try to get your Chief, No.1, into trouble? -- I don't know.

As a matter of interest, where were you on the evening of Wednesday, March 3rd? Do you know the days of the month? -- No, but I know when I see them on the almanac.

While you were living at Gabashane's, did you go out at all any night? -- No.

What time did you go to bed? -- At the time when my Chief went to bed.

Did you follow him round everywhere he went? -- Yes.

And you never once moved out of the village at night time? -- No.

Did you ever go into Chief Gabashane's house? -- At what time?

Any time while you were staying there. -- Yes, during the day, sometimes in the evening, before sleeping time.

You and your Chief, and Chief Ntoane and Titimus? Sometimes I went there alone because I used to help in the kitchen.

What doing? Cooking? -- Yes.

When you weren't working in the kitchen were you in the other room listening to the wireless? -- I used to listen to it - the room where the wireless is is next to the kitchen and I used to enter that room to listen and then go back to the kitchen again.

/Were you

Were you ever in the same room with Gabashane? --
You mean just the two of us?

Well, two of you and other people present as
well? -- Yes we used to be.

HIS LORDSHIP: What room was that? -- At his place in the
room he occupied, also on the verandah we used to be together.

What is that room he occupied - did it have any
name? -- No, I don't know.

Any more questions?

MR. GROBELAAR: No questions.

HIS LORDSHIP: When you were there, you said you were there
for some time, what did you do the whole day when you weren't
going elsewhere - what did you do with your time? -- I stayed
at home, doing nothing.

You mean by "at home", in the house? -- In the
house or outside wherever there was shade.

Did you ever do any walking? Through the village? --
No. It was only when I walked in the village or looking for
beer.

Did Chief Bereng ever go for a walk the whole time
he was there? -- No.

Either in the day or night time? -- Either in the
day or in the night time.

Do you know anything about gout? -- I know when a
person's feet are sore.

What about Chief Bereng, did he suffer from his
feet at that time? -- Yes, he has always suffered from his
feet.

I want to know, at that time? -- Yes, he suffered
from sore feet at that time.

/What did

What did he do for his feet at that time? -- He did nothing, but he had some medicine which he rubbed his feet with.

Did he take any medicine internally? -- No, I don't quite remember.

You were looking for beer you say. Did you get it? -- I said that soemtimes I used to go about looking for beer.

Did you get some? -- Yes.

Was it for yourself or for the others? -- Just for myself alone.

Was there beer at Chief Gabashane's? -- No.

Or where Chief Bereng was? -- No, there was no beer there.

You mean to tell us they had nothing to drink the whole time they were there? -- No, they had nothing to drink.

It must have been extremely dull then? -- Yes, because they don't drink.

Does Chief Bereng drink? -- No.

I want to find out what you did the whole time. -- We stayed there. He was waiting for his children.

MR. GROBELAAR: Who did the cooking for the Chief -- Chief Bereng? -- Where?

While he was at Chief Gabashane's. -- The cooking was done by Matsela, but I sometimes helped him.

That closes my case M'lord, except my learned friend wants to examine Chief Bereng.

THE DEFENCE CALLS:

GABASHANE MASUPHA, Sworn States,

EXAMINED BY MR. GORDON:

You are Chief Gabashane Masupha, accused No. 2, in this case? -- Yes.

You live at Mamathe's? -- Yes.

And you are the Chief of the Ward there? -- Yes.

Now how do you rank in seniority as far as Chiefs are concerned in Basutoland? -- I rank number three.

Are any of the accused directly related to you?-- Yes.

Which are they? -- No.5, No.6, No.7.

No.5. How is he related to you? -- He is a son of my father's uncle.

No.6.? -- He also is a son of my father's uncle.

And No.7.? -- He is my uncle's brother.

Which of the accused are your subjects? -- They are all my subjects with the exception of Chief Bereng and his follower No.3, Mojautu.

Are all the accused resident at Mamathe's? -- They are all residents of Mamathe's with the exception of No.10, Ramabanta, who is resident at Mahleke's. Ofcourse I am excluding Chief Bereng and No. 3.

Yes, we are only talking about your own subjects. You say all except No.10.? -- Yes.

And where does he reside? -- He resides in a village away from here, called Mahleke's.

Does he ever visit your village? -- Yes, he often comes to my village.

He quite often comes? -- Yes, he comes very often because he was brought up by my father.

Can you tell me anything about accused No.8, Fusi? What is his employment? -- Fusi is the Doctor for

lunatics at Mamathe's.

Do you know him well? -- Yes, I think I know him.

Can you tell His Lordship^{anything} about his state of health?--

The man is well but he was sent back from Johannesburg because of being mentally deficient.

Was he sent back to you? -- He was sent back to his home.

What is his condition at the present time? -- In my opinion he appears to be quite normal, but there are times that he is not normal.

And you know that of your own knowledge? -- Yes, he is my man.

Accused No.1, Chief Bereng, do you remember when he visited you this year? -- Yes, I do.

Can you tell His Lordship approximately the date he arrived at Mamathe's? -- He arrived in February.

Can you give an approximate date - middle, beginning or end of February? -- 23rd of that month.

Is that your approximate date or your definite date? -- Definite date. I am definite about that date because he wrote me and asked me to meet him in Maseru with a car.

Did you send a motorcar for him? -- The car was in the garage at that time.

By what conveyance did he arrive? -- He arrived home in Steven Pholo's taxi car.

For how long did he stay at Mamathe's, approximately -- He stayed for over two weeks at Mamathe's.

Where did he live while he stayed there? -- I let him occupy one of my houses.

How far is that from your personal house? -- Almost the same place.

/Do you

Do you mean it is adjoining? -- Yes.

How did you entertain Chief Bereng? What did you do with him, say, in the evenings? -- I sometimes went into the house that he occupied; some evenings he used to come to my own house.

You know the Crown witnesses in this case -- Mapeshoane, Molemohi, Sothi, Sepalami? -- Yes, I know them.

Are any of those related to you? -- Mapeshoane is a junior brother.

You've heard Mapeshoane's evidence to the effect that on a certain night you all gathered together and had a conspiracy about the killing of Maloi's brother? -- I heard him say so.

Did such a meeting ever take place? -- No.

Any truth in it whatever? -- It is a lie.

You've heard further evidence that on the following evening you proceeded in groups and finally your party killed Moleke in the way described by them? -- That is sheer fabrication.

Did such an incident ever take place at any time? -- No, never.

During Chief Bereng's visit with you

HIS LORDSHIP: Ask him if there is any truth in him sending for Maloi, just put that question.

MR. GORDON: Is there any truth in your ever sending for Maloi, in relation to paying him £100 for the surrender of his brother? -- No, I never did send for him.

Never, at any time? -- No.

Now, during Chief Berang's visit with you, did he ever leave Mamathe's and pay a visit to any other place? -- At what time?

/At any

At any time during the time that he was staying with you? -- Yes, we went out with him.

Where did he go to? -- He went to Ficksburg.

On how many occasions? -- I think on three occasions at the time when he was at Mamathe's.

Did he go anywhere else? -- No.

As far as the night time is concerned, did he ever go out? -- No.

Ever go out into the village? - To my knowledge he never went out.

Never went out to the village? -- At night he never went into the village.

Did he ever leave the confines of his house? -- No.

This younger brother of yours, Mapeshoane, what has your relationship been with him? -- He is a child I don't agree with.

Since when do you say that has been the position? -- Since I took over from my father, when my father died.

What was his relationship with your father? -- Even in my father's lifetime he was a very hard child.

How exactly do you describe this, what is the difficulty? -- First thing, he is a man who drinks a lot, who causes trouble in the village and ⁱⁿ other villages.

Has he any particular friends? -- In the village he has friends.

Who are these friends, that you know of? -- His friends are those young men with whom he works.

Can you give their names? -- Sothi is his friend, Sepalami is also his friend, Molemohi is his friend.

How did it come to your knowledge, this drinking habit of Mapeshoane and the trouble he causes in the village?

/I knew

-- I knew personally that he drank. As for disturbances that he causes, headman, Makione, has reported to me several times.

As a result of all these reports, did you take any action? -- I have called him before my Court and warned him several times.

Have there been any particular incidents when you have had occasion to warn him perhaps severely? -- That was on the occasion on which he had attacked a member of my Court.

What punishment did you administer? -- I gave him a whipping.

You flogged him? -- Yes.

HIS LORDSHIP: When was that? -- About 1945 or 1946.

MR. GORDON: Any other incident that you can recall? -- After I got him married, his behaviour towards his wife was bad. He went to use his knife upon his wife.

And what action did you take then? -- On that occasion he had his hands tied up because we feared he might cause injuries to his wife.

And what happened? was there a knife in that particular case? -- Yes, we deprived him of the knife which he had.

Do you know No. 9 accused very well? -- Very well.

Is he, or was he, friendly towards Mapeshoane and the other persons you mentioned? -- He was working with Mapeshoane.

Do you know whether they are still friendly? -- They are no longer friendly, but I don't see them now walking together.

Do you know the reason for this break in their friendship? -- I think it was after I had reprimanded Mapeshoane for hiring out my ploughing implements. I warned
/him together

him together with these other young men with whom he worked.

What was he doing after hiring out the ploughing implements? -- He hired them out and received the money and used it for his own purposes.

Mapeshoane describes his attitude towards you as one of respect and love, is that correct? -- It is not so.

How would you say. What is the position as far as Mapeshoane is concerned? -- I look upon him as a child who does not respect, who does not, therefore, love me.

This question of ritual murders. Have you ever had occasion to take the matter up? -- Yes, I did so in the national Pitso, which I called on one occasion.

Can you recollect when that was? -- In 1946. Also the year that came after that year.

As a result, what caused you to hold the national Pitso in 1946? -- It was after I received a Circular letter from the Paramount Chief instructing Chiefs to hold such Pitsos, throughout the land.

Is this the copy of the Circular you received? You can just look at it very hurriedly, I don't want you to read the whole thing. Is that correct? -- Yes, it is.

M'lord I won't read this Circular at the present moment, I'll just hand it in. (Circular passed in as exhibit.) I think it has been put, most of it, to Mapeshoane, M'lord. HIS LORDSHIP: Well, didn't Mapeshoane say he didn't know about it.

MR. GORDON: I am coming to that now, M'Lord. He wasn't at the Pitso and Mapeshoane said he heard about it subsequently.

HIS LORDSHIP: Yes.

MR. GORDON: As far as this Pitso was concerned, you heard Mapeshoane say he was not at this Pitso. What do you say to

/that? --

that? -- Yes, I heard ...

M'lord, could we number this particular annexure or exhibit?

HIS LORDSHIP: Get the Registrar to number it.

MR. GORDON: What do you say, what is your answer? -- I said I heard him say so.

Is that correct? -- No, I think he just said this.

Do you think that he was in fact, there? -- Yes, he was at that Pitso.

Were any of your brothers absent from any of your Pitsos? -- All those who are grown I expect them to attend such Pitsos.

And if Mapeshoane was absent would you have known about it? -- He would have reported to me the reason why he was not going to be at the Pitso.

You have a car? -- Yes.

What is the make of the car? -- A Buick.

What is the number? -- BD2.

During the time that Bereng visited you, where was this car? -- The car was at home till the 26th.

What happened on the 26th? -- He wanted to come to Maseru for certain reasons and I allowed him the car to Maseru.

Who was this? -- Chief Bereng.

And what happened to the car? -- When he returned from Maseru, the car remained at "TY".

In whose possession? -- In the possession of Steven Pholo.

From that time onwards, in whose possession was it subsequent to that? -- Then it came into the possession of one of my friends.

/What is

What is his name? -- He is a coloured man called Peter Walters.

What did he do with the car? -- I think he fetched the car from Steven Pholo. I asked him to do so.

Did he effect repairs to this car? -- Yes.

When did you get your car back again, approximately, from Peter Walters? -- I think I fetched it at the end of March.

During this period, 26th February to end of March, did this car ever come into your possession? -- No.

You might just tell the Court what was the nature of the repairs effected? -- The gear box had gone wrong.

Did you know the deceased in this case, Meleke Ntai? -- He was my subject, I knew him.

Did you receive any report from Meleke Ntai's wife just about the time of his death? -- Yes, I received a report by her, she was accompanied by Fusi, No.8.

And what was that report about? -- Fusi reported to me that there was a saddle that had been found near his village, and that Maleke's wife had been to him to say that Meleke did not return from the funeral at Mahleke's. Was that in the morning or in the afternoon that such a report was made to you? -- It was just before sunset.

What action did you take? -- In the usual way I sent a letter to the District Commissioner, making the report, I ordered the headmen at the neighbouring villages to send out people to guard over the saddle until the police arrived. I again ordered that Meleke's wife should be accompanied to her home as the sun was setting.

You sent an escort with her, is that correct? -- Yes.

/Now the

Now the following morning, was another report made to you? -- Fusi arrived early in the morning.

What was the report? -- He reported to me that a dead body had been found.

What action did you then take? -- In the usual way I had to report such an occurrence to the District Commissioner.

Did you do that? -- Yes.

Well Chief Gabashane, is that all you know about the death of Meleke Ntai? -- Yes, I think that is all I can say about it.

Chief Gabashane, I want you to tell His Lordship, are you a Christian? -- Yes.

Devout? -- Yes.

As far as your married life is concerned, how many wives have you? -- I keep one wife.

During the recent War, did you play any part in Basutoland? -- Yes.

What did you do? -- I used to collect recruits for the Army, in my district.

Were you the chief of recruiting for your district? -- Yes.

Did you work with the Administration? -- Yes.

On the return of the soldiers, did you ever have to leave Maseru? -- I used to see the soldiers off and communicate to them the instructions of the Paramount Chief. On their return I used to meet them at the coast at Durban, on the orders of the Paramount Chief.

And did you address them there? -- Yes.

MR. GROBELAAR: No questions.

/CROSS-EXAMINED BY

CROSS-EXAMINED BY MR. THOMPSON:

Chief Gabashane, you are also one of the male descendants of the great Moshesh, are you not? -- Yes.

As such, by Basuto tradition, you have great influence amongst your people? -- Yes.

In your own district you have a large following? -- Yes.

None of whom ever come into touch with the Regent, the Paramount Chief (I'm talking about the commoners.)? -- Do you mean whether my people have opportunity to meet them?

Came into personal contact with her? -- I don't know.

I'll put it this way. So far as receiving orders is concerned, they look to you through their headman for instruction and advice? -- Not always.

Well they're not allowed to go behind your back straight to the Paramount Chief, are they? -- No.

So they do look to you for transmission of orders through the headman? They apply to you for assistance and instruction through the headman? -- Yes.

Of these accused, with the exception of yourself and Chief Bereng and headman Makione, that is No. 4, is is not? -- Yes, of Mamatho's.

With the exception of you three, Nos. 5, 6, 7, 8, 9, 10 and 11, they're all ordinary Basuto without any possession of authority? -- Yes.

Who look to you as their immediate Chief for their orders and protection? -- Yes.

And it would be very unusual indeed, Chief Gabashane, for one of the people under you to query your orders, would it not? -- Nowadays they do often refuse to carry the

/orders out.

orders out.

Do they? Nowadays the Chiefs are losing their influence somewhat, are they? -- That seems to be the case.

Has that been your own personal experience? -- Yes.

It has not been unknown for a Chief with that experience to look to supernatural means to protect him, is that so? -- Where could he seek for that supernatural means?

By means of ritual murder. -- I have never heard of such a thing.

Never heard of ritual murder? -- I've never heard of Chiefs who sought protection from ritual murders.

Have you ever heard of Chiefs being involved in ritual murders? -- Yes, I've heard of such.

Have you any idea for what purpose Chiefs have been involved in ritual murders? -- No.

Completely ignorant on the subject are you? -- I don't know why they were involved in ritual murders.

Chief Gabashane do you mean to ask us to believe that you, one of the leading Chiefs in Basutoland, have not the vaguest idea as to why some Chiefs get themselves involved in ritual murders? -- Those Chiefs alone know.

You can't even guess? -- No, I can't.

Because I'm suggesting to you what you said a few moments ago, that in your very own position you find your people are getting restless and you want your position strengthened. -- That may be known to you.

Is it not known to you? -- No.

It never crossed your mind? -- No.

It is a fact isn't it - am I correct in what I said, that you are finding your people immediately under you less obedient than they used to be? -- I say with regard to

/orders, I

orders, I have charged many before my Court for refusing to carry out orders.

The number of such charges is increasing, is it? -- There are such charges, but not increasing.

What is your annual income from the National Treasury, Chief Gabashane? -- A lot of money.

How much? What is your salary? -- Per annum?

Yes? -- I can tell you what it is per month.

Then what is it per month? -- £93.

Before the National Treasury was established some three years ago, your income was considerably larger than that, was it not? -- Who is it that told you so?

Chief Gabashane, is it a fact that before the National Treasury was established and the native Courts were re-organised some three years ago, your income was very much larger than your salary today? -- I think the person who gave you that information, gave you wrong information.

Used you not to be entitled to retain all, or most, of the fines levied in the Courts in your area? -- Yes, that was so. I had the right.

And the total amount of fines per month or per year, was considerably more than you are drawing today? -- No.

Well, you must be the only Chief in Basutoland who has had that experience, Chief Gabashane. -- Yes, unfortunately that may be the case.

Unfortunately? -- Yes.

Unfortunately for whom? -- Unfortunately that I was the only Chief who got less than what other Chiefs got.

Have you got some sort of grievance about this arrangement? -- No, I was answering your question, when you

/said that

said that I was the only one who got less than what I get today.

HIS LORDSHIP: Answer the question, have you got a grievance? -- No.

MR. THOMPSON: Coming to this incident of March of this year, when did you first know that Chief Bereng was going to visit you? -- I received a telegram on the 22nd from him asking me to meet him in Maseru.

22nd of February? -- Yes.

That is all it said, asking you to meet him in Maseru? -- Yes.

. What was the urgency of sending you a telegram, do you know? -- He may reply to that question himself.

There was nothing in the telegram itself to indicate any urgency? -- No.

It came as a complete surprise to you, did it? --No, I was not surprised.

Why was it not a surprise? -- He is my Chief and I know he can ask me to meet him any time.

What do you mean, he is "your Chief", are you under his jurisdiction? -- He is my senior brother because his father was senior to my father.

So far as the sons of Moshesh are concerned, he is senior to you and you owe him a duty of respect, is that so? -- Yes.

But you have no duty in law as it prevails in Basutoland today, to obey his orders, have you? -- This is the first time I hear what you say.

Chief Gabashane I shall be obliged - you are an intelligent man, not like some of these poor people who have given evidence in this case, uneducated - I shall be obliged

/if you

if you will answer the question and not verge on the impertinence every now and then, and I warn you that course of conduct will do you no good. In Basutoland law today, is there any duty upon you to obey an instruction purported to be given you by Chief Bereng? -- No, there is nothing that binds me to carry it out.

So that this telegram, when it arrived, was a complete surprise to you? -- No.

Why was it not a complete surprise to you? -- Because I knew that I could at any time close up my office and come to meet him.

I just want to break off for a moment. I may be under a misapprehension about you. Have you been to school? -- Yes.

Where? -- In Basutoland and in the Cape Province.

What school in the Cape? -- Lovedale.

So you reached higher than Matriculation standard did you? -- No.

Did you reach Matriculation standard? -- Yes.

You are an educated man and you are an intelligent man. Now coming back to this, I want to see if I can get the answer from you that I expect from an intelligent matriculated person. Did this telegram come as a surprise to you or not? -- No, it did not come as a surprise to me.

Had there been previous discussion between you and Bereng that he might be visiting you? -- No.

How was it that the telegram did not come as a surprise? -- Many important people pay me visits several times.

When I say^a "surprise", you know what I mean. It was unexpected? -- Yes, it was unexpected.

You say you sent a taxi in to meet your senior Chief in Maseru? -- No, it was not sent in by me.

/You received

You received a telegram asking you to have your senior Chief met in Maseru, is that right? -- Yes.

What steps did you take to carry out that request? -- I came from my home on horseback to Teyateyaneng, when I got there, there was a friend of mine coming down to Maseru and I came down with him. I met Chief Bereng on the road, he was already going to my home, then I returned there with him.

So you didn't meet him as you'd been requested to do, is that what you mean? -- I was doing my best to try and find means by which he could go home.

Why did you get this car from Teyateyaneng to come into Maseru? -- I had to come into Maseru.

Where was your own car? -- At that time it was in the garage being repaired.

But it didn't go into the garage to be repaired till three days later, February, 26th? -- It had been in the garage some days on that day when Chief Bereng arrived.

When did you take it out of the garage? -- A few days after Chief Bereng's arrival at Mamathe's.

Chief Bereng arrived on February 23rd did he not? -- Yes.

And you say a few days after his arrival, the car came out of the garage and was returned to you at your home? -- Yes, I said so.

Sometime towards the end of February? -- Before the 26th, because on the 26th we used the car to go to Maseru.

On the 23rd it was in the garage? -- It had been in the garage for some days before the 23rd.

On the 23rd was it in the garage? -- Yes, it was still in the garage.

On the 24th was it in the garage? -- I do not remember.

/Why do

Why do you remember that it was in the garage on the 23rd if you can't remember where it was on the 24th? -- Because on the 23rd I would have used it to meet Chief Bereng.

And it is clear in your memory that you came in in a friend's car? -- Yes.

Well it must have been the 24th or 25th that you got your car back, mustn't it? -- Yes, it may be a day or two days before the 26th.

Then on the 26th it went back again into the garage? -- Yes.

What was the trouble with it when it went back on the 26th? -- I had sent it to the garage because there was something wrong with the gear box.

Chief Bereng told us when the Court re-opened this afternoon what he found wrong with the car on the 26th was that it wouldn't pull properly and that's got nothing to do with the gear box. He didn't come to Maseru with me, he came in with another driver.

He abandoned the car at "TY" on his return from Maseru on the 26th? -- Yes.

TEA ADJOURNMENT.

ON RESUMING:

GABASHANE MASUPHA (Under former Oath)

CROSS EXAMINED BY MR. THOMPSON: (Contd.)

Mapeshoane is a brother of yours isn't he? -- Yes.

Is he a full brother or a half-brother? -- He is a son of another wife.

A half-brother. He has no benefit to obtain by having you removed from Chieftainship, has he? -- No.

Suppose for some reason or other you ceased to be Chief tomorrow, it would not increase Mapeshoane's status

/or importance

or importance in any way whatsoever, would it? -- Well, it would appear he would be nearer.

Nearer to succession. Who would, in fact, succeed you - normally? -- I have my young brother and I have my own sons.

So he is well down on the list of succession? -- Not very low down.

Now you say you've had all this trouble with Mapeshoane, first of all when you had him flogged, that was in '45 or '46? -- Yes.

Were you acting within your recognised powers in inflicting that punishment upon him? -- Yes, he is my child and I had the right to do what I did.

Did he show any resentment? -- Yes.

In what way? -- He showed that he was a man with another man.

I'm afraid I don't understand that, Chief Gabashane. In what way did he show his resentment towards you? -- He showed himself to be very obstinate, much more obstinate than before.

He was sulky, is that it? -- At the time of the whipping, yes.

How long did that last? -- I can't say how long, because after the beating he left to go away where he went.

Where did he go? -- He was in the village.

He has always lived in your village, has he not? -- Yes, in my house.

And where did he go to live after the beating? -- He continued to live in the house.

How long did the sulky fit last? -- The warnings that I gave to him afterwards, he showed disrespect to them

/which was

which was much stronger than previously.

He didn't take your exercising legitimate powers as an elder brother, very well, is that it? -- I did exercise my powers as an elder brother.

But on those occasions he showed he did not like it? -- Yes, he showed that.

Apart from those occasions has he shown you any open disrespect.

In what way? -- By the warning that I gave him for misusing my ploughing implements and my office.

Yes, we'll come to that in a moment, but I think we don't understand each other. After the flogging, on several occasions, perhaps, you had reason, proper reason, to reprimand him? -- Yes.

And on those occasions did he not take the reprimand with the respect that a younger brother should have taken from the elder brother, is that it? -- Yes.

For the moment we'll forget about those occasions, and we'll forget about the ploughing. Were there any other occasions when he was not being reprimanded when he showed you disrespect? -- Yes.

In what way? -- It was reported to me the trouble that he caused in the village when he had had drink. Well of course, then you had to reprimand him? -- Yes.

You don't suggest he got drunk because he was cross with you, do you? -- No.

Well you can't give me any occasion on which he ^{open} showed you/disrespect. Can you tell me of any occasion on which he used threats towards you? -- He showed me, by his actions, that he no longer paid me any respect.

/You can't

You can't tell me what those actions were, so I've left that. Did he openly, by words, threaten you? -- No, he did not do that.

Had you ever any reason to believe that you were in fear of physical violence or anything like that, from him?-- Yes.

When? -- When he assaulted his wife.

I should have thought it was his wife who was in fear of physical violence, not you. -- As the father, I had to intervene.

And did he threaten to assault you when you intervened? -- He did not speak.

Did he threaten you with physical violence? -- No, he did not speak nor did he threaten any physical violence.

Is it your suggestion that because of these difficulties through the exercise of your legitimate powers, he has deliberately invented this story against you? -- Yes.

When did you hear of the disappearance of Meleke? -- I heard the report on a Friday from Fusi and also from Meleke's wife.

That was the disappearance. And the death on Saturday, March 6th? -- Yes, I had reports from Fusi.

And finally, you were arrested some time in July, was it not? -- Yes.

Is this your suggestion, that ^{between} ~~that/somewhere~~ March 6th and the time of your arrest in July, your younger brother, Mapeshoane, was sitting down concocting this story against you, and building it up in order to ultimately found a charge against you? -- Yes.

It is a fact, is it not, that he was arrested himself? -- I didn't know because I was arrested in Maseru.

/When you

When you were taken to the police camp, wasn't your younger brother, Mapeshoane, still under arrest or had he already been released? -- I knew nothing at all about it.

I want to see what your theory is, Chief Gabashane, because if that's the theory, I'm suggesting it is, to say the least, extremely far-fetched. He brooded on these matters for months, and then got himself arrested and then somehow or other concocted this entirely false story against you? -- Well, I don't know what to suggest.

That is the only thing you can suggest, isn't it? -- Yes.

Now about these other three young men? -- Which young men?

Sothi is a young man with whom you have never had any trouble? -- Because he is working with Mapeshoane, he worked about with my cattle and my ploughs, I had to reprimand him.

This trouble with Mapeshoane about the ploughs, did you ever charge him with, more or less, stealing your money, or doing something wrong in connection with your property? -- No I did not.

And the only thing you can think of about Sothi was the plough. Sepalami, ever had any trouble with him? -- Yes.

What was that? -- On return from the army I saw him taking down stones behind the village, preparing to build a house.

Without your permission? -- He had not asked me for permission, or even the headman.

But he should have done? -- Yes, he was bound to do so.

/So he

So he got into trouble? -- I stopped him from cutting those stones or breaking them down.

And for that reason you think he bears you a grudge? -- Yes.

And the other man, Molemohi? -- There has been nothing between me and Molemohi. I have never had occasion to reprimand him.

There was a suggestion, I don't know whether it is true, that one of these three young men had been working in Johannesburg on the Mines, is that correct? -- I don't know.

Now, Mapeshoane's hut was in the same skerm as your's? -- Yes, I loaned him one of my houses.

And the hut in which Chief Bereng and his party was living, was that also in the same skerm? -- Yes, it is next to the one that Mapeshoane occupied.

All in the same skerm. And this hut that was mentioned by Mapeshoane, what is it called? -- It is called Mophato-oa-Mathe.

The hut in which Mapeshoane says he saw you and the others on the Wednesday night and again on Thursday night, isn't that called Khohlong or something like that? -- Do you mean the hut which Chief Bereng occupied?

No. You heard Mapeshoane's evidence, didn't you? -- Yes.

And he said that he was summoned on Wednesday evening and again on Thursday evening and he went to a house called Khohlong, isn't that the house occupied by yourself and your family? -- No.

What is this house used for? -- It is used by my children or by visitors.

/Is it

Is it a sort of guest-house? -- Yes, or for the children if I have many children at a time.

You say it's used for spare children, so to speak, and guests, is that right? -- Yes.

Do you ever go into that hut in the evenings at all for any purpose? -- When there are no people occupying it?

All right, when there are no people occupying it, do you ever go in there for any purpose? -- No.

If there are people occupying it, I suppose you'd only go there to visit them? -- Yes.

Have you ever held any meeting for any purpose in that hut Khohlong? -- No.

Now, your case is, on Wednesday 3rd of March, you didn't move out of your ... did you move outside your skerm at all? -- This Khohlong hut is where the skerm is

Is that also inside the skerm? -- And I occupy the house which is outside in the garden.

Well, on the Wednesday evening, March 3rd, so far as you remember, you did not hold a meeting of any sort and nothing unusual happened? -- No.

And on Thursday March 4th, you did not leave your village for even five minutes? -- I never go outside at night. You never, at any time, go outside at night? -- No.

Has that been your life-long habit? -- By that, ofcourse I don't mean to imply that I don't go out to pass water.

What I mean is, it is your life-long habit never to go out of your village at night time, in whatever village you may be living? -- No.

/And, of

And ofcourse, it is impossible for you, after all this time, to remember what you did on that Thursday evening? -- It is not easy to remember.

Coming to the Saturday when the body was found, you received a report from Fusi, is that right? -- Yes.

Now we come to another one of the Paramount Chief's instructions - The Paramount Chief's instruction is that if a body is found, a report is to be made immediately to the nearest person in authority, is that not correct? -- Yes, that has always been the practice.

That person in authority is bound to take immediate steps to bring the matter to the notice of the European authorities, as quickly as possible? -- Yes, that is so.

And, in fact, any person who does not do that - report to the proper person immediately about the finding of a dead body - is immediately a subject of suspicion by both the Basuto and the Europeans, isn't he? -- I don't know.

If one of your headmen failed to report to you that a body had been found in his area, there would be trouble wouldn't there? -- Yes.

Pretty big trouble too? -- Big trouble.

Was Chief Bereng still with^{you}/when the report of the finding of the body of Meleke came in? -- Yes, he was still at Mamathe's.

When the report of the discovery of Meleke's body was made, Chief Bereng was still staying at Mamathe's. Did you discuss the matter with him at all? -- I told him about it.

Do you remember whether Chief Bereng was at Mamathe's on Thursday evening, Match 4th? -- I was with him.

You were actually with him? -- Yes.

/Do you

Do you remember that? -- Yes, all the time he was there I was always with him in the evening.

Every evening? -- Yes, every evening.

So you have no distinct remembrance of that evening, you just say you must have been with him because you were with him every evening. -- No, I made no distinction.

NO RE-EXAMINATION.

HIS LORDSHIP: It has been suggested that you offered this man Maloi £100. Did any money ever pass between you? -- No.

This brother of yours, Mapeshoane, who, you say, gave you such a lot of trouble, how is it that you gave him a house near yours? He had no respect for you. -- He is my son, and although he is hard-hearted, I am bound to maintain him.

But he had his house in the village, didn't he? Not next to yours? -- No, he hasn't a house of his own.

Where did you give him a house? -- The hut they used to sleep in when they were still attending school. After he married, then I allowed him to occupy that hut with his wife, and I removed the other boys to other huts.

What has happened to his wife? Are they living together still? -- He still lives with her.

Are they living happily together now? -- There is no peace.

Why is that? -- Always, if he has had drinks, he assaults his wife.

Then he works for you too, doesn't he? -- He is my child, he is bound to work for me.

ASSESSOR JONATHAN:

You said that Fusi was the Doctor for mental

/cases, does

cases, does he do other diseases as well? -- Yes, I understand he cures other diseases.

Is Fusi a headman of the village in which he lives?--
In what respect?

You have headmen, like Makione who is a headman? --
He has a place where his wife lives and he has a place where he keeps the mental patients.

My question is, is Fusi a headman? -- No.

Where the saddle and saddle cloth were found, is that Fusi's area or in the area of some other person? -- It is my area, the headman there who looks after that area is Pheta. It is not Fusi's area at all.

The area of the donga where the body was found, whose area is that? -- That is Lepekola Latsane's area. I saw that area on Friday last.

Was it the duty of Fusi to report to you or was it the duty of the headman, Pheta, or the Headman Lepekola to report to you? -- To report what?

To report the saddle -- to report the dead body? -- In regard to the saddle, it was the duty of Pheta to report to me, but he didn't report. With regard to the dead body, it was the duty of Lepekola to report to me. He did not report.

Did you, one night, send No. 5 accused to call Maloi? -- No.

What work have you allotted to Maloi in your area? --
I have no special work allotted to Maloi at my home.

Is he not in charge of your reserve pastures? --
Mapeshoane is the man who is in charge of the grazing ground.

And it is he who can choose his own men under him to help him look after the grazing ground? Do you happen to

/know that

know that Maloi is one of those men who he has appointed to assist him? -- Yes, I know that it is so.

In a matter of this sort, when a matter has occurred like this, do you take this matter seriously or lightly? -- I and the Government, we do take it seriously.

Did you, yourself, go to the scene of this murder or send some important person to go? -- I ordered the headman, Makione - he's one of the important men.

Who did the Government send out to be with No.4.? -- No, besides the Police, no one went out.

Was there a Sergeant or a Corporal? -- It was a Corporal. A Corporal came out with the policeman, but I m not quite sure because they did not appear before me. I only saw Trooper Hamilton.

Is Fusi's so far that you and the police officer could not get there? -- No, it is not so far.

COURT ADJOURNED.