

PC
~~QES. G.T.~~

19, 1954

IN THE PRIVY COUNCIL

No. 2 of 1954

ON APPEAL FROM THE HIGH COURT OF BASUTOLAND

B E T W E E N

KHOTSO SEPHAKELA

Appellant

- and -

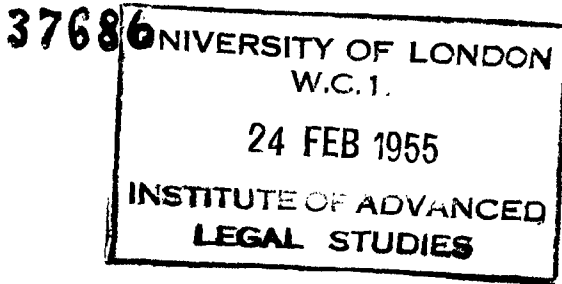
THE QUEEN

Respondent

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IN THE PRIVY COUNCIL

No. 2 of 1954

ON APPEAL FROM THE HIGH COURT OF BASUTOLAND

B E T W E E N KHOTSO SEPHAKELA Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

In the High
Court

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No. 1.

No. 1.

Indictment

Indictment

IN THE HIGH COURT OF BASUTOLAND

ARTHUR CLEMENT THOMPSON, in his capacity as Attorney-General for the High Commission Territories, who as such prosecutes for and on behalf of Her Majesty the Queen presents and informs the Court:

That:

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- (1) HABOFANOE MATSORA
- (2) MAHLOKO LESOOANA
- (3) KHOTSO SEPHAKELA
- (4) SABILONE RANTSOELEBE
- (5) MOKHETHI LESOOANA
- (6) RABOLAI MOROLONG
- (7) MALLA MOLALA
- (8) MONTLE MAKHETLOANE

In the High Court
No. 1.
Indictment

all Basuto male adults of Majahobe's in the district of Berea, hereinafter called the accused, are guilty of the crime of

MURDER

in that on or about the twentieth day of August 1951, and at or near Red Path in the district aforesaid, the accused did each and all or one or more of them, wrongfully, unlawfully and maliciously kill and murder Tieho Matsora, a Mosuto male there being.

10

In case of conviction the said Arthur Clement Thompson in his capacity aforesaid, prays for judgment against the accused according to law.

(Sgd). A.C. THOMPSON

ATTORNEY-GENERAL FOR THE HIGH COMMISSION TERRITORIES

No. 2.

Prosecution Evidence

EVIDENCE of RANTHENE MOLALA

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No. 2.
Ranthe
Molala
examination

P.W.7. RANTHENE MOLALA: (who is duly sworn by Interpreter):

EXAMINED BY MR. THOMPSON:

Ranthe do you remember the winter two years ago? Yes.

Where were you living at that time? At the time I lived at Mpunyetsane's.

Did you point out that village to Captain Shortt-Smith? Yes.

Do you remember a man Tieho Matsora? Yes.

Were you related to him at all? Yes.

What was the relationship? He was my maternal uncle.

30

What happened to him? The deceased came to my place on Monday.

This man Tieho is he still alive? He is now dead.

Do you know how he came by his death? Yes.

I want you to start from the beginning. Tell My Lord about the first person who spoke to you or the first person you knew about the events which led up to his death? This man Tieho came to my place on Monday, he was in the company of a young man called Motsoenkana.

The events you are just about to talk about did they take place on the day the deceased died? Yes.

Had you had any discussion with or had you spoken to anybody prior to that in connection with something that led up to the death of the deceased? I was working up to that point, I was going to explain.

I will let you tell your story in your own way but I prefer you to start at the beginning instead of going back from the middle but go on and explain the way you want to? One of the days which was a Saturday in the week before the deceased met his death a man came to me who was No. 4. accused. He said: "Look here Ranthene I've paid you a visit". He found me at my own house, I was not inside the house but outside. He asked if I would be good enough to go with him a little distance away from my house because he wanted to say something to me. I went with him and we stood aside and he then told me he had been sent to me. He said that he was sent to me by No. 1 accused but through No. 5 accused. He said that I should listen carefully to what he was going to tell me. He said I should pay due respect to what he was going to tell me. He said that this was a matter which I should keep in my bosom and not disclose it to anybody else. No. 4 accused said that No. 5 accused trusted him very much. He said he also trusts me. He said that No. 5 accused had given instructions by No. 1 accused that we should catch Tieho for him. He said that however, this was not the day for giving

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Prosecution Evidence

No. 2.

Ranthene Molala examination

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Ranthehe
Molala
examination

out plans and that if we wanted to make sure we should go to No. 1 accused who would explain the thing. He said that if I said anything about the plan and told it to somebody else I would be killed myself because it would be known that it was I who had given out the secret. He said I should go to his place late on Monday because the matter would then be properly arranged.

You were to go to No. 4 accused's place? Yes.
Anything else, did you agree? Yes, I agreed.

10

And was that all of that conversation? Yes,
that was all the conversation on that occasion.

What happened on the Saturday? Monday came.

Before you go on is this the same Monday the deceased met his death or a different Monday? This was the Monday on which the deceased met his death.

What happened on that Monday? On the Monday deceased came to my place.

Just a moment please Ranthehe. On the Saturday you say No. 4 accused had asked you to go and visit him on the Monday? Yes.

20

Did you or did you not comply with that request? Yes, I complied with that request.

Then you did go to No. 4 accused's home on the Monday? Yes.

Please tell My Lord what happened when you went to No. 4 accused's home, who spoke, who you saw and all about it? On that Monday as I went close to No. 4 accused's place I noticed that people had not yet arrived as had been previously arranged. I had a rest there and as time went on I saw some people arriving at his home. I then went down and reached his home; when I arrived at No. 4 accused's I found No. 1 accused and also No. 5 accused. No. 2 accused, Nos. 4, 7, 3 accused then No. 4 accused said to No. 1 accused, "Chief the young men that I have been talking to you about have also arrived".

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HIS LORDSHIP: Just a moment. Stand up accused Nos. 1, 2, 3, 4, 5 and 7. Those are the ones you saw are they? Yes.

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Then No. 4 accused said to No. 1 accused this is the young man? Yes.

MR. THOMPSON: Yes? - Then No. 1 accused said it is all right if the young men have arrived. No. 1 accused then said to No. 4 accused: "I hope you have told them everything because if you have not told them they would not have come. Since they have already had information from you No. 4 accused there is something short which I am going to speak to them about". No. 1 then said that the person he required was Tieho and that we should go for him. "I want you to catch him for me so that I can kill him to enable me to fill my medicine horn with the flesh". He said that after the plot had been carried out he would give us some reward. He further said that if anybody disobeyed the order and told other people who did not know anything about it, that person would be killed. That was all he said except that he said we should wait because others had not yet arrived and when they arrived everything would be arranged when all were there. Shortly afterwards other young men arrived.

Who were they? A young man arrived namely Rabolai, No. 6 accused.

Stand up No. 6 accused, is that the man? Yes.

Anybody else? If I haven't forgotten any other person whom I may have left out I think that is all that I saw of these people on that occasion.

Have you mentioned everybody who was there or do you mean there were others there whose names you don't remember now? I think I have given all the names however, as this thing happened some days ago I cannot say whether I have left out names of others who were present on that occasion.

Was there any more talking after other persons joined the party? He said: "It is all right young men that you have come together but you already know what orders I have issued".

This is No. 1 accused still speaking is it? Yes. He said: "I have issued orders through Nos. 4 and 5 accused, and they will be responsible for making this matter known to the young men". He said the time was getting short and it would be a good thing to hurry the matter because people would

In the High Court

Prosecution Evidence

No.2

Ranthene

Molala

examination

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In the High
Court
—
Prosecution
Evidence
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No.2
Ranthehe
Molala
examination

suspect what the meeting was about because there was not even beer to drink at that place. He said that we should listen carefully if we were given an order. "The person I am talking about saying I want him I shall make plans about him so that he can go away for some distance, where you will be able to catch hold of him when I give you the order to do so". He said the person who would be responsible for the carrying out of this plan would be No. 5 accused who would be assisted by No. 4 accused, and they would see to it that the plan was carried out according to instructions. Then No. 1 gave instructions that we should disperse and go to our homes. We then dispersed.

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At the time you dispersed had you any idea when the plot was to be carried out? Yes, I had known when the plot would be carried out.

When was that? He said that the plot would be carried out on the Monday and that the people responsible for the arrangements would be accused Nos. 4 and 5.

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This meeting took place on a Monday didn't it? Yes.

Was the plot to be carried out that same Monday, or the next Monday or two Monday's afterwards or which Monday? The plot was to be carried out on the following Monday.

Did anything happen between that Monday and the following Monday that has something to do with this case? Nothing happened except the orders.

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I am coming now to the following Monday. What happened on the following Monday? On the Monday which was the last one No. 4 accused came to me and said: "Young man, it is true that No. 1 accused has made plans that the person about whom you are talking should go away and he has sent him out towards Mapoteng".

Where was this? I was at my own house. We were not actually in the house but standing outside.

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You had been told the deceased had been sent to Mapoteng, is that correct? Yes, he said we should keep watch because the deceased might come on his return by the path a little higher up or by

the path a little lower down. We waited there and whilst waiting the deceased came in the company of Motsoenkana.

Who do you mean by "we" when you say "we waited there"? After No.4 accused told me about this he went away and I waited there alone. I should have said I waited there not "we".

You waited alone? Yes.

10 And was nobody else present when No. 4 accused spoke these things to you? No one else was present.

What time of the day did this conversation take place, midday or in the afternoon? It was in the forenoon a little time before midday.

You say you personally alone remained there? Yes. What happened? Later in the afternoon the young man Motsoenkana came with the deceased.

From what direction? They came from the direction of Monyane's in the valley.

20 Monyane's is right across the valley is it? Yes, they were walking from Monyane's towards me.

And what happened? They were coming in the direction of my home and they eventually reached my home. As they arrived at my place I greeted them with pleasure and was very glad to meet them because there was an order given. I took them into my hut. When they actually arrived at my home it was in the evening.

30 Had the sun already set or not? It was towards sunset.

You invited these two people into your house? Yes, I gave them chairs on which they seated themselves and then I gave them some beer which they drank. They went on drinking until it became dark.

Were there just the three of you in the hut, yourself, the deceased and Motsoenkana? I believe that No. 4 accused came when the other two were already in the hut.

40 You say you believe that, do you mean you know it or think it or what do you mean? I remember that No. 4 accused arrived after the three of us were in the hut. No. 4 accused joined the three of you in the hut? Yes.

You told me the drinking continued until dusk?

In the High Court

Prosecution Evidence

No. 2.

Ranthele Molala examination

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Court

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Evidence

No. 2
Rathene
Molala
examination

Yes.

And then? No. 4 accused went outside and called Motsoenkana to him, he said he wanted to speak to him, and Motsoenkana left the hut and went to No. 4 accused. No. 4 accused asked Motsoenkana where the man was and Motsoenkana in reply said "Here he is, I have been coming with him". No. 4 accused said it was a good thing that he had already brought the man whom they were looking for. He said we should remain in the hut until it became dark.

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No. 4 accused said that? Yes.

Who was to remain in the hut? That was Motsoenkana, Rathene, the deceased and myself.

Those were the instructions of No. 4 accused? Yes. He said that as it became dark Motsoenkana should take the deceased with him so that he could meet them at Ntsang's.

Is that the name of a village? Yes. The time which he spoke about came.

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What happened to No. 4 accused? Immediately after giving this order that deceased should be taken by Motsoenkana he went away to his own village.

Did he go away alone or in company with other people? He went away alone.

Leaving you three people at your own home? Yes and when the time came Motsoenkana and deceased left the hut, it was then already dusk.

They left leaving you behind them? Yes, immediately after they had left the hut I also left the hut and followed.

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You followed the two men who had just left? Yes, I was a little distance behind them so that they could not see that I was following.

In which direction were you going? We were going in the direction of Ntsang's village. Then we went on until we approached Ntsang's village; as they neared Ntsang's village I took a short cut route and proceeded to No. 4 Accused's house.

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No. 4 accused's house being in Ntsang's village? It is close to Ntsang's village.

You took a short cut to Ntsang's village. Go

on? As I approached No. 4 accused's house I saw people. I did not therefore go to the house of No. 4 accused but approached these people to find out whether they were the same people who had been detailed to do this work. As I came to them I found this party was that of the people who had been given the orders including No. 1 accused.

In the High Court
—
Prosecution Evidence
—

No. 2
Ranthehe
Molala
examination

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Was there anybody else besides No. 1 accused whom you remember? Nos. 8, 3 and 2 accused. I could see that there were some people a little below but while we were there we were hiding ourselves in order that we should way-lay the deceased.

Did anybody speak when you joined that group? I cannot remember. I do not know whether I may have just forgotten.

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So you joined the group and that made five of you with some other persons some distance away? Yes.

Then what happened? The whole group was sitting down but were not sitting in a group, we were sitting separately and hiding. Shortly afterwards I saw people coming alone. There were some who were in line but there was a larger group following those who were in front and the first person who I recognised was No. 4 accused.

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And the next person you recognised? The group that were following No. 4 accused caught up with him and they spoke to him. Others were walking a little slower and No. 4 accused walked towards us and found where we were. When he came No. 4 accused told No. 1 accused and us all that the young men were bringing the deceased with them. He said that we should get ready.

40

No. 1 accused or No. 4 accused said this? No. 4 accused said that we should get ready. No. 1 accused also spoke after No. 4 accused and said we should get ready for this man. We then kept watch and did not reply. The group came up and when they came into the defile, just a little before they crossed the defile he spoke and said "Why are you waiting, take hold of him".

In the High Court
Prosecution Evidence

No. 2
Ranthehe Molala
examination

Who spoke? That was No. 1 accused. We rushed at him, all of us rushed at him. As we rushed at him the deceased Tleho tried to defend himself as it appeared that in defending himself deceased would be dangerous No. 5 accused said "This man will beat you", then he tied him with a riem round the neck.

Did the deceased say anything while all this was going on. The attack and the ultimate putting of the riem round his neck? The deceased spoke at the time that he was being attacked.

Did he speak words that could be understood? Yes, he spoke something which we understood,

What did he say? He cried out and said "Joe, why are these people cruelly killing me".

Joe is a Sesuto expression of distress isn't it? - Yes.

No. 5 accused put the riem round his neck? Yes, he did so from behind the deceased.

And then? At the time the deceased could not have seen No. 5 accused because he was facing those who were attacking him. This is what caused the deceased to weaken, and at that time No. 2 accused hit the deceased on the head.

What with? He struck him with a battle-axe on the head.

How many times? Twice.

Can you describe that battle axe? Yes.

What did it look like? It is a battle axe whose handle is not very long.

What about the blade? It was shaped like a sharp axe and has got a spike on the other hand.

Anything like this axe exhibit No.11 which I am now going to show you? Yes, it was an axe similar to the one before the Court.

Did you observe which portion of the axe came into contact with the deceased's head? I could not say what part of the axe struck the deceased.

What happened to the deceased after he had been struck these two blows on the head? The deceased fell to the ground, as he fell to the ground we were ordered to take off our blankets and

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take away the clothing from the deceased.

Was that order obeyed? Yes, this order was obeyed and it was given by No. 1 accused.

Right. You removed your own blankets and unclothed the deceased, then what happened? After putting away our blankets I held one arm of the deceased.

Was anybody else holding the deceased? No. 8 accused held the other arm.

10 Was anybody else holding him? Others held the deceased by the legs.

Do you remember who they were? I cannot be definite about names but many of us were holding the deceased and we were ordered to do the work hurriedly in order that we would not be found by other people.

20 Are you definite about No. 1 accused giving the orders and No. 5 accused putting the riem round and No. 2 accused striking with the axe? Yes, I am quite certain.

You were holding one arm and others were also holding, then what happened? Then No. 1 accused gave an order to No. 2 accused that he should cut the deceased at the testicles with an axe. No. 2 accused obeyed the order and chopped the deceased. I saw him striking at the deceased and I believed it was with the battle axe.

Are you not certain about that? I am certain about that.

30 Did you observe which portion of the battle-axe came into contact with the portion near the deceased's testicles? I noticed that it was something which pierced the deceased.

What happened then? Then No. 1 accused came holding a billy can. and he collected the blood in the billy can which was brought to him.

Where was the blood coming from? The blood was coming from below the deceased.

Which portion of the body? Just below the testicles.

40 Was there any blood so far as you could observe coming from the two wounds on the head? There was.

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Prosecution Evidence

No. 2

Ranthehe Molala examination

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Court

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Evidence

No.2
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examination

Did anything particular happen to the blood from the head wounds? As the blood flowed from the wounds it was wiped off.

The blood was collected from the testicle wound then? Yes.

And after that what happened? What happened after that was that No. 1 accused gave an order that we should put on our clothes, which we did.

You resumed your blankets and then? We put on our blankets although others did not put on theirs which were taken by No. 3 accused. No. 1 accused then ordered that we should take the deceased to No. 4 accused's place.

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No. 1 accused you told us was there and his orders were carried out. No. 2 accused struck the blows? Yes.

No. 3 accused stand up please. You say No. 3 accused was in charge of some blankets, are you quite sure he was there? Yes.

Did you see him taking any other part apart from looking after the blankets? Yes.

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What did he do besides hold the blankets? At one stage immediately after the deceased was caught No. 3 accused tried to run away.

Was he stopped from running away? Yes, he was stopped from running away because it was feared he would make a report.

Do you know who stopped him? I am not certain about that because there was confusion.

So, as far as No. 3 accused is concerned, he held blankets and he tried to run away is that all he did? Someone said there is a man running away.

30

You have told us about that. Stand up No. 4 accused please. This man No. 4 accused you have told us that he was there immediately before the deceased was seized. Can you say whether or not No. 4 accused was present there at the killing? Yes, he was there all the time.

Did he take any active part in the killing? Yes, he took part because he was with us there and an order was given that we should all take part in the killing.

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You can't mention any specific thing that he

did, either holding or stabbing or anything like that? No, I didn't notice.

Stand up No. 5 accused. Was he present or was he not present at the killing? He was present at the killing.

What part did he play? He strangled the deceased with a riem.

No. 6 accused stand up. Was he present or not? He was present.

10 What part did he play if any? I did not see him striking any blows but he was there when the orders were given.

Do you know anything about No. 7 accused? He was present at the killing.

Did he play any particular part? I didn't see him do anything that would kill the deceased but he was there to help us.

20 No. 8 accused? He was at the killing.

Did he play any part? He did take part in the killing but I did not see him use anything that I can say killed the deceased.

Now when No. 1 accused gave instructions that the body of the deceased should be carried away, was it carried away? Yes, it was carried away.

What was used to carry the body? An ox skin was used which came from No. 4 accused.

30 No. 4 accused produced an ox skin and that was used. The body was placed on the skin is that right? Yes.

Do you remember who carried the skin? Although all of us were there with the exception of a few who remained behind, I can remember who carried.

Did you carry yourself? Yes I carried.

Who else? Accused Nos. 4, 2, 7, 8 Motsoenkana, Ramatsepe and accused No. 6. I think that is about all.

40 Where did you carry the body to? We carried the body to No. 4 accused's house.

And the remaining people who were not carrying, what happened to them? The persons that I saw staying behind were No. 1 accused.

No need to go through the names again. You

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mentioned the carrying party and the remainder of people stayed behind. You carried the body to No. 4 accused's hut, what happened when you got to No. 4 accused's hut? An order had been given by No. 1 accused before we started carrying the body to the effect that after we had placed the body in the hut we should all return to him.

Did you place the body in the hut? Yes, we placed the body in the hut.

Whereabouts in the hut? In the square hut belonging to No. 4 accused. 10

But whereabouts on the chair, or bed or where? As we approached the hut No. 4 accused went ahead of us, entered the hut and lit up.

Whereabouts in the hut was the body placed? We placed the body under the bed.

And after placing the body what did you carrying party do? We obeyed the order which was given by No. 1 accused and returned to him at the path. 20

What happened when you got back to the path? Then No. 1 accused took out a medicine.

Where did the medicine come from? The medicine was contained in a billy can and there was also the brush from the tail of an ox.

Do you know what happened to the billy can in which the blood had been collected? No.

Was it the same billy can with the medicine or not? No, it was not the same billy can, it was different. 30

What was done with the brush from the tail of an ox? The brush was put into the billy can and then sprinkled the medicine on us.

All of you? Yes.

And then? After sprinkling the medicine on us he addressed us and said "All you young men who have come here obeying my order, you have carried out my order. I am now going to make arrangements, after everything has been finished with regard to killing this man, to reward you. I will give you a very big reward. Now I give you instructions that you should be here again, all of you, on Thursday". 40

Where were you to go on Thursday? He said we should meet at No. 4 accused's place. Then we dispersed.

What happened on the Thursday? The Thursday came, he had explained that on that Thursday the body would be thrown away.

Was that No. 1 accused? Yes, No. 1 accused.

10 What did you do on the Thursday? On that Thursday I left my home and as I approached Sabilone's village it was dark then and I heard the footsteps of people who were walking some distance away. It appeared to me that they were the people who I was to join and had already left, being late. I followed this group. I walked very fast and caught up with them.

Who were in the group? The group consisted of accused Nos. 1, 5, 2, 3, 7, 8, 6, myself and No. 4 accused. That was all.

20 When you joined the group what happened? Someone asked "Is it you" and I said "Yes". I joined the group in carrying the body which was on an ox skin.

Where was the body when you found it on that Thursday night? The group was already on its way and they were at Mosenekeng.

Was the group already carrying the body? Yes.

30 Who was in the carrying party? All the persons whose names I have mentioned were carrying the body on the ox skin.

Where was it taken to? We went through Mosenekeng defile, until we came up on top of the cliff.

What was the name of that cliff, do you remember? - Mojapela.

40 And when you got to the top of Mojapela's cliff what happened? When we got to the top No. 1 accused said we should place the body on the ground. He said that many people should not be ordered to go to the bottom of the cliff but only a few selected people should go. Then No. 5 accused, Nos. 2, 8 and No. 3 went down and all the others remained at the top.

Including yourself? Yes.

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Did those who went down ultimately return?
All those went down in the company of No. 1
accused.

They returned? Yes they went down for some time
and then came back.

With or without the body? Without the body
but they came back with the ox skin.

Did anybody speak after they returned? Yes.

Who? No. 1 accused spoke.

Saying? "Now men we have done the work, but I
have not arranged everything to complete this work.
I am intending to complete the work". He said that
as soon as he had finished the work we would know
through either accused No. 4 or No. 5. He said
particularly those who were living in far off
villages. "I am going to give you a very
substantial reward, if any of you report this
matter or speak about it to his wife, you will be
killed".

Anything else? He said that it was a pity that
some of the people he had required had not attended
but he would let us know everything
when everything was completed. He said "Let us now
disperse".

And did you disperse? We then went back
through the Mosenekeng's defile back to No. 4
accused's place carrying the ox skin.

And when you got to No. 4 accused's? However
we did not reach No. 4 accused's house but as we
approached he took his ox skin and we went our own
way to our homes.

Now you have told My Lord what you know about
the death of Tieho? Yes.

One last thing I want to know from you. Is
No. 1 accused related to you? Yes.

What relationship? He is my maternal uncle.

Does he hold any position of authority in his
area? Yes, he holds some position of authority,
although it is not an important position.

What is it? He is the head of a village.

No. 2 accused. is he related to you? Yes.

What? He is my cousin.

Does he hold any position of authority? No.

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No. 3 accused, is he related to you? Yes.
 What relationship? He is also a cousin.
 Any position of authority? No.
 No. 4 accused, is he related? Yes, he is
 somewhat related to me by marriage because we
 have married the same family.
 Any position of authority? No.
 No. 5 accused is he a relation? Yes.
 What? He is my father.
 Your father? I say he is my father because
 he is a brother-in-law of my father.
 Does he hold any position of authority? No.
 No. 6 accused is he a relation? Yes.
 What? He is a cousin of mine.
 Does he hold any position of authority? No,
 not himself but his relative holds some position
 of responsibility.
 Don't worry about his relations. No. 7
 accused is he a relation? Yes.
 What relation is he? He is my father.

HIS LORDSHIP:

Do you mean proper father? He is my uncle,
 he is my father's brother.

MR. THOMPSON:

Your father's brother? Yes.
 Does he hold any position of authority? No.
 No. 8 accused is he related? Yes.
 Is there anybody you are not related to?
 What relationship is this one? He is a cousin of
 mine.

Any position of authority? No.
 You pointed out various places to Captain
 Shortt-Smith about a year ago did you not? Yes,
 I did.

The places you pointed out were where you and
 others lay and waited for the deceased? Yes.

The place where you say the killing took
 place? Yes.

The place where the horses were standing? Yes.

The house where the body was concealed? Yes.

And the place on top of the krantz where you
 and others remained while No. 1 accused took the
 body down and place it? Yes.

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Did you point those places out correctly to the best of your knowledge? - Yes, I claim that I pointed them out correctly.

I am rather interested in the deceased's dog. Do you remember on the Monday when he met his death deceased had his dog with him when he came along to your place on Monday afternoon? - I did not see the dog when he came to my village on that occasion.

Some witnesses will say that deceased's dog was seen hanging around No.4 accused's village after the deceased had been killed, do you know anything about that? - I only heard the dog barking at the time when the deceased was seized.

You heard dogs barking at that time? Yes.

CROSS-EXAMINED BY MR. LIEBETRAU:

How long have you known No.1 accused (HABOFANOE) ?

It is quite a long time.

Can you tell me the number of years? - No I cannot say exactly how many years it was.

Where did you first meet him? - I first met him at the school at Sekhoeng.

And that was a short while before the death of Tieho? - I cannot quite remember because there was nothing significant about that but as far as I can remember he was a person who called me to him and asked me if I knew him when we were at the school at Sekhoeng.

At any rate you have not known him since childhood? - No.

Can you explain to the Court how you only met your maternal uncle at such a late stage in your life, that you haven't known him since youth? - No, I cannot explain because I do not know the circumstances why it occurred.

The first time you learnt about this plot to kill Tieho was on a Saturday? - Yes, that was the first time that I was consulted about it.

You told us that this took place at your house I think? - Yes.

Can you tell us what time of day it was? - I cannot be quite certain as to what time it was,

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examination

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in any case it was during the day. I had no watch with me but in any case I cannot read a watch.

Can you say if it was before or after lunch?
You mean the Saturday ?

Yes? - I think it could have been before lunch but some time just before lunch.

Are you just guessing now? - No, I am not guessing but that is the time I think it was about.

10 Did No.4 accused find you in your house? -
Yes, I was in my house when he arrived. He greeted me and I went out of the house.

Were you alone in the house? - No, I was with my children.

Your wife and your children? - No, my wife was away it was just myself and the children.

What were you doing at that time? - I cannot quite remember exactly what I was doing on that day.

20 But he greeted you and then you went outside?
Yes.

Then did you continue talking outside? - Yes.
In front of the door? When I left the hut I went right outside the enclosure before the hut.
And you stood talking outside the enclosure?

Yes.

30 Is your hut isolated from other huts? - No, it is not. Were there other people around while you were talking? - No there were no people about because I came to him, he told me it was a private matter which he wanted to speak to me about and he suggested we should get away from other people so they could not hear him.

But I thought you stood speaking just outside your skerm? - Yes on the first stage of the conversation we were just outside my skerm but he suggested that we should go a little further away because he had some private matter he wanted to talk to me about.

40 So did you then go into the veld? - Yes,

You made an agreement to go to his place on the Monday? - Yes.

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Was that the Monday immediately following ?-
Yes.

Did you fix a time when you had to go? -
Yes, he said that I should go to his place later
in the day, in the evening.

You mean after sunset on Monday? - No, not
so that I was to be there after sunset, he said
some time before sunset.

In the late afternoon ? - Yes.

Was that the time you actually went? - Yes.

You have told us when you approached the
place you saw that nobody else had arrived yet? -
Yes.

Where were you expecting to see the people?
I was expecting to find them at No.4 accused's
where I was instructed to go.

Were you expecting to find them outside in
the open? - I was expecting to find them in No.4
accused's house.

I take it that you went to No.4 accused's
house to enquire whether the party had arrived,
No, I did not go to his house to enquire whether
the people had arrived.

You merely assumed that the people had not
arrived? - I stood there to watch to see if the
people had already arrived because it is an open
place and I could easily see if someone went
outside, I could easily see that people were
there.

At what stage did you go to the house of
No.4. accused? Who arrived or what caused you to
go ? - I went there when I noticed that people
were there. I saw people there.

Then you went to the square house of
accused No.4 ? - Yes, I went straight to his
square hut.

Would you be good enough, you have already
told us but I would like you to repeat the persons
you found in the square hut when you arrived ? -
I found there accused Nos. 1,5,2,7,4,3 and 8.
The others had not yet arrived.

Let us talk about No.8 accused for a moment.
When you gave your evidence in chief earlier this

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afternoon you did not mention his name at all.
Are you sure he was there? - Yes, he was there.

The position is, you arrived at the square house and you found seven people in the square house? - Yes.

Do you still remember giving evidence at the Preparatory Examination? - Yes, I remember although I may easily forget some of the statements.

10 I refer to page 7 My Lord about eight lines from the bottom of the page "I went there on that Monday. I found Nos. 1,5,4. I was the fourth." Can you give any explanation for the difference between these two statements, the one that you made today and the one you made at the Preparatory Examination? - It is not different but I may have forgotten because there has been a great number of days in between.

20 I appreciate that but what is the correct position. Did you find three people there or did you find seven people there when you arrived? - I am afraid I may have made a confusion and included people who were not present.

Who was present when you arrived at Accused No.4's house? - On that occasion, on the Monday the people that I found there were accused Nos. 1,5,2,7 and No.4, and myself.

30 So now you say that when you arrived at No.4 accused's place you found five people in the hut? - Yes.

You've told us that everybody had not yet arrived when you came? - Yes.

Will you tell us whether anybody did arrive after you? - Yes, accused No.6 arrived, that is the only person.

He is the only person who came after you? Yes, the only one.

40 So now we are quite certain therefore that Nos. 3 and 8 accused never attended that meeting on the Monday? - That is possible because we did not all come at the same time, those who had been invited.

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As far as you know accused Nos. 3 and 8 did not come, that is correct is it? - I am not absolutely certain about that because this thing happened a long time ago. It is also possible that they may have eventually arrived.

COURT ADJOURNS.

RESUMED on 8th July, 1953: (Second day):

P.W. 7 RANTHENE MOLALA (who is warned that he is still on former oath)

CROSS-EXAMINED BY MR. LIEBETRAU: (Contd)

When we adjourned yesterday we were talking about this meeting which was held at accused No.4's house? - Yes.

Do you know No.4 accused well? - Yes, I know him.

Your house is not very far from his? - It is some distance away from his but not far. We are under the same Chief.

Are you a frequent visitor at No.4 accused's place? - No, I have visited his home but not frequently.

Do you know that the house he occupied belonged to his grand-mother Paulina? - Yes, I know that is his parents' home.

Paulina also lives in one of the houses in that little group? - Yes.

On this Monday did you see Paulina? - No, I did not.

Did you see the wife of No.4 accused? -No.

You have told us that the date for the killing was fixed for the following Monday? - Yes.

Was that date fixed in the meeting in No.4 accused's house? - Yes.

Who fixed the date? - No.1 accused.

What exactly did he say? - He said that he had made arrangements.

Did he say it would happen on the following Monday? - Yes, he explained that

Was that after the arrival of No.6. Accused? - He had previously said that to me

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after I had arrived and also after No.6 accused had arrived.

I have been reading the evidence which you gave at the Preparatory Examination in regard to this meeting at No.4 accused's house. And in that evidence I can't find any reference whatsoever to the presence of No. 5. accused at that meeting? - I cannot say whether any reference was made to No. 6. accused but the day we arranged to meet there it was arranged that all of us should be there although some may not have come at the same time and may have come later on.

In any case you are sure now that No.6 accused was present at this meeting? - Yes.

Are you certain that this meeting ever took place? - I am quite certain that this meeting took place at No.4 accused's place.

I put it to you that if such a meeting ever took place, No.1 accused was not present at it; that he was somewhere on the road between Teyateyaneng and Mapoteng? - No, we were together.

I put it to you the other names you have mentioned, they were all at their homes or busy in their lands? - According to my own knowledge I was with them.

I want you to carry on to the Monday on which Ticho was killed. On that Monday you had quite a party at your place? - Yes.

You did have a party? - Yes, I had a party but it was not a feast.

Was that at your house? - Yes.

Did you have any visitors? - No.

Did you have a visitor, a man by the name of Mahlomola, (witness No.16 at the Preparatory My Lord). Do you know Mahlomola? - Yes I know a man called Mahlomola.

Mahlomola Masetla? - Yes.

Was Mahlomola at your house on that Monday? - Yes.

Was Mahlomola there all day or only for part of the day? - Not the whole day, he was only there for part of the day.

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Was he there in the afternoon ?- Yes.
 Did he leave long before sunset ?- Yes.
 Did he leave before No.4 accused arrived?-
 No.4 accused was already there when he arrived.
 At the time he left No.4. accused was still there.
 Was the deceased there while Mahlomola was
 still present?- The deceased had just arrived.
 Just arrived when what happened ?- Nothing
 happened Mahlomola left.
 Deceased had just arrived when Mahlomola
 left ?- Yes.

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Can you tell me whether Mahlomola and No.4
 accused were drinking together in the same hut?-
 I cannot quite remember whether that was the case
 because it was a long time ago when this happened.
 They were present together in the same hut?-
 Yes.

What about Maletsema Masetia (P.W.6 at the
 Preparatory My Lord). Was she at your house on
 that day ?- Yes, at one time she was at my
 place.

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On that Monday ?- Yes.
 Was she still there when the deceased
 arrived?- I am not quite certain whether she
 had already left or whether she was still there.
 You have told us that No.4 accused came to
 you on that day and told you about the plans that
 had been made for Tieho ?- Yes.

Was it during the morning that No.4 accused
 arrived?- Do you mean on the day of the killing?
 Yes ?- It was not in the morning.

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When was it that he arrived?- He arrived at
 about midday.

Then you had this conversation with him?-
 Yes.

Did he remain at your house until the
 arrival of the deceased?- No, he gave an order to
 me and Motsoenkana and then left saying that we
 would find him somewhere else.

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Do you mean to say that he came to your
 house twice on that Monday?- Yes he came twice to
 my place on that Monday.

The first time he came was about Midday?-Yes.

And then he told you to watch for the deceased? - Yes.

Did he go away again? - Yes.

When did he come back the second time? - It was still during the day when he came the second time.

Later in the afternoon? - Yes.

And then he came into the house and had some beer with you? - Yes.

It was then that the deceased and Motsoenkana arrived? - I was with the others together with Motsoenkana.

Which others? - Motsoenkana and No.4 accused and the deceased.

Did the deceased ever come to your house on that Monday when he was killed? - Yes he came to my place on that Monday in the company of Motsoenkana.

At what stage of the day did he arrive at your house? - It was a little before sunset.

When deceased arrived at your house, No.4 Sabilone was already with you? - When the deceased arrived Sabilone had not yet arrived.

So Sabilone arrived after the deceased? - Yes, after the deceased and Motsoenkana had arrived at my place.

And that was the second time on this Monday that No.4 accused had come to your house? - Yes.

What happened when No.4 accused arrived for the second time? - He called Motsoenkana to go outside so that he could speak to him.

Did the two of them go out? - Yes.

Then what happened? - After that Motsoenkana came back and called me.

Did you go out then? - Yes, I went out to them.

What happened to the deceased in the meantime? - The deceased remained in the hut where I left him.

You left him alone? - Yes.

All your other visitors had departed? - Yes.

We have this quite clearly that No.4 accused,

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Motsoenkana and the deceased were the last three visitors you had on that day ?- Yes.

Did you have a conversation with No.4 accused and Motsoenkana somewhere outside your house ?- Yes.

Could you tell us exactly where that conversation took place?- We were outside some distance away from my hut.

In the open or in the building?- I explained where we stood.

Explain again? - We were not in a hut but were outside in the open.

You all agreed to go down to Ntsang's village?- Yes.

You followed behind Motsoenkana and the deceased?- Yes.

You parted with them at Ntsang's village?-

HIS LORDSHIP

He didn't say that. He said: "I took a short cut."

MR. LIEBETRAU:

I beg your pardon My Lord. Do you remember when you took a short cut to No.4 accused's house near Ntsang's village? - Yes.

Had the deceased and Motsoenkana reached Ntsang's village at that time? - Yes I believe they had reached there because they were already in the village.

Did you see whether they entered any house?- No, I could not see because I was already walking across to No.4 accused's place.

The last view you caught of them was in that village somewhere ?- Yes, at the time I was walking across towards accused No.4's place.

I will read the evidence which you gave at the Preparatory Examination (Page 13 My Lord, five lines from the bottom of the page). In your statement at the Preparatory Examination you said that the two of them entered the house of Sebakeng?- Did I say that myself?

It is recorded here?- I cannot say whether I actually said that but what I do say now is that I

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saw them entering the village but I could not see what hut they entered.

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Then you went towards No.4 accused's village, and you met a group of people? - Yes.

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Could you tell me the names of the people again who you met at that place? - Yes.

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Who were there? - I will give you the names of those I actually saw there were others sitting down who I could not actually recognise.

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Give me the names of those you actually saw? - I saw No.1 accused, Nos.5, 8, myself.

Anybody else besides that? - Those are the ones I saw, the other one was No.2 accused.

Those are the only ones you recognised? - Yes.

You didn't recognise No.3 accused there? - I know No.3 all right but at the time I am not quite sure whether he was there.

20

Yesterday afternoon when you gave evidence you were quite certain that accused No.3 was there in that group? - At the path where the person was seized, many of us including him were at the path.

I am not talking about the path. I am talking about the group you met near accused No.4's village. You told us yesterday that No.3 accused was in that group? - I cannot remember having said that.

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HIS LORDSHIP:

But you did. - If I said so I think I made a mistake.

MR. LIEBETRAU:

Yesterday when you gave the names of the people you first met you did not mention the name of accused No.5 Makhethi? - I mentioned the name of No.5 accused yesterday.

You did not? - I thought I mentioned it.

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You were questioned about this very same point when you gave evidence at the Preparatory Examination. (I refer to page 8 My Lord about 10 or 12 lines from the bottom of the page). At the Preparatory Examination you gave some entirely different names. You said "When I came to them I

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found that they were Nos. 1, 6, 8 and 9." Was No.6 accused ever there in that first group that you met? - No.

Was No.9 accused in that group? -

HIS LORDSHIP:

No.9 accused is the one who has not been committed isn't he? - Yes my Lord but I would like to ask the question.

MR. LIEBETRAU:

Was No.9 accused in that group? - Yes, I mentioned his name I remember. 10

You didn't mention his name either yesterday or today? - Yes, I have not mentioned it.

Was he there? - Yes, he was.

You met this little group of people and then you all hid at the side of the path? - Yes.

This place where you hid, was it at the spot where you met them? - Yes, when I found them there we all hid ourselves on the ground.

And you pointed out the spot where you hid to the Police Officer Captain Shortt-Smith? - Yes. 20

While you were in hiding at that spot, the other members of your party arrived? - Yes.

From which direction did they arrive? - From the direction of Ntsang's village.

Nobody came from the direction of Mosenekeng? - There were others down below who appeared to be coming from the direction of Mosenekeng. 30

Did you recognise any of the people who were coming from the direction of Ntsang's? - Yes.

Whom did you recognise? - I recognised No.4 accused, Motsenkana, Ramatsepe, accused Nos.3 and 7. I think that is about all.

These people were coming in one group from the direction of Ntsang's? - Yes.

Was the deceased with them? - Yes the deceased was there. He was in the group in which No.4 accused was a little ahead of the others. 40

Do you mean the deceased and No.4 accused were walking alone ahead of the others? - Yes.

How far ahead of the group were they? - They were not very far away from the others. They were about from where I stand to that wall. (Indicates 15 yards).

What is the first thing that happened when this group approached? - No. 4 accused came to us where we were leaving the others behind including the deceased and said we should get ready.

Was the deceased at that time in a group with the remainder? - Yes, he was with all the other members of the group who remained.

After that No.1 accused gave the order to you to rush at the deceased? - Yes.

10

And you did so? - Yes, when he was in the path we all rushed at the deceased.

Did he shout at the time that you were about to attack him? - Yes.

He shouted as you were rushing? - Yes he shouted only once.

And after that you overpowered him? - Yes.

Had the riem been thrown over his head already when he was shouting? - No, it was before the riem was thrown over his head.

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Was the riem thrown over immediately after he shouted? - Yes.

Did he cry out loudly? - I had the impression that his voice could not be heard from a long distance because he was being attacked.

No 5 accused threw the riem over his head you told us? - Yes.

And he was standing behind the deceased when he did this? - Yes.

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The rest of you were holding the deceased by various parts of his body? - Yes, everyone who was there held him.

Then he was struck on the head with an axe? - Yes.

I think you told us No.2 accused did that? - Yes.

Was No.2 accused standing in front of the deceased or behind him? - He was in front of him.

He struck both blows from the front? - Yes.

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Did the deceased fall to the ground immediately after he was struck with the axe? - Yes, at the time that he could not have enough strength.

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Did he fall down or was he lowered on to the ground by you people who were holding him? - He fell to the ground on account of the blows that were struck him as well as being pulled to the ground.

Did he fall on his back? - Yes he fell on his back.

I suppose he was pulled over backwards with a riem? - Yes.

At some stage you were all told to remove your blankets? - Yes. 10

At what stage of the killing was that? - It was after the deceased had been thrown to the ground.

Did you remove only your blankets or did you remove all your clothing? - We took off all our blankets and our clothing.

HIS LORDSHIP

Do you mean you were naked? - Yes we were naked because it was said if we did not do so we would be spattered with blood. 20

MR. LIEBETRAU:

And all the murderers who were present on the scene had taken off their clothing and were stark naked? - Others only put away their blankets and remained clothed with shirts and trousers.

Some of you were completely naked and others remained in their shirts and trousers? - Yes.

And at what stage was the clothing of the deceased removed? - At that very time. 30

While you were undressing you also undressed the deceased? - Yes.

Incidentally you took off all your clothing, you were completely naked? - Yes.

What about Motsoenkana? - He had taken off his blanket but still had his trousers on.

What about Ramatsepe? - Ramatsepe had also put away his clothing but I am not quite certain because we were all very busy and there was not time for me to watch everybody. 40

Can you give me the names of the other assailants who stripped completely naked? - No,

I cannot give you those details because I had no time to look around and see who had taken off their blanket and who had not.

The deceased is now on the ground and his clothes have been taken off?— Yes.

Then he was chopped in the groin?— With a battle axe.

Who chopped him?— No.2 accused.

10 No.2 accused was standing when he did this chopping?— He was standing in the same way as I am now. (Upright).

Was he standing at the side of the deceased or was he standing at his feet or at his head?— He was standing at the legs of the deceased.

In between the legs or right at the feet?— He was standing between the legs of the deceased who was being pinned to the ground.

20 What became of the clothing of the deceased after he was undressed?— They were taken away at the same time as when deceased was carried away.

But I want to know a little bit before that. Was the clothing thrown on to the ground or was it being held while the chopping was being done and while the blood was collected?— His clothing was thrown on the ground.

30 And when the body was removed had it been re clothed or were the clothes taken separately?— The deceased's body was not re clothed but his clothes were put on the ox skin on which the deceased also lay.

You say his clothing was thrown on the ground whilst he was being killed?— Yes they were placed on the ground immediately after they were removed from the body.

40 Can I read your statement at the Preparatory Examination, I see something different (Page 15 My Lord). Questioned by No.3 accused. At the Preparatory you said "When the deceased was killed No.3 accused kept all his clothes" Today you say the clothes were thrown on the ground.

HIS LORDSHIPS:

Wait a minute, do you think there is really

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any difference Mr. Liebetrau ?
MR. LIEBETRAU:
 My Lord I would like to clear it up, on the face of it there appears to be a difference.
HIS LORDSHIP:
 It might be that No.3 accused was keeping a watch of them on the ground, I don't know.
MR. LIEBETRAU:
 Then My Lord it is up to the witness to explain? - No. 10

No what? - I deny that I said No.3. accused kept the clothes of the deceased at the time he was being killed, but what I say is that the clothes of the deceased were taken together with those belonging to others when the clothes were being carried away.
HIS LORDSHIP:
 He has misunderstood your question I think.
MR. LIEBETRAU:
 My Lord I won't press that point, it is really immaterial. During this killing on the Red Path, did you see any mounted persons? - Yes I saw a group of horses some distance away with some people standing near them. 20

Those people on the horses they did not take any part in the killing? - No, I did not see them coming.
 Have you any idea who those persons were? -
 No. 30

The body was eventually carried away to the hut of No.4 accused? - Yes.
 In an ox skin? - Yes.
 Would you recognise that ox skin if you saw it again? - Yes, I could recognise it, it was a red coloured ox skin.
 Whose ox skin was it? - It belonged to No.4 accused.
 The body was placed under a bed? - Yes.
 Was there only one bed in the square hut? -
 There were other pieces of furniture in the square hut but what I actually noticed was the bed under which the deceased was placed. 40

Did the other pieces of furniture consist

of a table and chair? - Yes.

And a small box where blankets were kept? - Yes.

Apart from that there were no other pieces of furniture in the house? - No, there were not many other things in the house.

When you took this body into the house of No.4 accused did it disturb the dogs of the village? - Yes, we could easily have disturbed the dogs because they could easily have heard our footsteps.

Did you in fact disturb them. Did they bark? - Yes, they barked much.

Having delivered the body you all returned to the Red Path? - Yes.

And there you were doctored? - Yes.

Was Motsenkana present amongst those people who were being doctored? - Yes he was.

You were told to come back on the Thursday night? - Yes.

Was Motsenkana present when that order was given? - Yes he was.

On the Thursday night did you in fact come back? - Yes.

And you met the party somewhere near Mosenekeng? - Yes.

How was the body being carried? - We were carrying the body in an oxskin.

You didn't go down to the bottom of the krantz? - No.

Would you tell us who all remained at the top of the kranz with you? - Accused Nos.4,3, and myself, on that occasion Motsenkana and Ramatsepe had not turned up.

Anybody else? - I think that is about all.

That is yourself, accused Nos. 3 and 4? -

Yes.

Yesterday you told us that No.3. accused went down to the bottom of the krantz with the body? - Did I?

Yes you did? - I have an idea he was one of those who remained at the top with me.

You are not certain about that? - It is

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possible for me to forget or make a mistake because this is a thing that happened long ago.

What is the position about No.6 accused, wasn't he there that night when the body was removed? - He was there.

Did he go to the bottom of the Krantz or did he stay at the top? - He remained at the top with me.

He also remained at the top? - Yes.

I ask you this because I was rather puzzled at some of the conflicting statements you made at the Preparatory. (I refer to page 9 My Lord, about eight lines from the bottom of this page, and I also refer to page 10 about 15 lines from the top). At the Preparatory you said once that No.6 accused helped to carry the body down the Krantz and in another place you said that he remained at the top? - I remember that he was one of those who remained with me at the top.

Can you remember what the weather was like on that Monday when Tieho was killed. There are Crown witnesses who said at the Preparatory that it was snowing, I just want to know if you will confirm that (Mohapi, P.W. 12 spoke about snowing My Lord, there are several but he is one of them). What was the weather like on the day of the killing? - That is correct, there was rain on that night.

Do you still adhere to that? - Yes.

MR. THOMPSON

No re-examination.

QUESTIONED BY:

MR. S. MATETE:

Can you tell me on this day of the killing, at what stage you noticed the deceased was dead? - The deceased died after he was struck on the head.

After the deceased was unclothed, at what stage was he reclothed? - When I last saw deceased he was still unclothed.

Do you mean to tell me that up to the time you left the body at the top, the body was still unclothed? - No, it was already reclothed.

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QUESTIONED BY MR V. GILLETT

When the deceased was struck on the head with the axe was he wearing anything on his head? - Yes, he had something on his head.

What was it? - It was a hat (Exhibit 9).

Is that it? - Yes, it looks like it, it is similar to the hat the deceased was wearing.

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P.W.8 RAMATSEPE SEOLI: (who is duly sworn by Interpreter):

EXAMINED BY MR. THOMPSON:

Now Ramatsepe, two winters ago, where did you live? - I lived in the village of Ntsang.

Are you related to any of the accused, Look at them. No.1 accused is he any relation of yours? - No, I am not related to him.

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No.2 accused? - According to our clan we are somewhat related.

Are any of them closely related to you? - No.

Do you remember a man who used to live not far away from you by the name of Tieho Matsora? - I did not know him during his lifetime.

You know that he is dead though? - Yes.

Do you know how he came by his death? - Yes.

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I want to start right at the beginning, from the first time you heard anything about his death, and tell My Lord what happened? - The beginning of the whole matter is that on one occasion I saw No.4 accused rounding up his sheep near my village.

Do you know the months of the year? - No.

All right. Go on? - He called me, and I went to him. When I came to him he said: "My friend there is a certain person who has spoiled my name and the name of No2 accused" he went further and said that they had now decided to kill that person.

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He and No.2 accused had decided? - Yes.
 Then he said whenever you see this person let me know. In reply I said "My friend I feel afraid, why are you so bold to kill a person". Then he said to me: "Am I speaking to a person who is frightened." He said: "My friend I was telling you this because I trusted you, this should be a secret between me and you." He then said: "If you agree to help me with regard to this person I will give you medicine which will make you a rich man." He said that he had already asked Motsoenkana for assistance and that he had promised him a reward of £60. He told me that I shouldn't be frightened because even the brother of this person Habofance, namely accused No.1, was also arranging to help with the killing of this person. He gave an example of himself saying that although he went to work on the mines he did not work on the mines but he was a rich man on account of this medicine. I agreed to assist but however, explained that I did not know this person. He said, that he would show me this person.

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What is the next thing that happened? -
 Although I forget the date he told me I should pay him a visit in the evening. I went to the place of No.4 accused in the evening of that day.

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Can you possibly remember the day of the week it was? - It was on a Monday.

And you went to No.4 accused's? - Yes.

What happened when you arrived? - I found the following persons. Accused Nos. 1,2,3,4 and 5, Ranthene and accused No.6.

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You found those people there? - As soon as I arrived No.4 accused spoke and said: "This is another man who I have found who is going to help us get this man". No.1 accused asked whether I knew that person and in reply I said I did not know him. No.4 accused said, however, that he would show me this person. No.1 accused asked what was going to be done in order that this person should be found quickly. No.2 accused replied and said he would do something clever which would cause this man to be found. No.1 accused said that the matter that was being discussed there should not be

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reported by anybody. We then dispersed.

Did any of those present whom you have named refuse to take part in this scheme or raise any objection to it?— No, no one.

What is the next thing that happened?— On another day which was during the day.

What day of the week?— It was a Sunday. No.4 called me and said that I should go to him with Motsoenkana where he was on the hill. I went with Motsoenkana to the top of the hill where I found accused No.4 with accused No.6. No.4. accused said that he had received information from Accused No.2 that the deceased would go and look for his sheep at Mapoteng on a Monday.

That was the following day?— Yes, he said that I and Motsoenkana should be on the look out to see which way the deceased would take. I said that I was suffering from a headache and would not be able to go.

Was that genuine or was it an excuse?— Yes, an excuse.

Was that all that happened on the Sunday?— Motsoenkana said that he would go.

What time of the day was this on the Sunday when this discussion took place between the four of you, you two witnesses and accused Nos 4 and 6?— It was in the afternoon on Sunday.

Did anything else happen on that Sunday?— No.

We come to the following day, the Monday. Where were you at sunset on that Monday?— I was at home.

What happened that evening?— During that evening Motsoenkana came to me when I was in Mamojela's with Mankhoaba.

In the hut of a woman called Mamojela and Mankhoaba was present?— Yes, he then reported to me that he had come with that person. He said that he had already reported to accused Nos 4 and 6. I was talking to them outside the hut. He told me that I should follow the road leading to Mosenekeng. Motsoenkana told me saying that we would find the others ahead of us. I then left.

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In which direction did you go?- In the direction of Mosenekeng.

What happened to you?- As I reached the outskirts of the village I reached a group of people near the krantz.

Is that the krantz called the Red Path?- Yes, these are the krantzes leading to the red path.

What did you do when you saw them?- I went towards that group thinking those were the members of the party who were referred to. When I got up to this group I identified the persons.

Who were they?- Accused Nos. 5,7,6,4,3 and another person who I did not identify.

Did you join these people?- Yes.

What did you seven people do?- We went in the direction of the Red path.

What happened?- On reaching the Red Path I found the following persons, accused Nos.1,2,8 and Ranthene.

Were there any others in that group besides the ones you named?- I omitted to mention accused No.7 in whose company I had come.

Then you seven joined those four?- Yes, then No.1 accused told us to undress and put away our blankets and catch hold of the person. I saw them rush at this person who I did not know. This person tried to defend himself by fighting with a stick.

That was the first time that you realised Tieho the unknown man had been chosen as the victim?- Yes.

I just want to go back for a moment. You say No.1 accused told you to take off your blankets?- Yes.

How much of your own clothing did you take off?- I took off my blanket.

Only your blanket?- Yes, only my blanket.

You have now got to the stage when deceased was seized and he tried to defend himself. Will you go on please. Then No.5 accused threw something like a riem round the head of the deceased.

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He held the deceased with a riem.

Was the riem attached to any part of the deceased's body? - It was round the neck of the deceased and held by accused No.5. Then No.2 accused struck the deceased with something that looked like a battle-axe on the head.

How many times did he strike him? - Twice.

Can you describe that axe? - Yes, I can.

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Describe it? - One side of it is like an axe, while the other end of it has a sort of spike like a chisel.

Long handle or short handle? - Short handle.

Anything like this (Exhibit 11) ? - Yes, it is something similar to that.

Which portion of that battle-axe came into contact with the deceased's head? - It was the blade of the axe.

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And do you remember where the first blow landed on the deceased's head or don't you remember? - I think it was on the left side of the head.

And the second one? - It was also on the left side of the head.

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What happened to the deceased after he had received these two blows on the head ? - The deceased fell to the ground and No. 1 accused came and collected the blood from the wounds on the head with a small billy-can. When the blood stopped flowing from the head No.1 accused then unclothed the body of the deceased, taking off the trousers that were being worn by the deceased.

Did he do that by himself or did he have assistance? - There were others assisting him but I could not say who because there was a lot of confusion.

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His trousers were taken off and then? - He said to me and Motsoenkana "I can see you are afraid of handling this person, are you wanting to go and report?" I then held the left leg of the deceased and Motsoenkana held the right leg.

Then what happened? - Then No.2 accused hit

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the deceased with the battle ax with the portion that has a spike.

Which portion of the body did he stab? - Underneath near the testicles. Then No.1 accused came and collected the blood which flowed from that wound.

With the same receptacle? - Yes. Then it appeared that No.3 accused was frightened and wanted to run away and No.2 accused said the thing to be done was to make him drink the blood, then No.1 accused made No.3 accused drink the blood. After No.2 accused had given No.3 accused blood to drink the deceased died. No.4 accused then produced an ox skin saying that deceased should be carried in that skin to his hut. We took the body and placed it on the skin and we then carried it to accused No.4's house.

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You say you yourself had taken your blanket off? - Yes.

What happened to your blanket when the party moved off with the body? - It was taken by others because I took my blanket back after we had placed the body at accused No.4's house.

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What happened to the deceased's trousers that had been taken off? - I do not know what happened to those trousers because I left the others there.

The body was placed in an ox skin and carried off to accused No.4's hut, can't you possibly remember who were carrying? - Although it was dark I think I can remember some.

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I don't want you to force your memory, if you can't remember say so. Only mention peoples names that you have a very clear recollection that they were carrying? - It was I, accused Nos.4, 2, Ranthene, and Motsoenkana.

Are those the only ones you remember, yourself and four other people? - Yes.

When the body was placed in the hut of accused No.4 was there any light in the hut do you remember? - There was no light.

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Where about in the hut was the body placed? -

An order was given that the body should be placed under the bed.

And it was so placed?— Yes.

And after the body had been placed under the bed what happened to it?— No.4 accused said that we should return to the path where instructions would be given to us.

When you people who carried the body down to the hut did anybody remain behind at the path or did the whole party of murderers move down with the body?— Others remained behind.

Did No.1 accused go down with the body or remain behind?— He remained behind.

After placing the body you say you returned to the path, what happened when you returned to the path?— Then No.1 accused said if anybody reported we had killed this person the person who made that report would also be killed in the same way as the deceased. I saw a billycan in his hand and also an ox tail brush. I saw him dip the brush into the billycan and then sprinkling that medicine on us.

Were you sprinkled?— Yes.

What was the object of this sprinkling do you know?— He said he was doing so in order that the Police should not worry us.

You say the medicine that he was sprinkling was taken from a billycan. Was that the same billycan in which the blood had been collected?— I did not see clearly but the medicine with which we were sprinkled didn't look like blood but like water.

After the sprinkling and the warning not to talk, what happened?— No. 1 accused said we should know that the body would be thrown away on Thursday. I then saw about six saddled horses near the rock.

You don't know whose horses they were?— I don't know. We then dispersed.

On Thursday did you return?— There is something which I have omitted to mention in regard to what happened at the path.

What was that?— There was a certain group of people I saw when I was at the path some distance away from us, they were sitting down.

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You don't know who they were?- No, I don't know who they were.

Thank you for filling in that omission. On the Thursday I went to the place of accused No.4, at night time.

Did you find anybody there? I found nobody there.

Weren't even any women moving about or anything like that?- No.

You saw nobody in the village? - Nobody

When you found nobody there what did you do?- I returned to sleep.

And a year later you pointed out to Captain Shortt-Smith certain spots did you not?- Yes.

You pointed out certain villages?- Yes.

You pointed out the spot where you joined the body of persons who went up to the Red Path with the deceased?- Yes.

You pointed out the spot where the deceased was killed?- Yes.

Where you saw the horses?- Yes.

Where you saw the group of unidentified people?-

Yes.

And the hut where the body was left?- Yes.

Did you point out all those places correctly to the best of your ability? - Yes.

Do you remember whether or not the deceased had a dog with him?- No, I did not see a dog.

Do you remember whether you heard any dogs barking the night he was killed?- No, I did not.

CROSS-EXAMINED by MR. LIEBETRAU:

You've told us that you first heard about this plot from No.4 accused?- It is true.

Where did that conversation take place? - Near my village at Ntsang's

And after this conversation No.4 accused told you to come to his house?- That is true.

So you went that same evening?- Yes.

Can you remember at all on which day of the week you had these two conversations, the

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one with No.4 accused and the day you went to his house?- I may forget about what day of the week it was.

But it all happened on the same day?- No, on different days.

How many days elapsed in between?- I cannot say exactly how many days between.

I suppose you were alone with No.4 accused when you had this first conversation?- Yes, that is true.

Were you far away from your village?- No, near my village.

Were there any people outside their houses in the village?- No, I did not see any people.

I want to talk about the time when you went to accused No.4's place. What time of day was it when you went there?- It was in the evening.

Already dark?- Yes.

Had people already gone to bed?- I noticed that people had gone to bed because I didn't hear any of them speaking.

Were you the last to arrive at that meeting, or did other people arrive after you?- I was the last to arrive.

When you arrived was Ranthene there?- He was there.

You didn't by any chance speak to him did you?- No.

You have given the names of various people you found at that meeting?- Yes.

Would you be good enough to repeat those names?- Yes. Accused Nos. 1,3,2,4,6, myself and Ranthene.

Anybody else?- Accused No.5.

You remember when you gave evidence at the Preparatory you were asked to give the names of these people?- Yes.

I refer to page 23 My Lord about one third of the way from the top. When you gave the names at the Preparatory you didn't say a word about No.3 accused?- That is quite possible but it should be remembered that this matter took place long ago.

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But eighteen months ago at the Preparatory Examination your memory should have been much better than it is today and if No.3 accused had been present you would have remembered it at the Preparatory. I ask you again was No.3 accused present or was he not present?— I say he was present.

What about No.7 accused, was he present?—
 No, he was not present.

And No.8 accused?— He also was not present.

At this meeting you had a general discussion about this killing?— Yes.

Was it decided when the killing would take place?— No, what was only done was to decide how to find the man.

Nobody said that the killing would take place on Monday?— That I did not hear mentioned.

So after this meeting you all parted?— Yes.

You went home?— Yes.

Did you find your family asleep?— Yes.

By then it must have been quite late at night?— Yes.

The next thing that you know about this matter happened on a Sunday?— Yes.

Was it the Sunday immediately following the Sunday of the same week?— Yes.

Where were you when No.4 accused called you?— I was at my parents home.

At Ntsang's village?— Yes.

No.4 accused came to you alone?— He shouted to me.

What did he shout to you?— He said I should go to his home with Motsoenkana.

Were you to bring Motsoenkana?— Yes.

Did you find Motsoenkana?— Yes.

Where?— At his parents home.

Then the two of you went?— Yes.

When you reached No.4 accused's did you find him alone?— He was with No.6 accused.

Where did you find them?— They were on the hill.

Near any villages or near any houses?— They were near houses.

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Whose houses, accused No.4's? - No near Matsoele's house.

What time of day was that? - It was some time after lunch.

What did No.4 accused ask you to do? - To try and help him in looking for Tieho.

Was No.6 accused told to do anything ? - No. I did not hear anything about it.

10 The only people who were ordered were you and Motsoenkana? - Yes.

You were ordered to carry out your work the next day? - Yes.

This conversation took place on a Sunday you say? - Yes it was Sunday.

Was it on that same evening the deceased was killed? - No the deceased was killed on the Monday.

Was that the next day? - Yes.

20 On the Monday? - Yes.

Motsoenkana came to call you on the Monday? - Yes.

He found you in the hut of Mamojela ? - Yes.

What were you doing in that hut of Mamojela's? - I paid a visit.

30 What did Motsoenkana actually say to you when he called you out of the hut, when he arrived and started speaking to you what did he say then? - He just said "I have been coming with that person."

Was that said in the presence of Mamojela and her daughter 'Mankhoba? - Yes.

Was the person's name mentioned? - No.

When he said those words what happened ? - I went out with him.

Then you had a similar conversation outside? - Yes.

And you agreed to go to the Red Path? - Yes.

40 While you were going to Mosenekeng you saw a group of people? - Yes.

Do you know the points of the compass, do you know where North is and where South is? - I cannot understand what that question implies.

Do you know where North is? - I dont know.

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You know where Majahobe's is? - Yes.

I want to know whether you entered the Red Path from Majahobe's side or from the opposite side? - Majahobe's was behind us.

Did you come from the direction of Majahobe's into the path or did you come from the opposite direction? - As Majahobe's village was behind us we were coming from the direction of Majahobe's not towards it.

Then you joined a group of people at the Red Path? - Yes.

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Between leaving Mamojela's house and joining this group of people were you completely alone? - Yes.

No.4 accused you have told us was walking in this group? - Yes he was.

Did No.4 accused remain with the group all the time or did he go ahead of the group at any particular stage? - Because of the darkness I cannot say whether he was amongst the group all the time or whether he was ahead of the group at any stage.

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What about Motsoenkema was he in your group? - No.

Did you see him at any stage that night? - I only saw him at the Red Path.

Was he waiting at the Red Path on your arrival? - No, I did not see him arrive but I identified him at the time we were doing the work.

And you are quite certain about this point, that you did not come to the Red Path in company with Motsoenkema? - Yes.

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Nor did you come in the company of accused No.2? - No.

At what stage were you told to undress. Had you already caught the deceased or hadn't you caught him yet? - We had not yet seized the deceased when we were told to undress.

What was the order that you were merely to take off your blankets or were you to strip naked? - The only order that I heard given was put off your clothing and seize the person.

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Did any of the murderers actually strip naked? - I did not notice any of them.

Did you perhaps notice Ranthene, whether he had taken off his blanket or not? - No, I did not take any notice.

And Motsenkana? - He also I did not notice.

I take it that the very first thing that was done to the deceased was that you caught hold of him with your hands? - The deceased was fighting with a stick and there were others of our group who had sticks with them.

Were they fighting back with them? - Yes.

And eventually your group overpowered the deceased? - Yes.

And while you were holding him the riem was thrown round his neck? - No, the riem was thrown over his head before he was seized.

In what position was accused No. 5 when he threw this riem, in front of the deceased? - He was behind the deceased.

Did the deceased scream at all or make any sounds when he was attacked? - No, my ears did not hear that scream.

As far as you know he didn't make a sound? - No, I did not hear him.

Did any of the murderers make any noise, or shriek or shout? - No.

We have got to the stage where the deceased is being throttled with this riem, then No. 2 accused struck him with the axe? - Yes.

Did he strike him from the front? - Yes, both blows, from the front.

And after that the deceased fell to the ground? - Yes.

On his back? - I am not quite certain whether he fell on his back or not because there was a lot of confusion.

When No. 1 accused collected the blood from the head wounds was this before the deceased was undressed? - Yes, it was before the deceased was undressed.

You have no doubt in your mind that the

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blood was collected from the head wounds?- Yes
 it was collected.

Do you know a person named Matjeketa,
 former No.9 accused?- Yes, I know him.

He was not there that night?- I did not
 see him with my own eyes. I cannot deny that he
 was there.

You did not see him take any part in the
 killing? - No, I didn't see.

To what extent was the deceased unclothed,
 were all his clothes taken off or only his
 trousers or what? All that he had on his body
 was removed. 10

I have been reading your evidence at the
 Preparatory (Page 26 My Lord, about two-thirds
 down from the top) In that statement you said the
 deceased remained in his shirt. - I cannot quite
 remember because it was long ago.

What is the correct position, Was he naked
 or did he have a shirt on?- He did not remain
 in his shirt. 20

No.4 accused produced an ox skin to carry
 away the body?- Yes.

Do you know whose skin it was?- No, I don't
 Was the naked body carried away in the
 skin?- Yes.

The clothes were not thrown on top of the
 body?- No.

But eventually you got to the house of
 No.4 accused?- Yes. 30

There you entered in the darkness in the
 hut and left the body in the dark?- Yes.

How was it possible to find your way
 around the hut in the darkness?- Darkness
 doesn't prevent a person from walking. Even in
 the veld a person can walk in the dark.

You could manage although it was dark?-
 Yes.

You know that there are many dogs in that
 village of No.4 accused?- Yes, I know there are
 dogs. 40

Were the dogs disturbed when you came with
 the body?- I did not notice whether they were

disturbed or not.

On Thursday night you went back to the house of No.4 accused ?- Yes.

Did you actually enter the house? I did not.

Did you call out to anybody?- No, I did not.

What made you conclude that there was nobody at the house?- I couldn't hear any sound of people so I concluded that there were no people and I returned.

10

You didn't think of asking No.4 accused's mother, Paulina?- I could not have asked accused No.4's mother because we had previously been warned that we should not talk about this thing.

On the Monday night before the deceased was killed when you had this meeting, did you see Paulina on that night?- No.

20

Do you know anything about these blankets before the Court (Exhibits 12,13 and 14) Do you know that blanket exhibit 12?- Yes.

Whose is that ?- Accused No.4.

He was not wearing that blanket on the day of the killing?- There is nothing which I can speak about in regard to the blanket.

You didn't see that blanket being worn on the Monday? - No.

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Exhibit 13. Whose blanket is that ?- This belongs to accused No. 3.

That blanket was not worn on the Monday in question?- I did not notice what he was wearing.

Exhibit 14 whose blanket is that ?- It belongs to accused No. 2.

Was that blanket worn on the Monday ? - I did not notice.

MR. THOMPSON:

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No re-examination.

In the High
Court
Prosecution
Evidence
No.3
Ramatsepe
Seoli
Cross-
examination

In the High
Court
Prosecution
Evidence
No.4
Mabitla
Mohlotsane
Examination

No. 4

EVIDENCE OF MABITLA MOHLOTSANE

P.W. 11 MABITLA MOHLOTSANE: (who is duly sworn
by Interpreter);

EXAMINED BY MR. THOMPSON

Mabitla two years ago what was your employ-
ment?— I was herding sheep,

Who was your employer?— No.4 accused.

Did you live in his village?— Yes.

Do you remember a man Tieho Matsora?— Yes.

Do you remember that his body was found?—

Yes.

Do you remember about the body being found?—

Yes.

What day of the week was it that you heard
about it?— Friday.

The same day it was found. I want you to
take your mind back to the previous Monday evening.
That Monday night I heard a scream.

Where were you when you heard the scream?—
I was in my hut.

From which direction did the scream come?—
It came from the direction of the Red Path.

When you heard the scream what did you do?—
I went out of the hut in the company of Thabo and
Khoto and went in the direction of the scream.

Khoto is here waiting to give evidence, is
that right?— Yes.

How big is Thabo?— He is a small boy,
about that size (Indicates about three feet).

Only that size from the floor?— He is
lower than that because he can not be seen under a
Sehalahala bush.

You, Khoto and Thabo what did you do?— We
left the hut and walked in the direction of where
the screams came, that is the Red path. We went
there and on arrival we stood near a bush. As we
looked around we saw five horses.

Just say what you saw, not we? I saw five
horses.

Did you see anything else?— I saw a group of
people.

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Did you recognise any of them? - Yes, I did.

Please name those you recognised? - I recognised accused No.4, P.W.6, at the Preparatory, Ramatsepe, accused No.3, No.2. Those are the only persons I recognised.

Nobody else? - Have I mentioned six?

Six people altogether. No you have only mentioned five so far? - No.6 accused was present.

Nobody else? - The others I only recognised on the occasion when the group

These people you recognised had you known them for a long time or were they comparative strangers to you? - Those are the people I have known for a long time.

Did you see what these people were doing? - I could see they were doing something, but I could not say what, I saw them moving about.

And what did you do after you recognised some of them? - I returned home.

After you got home what happened? - I went to sleep.

And then? - Some time after I had been sleeping I saw this group coming towards the house.

Where were you? - I was outside.

What were you doing outside if you were asleep? - I heard the dogs barking then I went outside.

Did you recognise anybody in that group? - Those are the same people I recognised before.

That is accused Nos. 2,3,4,6,P.W.6. and Ramatsepe? - Yes.

What were they doing? - They were carrying something and entered with it in the square hut.

Did you get any impression as to what that something was? - It was as if they were carrying a person.

They took whatever they were carrying into the square hut did they? - Yes, the square hut belonging to accused No.4.

Can you remember whether or not there was any light in the hut or not? - Yes, the room was lit

In the High
Court
Prosecution
Evidence
No.4
Mabitla
Mohlotsane
Examination

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In the High Court
 Prosecution Evidence
 No.4
 Mabitla
 Mohlotsane
 Examination

up and I saw accused No.4 light up.
 Is that all you saw that evening?- Yes.
 Did anybody ever speak to you about what
 you had seen?- The next morning accused No.4
 told me I should not enter the hut.
 Did he say anything else to you about it?-
 No.
 That was on the Monday night?- Yes, that
 was on Monday night.
 Did you see anything else unusual that
 week?- Yes, on Thursday. 10
 During the day or night time?- At night
 time.
 What happened on Thursday night?- I saw a
 group of people leaving the square but belonging
 to accused No.4.
 Where were you?- I was outside. I had been
 sleeping but was woken by the dogs and went
 outside.
 What did you see?- I saw this group of 20
 people walking away and recognised accused Nos. 4,
 3.2. RAMATSEPE and Motsoenkana, I also recognised
 accused Nos. 5 and 1. That is all.
 What were they doing?- I saw them carrying
 the person and going away.
 In which direction?- In the direction of
 the Red Path.
 On this occasion you were alone when you
 saw that were you?- Yes, the others were asleep.
 Are you quite sure on Monday night, it was 30
 a bush you stopped behind?- Yes.
 During the day time on Monday did you see
 any of these accused?- During that day I saw
 accused Nos. 2 and 3 going in the direction of
 Masoeling.
 Did they call at your village at all?- No,
 I didn't see them call at my village.
 Did you talk to them at all? Yes.
 What was the conversation?- No.2. accused
 said that I should inform No.4 accused that he 40
 would call on his way back from Masoeling.
 Did you give No.4 accused that message?-Yes.
 This man Tieho, did you know him well before

he died?

Yes, I did know him well.

Did you know he was the owner of a dog?
Yes, he owned a dog.

When did you last see that dog? -

I saw it for the last time in the
village where I used to stay in those days.

No.4 accused's village? -

Yes.

10

Was that before or after the Monday
evening when you saw this group of people at
the path?

It was after.

After the Monday? -

Yes.

Was the dog at your village on the
Tuesday? -

I saw the dog on Wednesday.

20

It was just hanging around your village
was it? -

I saw the dog when it was near the
village.

Did you point out to Captain Shortt-
Smith the place where you were when you saw this
group? -

Yes.

And where the group was? -

Yes.

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And where the horses were? -

Yes.

And the square hut? -

Yes.

Did you ever discuss this question with
Khoto, one of the boys who were with you? -

Yes.

Did you ever tell Khoto what places he
had to point out to the Police? -

No, I did not.

40

CROSS-EXAMINED by MR. LIEBETRAU:

Have you been to school? - No.
You do know the days of the week? - Yes.

In the High
Court
Prosecution
Evidence
No.4
Mabitla
Mohlotsane
Examination

Cross-
examination

In the High
Court
 Prosecution
Evidence
 No.4.
 Mabitla
 Mohlotsane
 Cross-
 Examination

What is today? Wednesday

You are right. You have told us you were working for No.4 accused at that time?- Yes.

You were sleeping in one of his huts? -Yes

What about Khoto was he also working for No.4 accused?- No, he was not working for No.4 accused but he used to come and share the same room with me.

And on that particular Monday night he shared the room with you?- Yes.

And Thabo did he work for No.4, accused?- Yes.

What work was he doing?- He was herding sheep with me.

And he was occupying the same hut as you were? - Yes.

On this Monday night were you still awake when you heard this scream or were you woken up by something?- I was awakened by the barking of the dogs.

Did you wake Khoto?- We were just lying in bed, we were not fast asleep.

You say one moment you were woken up by the dogs and the next moment you say you weren't fast asleep?- We were just lying in bed but were not fast asleep.

You were lying in bed still awake?- Yes.

Then you heard the dogs and the scream?-Yes.

Was Thabo also awake or asleep when you heard the scream?- He was awake.

Then you all three got up and decided to go out? Yes.

How many screams did you hear?- I heard a scream twice.

Was it a wordless scream of pain or could you distinguish any words?- It was a scream of a person feeling pain.

You could distinguish no words? No.

Did you hear both these screams while you were still inside the hut?- I heard the second scream when I and others were outside.

You mean you and Khoto and Thabo?- Yes.

Monday?- Yes it was. Do you remember that it was very cold on that

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There was snow on the mountains in the morning ?- Yes.

And it was raining that night?-

It had been raining.

It wasn't raining at the time you went out? -

No.

When you came to this place at the Red Path, did the three of you come openly to the path or did you come secretly? -

We went on secretly.

The first thing that you noticed was five horses? -

Yes.

Was anybody near the horses?-

I did not notice any person near the horses.

You noticed only one group of persons ?-

Yes, some distance away from the horses.

You have given the names of certain persons whom you recognised in that group?-

Yes.

First No.4 accused ?-

Yes.

Was No.4 accused clothed or was he naked? -

At the time I recognised him he was clothed.

Was he wearing a blanket? -

Yes, he was,

Do you know that blanket, Would you recognise it today ? -

Yes.

Can you see it anywhere here in Court?-

Yes.

Point it out please, (Exhibit 12), -

Yes.

What about Motsoenkana you recognised him didn't you? -

Yes, I did.

In the High
Court
Prosecution
Evidence
No.4
Mabitla
Mohlotsane
Cross
Examination

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In the High
Court
 Prosecution
Evidence
No.4
 Mabitla
 Mohlatsane
 Cross-
 examination

Was he clothed or was he naked?-
 He was clothed.
 Wearing a blanket? - Yes.
 Can you see the blanket in Court? -
 No.
 What about Ramatsepe was he naked?-
 He was clothed.
 Wearing a blanket? - Yes.
 Are you certain he was wearing a blanket?-
 Yes. 10
 No.3 accused was he naked or was he wearing
 a blanket?- He was clothed and wearing a brown
 rug.
 Is that here in Court? - Yes.
 Point it out. - Exhibit 14 My Lord, right.
 No.2 accused was he naked or was he wear-
 ing clothes?- He was clothed.
 Wearing a blanket?- Yes he was wearing a
 travelling rug.
 Is it here in Court?- Yes. 20
 This one here?- Yes. (Exhibit 13)
 No.6 accused was he wearing clothes or
 naked? - He was clothed.
 Also wearing a blanket?- Yes.
 Did you see any naked men in that group?-
 I did not.
 So far as you observed they were all
 clothed and wearing blankets? -
 Yes.
 While you were observing this group of 30
 people, you were sitting I think you said under
 a bush is that right? -
 Yes.
 Thabo was sitting with you and Khoto also?-
 Yes.
 You couldn't identify the person who
 screamed? -
 No, I did not
 As far as you are concerned this group
 of people was just moving about? - 40
 Yes.

	After seeing this you went back to your bed? Yes.	In the High Court
	This happened on a Monday night was it? - Yes.	Prosecution
	And the next morning No.4 accused spoke to you? - Yes.	<u>Evidence</u>
	He told you not to enter the square hut? - Yes.	No.4
	The next morning was of course Tuesday morning? - Yes.	Mabitla
		Mohlotsane
		Cross-Examination
10	Do you remember giving evidence at the Preparatory Examination? - You mean at the camp? Yes, Teyateyaneng camp? - Yes.	
	(I refer to page 50 My Lord about two thirds from the top). You said "No.4 accused ordered me not to enter the hut, it was Thursday morning"? - Yes.	
	You told the District Commissioner it was Thursday morning? - No, it was Tuesday.	
	<u>HIS LORDSHIP:</u>	
20	That is from the shorthand notes? <u>MR. LIEBETRAU:</u>	
	Yes, it is a great pity <u>HIS LORDSHIP:</u>	
	Tuesday and Thursday are similar in sound. <u>MR. LIEBETRAU:</u>	
	It is very hard on the defence My Lord. <u>HIS LORDSHIP:</u>	
	It is hard on the prosecution too. <u>MR. LIEBETRAU:</u>	
30	All right, Were you the only one who was told not to enter that hut? - Thabo was also told. And Khoto? - No he wasn't living with us, he used just to come for sleeping.	
	On the Monday night after you had seen these people at the Red Path you went back to bed? Yes.	
	Then you were woken up by dogs barking? - Yes.	
	Were the dogs barking more than usual? - Yes.	
40	Was the wife of No.4 accused at home at that time? - She was not.	

In the High
Court
 Prosecution
Evidence
No.4
 Mabitla
 Mohlatsane
 Cross-
 Examination.

Paulina, his mother was at home? -
 Yes, she was.
 Would you be good enough to repeat to us
 the names of the persons carrying the thing like a
 person on Monday night? - Accused Nos.4,2,6,
 Motsoenkana, Ramatsepe, Accused No.3
 Were those the only people in the group or
 there others you did not recognise? - Yes, there
 were others who were present who I could not
 recognise.

10

On Thursday night you recognised some
 different people?- Yes.
 Amongst others you recognised Ramatsepe?-
 Yes.

Do you mean he was with the group leaving
 the hut carrying this thing amongst them? - Yes
 he was.

Did you see them come out of the square
 house or were they already outside when you saw
 them? - They were already some distance away
 from the hut when I first saw them.

20

They hadn't reached the Red Path yet?-
 No.

And do you mean to say Motsoenkana was
 also with them helping to carry?

Yes.
 What about No.6 accused, did you see him
 on Thursday night?- Yes, I saw him.

You haven't mentioned his name you know?
HIS LORDSHIP

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Wait a minute. Do you mean carrying the
 body?

MR LIEBETRAU:

Carrying the body.

HIS LORDSHIP:

Well say carrying the body.

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MR. LIEBETRAU:

Did you see him carrying the body on Thursday

night. No.6 accused?- Whether he was actually carrying the body or not on that occasion, I cannot say, but he was amongst that group.

You haven't mentioned his name?- I mentioned his name.

No you did not. You mentioned accused Nos. 1,2,3, 4,5, Ramatsepe and Motsoenkana ? -

Didn't I give the name of the sixth person.

10 No you didn't. But now you want to add his name?- I mentioned his name.

During that day you have told us you saw Nos. 2 and 3 accused go towards Masoeling? -

Yes.

Do you know the Malimong Court? -

No, I don't.

I suggest to you that it wasn't on that Monday at all that you saw accused Nos. 2 and 3 going past. It was some days earlier? -

20 No, I saw them on that day myself.

MR. THOMPSON:

No re-examination.

QUESTIONED BY MR. MATJEKA:

30 What was the distance from the bush where you were hiding to where these people were shuffling about? -

It was a distance of from where I stand to that corner.

(Approximately 15 yards)

40

In the High
Court
Prosecution
Evidence
No.4
Mabitla
Mohlotsane
Cross-
Examination

In the High Court

No. 5

Prosecution Evidence

EVIDENCE of KHOTO RANTSOELEPE

No.5
Khoto Rantsoelepe examination

P.W.12. KHOTO RANTSOELEPE: (who is duly sworn by Interpreter):

EXAMINED BY MR. THOMPSON: Khoto have you been to School? Yes. What Standard did you reach? Standard I.

Do you know what happens to people who don't tell the truth in the witness box? No, I don't know. 10

I'm warning you they get punished. Where were you living two years ago? I used to live at my home.

Where was your home? Mpunyetsane's.

Is that the same place as Sabilone's, No. 4 accused's? Yes.

Do you remember a man by the name of Tieho Matsora who died? I remember the name of that person who was said to have died but I did not know him personally. 20

Do you remember the week when his body was found? Yes, I remember.

Do you remember the Monday night of that week? Yes.

Did you see anything unusual on that Monday night? No.

Do you know the last witness? Yes.

Did you go out with Mahlomola after you had gone to bed? No. 30

Did you hear any screams that night? No.

HIS LORDSHIP :

You have given evidence in the Court below? Yes.

You have been sworn in to tell the truth and as the learned Attorney-General has told you that if you don't tell the truth here then you are liable to be prosecuted and punished, because telling lies in Court is a very serious offence. Do you understand? Yes. 40

MR. THOMPSON:

Did you hear any screams on that Monday night?

No, I did not hear any screams.

Did you go up to the Red Path that Monday night? No, I did not.

Did you see No. 4 accused or No. 6 accused outside your village that night? No.

Did you see any horses up at the Red Path that night? No.

Captain Shortt-Smith have this witness arrested for perjury please.

10 HIS LORDSHIP:

Tell this witness that a copy of his evidence will be sent to the learned Attorney-General to compare with the evidence which he gave in the Court below and then the learned Attorney-General will decide whether to act.

In the High Court

Prosecution Evidence

No.5

Khoto Rantsoelepe examination

No. 6

EVIDENCE of MAMOJELA SELLO

No.6

Mamojela Sello examination

20 P.W.13 MAMOJELA SELLO: (who is duly sworn by Interpreter):

EXAMINED BY MR. THOMPSON:

Two winters ago were you living in the same village? Yes.

Do you know the days of the month? No, I don't.

Do you remember when a man by the name of Tieho disappeared? No.

30 Did you know a man by the name of Tieho? Yes.

Did you remember that he disappeared and his body was found? Yes.

Do you remember the Monday of the week in which his body was found? About what?

Did you have any visitors on that Monday evening? Yes.

Who were they? Ramatsepe and Motsoenkana.

Do you remember what time of the day or evening they came to visit you? It was after dark.

Did you actually see them yourself? Yes.

Later that evening did anything unusual happen? No.

In the High
Court
Prosecution
Evidence

No. 6
Mamojela
Sello
examination

Did you hear anything? Yes.
What did you hear? I heard a scream.
Don't you call that unusual? It was unusual.
Where were you when you heard the scream? I
was in the hut.

From which direction did you gather the scream
came? It came from the direction of the Red Path.

When you heard the scream what did you do? I
did nothing but went back into the hut.

You were in the hut when you heard the scream
weren't you? A child who stayed with me told me
that she had heard the scream and then I went outside.

Did you hear the scream yourself? Yes.

Then you went outside after the child had
spoken to you? Yes.

When you went outside did you see anybody?
Yes.

Whom did you see? Ramatsepe, Motsoenkana,
accused Nos. 2 and 3.

Where were they? They were just passing.

Going in which direction? Going down below.

What do you mean by down below? They were
going in the direction of their homes which is
Majaheng.

Would that be in the direction of the Red
Path? No.

What is the name of your village? Ntlang's
village.

Are you quite sure that you saw four men? Yes.

Are you quite sure it wasn't only one? No, it
wasn't only one.

Did you see these people with your own eyes?

Yes.

Cross-
examination

CROSS-EXAMINED BY MR. LIEBETRAU

Could you distinguish any words in the scream?
No.

How many screams did you hear? Two.

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No. 7

EVIDENCE of MANKHOABA MOLONGOANA

In the High
Court
Prosecution
EvidenceNo.7
Mankhoaba
Molongoana

P.W.14. MANKHOABA MOLONGOANA: (Admonished to speak the truth):

HIS LORDSHIP:

You know the difference between telling the truth and telling a lie don't you? Yes.

10

You are here to tell the truth and if you tell the truth you have nothing to fear from anybody. Do you understand? Yes.

EXAMINED BY MR. THOMPSON:

Examination

Are you the daughter of the last witness?

Yes.

Two years ago did you live with your mother in Ntsang's village? Yes.

20

Do you know the days of the week? Yes.

What is today? Wednesday.

That is quite right. Do you remember that a man was found dead in your neighbourhood two years ago? I only heard about that.

Do you remember the Monday of that week when you heard about a man having died? Yes.

During the day on that Monday did you see any of these accused? Yes.

Which of them did you see? I saw accused Nos. 2 and 3 passing.

30

In which direction? They were going in the direction of Masoeling.

Do you remember that evening. Did you go to bed as usual? Yes.

Did you hear anything during the night? Yes.

What did you hear? I heard a scream which came from the direction of the Red Path.

Where were you when you heard this scream? I had gone out to pass water.

40

When you heard this scream did you see anybody? No, I never saw anybody.

What sort of scream was this. Was it a scream of words, or a scream of pain or distress or joy or what? I don't know.

In the High Court

Prosecution Evidence

No. 7 Mankhoaba Molongoana examination Cross-examination

Can you repeat the sort of sound you heard? I heard something like 'Jooe, Jooe' !

CROSS-EXAMINED BY MR. LIEBETRAU:

When you were outside at the time you heard these screams, you saw some people there. Didn't you see accused Nos. 2 and 3 at that time? I saw them just passing going back to their homes, but they were not very close to me.

10

About as far away as I am from you (Twenty yards)? Yes.

In any case they were far away from the screams? Yes.

Do you know a person named Khotso? No.

Stand up No. 3 accused. Do you know that person? No.

These two people that you saw that night, can you point them out among these accused? I only know No. 2 accused, Mahloko.

20

Let us get this cleared up. You saw two people at the time you heard the scream, is that right? Yes, they were some distance away from me.

Mahloko, No. 2 accused was the one? Yes, there were only two people.

HIS LORDSHIP:

Was accused No. 2 one of them? Yes.

MR. LIEBETRAU:

The second person, the person who was with Makloko can you see him here? (Points out No. 3 accused)

30

You also told us you saw the same two people during the day? Yes.

Are you sure it was that day? Yes.

I am suggesting to you that it was a few days earlier? No.

Did they speak to you? No.

What were you doing when you saw them? When I saw them going where?

Towards Masoeling? I was playing.

40

RE-EXAMINED BY MR. THOMPSON:

Re-examination

Point out through that door how far these two

men were away from you when you saw them that night? - (Points out policeman standing about ten paces away)

In the High Court
Prosecution Evidence

QUESTIONED BY MR. GILLETT:

Was it a very dark night, or was it moonlight or what was it? It was dark.

No. 7
Mankhoaba
Molongoana
Re-examination

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How did you recognise these two people, by their faces or by their voices or how? I recognised them by their blankets, they were wearing travelling rugs. They were wearing these travelling rugs when they passed during the day and I recognised them as the same rugs that they were wearing on their return.

No. 8

EVIDENCE of MOTSOENKANA MOTLALEHI

No. 8
Motsoenkana
Motlalehi
examination

RESUMED 13th July 1953. (Fifth Day)

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F.W. 25 MOTSOENKANA MOTLALPHI: (who is duly sworn by Interpreter)

EXAMINED BY MR. THOMPSON:

Motsoenkana two winters ago were you living at the village of Ntsang's? Yes, I was paying a visit there.

At the time you arrived there I think you had not yet met Tieho Matsora who is now dead? I did not meet him there as soon as I arrived but met him later.

30

Do you know how he came to meet his death? Yes.

What is the first thing that happened so far as you are concerned that led up to his death? There was a plot made.

When did you first hear of the plot? During the month of August two years ago.

What happened? I met a young man called Sabilone (Accused No. 4). I met him on his way to

In the High
Court

Prosecution
Evidence

No. 8
Motsoenkana
Motlalehi
examination

Raleting. He was proceeding from Molungoana to Ntsang's village. It was on a Tuesday at about dusk. He asked me whether I knew Tieho, I told him that I did not know him, he said that I must look for Tieho because he wanted to kill him. During the same week on a Sunday he sent someone to me namely Ramatsepe asking me to go and see him with Ramatsepe. I went with Ramatsepe in the afternoon with him.

On the Sunday? Yes.

10

When I came to him No. 4 accused was with accused No. 6 on the hill.

The same hill near Ntsang's village, near the Red Path? Yes.

There was yourself Ramatsepe, accused Nos. 4 and 6, then what happened? Accused No. 4 asked me whether I still remembered the request he had made to me. I asked him what request. He said that he was referring to the request which he had made asking me to look for Tieho for him. I told him I was afraid to kill a person. He said "Look here man I will reward you with the sum of £60 and if you are not going to do so we are going to kill you because you already know of our plot". I asked him where this man Tieho lived and he told me he lived at Majaheng. I asked him what this man Tieho had done and he said it was because Tieho had said that he, No. 4 accused and No. 2 accused were thieves. I then agreed. He said that on the Monday I should go to Mapoteng and I would find him there.

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You were to go to Mapoteng on the following day? Yes. He said I would find Tieho either at the Police Post or the National Treasury Court. He told me he was an elderly man, dark brown. I left on Monday for Mapoteng.

Did you go alone or in company? I ought to have gone with Ramatsepe but he did not go on account of ill health.

So you went alone? Yes, I left in the direction of Totoshe then crossed the Qubetu. I returned at Makhapela's because it was late in the evening.

40

Did you find anybody at Mapoteng? I did not reach Mapoteng on that day.

Which way did you return? I returned the same route which I had taken.

That is through Buller's? Yes, on the side of Buller's village.

Where is the next place that you called at? I did not call at any place but as soon as I got home the deceased came.

10 What do you call home? I mean Molungoana's where my grand-mother lives.

Were you staying at Molungoana's then? No, I was staying at Ntsang's.

What happened then? After my arrival there the deceased Tieho came.

How did you know it was Tieho? He asked for some tobacco from my grand-mother. My grand-mother hadn't any tobacco but asked who he was and he said he was Tieho.

20 And did he correspond with the description which had been given to you? Yes. Then Molungoana arrived, he said that he was returning from Ranthene's where there was a beer drink.

Then what happened? The deceased asked for some tobacco from Molungoana and in reply Molungoana said he had some tobacco at his own home. Then Molungoana and Tieho left and I left after them.

30 In which direction did you go? I went to the kraal and kraaled up the animals. After kraaling up the animals I left with Tieho.

Where did you and Tieho go? We went to a beer drink at Ranthene's.

When you got to Ranthene's was there anybody but the three of you? I found people there.

Did you recognise any of them? I recognised accused Nos. 4, 6, Ranthene, Mahlomola and Rantsepe and others.

40 What happened at Ranthene's when you and the deceased arrived there? We entered the hut, then Ranthene, accused Nos. 4 and 6 left the hut. Then No. 6 accused called me, he didn't shout, he just beckoned to me and I then left the hut. I found him and others outside.

In the High Court

Prosecution Evidence

No. 8

Motsoenkana
Motlalehi
examination

In the High
Court

Prosecution
Evidence

No.8
Motsoenkana
Motlalehi
examination

Who were the others? Accused Nos. 4, 6, Ranthene and myself.

You joined these other people outside and then? - No. 4 accused then asked where I found him.

Meaning the deceased? Yes, I told him the deceased had found me at Molungoana's. He asked what was going to be done.

No. 4 accused asked? Yes. Ranthene then said that they should go ahead and we would find them either at Mamojela's or at the Red Path. Ranthene said that he would give the deceased and me some beer. 10

Which two left? Accused Nos. 4 and 6.

What happened to the deceased? The deceased was already in the hut. Ranthene then gave us some beer in a billy-can, we drank the beer but we did not finish it. I then left with the deceased Tieho. It was already dark. When we reached Ntsang's village the deceased entered Mamahase's hut and I entered Mamojelo Sello's hut. In that hut I found Ramatsepe, Mamkhoaba and Mamojela. I called Ramatsepe outside and I told him I had been coming with the person. 20

What person? The deceased. He asked where he was and I told him he was at his mother's place. I told him to go ahead and I would follow. I then left and went to the hut where I was staying. After that I went to sleep with my wife Mamojele. However, I left Mamojele in the hut and went away.

By that time it was quite dark? Yes, it was dark. 30

Where did you go to? I went to the Red Path.

Did you arrive at the Red Path? Yes, I arrived at the Red Path and found many people, many more than I had been with.

Could you recognise any of those people? Yes I recognised Ramatsepe, accused Nos. 4, 6, Ranthene and I was the fifth.

Anybody else that you recognised? No.

What were these people doing? These people were killing the deceased Tieho. 40

So you recognised the deceased as well as those you named? Yes, I recognised him.

In what position was the deceased when you arrived there? I found the deceased had all his clothing removed from him.

In what posture was he? He was lying on the ground.

10 What else did you see? I found that the deceased had a wound on the head but he was still alive. After I arrived accused Nos. 4 and 6 told me to hold the deceased by the legs. I held the legs of the deceased with some other person who I did not know. I held the right leg while Ramatsepe held the left. Another person who I did not know chopped the deceased underneath the testicles with a battle axe.

Do you not know who that person was? At the time I did not know him.

Do you know him now? Yes, I recognised that person when we took the deceased into the hut.

Who was it? Accused No. 2.

20 What sort of a weapon did he use? It was something like a battle axe.

Can you describe it? Yes.

Please describe it to My Lord? It was something with a sharp blade like an axe and at the rear of the blade it had a point.

Anything like Exhibit 11? Yes, something like that. After that the deceased died. When he was dead we took the body on an ox skin.

Did anything else happen before the body was taken on the ox skin? Yes.

30 What was that? There was a man carrying a billy-can and a bottle. This person collected blood in a billy-can after the deceased was chopped underneath the testicles and at the time I arrived the same man was collecting blood from the head wounds.

Did you notice anything else before the carrying? I do not know who that person was but that person ran away.

40 Did he run away completely? He was stopped from running away and made to drink the blood.

Where was the body carried to? The body was taken to accused No. 4's house.

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Motsoenkana
Motlalehi
examination

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examination

Who carried it? It was carried by us namely myself, Ramatsepe, Ranthene, accused No. 6 and two other people who I did not know. Accused No. 4 was walking in front of us. As we went we left other people behind with the horses.

You say it was taken to a hut. Where was it placed in the hut? We placed the body under a bed.

How could you see in the hut? The hut was lit.

Who lit it up? No. 4 accused lit it up. 10

And was it at that stage that you recognised No. 2 accused? Yes, he still had the battle axe in his hand.

After the body had been placed under the bed what happened? No. 4 accused said that we should return to the place where we had been so that we should receive the necessary warning.

Did you go back there? Yes.

What happened when you got back there? When we reached the spot there was a tall man who had been collecting the blood and he sprinkled the tail ox brush on us. 20

What did he sprinkle? With medicine.

And after that? He said that nothing would happen to us and the Police wouldn't worry us at all. He said that nobody should tell anything about the killing or the deceased because if he did he would be killed like the deceased. After we had been sprinkled with medicine we put on our clothes.

When had you taken them off? At the time that we were working on the deceased we took off our clothes. 30

Did you take off all your clothes? I only took off my blanket.

You yourself then resumed your blanket? Yes, and we were told that No. 4 accused would advise us where the body would be thrown. After this we then dispersed.

And you yourself have no knowledge how the body came to be taken from accused No. 4's hut to the place where it was found on Friday? I did not know anything at all. I only went there when it was said that a person was found, I went there to 40

find out whether it was the same person we had killed.

Was it? Yes.

Do you know whether all this party of murderers came to the scene on foot or were any of them mounted? Although there were horses I did not see how the murderers had got to that place.

You did see some horses did you? Yes.

Near the scene of the murder? Yes.

And a year later did you point out to the Police Officer Captain Shortt-Smith the various spots you mentioned? Yes.

And the various villages you visited? Yes.

The scene of the murder? Yes.

Where you saw the horses? Yes.

The hut where the body was put? Yes.

In the High Court

Prosecution Evidence

No. 8

Motsoenkana Motlalehi examination

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CROSS-EXAMINED BY MR. LIEBETRAU:

Cross-examination

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Have a look at No. 1 accused. Do you know that person? No.

You have never seen him before? No.

Accused No. 2. Do you know him? Yes.

When did you see him for the first time? I saw him for the first time on the day of the killing of Tieho.

You told us you saw him in Sabilone's (Accused No. 4) hut. Do you know his name? Yes.

30

How did you come to know his name? I knew his name before I knew him personally. I was told his name by accused No. 4.

That night in accused No. 4's hut did anybody speak his name? Nobody spoke his name but I recognised him later, when we were already in the cave.

How did you know that that person was Mahloka when you were in the cave? I had first of all known about his name through accused No. 4 and I recognised the person when the case was being investigated.

40

Accused No. 3 stand up. Do you know that person? No, I don't know him.

In the High
Court

Prosecution
Evidence

No. 8
Motsoenkana
Motlalehi
Cross-
examination

You have never seen him before? No.
Mokhethi, accused No. 5 do you know that
person? No, I did not know him at the time.
Accused No. 7 do you know him? No, I don't
know him.
Accused No. 8 do you know? Yes.
Since when have you known him? I have known
him since 1951.
Did you know him at the time Tieho was killed?
Yes, I had known him before then but at the spot
where the deceased Tieho was killed I did not
recognise him.

10

You were told to go to Mapoteng where you
would find the deceased? Yes.
You were supposed to go with Ramatsepe? Yes.
When did Ramatsepe decide that he wasn't
going? It was on a Sunday.

Then he already said he was suffering from
ill-health? Yes.

On the Monday morning you went in the
direction of Mapoteng? Yes.

20

Your object in going to Mapoteng was purely
to look for the deceased? Yes.

You did not reach Mapoteng? No, I did not
reach Mapoteng.

On that Monday were you missing any of your
stock? No, I did not miss any of my stock on that
Monday.

Did you on that Monday make a report of lost
stock, eight goats? Those I had lost long before
and I had made the necessary report then.

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You made the report long before this Monday?
Yes, but later my father also reported about the
loss of these animals, they were not mine, but my
father's.

Did your father report on that Monday? No, I
don't know.

I put it to you that you personally reported
lost stock on that Monday? No.

Do you know a person named Philemon Marabe?
I know the man but I have only recently met him.

40

Do you know that he is the clerk in charge of
lost stock at Mapoteng? Yes.

And his books show that you reported on that Monday that you had lost eight goats? No, I never reached Mapoteng that day but went there on the Tuesday.

You say you did not reach Mapoteng because it was getting late? Yes.

Had the sun already set when you turned round? When I reached home the sun went down.

By home you mean Molungoana? Yes.

You were not staying at Molungoana's, you were staying at Ntsang's? Yes.

Why do you refer to Molungoana's as home? It is home because my grand-mother lives there.

At the time that you turned back on account of the lateness of the hour, had you then given up finding the deceased? Yes, I had given up because it was late.

Why then didn't you return to Magecge where you were staying? I called at Molungoana's because I went there to kraal up my father's stock which were staying there. They were not staying at Ntsang's where I was living.

The sun went down at Molungoana's you say? Yes.

And from there you went on to Ranthene's? Yes, with the deceased.

When you got to Ranthene's you found there was a beer party in progress? There were no people drinking beer at that time.

You found a lot of people there? Yes.

What were they doing, just sitting around? Yes, they were just sitting down and drinking some light beer.

This woman Maletsema did you actually find her at Ranthene's place? Yes.

And Mahlomola? Yes, he also.

Was Mahlomola present when accused Nos. 4 and 6 arrived? No, accused Nos. 4 and 6 I found there.

And you found Mahlomola present in the same hut with them? Yes.

Were they talking to each other? Yes, they were making a noise.

There is no possibility that Mahlomola might

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Cross-examination

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Evidence

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Motsoenkana
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Cross-
examination

not have noticed them there at all? Mahlomola saw them, he was at the beer party.

Then you say No. 6 accused beckoned you to come out of the hut? Yes.

At that stage had Maletsema left? No, she had not yet left.

Had Mahlomola left? He also had not left.

Then I take it Maletsema, Mahlomola and the deceased remained in the hut while you were talking outside? Yes, there were many other people in the hut. 10

The deceased was not alone at that stage in the hut? No.

Are you sure that No. 6 accused was there talking to you? Yes.

Is it not a fact that No. 4 accused was there alone? No.

I am asking that because Ranthene said accused No. 4 was there alone? No.

Eventually you arrived at Ntsang's village? Yes. 20

You say that you went to bed with your wife? Yes, after I had fetched her from where my mother lives.

You mean you actually got undressed and got under the blankets with her? No, I didn't say that, I said I left her and went away.

I understood you to say you went to bed with her. You slept with her. What do you mean by saying that you slept with your wife? What I mean is that I went with my wife to my sleeping room and then I passed on. 30

You mean you went out? Yes, not that I went to sleep.

From your sleeping room you walked alone to the Red Path? Yes.

While you were walking to the Red Path did you hear any screams? No, I did not hear any screams.

After you arrived at the Red Path, did the deceased then scream? Yes. 40

Do you mean while he was lying down he then screamed? No.

So that night you heard no screams at all?
Yes when I arrived there the deceased was lying there only breathing a little, he was just about to die.

Do you know a woman named Mamojela? Yes.

And do you know her daughter Mankhoaba? Yes.

While you were walking from your house to the Red Path did you pass Mamojela's hut? No, I passed below Mamojela's house.

10 Can you give us any indication how far away you were from Mamojela's hut when you passed? (Witness indicates distance of about 60 to 80 yards).

Did you see Mamojela at all when you passed? I could not have seen her because it was dark.

Did you see Mankhoaba? No, I did not.

I wonder if you can help us to explain something. Mamojela and Mankhoaba said they heard screams; that they saw you at the time that the screams were heard and that you were walking past their house and furthermore that you were walking with Ramatsepe and accused Nos. 3 and 2. Can you help us to explain that? Those persons you have mentioned are those I found at the Red Path.

Were they not walking with you? No.

Then you arrived at the Red Path and you found a group of people there? Yes.

You saw somebody there with a billycan and a bottle? Yes.

30 What sort of a bottle was this? I saw a long bottle whether it was flat or otherwise I cannot say.

What was this bottle used for? I do not know what it was used for because it wasn't even used for collecting the blood.

Was only the billy-can used for collecting the blood? Yes.

40 And the blood was collected from which wound? When I arrived the blood was being collected from the head wound and later the blood was collected from underneath the deceased.

You have told us that the people who were working on the deceased had removed their clothes?

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Motsoenkana
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Cross-examination

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Examination

Yes.

When you say that do you mean that they removed only their blankets or that some of them had removed all their clothes? What I say is that I noticed all of us had taken off our blankets.

Were there no naked men present apart from the deceased? No.

When you arrived on the scene had the others already removed their blankets? Yes, they had already removed their blankets.

And then you followed suit? Yes.

This man Ranthene had he also removed his blankets? Yes.

He was not completely naked was he? No.

Then you were ordered to hold the legs of the deceased? Yes, the right leg.

Who gave you this order? The order was given to me by No. 4 accused and No. 6 accused and another tall man who gave me the order to hold the deceased by the leg.

All three of them gave you a similar order? Yes, the order was given by the three men and the reason why it was repeated by the others was because I was late in holding the deceased.

Was any suggestion made that you and Ramatsepe appeared to be afraid and that you were made to hold the legs? No such suggestion was made but an order was given that we should hold by the legs.

Then after this work was completed the body was taken away? Yes.

It was carried in an ox skin? Yes.

Do you know where the ox skin came from? No, I do not know.

While you were taking the body to the hut No. 4 accused was with you? Yes.

Was he assisting to carry? No, he was just walking ahead of us, he did not help us to carry.

Who was the person who went into the hut and lit it? Accused No. 4.

How many of you were carrying this body? Those that I recognised were five people but there were many others who I did not recognise.

Who actually went into the hut to deposit the

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body? Accused Nos. 4, 6, Ranthene, Ramatsepe and myself and two others who I did not recognise. Those two I did not recognise them at the time.

Did you recognise them afterwards? I only recognised one of them.

So according to you there were seven people who went into this hut and placed the body under the bed? Only four persons entered the hut, the others came into the hut afterwards.

10 Four people took the body in and then the others all collected afterwards? Yes.

What did these others come to do in the hut? They came into see where the body was placed.

The body was under the bed you say? Yes.

There was only one bed in that hut? Yes.

And there was a table and some chairs? I didn't look around to see other things in the hut.

Having deposited the body you all went back to the Red Path? Yes.

20 And you found the other people waiting there? Yes there were people waiting there with horses at the Red Path.

Then you were doctored and you were told that later the body would be thrown away? Yes.

Was it said when the body would be thrown away? No, I didn't hear that order being given.

You didn't go back on the Thursday night to help throw the body away? No, I did not.

30 In any case he has told us that he saw you at No. 4 Accused's place on the Thursday night helping to throw the body away. That could not be correct? No, that can't be correct.

You have told us about a certain person who tried to run away? Yes.

Have you any idea why he was made to drink blood? It was said he should be made to drink blood in order that he may not be frightened.

40 How would that stop him from being frightened? I believe it did because he did not try to run away again.

He actually ran away some distance and then he was stopped? Yes.

HIS LORDSHIP: After you found the deceased you

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Cross-examination

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went along to Ntsang's with him? Yes.
 You went into Mamojela's hut? Yes.
 And the deceased went into Mamohase's hut?
 Yes.
 And in Mamojela's hut you found Ramatsepe?
 Yes.
 And you told Ramatsepe you had brought Tieho?
 Yes.
 Did you tell anybody else? No.
 You only told Ramatsepe? Yes.
 And then you went home? Yes.
 How far is Mamohase's hut from the Red Path?
 It is not a very long way, it is just close to Mamojela's.
 Can you tell us? (Indicates approximately 80 yards).
 Do you know how the deceased got from Mamohase's hut to the Red Path? No, I don't know how he got from Mamohase's hut to the Red Path because I did not even meet Ramatsepe after that.

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Defence
Evidence

No. 9

No. 9
 Khotso
 Sefhakela
 examination

EVIDENCE of KHOTSO SEPHAKELA
 (The Appellant objects to the inclusion of this document)

ACCD.3. KHOTSO SEPHAKELA: (Elects to be sworn in)
 (who is duly sworn by Interpreter):

EXAMINED BY MR. LIEBETRAU:

Did you know the deceased? Yes.
 Did you have any part in his death? No.
 When did you first hear that he had died?
 On Friday the 24th August 1951.
 You've heard the witnesses who spoke about your attendance at a meeting at Sabilone's on Monday 13th? Yes.
 Did you attend such a meeting? Not at all.
 Ever since I was born I have never been to Sabilone's.

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Can you remember where you were on Monday the 13th? Yes.

Where? I was at my home at Majaheng.

During the day? Yes.

And Monday night? I remained at home during the night too.

Was anybody at your home with you? Yes.

Who? My wife.

Named Mamoleihi? Yes.

10 Monday the 20th August you have heard the witnesses who said you were at the Red Path taking part in the killing on that Monday? Yes, I heard that.

Were you at the Red Path on that night? Not at all I was at my own house.

Alone? With my wife.

On that Monday during the day did you go anywhere? No, I remained at my home the whole day.

20 Apart from your wife did you see anybody else during that day? Apart from accused No. 2 no other person came to my house.

Several witnesses said that you and No. 2 accused passed near the Red Path on that Monday the 20th? That is not true I never passed there on the 20th.

Did you and No. 2 accused pass there on any other day? Some days before that date we had passed near that place.

30 Where were you going? We were going to the Malimong Court.

You have heard the evidence of witnesses who say you helped to throw away the body on the Thursday night? I have heard them.

Did you do so in fact? Not at all, I never came near that place.

Do you remember where you were on Thursday night? I was sleeping at my hut.

Alone? With my wife.

CROSS-EXAMINED BY MR. THOMPSON:

40 In fact I gather you never go out in the evening at all? That is so, I am not accustomed to go out at night.

Can you explain why any of these witnesses

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No.9

Khotso Sephakela examination

Cross-examination

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Court

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Evidence

No.9
Khotso
Sephakela
Cross-
examination

who involved you should do so? I say that the first witness is giving false evidence when he says he saw me taking part in killing the deceased.

That's Ranthene? Yes.

Why should he give false evidence? I do not know why he should have done so but I remember that on one occasion Ranthene came to me while I was with accused No. 2 when I was visiting his home at Mpete's. He said that the Police were worrying him and asking him to give false evidence against me and No. 2 Accused. He went further and said that Monyane was also persuading him to do so.

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I still don't understand why they picked on you? I do not know what was in his mind, Ranthene's because he does not even live in my area, he lives out at Masupha's.

Doesn't it strike you as peculiar that these witnesses who are supposed to be giving false evidence say that you did not take a very active part but that in fact you tried to run away? That is a peculiar thing, I heard them say so.

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You admit it is a peculiar thing that they are trying to put the blame on you, but they wouldn't in the same breath say that you tried to run away and in fact take no part in it? I find it a very peculiar thing.

Monday August 20th you and No. 2 accused and your wife were in this large village sitting by a fire were you? It is so.

And not one of your friends or relations saw you during the whole of the day or the evening? Late in the afternoon the uncle of accused No. 2 came when he returned from where he was herding sheep not far away from the village.

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What is his name? Mpete.

Is he the only one you can think of who saw you and No. 2 accused sitting by that fire? That is the only person who I can remember because he actually came up to us.

Is there something wrong with No. 4 accused's village. You see No. 1 accused said that he never in his life has been near No. 4 accused's village. No. 2 accused said he never in his life had been

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near No. 4 accused's village, you say never in your life have you been near No. 4 accused's village, it sounds as though everybody avoided the place? I have seen the village but I have never entered that village in my life.

In the High Court

Derence Evidence

You have heard accused No. 2 give evidence that you were with him when he found the body? That is true.

No. 9
Khotso
Sephakela
Cross-examination

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What made you go down that cliff, despite the fact that there was no path and it was very difficult to get down the cliff? We were acting on instructions from the Chief to go and make a search. It is true that when we got up to the cliff I suggested to accused No. 2 that in order that we may be able to see everything on the sides of the cliff East and West we should go down.

Just an inspiration on your part which led you straight to the body? We were to make a proper search amongst the rocks to see if we could find anything.

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Do you agree with No. 2 accused that Thuso was no where near at the time you found the body, he was away behind? Yes, he was far away behind.

And do you agree that for an unknown reason Thuso was lying when he came here and told us that he was with accused No. 2 who led him to all intents and purposes straight to the body? I was walking just next to accused No. 2 and we were the people who were ahead of others.

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No.10

No.10
Mamoliehi
Khotso
examination

EVIDENCE of MAMOLIEHI KHOTSO
(The Appellant objects to the inclusion of this document)

D.W.5. MAMOLIEHI KHOTSO: (who is duly sworn by Interpreter):

EXAMINED BY MR. LIEBETRAU:

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Are you the wife of No. 3 accused? Yes.

Did you know the deceased? Yes.

Did you hear that he had died? Yes.

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Court

Defence
Evidence

No.10
Mamoliehi
Khotso
examination

Do you remember what day of the week you heard about his death? Yes.

What day was it? It was on a Friday.

Was that the day his body was found or was it after that? That was the same day as the deceased was found.

I want you to think back to the previous night, the Thursday night. Can you remember where you were on Thursday night? Yes.

Where? I was at my hut.

Were you alone? I was with my husband.

On that Thursday night did your husband go out anywhere? No.

Can you remember what the weather was like during that week when the deceased died? It was cold.

Was it just a cold wind or anything in particular causing the cold? It was snowing a little.

Can you remember which day it snowed? Yes.

Which day? Monday.

On that Monday can you remember where your husband was? He was at home.

Monday night? He was at home.

Did he go out anywhere on Monday night? No.

Does your husband spend nights away from you?

No.

Does he ever go out visiting at night? No.

Do you know a woman by the name of Materonko?

Yes.

And you know No. 2 accused? Yes.

Do you know of a conversation which you had with No. 2 accused in the presence of Materonko? Yes.

Can you tell us when this conversation took place? It was a Monday.

Was your husband present or not? No, he was away.

Do you know where he was? Yes, he was at the Police Station at Mapoteng.

Had he been there for long? He had gone there on Sunday the previous day.

What was this conversation between you and

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No. 2 accused? He asked whether I had seen his brother meaning accused No. 3. In reply I told him I had not seen him. He asked whether his brother had been arrested because he and his brother had found the deceased. He said to me "You shouldn't be frightened, because you know very well yourself that your husband never went away from you without your knowing either during the day or night, perhaps this is just an investigation by the Police".
 Did No.2 accused say anything about himself? No.
CROSS-EXAMINED BY MR THOMPSON:

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Defence Evidence

No.10
 Mamoliehi
 Khotso
 examination

Cross-examination

Did he say your husband would be back within six months? No.

It wasn't until about three months after the death that you were asked to remember where your husband was on those two nights? I remember that my husband was arrested on a Sunday when the deceased had been buried the previous day.

And you remembered immediately that your husband never went out at night time and never left you alone? Yes.

No.11.

EVIDENCE of THABO MOROLONG

No.11
 Thabo
 Morolong

D.W.12 THABO MOROLONG: (Admonished to speak the truth)

HIS LORDSHIP:

You know what the difference is between telling a lie and telling the truth don't you? No, I don't know.

Surely you know what the difference is between telling a lie and telling the truth? No.

Explain to him Mr. Interpreter. You are here to tell us what you saw or what you heard and if you didn't see anything you say so and if you didn't hear anything say so but on the other hand if you did hear anything or if you did see anything tell us what you saw and what you heard, do you

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Court
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No.11
Thabo
Morolong
examination

understand? Yes, I understand.
If you tell us you saw something which you
didn't see that is a pure lie? Yes.
Do you understand now? Yes.
You are here to tell us the truth? Yes.

EXAMINED BY MR. LIEBETRAU:

Do you know Mabitle? Yes.
Do you know Khoto? Yes.
Do you know the old woman Paulina? Yes.
Have you ever slept at Paulina's place? Yes.
When you slept in her place did you sleep
alone or did you sleep with anybody else? I used
to sleep there with Mabitle and Khoto.
Do you know the place which is called the
Red Path? Yes.

Have you ever been to the Red Path at night?
No.

Have you ever been to the Red Path with
Mabitle and Khoto? No.

Have you ever sat under a bush at the Red
Path and seen horses there at night? No, I never
saw the horses.

Do you know the square house where No. 4
accused lives? Yes.

Has No. 4 accused ever forbidden you to go
into that house? No, he never forbade me.

Cross-
examination

CROSS-EXAMINED BY MR. THOMPSON:

I suppose you have never been to school at
all? No.

Are you herding cattle? I used to herd goats.
I suppose you can't give me any idea how long
you've been doing that? No.

Just for a short while? Yes, because off and
on I left the goats and looked after the cattle.

Who is your mother? Mabato

Who is your father? Motsokane.

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No. 12

EXTRACT FROM THE ATTORNEY-GENERAL'S
CLOSING SPEECH

In the High
Court

No.12
Extract from
the Attorney-
General's
closing
speech 14th
July 1953

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No. 3 accused My Lord, the evidence is
Mabittle identifies him in the carrying party on
the Thursday evening. Then we have the evidence
of the accomplices and the evidence of Mabittle
associating No. 3 accused with the crime. I might
point this out to Your Lordship, in the case of
No. 3 accused there is some evidence from the
Crown witnesses that he was an extremely unwilling
party, he actually tried to run away. Two of them
identify him as the man who tried to run away and
the third accomplice said in this Court that
somebody did but he doesn't know who it was.

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No. 13

EXTRACTS FROM JUDGMENT

Criminal Trial No. 5 of 1953

Regina versus Habofanoe Matsora and Others

JUDGMENT

No.13
Extracts
from
Judgment 15th
July 1953

Per WILLAN, C.J.

15th July, 1953

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HIS LORDSHIP: In this case the eight accused are
charged with murdering TIEHO MATSORA at or near
Red Path (marked F on the plan, Exhibit A) in the
district of Berea on or about the 20th August 1951
which was a Monday.

The Attorney-General appeared for the Crown
and Mr. Liebetrau for all the accused.

In the High
Court

No.13
Extracts
from
Judgment 15th
July 1953

The accused were not all arrested until well on into 1952, and the Police Investigation, of necessity in an involved case such as this, took a considerable time. The delay in bringing this case to trial is solely due to the fact that the Medical Officer who performed the post mortem examination on the body of the deceased left Basutoland and settled permanently in the United States of America before the Preparatory Examination opened. Hence a commission had to be sent to America and his evidence was taken there on interrogatories by both the Crown and the defence. This commission was not completed in the United States until the end of February 1953. As soon as it was received here this trial was listed for the next Criminal Sessions.

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The body of the deceased was found on Friday the 24th August 1951 at the foot of a vertical rocky cliff, about sixty feet high, at the spot marked N on the plan Exhibits A and C. There were the following injuries -

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1. Two lacerated wounds on left side of scalp, with multiple fractures of the skull.
2. A small penetrating wound on the left side of scrotum.
3. A fracture of the breast bone.
4. A small abrasion half an inch in diameter of skin on surface of tips of right forefinger and middle finger.

In addition to these injuries there was bloodstained fluid in the mouth, gullet, and upper breathing passages of the deceased.

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The dead body was identified by P.W.1 and 2.

The Medical Officer who conducted the post mortem examination stated that, when he did so, putrefaction of the body had set in but he was able to give his opinion that death was due to

the fracture of the skull. When giving evidence on commission he said that there was not sufficient evidence to say that the deceased had met his death by falling over the cliff because the only bones broken were in the skull and the breast bone and he pointed out that the wound in the scrotum could only have been made by a sharp instrument.

In the High
Court

No.13
Extracts
from
Judgment
15th July
1953

10 In my view the deceased could not have met his death by falling over a cliff about sixty feet high. The medical evidence discloses that only the skull and breast bone were fractured. P.W.6. Captain Shortt-Smith the Police Officer in charge of this case, stated that the cliff in question is vertical, absolutely sheer, and at the base the ground is solid rock. If the deceased had fallen over it he would have sustained many more fractures particularly of the arms and legs.

20 Further, we have the evidence of the policeman Trooper Mofereferere, P.W.5. who was present when the body was found at the foot of the cliff, He stated that the body was then clothed in under-pants and trousers and that there was no hole in either of these garments corresponding to the wound in the scrotum which was caused by a sharp instrument, This evidence is corroborated by P.W.16 brother of the deceased, who was also present when the body was found. Therefore these garments must have been placed on the deceased after that wound
30 was inflicted, and this is what the accomplices say was done.

Hence any suggestion that the accused fell over the cliff is untenable and I am satisfied beyond doubt that he was murdered.

The main evidence for the Crown rests on the evidence of Ranthene, P.W.7. Ramatsepe, P.W.8. and Motsoenkana, P.W.25, all accomplices.

40 The Crown case is that accused 1 required the deceased to be killed because he, accused 1, wanted medicine. Therefore this is a medicine murder.

On the Monday prior to the 20th August 1951, there was a meeting at the hut of accused 4 at

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which the plot was hatched to kill the deceased on the following Monday, the 20th August 1951.

On that 20th August 1951, the deceased was returning from a place called Mapoteng, shown on the plan, Exhibit A, where he had been to search for some sheep of his which were lost. Deceased and the accomplice Motsoenkana (P.W.25) arrived together at the hut of the accomplice Ranthene, about sunset. So there were then present at that hut the deceased, Motsoenkana and Ranthene. They were joined by accused 4 and 6 a little later. After accused 4 and Motsoenkana had had a private talk outside that hut accused 4 and 6 went away. Shortly afterwards deceased and Motsoenkana left and went in the direction of the village of Ntsangs, which is very close to Red Path. Ranthene followed them and taking a short cut arrived at the hut of accused 4 before them - that hut is near the village of Ntsangs. It was completely dark by this time - it was winter time. At the Red Path Ranthene saw several groups of persons waiting there. Immediately the deceased and Motsoenkana arrived, the deceased, on the orders of accused 1, was seized and accused 5 threw a riem round his neck. Deceased screamed. Then accused 2 hit the deceased twice on the head with an axe. An axe, Exhibit 11, which is a fireman's axe with a short handle and a blade on one side and a pick at the other side was put in evidence. It was identified by P.W. 24 as belonging to her and all that can be said about this Exhibit 11 is that it was in the village in which accused 2 lived at the time of this murder. But there is no evidence that this was the weapon used - all the accomplices can say is that the axe used was like Exhibit 11.

After being hit with the axe by accused 2 the deceased fell to the ground and was stripped of his clothing on the orders of accused 1. Accused 2 again hit the deceased with the axe close to the testicles - we know from the medical evidence that this wound in the scrotum was caused by a sharp penetrating instrument. Accused 1 collected blood in a

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billycan from both the head and scrotum wounds.
The deceased died on the spot at Red Path.

According to the Crown evidence the principal actors in the actual killing of the deceased are accused 1, 2 and 5.

The body of the deceased was then carried to the square hut of accused 4 - marked L on the plan Exhibit B - and there placed under a bed. It was carried on the ox skin - Exhibit 1, which was eventually found by the Police in the hut of accused 5.

The body was left in accused 4's hut until the following Thursday night. That night, on the orders of accused 1, it was taken to the spot N on the plans Exhibits A and C and there deposited at the foot of the cliff, where it was eventually found by the Police.

That is the Crown case and I now deal with the salient evidence against each accused in chronological order.

* * * * *

Accused 3.

The case against this accused is as follows:
(a) The two accomplices, P.W.7 and 8 state that accused 3 was present at the meeting on the 13th August 1951, when the plot was hatched to kill the deceased.

(b) The same two accomplices state that accused 3 was present at Red Path when the deceased was killed. They both say he tried to run away but was called back by accused 1. The third accomplice, P.W.25, stated that there was one man there who tried to run away. This is corroborated by independent witness P.W.11.

The defence of this accused is an alibi supported by his wife.

Counsel for the defence suggested in his closing address that if this accused was found to be

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present at the Red Path when deceased was killed he would, on the Crown evidence that he tried to run away, be entitled to rely on the defence that he acted under compulsion.

In my view such a suggestion is untenable because, first, this accused did not rely on it in his evidence - he said he was not at the killing, and secondly, there is not sufficient evidence that he took part in the killing because he was in fear of his life or of serious bodily injury. Further, there is the evidence for the Crown that he attended the meeting when the plot was hatched to kill the deceased; if he wished to withdraw he could have done so after that meeting and never gone to the Red Path on the night of the 20th August 1951.

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* * * * *

Therefore against accuseds 1 to 6, both inclusive, we have both accomplice and independent evidence. Against accused 7 there is accomplice evidence and the bloodstained sack. He has given no explanation regarding the sack.

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In addition, we have the medical evidence of the wounds, which corroborates the account given by all three accomplices.

The law in this Territory with regard to accomplice evidence was laid down by the Judicial Committee of the Privy Council in the case of Gideon Nkambula v. Rex (1950) A.C. 379; that is a Swaziland case but the law in Basutoland on accomplice evidence is identical with the law in Swaziland. That case laid down that the evidence of two accomplices, unsupported by any other testimony, is sufficient, if believed and if the warning of the danger of accepting it is present in the mind of the Judge and his Assessors, to warrant the conviction of those accused of a crime.

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There are discrepancies in the evidence led by the Crown but none of them go to the root of the case. In a fast moving drama such as this it

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is only to be expected that there would be discrepancies.

In this case the defence could not produce any evidence of motive as to why these accomplices should lie. All three accomplices, in my view, and I have warned myself and my Assessors of the danger of accepting accomplice evidence, are witnesses to truth. Further, there is ample independent evidence, which I have set out earlier, corroborating their evidence. I believe the evidence of those independent witnesses.

In the face of this overwhelming evidence brought by the Crown I reject the alibi defences brought by the defence.

Clearly from the Crown evidence - the meeting of the 13th August 1951, when the plot to kill the deceased was hatched, the actual killing on the 20th August 1951 and the disposal of the body on the 23rd August 1951 - all this evidence establishes common purpose.

I have no hesitation in convicting accuseds 1, 2, 3, 4, 5, 6 and 7 of this murder.

I give accused 8 the benefit of the doubt only because there are discrepancies in the accomplice evidence, the only evidence against him - evidence which is much weaker than the evidence against the other seven accused. I acquit him.

All four Assessors agree with my findings in respect of accuseds 1, 2, 3, 4, 5, 6 and 8. As regards accused 7 three of the Assessors agree with my finding.

Maseru,
15th July 1953.

(SGD) HAROLD WILLAN
CHIEF JUSTICE

No. 14

SENTENCE

HIS LORDSHIP:

HABOFANOE MATSORA
MAHLOKO LESOOANA
KHOTOSO SEPHAKELA
SABILONE RANTSOMLEBE

In the High
Court

No.13
Extract
from
Judgment
15th July
1953

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No.14
Sentence
15th July
1953

In the High Court

MOKHETHI LESOOANA
RABOLAI MOROLONG
MALLA MOLALA

No.14

Sentence
15th July
1953

the sentence of the Court is that you shall be returned to custody and then you will be taken to a place of execution and there on a date appointed you will each be hanged by the neck until you are dead.

In the Privy Council

No. 15

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ORDER IN COUNCIL GRANTING SPECIAL LEAVE TO APPEAL

No.15
Order in Council granting Special leave to appeal
22nd
December
1953

L.S.

AT THE COURT OF SAINT JAMES

The 22nd day of December 1953

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PRESENT

HER MAJESTY QUEEN ELIZABETH THE QUEEN MOTHER
HER ROYAL HIGHNESS THE PRINCESS MARGARET

LORD PRESIDENT
MR. SECRETARY HEAD

MR. GEOFFREY LLOYD
COMMANDER GALBRAITH

WHEREAS Her Majesty, in pursuance of the Regency Acts, 1937 to 1953, was pleased, by Letters Patent dated the twentieth day of November 1953, to delegate to Her Majesty Queen Elizabeth The Queen Mother, Her Royal Highness The Princess Margaret, His Royal Highness The Duke of Gloucester, Her Royal Highness The Princess Royal and the Earl of Harewood, or any two or more of them, as Counsellors of State, full power and authority during the period of Her Majesty's absence from

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the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval of anything for which Her Majesty's approval in Council is required:

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AND WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 7th day of December 1953, in the words following viz:-

10 "Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble
20 Petition of (1) Habofoane Matsora (2) Mahloko Lesooana (3) Khotso Sefhakela (4) Sabilone Rantsoelebe (5) Mokethi Lesooana (6) Rabolai Morolong (7) Malla Molala in the matter of an Appeal from the High Court of Basutoland between the Petitioners Appellants and Your Majesty Respondent setting forth (amongst other matters): that the Petitioners desire special leave to appeal against the Judgment dated the 15th July 1953 of the High Court of Basutoland whereby they were each of them convicted of and sentenced to death upon the charge of having on the 20th August 1951 at or near the Red Path in the District of Berea murdered one Ticho Matsora a Mosuto male;
30 that the Petitioners submit that there are discrepancies in the evidence and that there was misdirection in the summing-up: that Petitioner No. 3 further submits that he remained present at the Red Path on the 20th August 1951 at the time of the murder of the deceased under compulsion and coercion such as would not in law render him guilty of the murder of the deceased and would entitle him in law to be acquitted: that it is submitted
40 that the learned Judge was wrong and misdirected himself in law in his Judgment in holding that (a) this defence of compulsion was not open to

In the Privy
Council

No.15
Order in
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22nd
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Petitioner No. 3 or (b) that such defence upon the evidence was not made out: And humbly praying Your Majesty in Council to grant the Petitioners and each of them special leave to appeal from the Judgment of the High Court of Basutoland dated the 15th July 1953:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion (1) that leave ought to be granted to Petitioner No. 3 Khotso Sephakela to enter and prosecute his Appeal against the Judgment of the High Court of Basutoland dated the 15th day of July 1953 and (2) that the Petitions of Petitioners Nos. (1) (2) (4) (5) (6) and (7) ought to be dismissed:

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"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal".

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NOW, THEREFORE, Her Majesty Queen Elizabeth the Queen Mother and Her Royal Highness The Princess Margaret being authorized thereto by the said Letters Patent have taken the said Report into consideration and do hereby, by and with the advice of Her Majesty's Privy Council, on Her Majesty's behalf approve thereof and order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the High Commissioner for Basutoland the Bechuanaland Protectorate and Swaziland for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW

In the Privy
Council

No.15
Order in
Council
granting
special
leave to
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22nd
December
1953

No. 2 of 1954

IN THE PRIVY COUNCIL

ON APPEAL FROM THE HIGH COURT
OF BASUTOLAND

B E T W E E N :

KHOTSO SEPHAKELA Appellant

- and -

T H E Q U E E N Respondent

RECORD OF PROCEEDINGS

Hy. S.L. POLAK & CO.,
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Solicitors for the Appellant

CHARLES RUSSELL & CO.,
37, Norfolk Street,
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