

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v.

FRANK LEBETE
THABANG MONYANE
CARRINGTON MOEKETSI MASOABI

1st Accused
2nd Accused
3rd Accused.

J U D G M E N T

Delivered by the Honourable Acting Chief Justice Mr.
Justice J.L. Kheola on the 30th day of October, 1986.

The three accused, Frank Lebeta (A1), Thabang Monyane (A2) and Carrington Moeketsi Masoabi (A3) , are charged with the crime of theft, alternatively with the offence of contravening section 343 (1) of the Criminal Procedure and Evidence Act 1981. The indictment reads as follows:

"In that upon or about the 17th December, 1984 and at or near Maluti Mountain Brewery, Maseru Township in the district of Maseru the said accused one or other or all of them did unlawfully and intentionally steal 950 cases of beer and 108 cases of brandy the property or in the lawful possession of Ian Frasers Ltd, a company lawfully registered under the Companies Act of 1967."

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Alternative Charge

"In that upon or about the 4th January, 1985 and at or near Maseru in the district of Maseru the said accused, one or other or all of them was or were found in possession of 950 cases of beer in the regard of which there was reasonable suspicion that they had been stolen and was or were unable to give a satisfactory account of the possession and was or were guilty of the offence of contravening the provisions of Section 343 of the Criminal Procedure and Evidence Act of 1981."

The accused pleaded not guilty to both charges.

David Soai Rakuoane (P.W.1) is a businessman who deals in transportation of goods for reward. He owns a Datsun half-truck with Reg. No. A6983. He had some business dealings with a lady by the name of Martha of Welcome Transport. He used to take money from Martha and go to the mountains where he bought wool. He brought the wool to the lawlands in his own truck.

On the 17th December, 1984 he came to Maseru for shopping and met Martha. While he was still talking to her A1 and A2 arrived. Martha left him and went to them. After talking to them for a short while Martha returned to him accompanied by A1 and A2. She asked him to help the two accused by transporting their goods, and told him that the accused would pay him whatever price he charged. As he did not want to disappoint Martha he agreed to help the accused. He and the two accused climbed into the truck and he drove to Maluti Mountain Brewery directed by A1. When they arrived at the gate of Maluti Mountain Brewery (M.M.B) A1 alighted and showed the security guard some papers and it seemed as if they were writing in a certain book. A1 returned to the truck and directed him (P.W.1) to parking zone No.9 and the truck was parked there.

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A1 again alighted and entered into some offices. When he came back to them he reported that some papers were missing and that he would have to go to town.

It was at about 11.30 a.m. when A1 left for town.. P.W.1 and A2 remained at M.M.B. At about 3.00 p.m. A1 came back and reported that everything was all right. The beer was taken out of the warehouse and packed near the truck. The labourers came and loaded it on the truck. During the loading both A1 and A2 were standing outside the truck and it was filled to capacity. After the loading, the two accused and the labourers boarded the truck. A1 said that he would direct P.W.1 as to where they were going. From the brewery they took the road to Mafeteng till they came opposite the Moshoeshoe I International Airport when A1 instructed him (P.W.1) to turn to the right into a yard in which there is a restaurant and some outbuildings. A1 ordered him to park in front of the restaurant opposite the door in the middle of the building. They all alighted and the off-loading started in earnest and A1 and A2 assisted the labourers.

P.W.1 saw a man ^{who} also assisted in the off-loading and showed the others where to put the beer. He was light in complexion and heftier than the two accused. After the entire load of beer was put into the restaurant he (P.W.1) demanded his reward from A1. He was given R100 and was satisfied. Just before he left A1 asked him to return to M.M.B. and take another load of beer promising him a reward of R130. Having accepted the offer he and the two accused together with the labourers returned to M.M.B. The truck was again filled to capacity but another large quantity of beer still remained behind. When they left the brewery A1 remained behind and said he was

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going to look for another truck to carry the remaining beer. P.W.1 went to the restaurant where the first load was off-loaded accompanied by A2 and some labourers. On their arrival at the restaurant the off-loading was supervised by A2 and the man with a light complexion referred to earlier.

While the off-loading was going on A1 arrived in another truck of the same size as his (P.W.1's). It was also carrying a full load of beer. After the beer on his truck had been unloaded P.W.1 was given his reward of R130 and left while the unloading of beer on the other truck was going on. He went to ha Marakabei. He again came down to Maseru in about a week's time and met Martha at Welcome Transport.

In about two or three months' time after he had transported beer for A1 and A2 he met Martha. She told him that 'things were going bad' about the service he had rendered to A1 and A2 and she invited him to accompany her to go and see her lawyer. He agreed. When they came to the offices of the lawyer at Lesotho Bank Tower, he was introduced to accused 3 as the lawyer of Martha. A3 asked him if he (P.W.1) knew anything about the investigations which were being made by members of the C.I.D. regarding his involvement in the transport of beer from M.M.B. He said he heard for the first time about such investigations when Martha told him. A3 then warned him that he should ^{not} say that he transported any beer from M.M.B. and that if he admitted having done so, he alone would be arrested and punished while the boys (A1 and A2) got away with it. P.W.1 says that he got frightened and promised to keep his mouth shut. After a few weeks the police contacted him but he denied any knowledge of the beer.

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On the 22nd April, 1985 A3 came to his home at Khubetsoana and told him that the case about the beer was to be heard on the 6th May, 1985. He again warned him that the case was a very dangerous one against him (P.W.1) and that he should not tell the police that he transported any beer from M.M.B. P.W.1 says that it was against his nature to tell a lie and decided that it was time to go and tell the C.I.D. men the truth. He went to the C.I.D. office and told them everything he has told the Court.

In cross-examination he admitted that after his truck had been seized by the police he consulted the present defence counsel, Mr. Matsau, and instructed him to make the application for the release of his vehicle. He knew both A1 and A2 by appearance but knew A1 better than A2 because during the transactions he had with them on the 17th December, 1984 A1 was more friendly to him and did more of the talking than A2. He admitted that he saw both A1 and A2 for the first time on the 17th December, 1984 and saw them for the second time on the day this case started before this Court. No identification parade was ever held at which he was asked to identify the two accused. He identified A2 by his appearance and that he had no special or peculiar features by which he identifies him. When it was put to him that A2 has big protruding eyes he admitted but said that although not all people had big protruding eyes, there were many people who had big protruding eyes.

P.W.1 said that he could no longer identify the hefty man he saw at the restaurant because of the long lapse of time. He also had a very short time during which he observed the features of the hefty man. Regarding A1 and A2 he had a very long time during which he carefully

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observed their appearances. Before he and the accused went to M.M.B. they never sat down and discussed what goods he was going to carry nor the destination of the goods. However, when they were already in the truck they told him the destination. They did not agree on the price/reward before he saw the goods he was supposed to carry in his truck. After seeing the goods he charged them R100 for a full load. When Martha told him that the police had come to her and showed her the registration number of his vehicle, he sensed that he could be in trouble but did not volunteer to go to the C.I.D. men at that stage because he did not know what was taking place. He said that he made a mistake in his evidence-in-chief if he said the police came to him. What happened is that he voluntarily went to the police and his vehicle was seized. He denied that he was in the conspiracy to steal the beer.

Under cross-examination by A3 P.W.1 denied that he went to A3's offices in order to instruct him to defend him in the case concerning the beer he had transported. He was shown a file from A3's offices marked "David Rakuoane vs Rex". In the file there is a date = 15/3/85 and the words: Criminal case: theft of liquor and release of vehicle; to pay R1000 for the entire case". He denied that he had ever instructed A3 and asked why he was not ordered to pay instruction/consultation fee. He also pointed out that on 15/3/85 his vehicle had long been released to him by the police. He went further to say that the file could have been made on the previous day. The file was handed in and marked "Exhibit A".

He denied that he confessed to A3 and told him that the beer was taken to ha Marakabei and from there to Leribe at his (P.W.1's) home from

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where Martha would collect her share.

The second witness, Mantso Lenaneho Koloko, was involved in the removal of the beer from ha 'Masana which is the name of the place where P.W.1 unloaded it. In 1984 he was working as a lorry-driver for one Mohamed. The truck he drove was a hyno truck Reg. No. A1232. A few days before christmas of 1984 his master instructed him to go to ha 'Masana and transport some goods for A3. From his master's place at Mazenod to ha 'Masana he was shown the way by A3 who was a passenger in the truck. When they came to ha 'Masana A3 showed him a restaurant and the truck was parked there. A certain Mr. Moleko, who was well known to the witness, opened a storeroom in which there was beer. At that moment David Masoabi (P.W.12) arrived, he was driving A3's van and carrying some labourers. After the storeroom was opened the labourers took out cases of beer and loaded them on his truck until it was filled to capacity. The beer consisted of Amstel and Castle and was in tins and bottles. That load of beer was taken to a place at Mazenod or Masianokeng and off-loaded at a place A3 called his farm. There is a house in the farm and the beer was put into one of the rooms by the labourers brought there by David Masoabi in A3's van.

They all returned to ha 'Masana and brought another full load of beer to A3's farm. At this time A3 was a passenger in the truck. After the second load was off-loaded at the farm A3 released him (witness). He went back to Mohamed's place.

About a month after he had transported A3's beer the police came to him and asked him what he knew about the beer. He told him everything he

knew about the transporting of the beer from ha 'Masana to A3's farm-house. A few days after the police had spoken to him A3 came to him and asked him what the police had been saying to him. He told him. A3 warned him not to be frightened since the police could not do anything to him. Some time after he had met A3, Mr. Mohamed instructed him to go to the offices of A3. David Masoabi collected him in A3's vehicle and took him to the offices. They found A3 in his office and again asked him some question about the beer and recorded something on a paper which he later gave to his secretary. From there A3 took him to the Law Office where he was made to sign a certain paper before a certain lady. He denies that the lady read back the contents of that paper to him. He also did not read the contents because he never suspected that A3 could write what he had not said.

The affidavit was handed in as an exhibit and marked "Ex B". In the affidavit he is recorded as having said that he collected 377 cases of beer for A3 from Makhotsa Liquorama Bottle Store. His statement before the police was handed in as Exhibit C. The statement is in his own handwriting and its contents are substantially the same with his evidence before this Court.

David Masoabi (P.W.12) worked for A3 as a driver from 1983 to December, 1984. He drove A3's white van Reg. No. A 0897. He knows the last witness, Mantso Koloko, because he used to visit Mazenod and saw that Mantso was working for Mohamed. He also knew Eward Likotsi (P.W.5) and one Pule both of whom were employees of A3. They roofed his cafe at 'Matsoana and repaired some doors of A3's house at Masianokeng.

One day in December, 1984 he collected Likotsi and Pule in the van, they went to the Maseru Traffic circle and collected four casual labourers. He drove them to the farm and dropped them there. From there he came to A3's offices and took him to Mazonod at the home of Mohamed. A3 hired Mohamed's truck for the transportation of his goods. When they left the home of Mohamed A3 was a passenger in the truck driven by Mantso Koloko. He (David) went to the farm and fetched Likotsi, Pule and the labourers and took them to ha 'Masana. He was instructed by A3 to do all these things.

At 'Masana's A3 directed them to a restaurant. A big storeroom was opened and they were instructed by A3 to take out the beer that was in that storeroom and to load it onto 'Mantso's truck. He, Likotsi, Pule and the casual labourers loaded the truck until it was filled to capacity. 'Mantso and A3 travelled in the truck when they left the restaurant. He and the labourers travelled in the van and followed the truck. They went to A3's farm and unloaded the beer and put it into one room. They returned to the restaurant and brought the second load. The beer in the two loads consisted of Castle, blacklabel and Amstel.

David Masoabi said that at one stage while the loading was going on he heard when accused³ told one man that the beer belonged to his clients who had been arrested. He did not know where A3 got the beer from. On the following day A3 instructed ^{him} to transport some beer from his farm to his home at ha 'Matsoana and allowed him to drink only six tins of beer from the beer he was taking to ha 'Matsoana. However, he used much more beer than he was allowed to drink and was too drunk when he came back from ha 'Matsoana. A3 strongly objected to that kind of conduct and fired him without pay.

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On the Saturday preceding the day on which the witness gave evidence (17th May, 1986) A3 invited him (P.W.12) to a meeting at the home of one Leticia Masoabi at Mazenod. When they met there A3 told him that he (A3) was facing a criminal charge and that there were going to be ^{some} difficulties unless he (P.W.12) assisted him. He did not ask him what he meant by that but merely demanded his salary. A3 gave him R50 that day. He went to A3's offices to collect the second R50 despite the fact that A3 had said he did not want people to see him go to his office. A3 asked him to say that Mantso Koloko was collecting mealie stalks used as fodder at ha 'Masana and not beer. As far as he knows the mealie stalks were collected by him from ha 'Masana to A3's farm. It took him two weeks to do that job.

In cross-examination David Masoabi said that he still hates A3 because he has not paid him the balance of his salary.

The evidence of Edward Likotsi (P.W.5) corroborates that of David Masoabi with regard to the loading of the beer from the restaurant to A3's farm. However, there are some slight differences in their versions. David said A3 was in the truck with Mantso. Edward says he was in the truck while A3 was in his 4 x 4 van. Again according to David, Edward was present when the first load was loaded; but Edward says that he arrived at the farmhouse while the first load was being off-loaded from the truck.

He started working for A3 in 1979 and left him in January, 1986. There were two reasons why he left him; the first one was that A3 did not

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drove it to ha 'Matsoana. He (witness) was going to repair the door of A3's cafe. They arrived at ha 'Matsoana late in the evening and unloaded the beer and put it into the cafe. He worked on the doors for the whole night till 5.00 a.m. when they came back to Maseru.

On christmas day A3 again took them to the farm-house in his own van and another load of beer and some brandy was taken to ha 'Matsoana. On this occasion the beer was sold at the foot-ball ground where a match was played. Phehello Masoabi (D.W.4) and A3's wife accompanied them to the foot-ball ground. Since not all the beer was sold, the remainder was taken to A3's cafe at ha 'Matsoana. A3 gave them one case of beer which they drank with some villagers.

One day he was working at the house of A3 at Happy Villa when he saw nine cases of brandy in the house. Under cross-examination the witness admitted that he took 200 roofing tiles from A3's site at Mazenod because he (A3) failed to pay him his salary. He sold the tiles to one Nkane for R200. He had previously warned A3 that unless he paid him he would take the tiles.

Lin Chien Lieng (P.W.4) is the Chinese lady who runs a restaurant known as Sparrows. Her father manages the garage known as B.P. Garage. She knows A3 very well because he often visited her restaurant. In December, 1984 or January, 1985 her father told her that A3 was closing his business at the mountains and wanted to sell some beer from such business. She agreed to buy a case of beer at R2 or R3 below the current market price. A3 brought three loads of beer with his van. She paid between R400 and R500 for the first load; and between R600 and R700 for the second and third loads. Her father knew A3 to be a lawyer. She did not ask ^{A3} to produce his licence because she did not suspect that he stole the beer. She paid him in hard cash. She denied that A3 brought stout beer and exchanged it with castle lager.

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pay him regularly and owed him some R2000; the second one was that there was no more work for him. He is a carpenter. The work he did for A3 was to roof four of his houses located at Europa, Mazenod, Masianokeng and at ha 'Matsoana. He also fitted in the doors of the houses. After unloading the second load of beer at A3's farm house A3 instructed them to close the windows with sacks and instructed him to return to the house on the following morning and repair one of the doors of the house. On the following day he arrived at the farmhouse at 7.00 a.m. and repaired the door.

On the following day he and A3 came to the farmhouse in A3's van Reg. No. A 0987. It was driven by A3. On their arrival at the farm A3 instructed him and the farmhouse-guard ^{to} take out some beer from the house and load it onto the van. When the van was full he and A3 came to Maseru and took the load of beer to a certain chinese garage in town. The beer was off-loaded there with the help of the employees of the garage and the beer was put into the storeroom of the garage. Before they left he saw that A3 was talking to a Chinese man, but did not see him hand over to him any money.

On the following day A3 instructed him and Pule to accompany him to the farmhouse again. During the course of the day they took two loads of beer from the farmhouse to the same Chinese garage to which they delivered one load on the previous day. The beer was received by a Chinese man and a Chinese woman. It was about a week before Christmas.

About two days before Christmas A3 took him and Pule in his van to the farmhouse. A3 instructed them to take out some beer from one of the rooms and to load it onto the van. When the van was full he (A3)

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The evidence of 'Masello Mpoko (P.W.3) was to the effect that in December, 1984 she worked at the restaurant of one Mathibeli Moleko. Her master sold mostly castle lager. In December, 1984 she saw nothing. In July, 1985 the police came to her and told her that some beer was brought to her place. She denied this.

Joachim Willem Korb is a grocery manager at Frasers Wholesale. He is responsible for making external orders for the purchase of liquor for all Frasers lodges at Semokong, Qaba and Marakabei. He says that on the 17th December, 1984 A2 brought an internal order for liquor for Qaba Lodge. A2 used to work at Frasers Retail. He wrote one order for hard liquor and another for beer and gave them to A2. He is not quite sure what he did with the internal order he received from A2 but he thinks that he either threw it away or gave it to A2. Under normal circumstances a person who takes the external order to M.M.B. comes back with invoices showing the price of the whole merchandise. The accountant then issues a cheque and gives it to the bearer together with the invoices. The bearer returns to M.M.B. and pays for the order.

At the relevant time one Strydom (P.W.7) was responsible for making internal orders because Rantenbach was on leave. The normal procedure was that after paying for the beer A2 had to bring to him (Korb) the M.M.B. invoice so that he could issue an internal invoice debiting the lodge concerned. On the 17th December, 1984 A2 never came back to him with the invoice from M.M.B. On the 18th December, 1984 he contacted Strydom and asked him about the invoices. As a result of the report made to him by Strydom they both went to M.M.B. and found that the beer and hard liquor had been uplifted by somebody whose signature they could not decipher. Under cross-examination he

admitted that not only A2 brought the internal orders for liquor but A1 did as well. He did not know one Paul Seotsanyana and said that he (Paul) never brought internal liquor orders to him. (He handed in as exhibits the original copy of the order for hard liquor "Ex F" and its copy "Ex G"). He pointed out that the fourth item on Ex F was not entered by him as Ex G shows.

Thys Strydom was an accountant at Frasers. A1 worked with one Rautenbach as an assistant merchandiser. He said that he never made any order for liquor for the lodges because Rautenbach told him before he left that he had already supplied the lodges with enough stock of beer for the christmas. When they went to M.M.B. they were given photo copies of the relevant invoice, one of which is Ex H. He admitted that A2 was transferred as an assistant lorry driver for Marakabei before Rautenbach went on leave on the 5th December, 1984.

Alex Gwintsa is an accountant at Frasers Wholesale. He deposed that in December, 1984 A2 brought some invoices for liquor from M.M.B. He drew a cheque for an amount of R14, 147-85 to cover the invoices and gave it to A2. He had been dealing with A2 for about one year before the incident in question. He does not make the employee to sign for the cheque before taking it away.

Stanley Mosoka (P.W.10) testified that on the 14th December, 1984, which was a Friday, A2 came to M.M.B. where he (P.W.10) worked as a security guard. He showed him a Frasers order for hard liquor and passed to one Mrs. Manyeli (P.W.11) who made out some invoices. A2 went to the cashier's office and paid for the order. After paying for the order A2 came to him and he saw that the invoices had been stamped with "paid" stamp. A2 said that he did not have transport and left the invoices.

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On Monday (17th December, 1984) A1 came and said he had come to fetch Frasers liquor left there on Friday. He (A1) was accompanied by Checha Ralikhomo (P.W.4) driving a tractor with Reg. No. OW, but he did not see the actual numbers. It had a trailer. The hard liquor was taken away after he, Mrs. Manyeli and A1 signed the invoices. He identified Ex H as the invoice he signed and stamped with the "Security Checked" stamp. Although this witness was adamant that A2 came on Friday, 14th December, 1984, he suddenly conceded after a short break that he had made a mistake and that A2 came on Monday, the 17th December, 1984 and that A1 collected the liquor on the 18th December, 1984.

The evidence of Mampho Manyeli (P.W.11) corroborates that of Stanley Mosoka that on the 17th December, 1984 A2 brought the order Ex F. She ticked the items on the order to indicate to the person who would issue the invoices what the goods were available in the warehouse. On the following day a tall slender man with a darkish complexion came and collected the liquor.

Checha Ralikhomo was declared as an accomplice. He testified that he worked for Morija Frasers shop as a tractor driver. His duties entailed collecting merchandise from the Frasers branch at Maseru or at the station. In December, 1984 A1 instructed him to go to M.M.B. and said he would join him later. He went to M.M.B. and A1 arrived. He (A1) met the security guard and nine cases of different kinds of brandy were checked out with the use of some papers. He and A1 loaded the liquor on his trailer. After the liquor was loaded they both got on the tractor and he drove away. When they passed near Lesotho Flour Mills A1 instructed him to park on the side of the road. A car came and stopped behind the trailer. A1 alighted and went to the car. He spoke to the driver and

returned to the tractor. They drove away leaving the car behind. A1 said he should follow the road through Maseru West. When they were at Maseru West A1 again ordered him to park on the side of the road. The car he referred to earlier came again and A1 off-loaded the liquor from the trailer into the car. He (A1) said the driver of the car was helping them to carry the liquor to Crocodile Retail Store. A1 gave him R10 and he went to the station to collect groceries to Morija.

Checha says that he was later arrested and remanded into custody. While he was in remand A1 gave him R50-00 to pay rent since he was not working. When they were at the charge office after they had been arrested A1 asked him not to admit that he took hard liquor from M.M.B.

Moshe Mohalenyane (P.W.18) was a security guard stationed at M.M.B. in the beer section. On the 17th December, 1984 a customer came and he allotted parking zone No.9 to that customer. The customer signed the register and entered the registration number of his vehicle in the register, the time and his company. According to the register the vehicle's Reg. No. is A 6983. He was not sure whether it was the driver or the passenger who signed the register. (The register was handed in as an exhibit and marked Ex G).

'Matli Hlalele (P.W.18) testified that in 1984 he worked as a security checker at M.M.B. On the 17th December, 1984 A1 and A2 brought a Frasers order for beer. He checked the beer with both accused when it was brought to loading zone No.9. He worked mostly with A2 because A1 stood some distance away. He is not quite sure who between the two accused signed the invoices because he worked with both of them,

however, he thinks it was A2 who signed. He identified Ex N as a copy of the invoice he signed with one of the accused.

The evidence of 'Mamachaba Machaba (P.W.13); Lipontso Moima (P.W.19), 'Mampiti Mohale (P.W.20) and Lebeko Senyane (P.W.21) proves beyond any reasonable doubt that on the 17th December, 1984 orders for both hard liquor and beer were received at M.M.B. and that invoices were made out and that payment was duly made by cheque. They all identified Ex J as the document (invoice) they issued or signed and the customs officers kept it for purposes of assessing tax to be paid by M.M.B.

The evidence of the three police officers - D/WO/ Polanka (P.W.22), D/Sgt. Molefi (P.W.26), Trp. Sehloho and of Frasers security officer Tseliso Mpiti, was to the effect that on the 4th January, 1985 the farmhouse of A3 at Masianokeng was searched and that 376 cases of different kinds of beer were found. When A3 was asked about the beer, he said that it belonged to him and that he was going to use it for the thanksgiving feast which he intended to hold for his ancestors. He further explained that he bought the beer over a long period in small quantities. When the beer was being checked the witnesses noticed that A3 was using the original copy of the copy of invoice used by them (Ex N). A3 said the invoice belonged to his clients i.e. A1 and A2 who were charged with the theft of Frasers beer.

The beer was transported from A3's house to the charge office in Frasers truck because at that time the police had no transport of their own. From there the plice went to A3's home at ha 'matsoana but no beer was found there. The beer^{was} kept at Frasers storeroom because the police had no facilities to store such a large quantity of beer. The

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employees of Frasers gave the police the two keys of the storeroom in which the beer was kept. Some goods of the complainant remained in the storeroom in which the beer was kept, so that whenever complainant's employees wanted anything from the storeroom the police had to come and open for them.

It is common cause that when Griffin (P.W.23) was asked by the Prosecution to check and determine the dates on which the beer in the storeroom was manufactured the accused were not invited to attend the checking. According to Griffin's evidence the Amstel examined was produced on the 5th and 11th December, 1984 in South Africa. The beer could not have reached Lesotho market on the 7th December, 1984 when it is alleged to have been sold to A3.

Frank Masoabi (P.W.15) and Limakatso Masoabi (P.W.16) testified that one day during the morning hours the mother of A3 asked them to remove a few cases of beer from her premises and to put them in the veld in a field on which there was a mealie crop and in a Kraai situated in the forest. During the afternoon of the same day A3 arrived at 'Matsoana accompanied by police looking for beer. Frank Masoabi further told the Court that during the evening of the same day a van came and the beer from the field was taken away.

The defence of A1 is that on the 17th December, 1984 he was in the office at Crocodile Retail Store for the whole day and never went to M.M.B. He denies that on the 18th December, 1984 he and Checha Ralikhomo went to M.M.B. and collected 9 cases of hard liquor.

It is A2's defence that on the 17th December, 1984 he was working as an assistant lorry driver attached to a truck which transports goods to Marakabei's. He denies that he delivered an internal order for liquor to Mr. Korb. The defence of both A1 and A2 is that commonly known as alibi.

A3 denies the charges against him and testified that the beer that was taken from his farm-house was his. He bought it

from Makhotsa Liquorama Store for about M4000-00 plus. He only paid M2000 cash because he negotiated with Mr. Makhotsa to give him a discount or a set-off in respect of the cases in which he had represented Mr. Makhotsa. In other words Mr. Makhotsa owed A3 a sum of about M2000 in fees for legal services provided by A3. He bought the large amount of beer because he intended to hold a feast of thanksgiving to his ancestors. On the 1st September, 1984 he was involved in a car accident and narrowly escaped death; he therefore wanted to thank his dead. He handed in as an exhibit a sheet of paper on which he recorded the serial numbers of the cases in which he represented Mr. Makhotsa and the sums of money involved in each case. The sheet is Exhibit T.

He denies that on 4th January, 1984 he had any document which was similar to the one police used in checking the beer at the farm-house. He admits that he hired Mr. Mohamed's truck driven by Mantso Koloko but he deposed that it was for the purpose of carrying the beer from Makhotsa Liquorama Bottle Store and also for carrying mealie stalks from ha 'Masana to his farm-house. He also admits that on Christmas Day he transported 10 cases of beer to ha 'Matsoana where the beer was sold at the foot-ball ground. He denies that he sold any beer to Miss Lin Chien Lieng (P.W.4), he merely exchanged some cases of Black Label beer with those of Castle beer and the transaction was between him and P.W.4's father.

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The evidence of his three witnesses - 'Mako Masoabi, Eliah Masoabi and Pheello Masoabi was to the effect that A3 intended to hold a feast to thank his ancestors for the narrow escape he had when he was involved in a car accident. Pheello Masoabi deposed that he is the one who collected the beer from Makhotsa Liquorama Bottle Store but he did not have any receipt because A3 told him that he had already paid for the beer and that it was outside the bottle store. When he arrived there the beer was pointed out to him by the ladies who work in the store.

The evidence of Pitso P. Makhotsa was that he owns hotels and bottle stores. In November, 1984 A3 bought a lot of beer from him. He does not remember the exact quantity because A3 talked in terms of the money he had which was in the region of M2000 and asked for a discount. He (Makhotsa) refused to give him any discount because the beer at his bottle stores was very cheap, so cheap that it was even cheaper than M.M.B. He did not take any money from A3 because he had to pay to the cashier. Mr. Makhotsa said that he knew nothing about A3's story that they agreed on a set-off in respect of the legal fees which he owed to A3.

There is overwhelming evidence that on the 17th December, 1984 the complainant company, Ian Frasers Ltd. made an order for 950 cases of beer and 9 cases of hard liquor from M.M.B. The order for beer is Order No.51103/7360 (Ex.0) and the order for hard

liquor is Order No.51103/7361 (Ex.F). The orders were signed by an employee of the complainant company, one Joachim Korb (P.W.6). The liquor in both orders was for Frasers Qaba Lodge.

That the two orders were received by M.M.B. has also been proved beyond a reasonable doubt by the evidence of several employees of M.M.B. 'Mampho Manyeli (P.W.8) was given Ex.F and checked what types of hard liquor was available in the warehouse, she then ticked three items and the bearer of the order went to the cashier and paid. He came back with invoice No. 3106 (Ex.H). She took out the liquor on the following day when a different man from the one who brought the order on the previous day, came and said he had come to collect Frasers' liquor left on the previous day. She and the man signed Ex.H when the liquor was taken away by the latter.

Stanley Mosoka (P.W.10) checked the liquor and stamped Ex.H with his security stamp before the liquor was taken out. Mrs. Mamachaba Machaba (P.W.13) is the cashier to whom payment was made and she issued receipt No.23312 (Ex.I). Lipots'o Moima (P.W.19) worked as a computer operator at M.M.B. She processed the two orders referred to above and issued invoices Nos. 3105 and 3106. 'Matli Hlalele (P.W.18) is the security guard in the beer section of M.M.B. and checked the consignment in Ex N (Ex J) and stamped the invoice with his security stamp before the beer was taken out.

It is clear from the evidence summarised above that the order was made and that the liquor was removed from M.M.B. The main issue is whether A1 and A2 removed the liquor. The first witness who implicates them is P.W.1 David Rakuoane. He met the accused at Martha's place and took them to M.M.B. in his truck. He transported two loads of beer to 'Masana's and A1 and A2 paid him M230.00. It was submitted on behalf of the two accused that P.W.1's evidence of identification leaves open a reasonable doubt and that the Court must reject it. It will be recalled that P.W.1 spent almost the whole day with A2. He also spent a fairly long time with A1 who was more friendly to him than A2 and did most of the talking. It is true that when P.W.1 was asked to give any striking features by which he identified A2, he merely said he is a tall and slender person with a long face. When Counsel for A2 gave him the opportunity to have a good look at A2, he suddenly conceded that he had big protruding eyes. I was referred to the following cases: Daniel T. Lehloenya and Others, CRI/T/35/79 (unreported), R.v. Masemang 1950(2)S.A. 488 and R. v Mokoena, 1958(2) S.A.212. These cases can be distinguished from the present case in a number of ways: In Lehloenya's case there was a single witness who identified the accused and Rooney, J. had this to say:

"The two men who executed the robbery were quick about it. All they had to do from the time they entered the Senior Accountant's office, was to commandeer the trunk and its contents and made a quick escape. I have no estimate of the

time which elapsed, but I doubt if the two men were in the room for much more than one minute. They might have secured their objective in less time. Although the staff were, as one would say, frozen to the spot, the robbers moved about and this might have impeded or confused Miss Adoro's observations. Two months is a long time in which to remember an undistinguished face seen for such a short time and in such dramatic and frightening circumstances. The possibility of mistaken identity cannot be excluded."

In the present case the witness was not frightened when he saw the accused and remained with them for almost the whole day. It was at daytime.

In Masemang's case, the complainant was attacked at 8.30 p.m. She did not see the face of her attacker but merely saw his clothes. In Mokoena's case, the complainant's handbag was snatched at night and the thief ran away immediately. It was also a case based on the colour of the clothes the thief wore. The other witness who knew the accused was discredited.

In all the cases I have been referred to the single witness was a victim of some assault and was not only frightened but had a very short time within which to see the accused properly. In R. v. Turnbull (1976) 3 All E.R. 549 at p.552 Lord Widgery, C.J. said!

"How long did the witness have the accused under observation? At what distance? In what light? was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material

discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence. Recognition may be more reliable than identification of a stranger; but, even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistake in recognition of close relatives and friends are sometimes made".

Although P.W.1 was seeing the two accused for the first time and the fact that no identification parade was ~~not~~ held, I am of the opinion that the Court must take his evidence as reliable because he had a very long time during which he observed the two accused. In any case his evidence is corroborated by other witnesses.

Mr. Gwintsa (P.W.8) knows A2 very well because he dealt with him whenever he brought invoices so that he, as the accountant of the complainant company, could issue a cheque. His evidence is to the effect that on the 17th December, 1984 he drew a cheque for the sum of M14,147-85 for the purpose of liquor and gave it to A2 who brought the invoices to him.

Mr. Korb (P.W.6) testified that on the 17th December, 1984 he gave two official orders to A2, he made the orders after A2 had given him an internal order from Frasers Retail Store.

The evidence of Mr. Gwintsa and Mr. Korb was criticized on the ground that they could not be sure that on the 17th December, 1984 it was A2 and not any other messenger such as Paul Seotsanyana who brought the internal orders and collected the cheque. I do not agree with that suggestion that the two witnesses may be mistaken.

It must be remembered that the theft of beer was committed on the 17th December, 1984 and on the following day, the 18th December, Mr. Korb discovered that there was something amiss. He immediately started investigation. In my opinion his memory and that of Mr. Gwintsa were still very fresh as to what happened on the previous day. If the theft was discovered after several weeks or months, I would agree that they would not easily remember who among the various messengers brought the internal orders and collected the cheque. I can easily remember the attorney who appeared before me yesterday but not the attorney who appeared before me on Monday last week.

It must also be borne in mind that the orders for liquor were not a daily occurrence. In other words it was not something that was done every day of the week.

With regard to A1 the corroborative evidence comes from 'Matli Hialele (P.W.18) who testified that on the 17th December, 1984 he saw A1 at M.H.B. where he worked as a security officer. A1 was standing near a white truck parked at zone No.9. He (P.W.18) checked the beer with A2. P.W. 18's evidence was seriously criticized on the ground that his version of what happened differs from that of P.W.1. It is submitted that P.W.1 said A2 was sitting in the truck most of the time. This is correct but it does not mean that A2 remained in the truck all the time. In his evidence-in-chief P.W.18 made it quite clear that when beer was being loaded onto his truck both A1 and A2 were standing outside the truck.

P.W.18 told the Court that when checking the beer against the invoice he used two methods. He used to tick the items and then sign or just sign without ticking. But when he was shown Ex N and

shown the crosses used in the checking he insisted that those were ticks. I may say that the marks are not crosses in the true sense nor are they ticks as we know them. The court has been asked to take P.W.18 as an unreliable witness because he refuses to admit that what appear on Ex N are crosses. As I have stated above I am not so sure that those marks are crosses because they have some strokes which point upwards like ticks. I believed the evidence of this witness and found him to be a truthful witness. He showed me his signature on Ex N and stamped it with his security check stamp.

The defence again suggested that because A2 was a regular customer at M.M.B., P.W.18 must be acquainted with his signature so that on the 17th December, 1984 if A2 used a different and strange signature that would have aroused his suspicions. I do not think that a security officer is under any obligation to know the signatures of customers who regularly buy from the premises. His main concern is to check that the exact quantity bought by the customer is taken out and that they both sign.

The evidence of P.W.1 is again corroborated by an entry in the register that on the 17th December, 1984 his truck Reg. No A 6983 entered the M.M.B. premises at 10.10 a.m. (Ex G). There is no entry under the heading "Time Out" and it was suggested that the truck never left the premises that day. I do not agree with that suggestion because it is a common feature throughout the register that the times when the vehicles leave the premises are not entered. On the day in question failure to make an entry under this particular heading occurred in respect of twelve motor vehicles.

With regard to the 9 cases of liquor A1 and A2 are implicated by Stanley Mosoka (P.W.10), Checha Ralikhomo (P.W.14) and Mampho Manyeli (P.W.11). The evidence of P.W.10 was altogether unsatisfactory.

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He was adamant that A2 came to M.M.B. on the 14th December, 1984 which was a Friday. When it was put to him that he could be mistaken about the date and day of the week, he was quite sure that he was not mistaken. He later admitted that he had made a mistake about dates. I formed the opinion that he is not the type of witness one can rely on.

Checha Raiikhomo was declared an accomplice, but his evidence does not show that he was a conscious perpetrator of a crime. He was instructed by A1 to go to M.M.B. and obeyed the order because A1 was senior to him. He drove his tractor and collected nine cases of hard liquor from M.M.B. A1 accompanied him. When they came back the liquor was off-loaded and put into a car. A1 said the person in the car was helping them by taking the liquor to Frasers Retail Store. He (A1) gave him M10 before he went away. When they met at the charge office a few days later A1 told him not to admit that he took liquor from M.M.B. One day he again gave him M50. It seems to me that if Checha's evidence is to be taken as the truth he cannot be regarded as an accomplice because he was apparently unaware that the liquor was being stolen. Be that as it may, I shall take it that when the liquor was off-loaded in Maseru West before it reached its normal destination he suspected that something must be wrong. It is, therefore, necessary that Checha's evidence must be approached with extreme caution and unless his evidence is corroborated by independent evidence the Court cannot convict.

I have held that Mosoka is an unreliable witness, Mrs Manyeli (P.W.11) does not implicate A1 in any way because according to her evidence the man who came to collect the liquor was tall and had a darkish complexion. That complexion does not fit that of A1. So the evidence of the so called accomplice remains uncorroborated as far as A1 is concerned.

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I turn now to the alibi defence raised by A1 and A2. A1 says that he was in his office for the whole day and that if he left his office Mr. Strydom would have noticed this. The evidence was that A1 has his own office separate from that of Mr. Strydom. It seems to me that Mr. Strydom could go to A1's office only when he wanted to order him to do something or to discuss something with him. If he did not have any business to discuss with A1 on the 17th December, 1984 he would not notice that A1 was not in his office for the whole day.

A2 says that during the relevant period he had been transferred to be an assistant lorry driver to a lorry assigned to Mantsonyane. He does not specifically say where he was on the 17th and 18th December, 1984.

The legal position is that the accused does not bear any onus of proving his alibi. It is sufficient if it might reasonably be true. This does not mean that the court must consider the probability of the alibi in isolation (R. v. Biya, 1952 (4) S.A. 514 A.D.). In the case of R. v. Hlongwane, 1959 (3) S.A. 377 (A.D.), at pp 340-342 Holmes, A.J.A. stated the legal position in these words:

"The legal position with regard to an alibi is that there is no onus on an accused to establish it, and if it might reasonably be true he must be acquitted. R.v. Biya 1952 (4) S.A. 514 (A.D). But it is important to point out that in applying this test, the alibi does not have to be considered in isolation. I do not consider that in R. v. Masemang, 1950 (2) S.A. 488 (A.D.) VAN DEN HEEVER, J.A., had this in mind when he said at pp. 494 and 495 that the trial Court had not rejected the accused's alibi evidence "independently". In my view he merely intended to point out that it is wrong for a trial Court to reason thus: "I believe the Crown witnesses. Ergo, the alibi must be rejected." See also correct approach is to consider the alibi in the light of the totality of the evidence in the case, and the Court's impressions of the witnesses."

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I have considered the alibi together with all the evidence adduced by the Crown and have formed the opinion that the Crown has proved beyond a reasonable doubt that the alibi is false. Accused were seen by many witnesses who knew them very well.

I now turn to the Crown case against A3. There is no evidence directly connecting A3 with the removal of the liquor from M.M.B. He first comes into the picture when the beer was removed from ha 'Masana to his farm-house at Masianokeng. The first witness who "implicates" the third accused is Mantso Koloko (P.W.2). He did not know that the beer he transported from the restaurant at ha 'Masana to A3's farm was stolen. He was instructed by his employer to go and help A3. When the police later contacted him he told them everything. It was then that A3 also contacted him and asked him what the police had said to him. He told him. A3 then said he should not be frightened. One day his employer ordered him to go to A3's office. When he arrived there A3 asked him what the police had been saying to him and appeared to be recording his answers on a piece of paper which he later gave to his secretary to type.

From there he was taken to the Law Office and made to sign that typed document before a certain lady. The contents of that document were never read to him. He denies the contents of Ex B. It is possible that the contents of Ex B were not read to him, however, this Court must approach his evidence with extreme caution because he knows English fairly well as evidenced by Ex C which is a statement in the witness's own handwriting. He ought to have read the contents of that document before he signed, but as he says he did not suspect that A3 could make him sign for something he had not said.

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The evidence of Mantso Koloko is corroborated by Edward Likotsi (P.W.5) and David Masoabi (P.W.12). They were present when the beer was taken from ha 'Masana to A3's farm-house. It is true that David Masoabi said he still hates A3 for having failed to pay him the balance of his salary, but he did not give me the impression that he was biased against A3. In fact he is not the only witness who claims that when he left A3's employment he was not paid all his salary. Edward Likotsi testified that A3 failed to pay him for a long time till he finally decided to take some 200 roofing tiles and sold them. I did not form the opinion that these witnesses were biased against A3. In any case their evidence does not stand alone.

The evidence of Miss Lin Chien Lieng (P.W.4) shows that during the period December 1984 to January, 1985 A3 had quite a lot of beer which he sold to her. A3 denied that he sold any beer to this witness, his version is that he exchanged one type of beer for another type. In my view that is most improbable because at that time A3 had a very large quantity of castle lager beer at his farm-house. He could not go to P.W.4 when he had that type of beer. It must be remembered that the beer he had was for a feast for his dead and people attending a feast could not choose that they do not like black label beer. The road to ha 'Matsoana passes very close to his farm-house. Furthermore, A3 took three loads of beer to P.W.4. That a large quantity of beer was taken to P.W.4 is corroborated by Edward Likotsi who went to P.W.4's place with him. Likotsi stated that another load of beer was taken to A3's cafe at ha 'Matsoana.

There is the evidence of two relatives of A3 - Limakatso Masoabi (P.W.16) and Frank Masoabi (P.W.15) whose evidence shows that some beer had earlier been hidden in the veld before A3 and the police arrived

at ha 'Matsoana. The effect of this evidence is to show that there was something wrong about the beer and that some warning must have been sent to ha 'Matsoana that the beer must be removed because police were coming.

Another disturbing feature of the case against A3 is that all the Crown witnesses who implicate him in this case testified that at one time during the investigations A3 approached them and pleaded with them to turn against the Crown. If the third accused knew that he bought the beer lawfully why could he do such a thing.

I now turn to A3's defence. He says that he bought this large quantity of beer from Mr. Makhotsa for about M4000-00. He alleges to have paid M2000-00 in cash and then he and Mr. Makhotsa agreed on a set-off because Mr. Makhotsa owed him legal fees in respect of certain cases in which he appeared for him. Mr. Makhotsa says that he does not know anything about the set-off. All what Mr. Makhotsa knows is that he refused to give him a discount when he (A3) told him that he wanted to buy beer for about M2000-00. The problem which A3 faced was that there was evidence that the beer exhibited before this Court could cost about M5005.00 at the lowest prices of December, 1984. He attempted to justify how Mr. Makhotsa could give him such a large quantity of beer for less than half price. Unfortunately Mr. Makhotsa did not support him. Obviously the beer could not have come from Mr. Makhotsa's bottle store.

A3 called some senior members of his family, namely 'Mako Masoabi and Eliah Masoabi. The evidence was to the effect that A3 has previously been holding thanksgiving feast for the dead and that he was making preparations to hold one such feast in February, 1985. 'Mako Masoabi testified that he saw the beer at the farm

together with animals that were to be slaughtered for the feast. The evidence of these two witnesses does not carry the defence case any further. The issue before the Court is whether A3 bought the beer found at his farm-house from Makhotsa Liquorama Bottle Store. The witnesses do not know this.

Pheello Masoabi's evidence is full of improbabilities. He said that there were one hundred cases of soft drinks at the farm-house at the time the police searched the premises. It is most unlikely that the police officers who searched the three rooms would not have seen such a large quantity of soft drinks. They saw the mealies and other things but not that large quantity of soft drinks. Even A3 himself never said there was such a large quantity of soft drinks in one of his rooms. It seems to me that this is nothing but a figment of his imagination.

It is also improbable that the beer could be left in the street unattended outside Makhotsa Liquorama Bottle Store. If A3 paid for the beer why was it not taken out in his presence? Why should it be taken out in the absence of any of A3 employees and be left unattended? The truth seems to be that no beer was ever bought from Makhotsa Liquorama Bottle Store. There is not a single witness from Makhotsa's Store that she or he sold that large quantity of beer to A3. Not even Mr. Makhotsa is sure that A3 bought the beer from his store after he told him that he could not make any discount. Mr. Makhotsa does not even know that A3 paid for the beer.

A3 challenges the evidence of Mr. Griffin on the ground that when he examined the beer on two occasions he (A3) was not invited to attend. A3 also feels that ^{it} was improper for the police to keep the

beer in the complainant's storeroom where complainant had access and the possibility that the complainant replaced the beer found at his farm with some old tins of beer, has not been ruled out. The accused person is never invited when tests are conducted on the exhibits taken from him. In a recent murder case before me, accused's cloths were taken from him and sent to Pretoria for certain examinations to find out if there was any human blood on them. Accused was not invited to go to Pretoria. Experts often conduct certain tests on motor vehicles or engines found in the possession of an accused person. The accused is never invited to attend.

It seems to me that it was not necessary to invite A3 when the dates on the beer tins or bottles were determined. The police gave evidence that they kept the beer in complainant's storeroom because their exhibit-room was too small for that quantity of beer. However, they kept the two keys for that storeroom and whenever the complainant's employees wanted to take some of their goods from the storeroom, they had to do so under the supervision of the police. I believed the police witnesses when they said that the beer exhibited before this Court was the same beer they found at A3's farm-house.

I now turn to Mr. Griffin's evidence. He regards himself as an expert in the liquor production industry. According to him some of the beer he examined was produced on the 7/12/84, 5/12/84 and 11/12/84. It is clear from his evidence that such beer could not have been sold by Mr. Makhotsa to A3 before the 7th December, 1984, because it could never have reached the market before it was produced. Even the beer that was produced on the 5th and 7th December, 1984 in

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the South African Brewery, could not have reached Lesotho market before the 7th December, 1984 (See Ex L and Ex M). The evidence of Mr. Griffin completely disproves the evidence of Mr. Makhotsa but as I said Mr. Makhotsa does not know whether A3 actually paid for the beer and took it. He knows only about the negotiations.

When the defence closed their case Mr. Muguluma, counsel for the Crown, applied for the amendment of the charge sheet in count I to read "9 cases of brandy" instead of 108 cases of brandy. I granted the application because it was clear from the evidence of the Crown witnesses that 9 cases of hard liquor were involved but the Crown counsel decided to amend at the close of the defence case. I rather think that the application for amendment should not have been brought so late in the trial. Be that as it may I saw no major prejudice to the accused.

The alternative charge is also wrong in that it alleges that all the accused were found in possession of 950 cases of beer at or near Mazenod. There is no evidence to that effect. Only A3 was found in the possession of 376 cases of beer. Because the charge was not amended A3 cannot be convicted on the alternative charge as it stands.

Section 192 of the Criminal Procedure and Evidence Act 1981 provides that any person charged with theft may be found guilty of receiving stolen goods knowing them to have been stolen or of contravening section 343 or 344 (1), if such be the facts proved. As I stated earlier in this judgment there is no evidence that A3 participated in any way when the beer was removed from the premises of M.M.B. nor ^{was there} any conspiracy to steal such beer and hard liquor.

However, when A3 removed the beer from the restaurant at ha 'Masana, I am of the opinion that he knew that the beer had been stolen. There is abundant evidence that A3 tried on many occasions to persuade some Crown witnesses not to give evidence favourable to the Crown. If he did not know that the beer had been stolen from M.M.B. he would not have asked P.W.1 not to say he transported the beer from there; he would not have approached Edward Likotsi and David Masoabi in an attempt to force them to turn against the Crown.

A3 or somebody acting on his behalf obviously sent a message to ha 'Matsoana that beer should be removed from his mother's place and be hidden in the fields before the police arrived.

The beer was received at an unusual place and time and from a person who would not ordinarily own such property, in this regard I refer to the owner of the cafe, Mr. Moleko or and A1 and A2 because it is not clear from whom A3 received the beer. The evidence is that A1 and A2 stole the beer from M.M.B. and took it to Mr. Moleko's cafe. Whether they sold the beer to Mr. Moleko who in turn sold it to A3 is not clear from the evidence. However, that is not material and the Court has come to the conclusion that he received it from any one of them or from all of them.

The circumstances I have pointed out conclusively prove that A3 had guilty knowledge and knew that the beer was stolen. He received the beer at night from people who could not reasonably be expected to own such large quantity of beer. The evidence of 'Masello Mpoko, the lady who worked at the restaurant was vague in the sense that she does not positively say that on the night of the 17th December, 1984

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or the 18th December, 1984 she was on duty and saw no beer being brought to the restaurant. I fail to understand why Mr. Muguluma called this witness. If the witness had made a statement which was inconsistent with her evidence, it was his duty to impeach the witness and discredit her in terms of section 274(2) of the Criminal Procedure and Evidence Act 1981.

A3 referred me to many authorities, and I agree with the law in all those authorities, but they cannot be applied to this case. This is not a case based on suspicion, it is based on direct evidence implicating the third accused. His defence was composed of nothing but untruths and cannot be regarded as a story that may be reasonably possibly true.

For the reasons I have attempted to summarise above I formed the opinion that the Crown had proved its case beyond a reasonable doubt.

I find A1 guilty of the theft of 950 cases of beer in the main charge;

I find A2 guilty as charged in the main charge (as amended);

I find A3 guilty of receiving 950 cases of beer in the main charge knowing them to have been stolen.

Both A1 and A3 are not found guilty in respect of the 9 cases of brandy.

J.L. KHEOLA
ACTING CHIEF JUSTICE.

30th October, 1986.

For Crown - Mr. Muguluma
For Defence - Mr. Matsau

SENTENCE:

Three (3) years imprisonment of which one year is suspended for 3 years on condition that during the period of suspension the accused are not convicted of any offence involving dishonesty committed during the period of suspension.

My assessors agree.

J. L. KHEOLA
ACTING CHIEF JUSTICE.

30th October, 1986.