

IN HIGH COURT OF LESOTHO

In the matter of:

REX

VS

- 1. POSHOLI PHEELLO MOSILI**
- 2. MONTS'O RAMALEFANE**
- 3. REENTSENG JACKSON PHALALI**
- 4. TS'IU MOPELI**
- 5. LIN LING REN**
- 6. THABO LEKHOOA**
- 7. THATO MOSILI**

JUDGMENT

Delivered by the Honourable Mr Justice WCM Maqutu
on the 23rd day of August, 2001

This case had initial problems of some of the Accused not attending trial. On the 17th October 2000 the case could not proceed because Accused 3, Accused 5 and Accused 7 were not there.

Eventually the case was able to proceed after Accused 7 had surrendered herself and given a reasonable explanation on the 29th November 2000 and Accused 3 had been arrested and remained in custody on the 7th December 2000. Accused 5 who is a national of the Peoples Republic of China had absconded and

was therefore never arrested. The case proceeded after the Crown Counsel had applied for separation of trials. That application was granted, but the numbers of the Accused were not charged. The result of this was that on the 12th February 2001 Accused 1, 2,3,4,6 and 7 were arraigned for trial.

These six accused were read the following indictment:-

The Director of Public Prosecution

who as such prosecutes for and on behalf of The King, presents and Informs the court,

COUNT 1

THAT:

1. **POSHOLI PHEELLO MOSILI**
2. **MONTS'O RAMALEFANE**
3. **JACKSON REENTSENG PHALALI**
4. **TS'IU MOPELI**
5. **LIN MING REN**
6. **THABO LEKHOAA**
7. **THATO MOSILI**

**HEREINAFTER CALLED THE ACCUSED
ARE GUILTY OF THE CRIME OF MURDER**

In that upon or about the 1st June 1997 and at or near Khomo-e-Ts'oana Ha Makhoathi in the District of Maseru, the said accused did one or the other or all of them unlawfully and intentionally kill **PIETER JOHANNES GROENEWALD**.

COUNT II

THAT:

1. **POSHOLI PHEELLO MOSILI**
2. **MONTS'O RAMALEFANE**
3. **JACKSON REENTSENG PHALALI**
4. **TS'IU MOPELI**
5. **LIN MING REN**
6. **THABO LEKHOAA**
7. **THATO MOSILI**

**HEREINAFTER CALLED THE ACCUSED
ARE CHARGED WITH THE CRIME OF ROBBERY**

In that upon or about the 1st June, 1997 and at or near Ha Pena-Pena in the district of Maseru, the said accused did one or the other all of them unlawfully assault **PIETER JOHANNES GROWNEWALD** and by intentionally using force and violence to induce submission by **PIETER JOHANNES GROWNEWALD** did take and steal from his person or his presence out of his immediate care and protection property to wit.

1. A white Nissan van 2.4 registration numbers BFH 193 FS engine number A24002030y chassis number S.081421 1997 model.
2. Men's wrist citizen watch quarts.
3. Gold finger ring
4. RPN scientific calculator
5. Black torch with red marks
6. Navy blue lumber jacket
7. Motor vehicle radio set S/N QK 089019 Pioneer
8. Survey binoculars
9. Pair of black leather hand cloves
10. L.T.A documents
11. Light brown leather boots
12. Blue jean trousers wrangler
13. Cream with brown and white jersey assorted colours, his property or in his lawful possession, did rob him of the same.

COUNT III**THAT:**

1. **POSHOLI PHEELLO MOSILI**
2. **MONTS'O RAMALEFANE**
3. **JACKSON REENTSENG PHALALI**
4. **TS'IU MOPELI**
5. **LIN MING REN**
6. **THABO LEKHOAA**
7. **THATO MOSILI**

**HEREINAFTER CALLED THE ACCUSED
ARE GUILTY OF THE CRIME OF KIDNAPPING**

In that upon or about the 1st day of June 1997 and at or near Ha Tonki in the district of Maseru, the said accused did unlawfully and intentionally deprive **PIETER JOHANNES GROENEWALD** a male adult, of his liberty by detaining the said **PIETER JOHANNES GROENEWALD** in a donga for four hours.

All the six accused pleaded not guilty to all the charges.

The Crown first witness Pw1 was Mokhethi Rebamare Ntsoereng:

Duly sworn Pw1 said he had met Accused 4 (Chief Ts'iu Mopeli) in 1997 when they were introduced to each other by Rets'elisitsoe Hlasa. On that occasion Accused 4 had brought a Xhosa speaking man who was looking for diamonds. Pw1 had diamonds, but they could not agree on the price. Among the people present was a woman from Kolonyama. When they parted Accused 4 had given him his telephone and had asked Pw1 to find him buyers for vans. Pw1 had found a buyer for a van and phoned Accused 4, but Accused 4 did not bring a van

at the expected time.

Around June 1997 Accused 4 phoned Pw1 and told him he was bringing a van. Although Pw1 no more took Accused 4 seriously, he warned Thabo Mphana some one was coming with a van, Thabo Mphana should get a Chinese buyer whom he knew to be ready. Pw1 then went away to attend his other business affairs. He had left a message with Silas Chakela at Caltex Garage to direct Accused 4 to the residence of Pw1, if Accused 4 should come. When Pw1 came back he saw that there were people and a white 4x4 vehicle at his residence. When he got to his residence he found Accused 4 with 3 young men whom Accused 4 introduced as his boys.

While they were waiting for Thabo Mphana who had not been at home when they went to look for him, Accused 1 and Accused 3 washed that vehicle on Accused 4's instructions. At that time Pw1 and Accused 4 went to look for food and when they came back Accused 3 and Accused 1 had not finished washing the vehicle. As it was getting late, they went to the Chinese gentleman who was supposed to buy the van. He would not talk to them in the absence of Thabo Mphana. It was after some waiting and only after 7pm that Thabo Mphana became available and they returned to the Chinese gentleman. Negotiations

began, Accused 4 was talking as the owner. He asked for M18000.00 as the price for selling the vehicle to the Chinese gentleman, Thabo Mphana was acting as interpreter.

The Chinese gentleman was joined by another Chinese gentleman. These Chinese gentleman said they were prepared to pay M12000.00 of which M2000.00 would be paid immediately. The balance of M10 000.00 would be paid in a day or two. An agreement was reached on this basis and the four Accused promised to bring the papers for the vehicle. They left the vehicle there and Thabo Mphana took them to the Bus Stop in a vehicle belonging to the Chinese gentleman. As negotiations had been taking place in Teboho Kou's premises, Accused 4 gave Thabo Kou M50.00. Accused 4 had also demanded an extra M300.00 for the tyres. Pw1 was rewarded with M500.00 for his part in what had transpired up to that time. He was later phoned by one of the 4 Accused who said he should have been given only M50.00.

After two days later the four accused came in a red Cressida car which was driven by Accused 4. They eventually got to the Chinese gentleman with Thabo Mphana. The Chinese gentleman asked for papers that covered the vehicle. They went and talked away from them. Pw1 does not know what was said and whether the

Chinese gentleman was given papers for the motor vehicle. He however witnessed the handing over of M10 000.00 to the Chinese gentleman. This was done under a street lamp outside Teboho Kou's residence. Thabo Mphana was given M500.00 by accused 4 and he was also asked to find other buyers Pw1 was given another M500.00.

Pw1 added that on the first occasion Accused 1 had been called by a neighbour who had called him Chup, Push or Major - he is not sure of the exact name that was used. They appeared to know each other. That neighbour said they had met at Katse.

Three or four days later Pw1 was arrested by the police at Hlotse Leribe. He was later transferred to Maseru. It was from the police that he learned that the vehicle had been stolen. In Maseru he made a statement. Although he only knew Accused 4, no identification parade was held for the identification of Accused 1, 2 and 3. Nevertheless, Pw1 was certain he knew Accused 1, 2 and 3 because they came to him twice.

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On the first occasion as they were going up and down accused 4 had said his car had no radio with a cassette player. Accused 3 took out the radio with a

cassette player from the vehicle. Accused 1 and 3 are the ones who took it out. The vehicle had been a Nissan one ton vehicle which looked like a 4x4.

Under cross-examination Pw1 revealed he now resided in the Republic of South Africa where he is doing business with Voda Com and NTN. He conceded that the vehicle was a white 4x4 which he later called a Nissan Van. Pw1 told the court that he had not been well-treated by the police. He had been hand-cuffed and his legs had been in iron legging when he was transported to Maseru. This was so uncomfortable that he felt less discomfort when he was lying on the bakkie of the police van. He was only untied when he was put in the cell.

He was interrogated from 10 am to 4 pm with intervals 10 by a team of five policemen. He was released after providing the police with a statement. He was never given a charge. He signed a statement and signed some papers in blank. The police said they were going to transfer it to those papers and write it properly. He was never taken before a Commissioner of Oaths. He was surprised there was a Commissioner of Oaths stamp on it. The one he had signed, he had signed at the end. The one he was shown by defence had only been signed in the margins. The one he had signed had been read back to him in English.

Pw1 denied he had given a statement about what the police wanted to hear or that he had been told by the police what to say: He had realised he was in trouble when he learned the facts from the police about the vehicle, he became aware he might face a criminal charge. In his view the police handcuffed him and destabilised him in that manner because that is the way they act to all people. He did not wash while he was in the cell like all his cell-mates. He did not give the reason why the M10 000.00 was handed outside Teboho Kou's residence under a street light.

Pw1 said in his statement to the police he had mentioned that he had taken Peter Topaz to the chinese gentleman in an attempt to sell a car to the Chinese gentleman, but he would not buy it because he wanted a van. Pw1 had not asked about the legality of the van. He assumed the van was legal because Accused 4 had other vans. He never satisfied himself about the existence of documents for that particular van. The only thing he was interested in was payment of M10 000.00. He was not in the vehicle selling business. He made M1000.00 out of that transaction.

Pw1 told the court also in answer to questions that although police knew he was a diamond smuggler, they did not say he was in trouble. He knew it was a

crime. He did not know anything about the vehicle when he got involved in its sale. Pw1 said although Accused 1, 2 and 3 denied ever meeting him in Hlotse in June and July 1997, they did meet him. Accused 1 and 3 did wash the vehicle although they denied washing.

On behalf of Accused 4 in cross-examination, Pw1 was asked many question about his rough treatment during police detention before he was interrogated he confirmed that it was not pleasant and that the police had said they were not going to play with him. He insisted that his statement was the same as his evidence although there were many things the police did not understand. Pw1 said he was not sure if the transcribed statement was the same as the statement he gave. Pw1 insisted he told the court that Thabo Mphana was given M1000.00 for his part in the transaction. He conceded that in his statement he said the Chinese gentleman offered M2500.00 which is M500.00 more than the M2000.00 which he said was offered in his evidence in court. He insisted that in his statement to the police he had said the last letters in the registration number of the vehicle were FS. He denied improving his statement in evidence. He believed he spent 2½ days in police custody not 5 to 7 days. He is not sure he was arrested on first July 1997 although that may appear in his statement.

Pw1 could not explain why his statement showed it was Accused 4 who took the radio when he had said in evidence that the radio was taken out by Accused 1 and 3 on Accused 4's instructions. At that stage Pw1 wiped his face with a face towel. He explained he had earlier been running. It also transpired that he was drinking a lot of water. Pw1 said the police had invented the story in his statement that he came to know that the owner of the vehicle had been kidnapped and murdered and the vehicle stolen. The police had not told him about Accused 4. After Pw1 had been arrested he came to know during interrogation that the vehicle was involved in a robbery. Pw1 said it was Chasta his neighbour who called Accused 1 and said he knew him from Katse dam.

Pw4 denied there was or had been any animosity between him and Accused 4. Pw1 admitted he had lived on his Sister's earnings. He said this was supplemented by farming and gardening. To him farming was profitable. He was not cross that his diamonds were not bought by the Xhosa gentleman who was with Accused 4. Pw1 denied he had been a willing tool in police hands and that he had any grudge against Accused 4.

After Pw1 the Crown called Pw2 Thabo Mphana.

Pw2 duly sworn told the Court that on the 18th June 1997, when he got home, he

was told that some one had been to see him 3 times. That person called Chain had eventually left him a note. The note simply stated DBra T, see meC signed Chain Chain is the nickname of Pw1 Mokhethi Nts'oereng. Before sunset, a Chinese gentleman called him and had come accompanied by another Chinese gentleman that he did not know. He said three men came to his shop Lai lai wholesale selling a motor vehicle. They had said they were selling the vehicle for M18 000.00. While Pw2 was talking with this Chinese gentleman Pw1 came with two or three gentleman - if his memory serves him well. Pw1 had already arranged a meeting place about 100 metres from Pw2's residence. Pw1 preceded them to that meeting place and Pw2 and the Chinese gentleman Lin followed them. They got into the house, leaving the other Chinese gentleman, they were with, outside.

In the house Pw2 says he found Pw1 with four other gentlemen. Pw1 introduced Mopeli (whose first name he forgets) as Chief of Mazenod. Pw2 could not identify Accused 4 although he pointed out accused 4 among the accused before court as the man who had some features of the man he saw. Chief Mopeli said he had been to Lin and they talked about the vehicle and the price. Pw2 told the court he never knew who the other men were. Chief Mopeli only said they were his boys who live in Cape Town, and they sometimes have motor vehicles.

The issue of Lin's payment arose. Pw2 asked where the papers for the vehicle were. Chief Mopeli said that was not a problem. Pw2 and Lin went outside the house to talk. Lin said he could only afford M12 000.00. They then went into the house to tell Pw1 and Chief Mopeli this fact. Chief Mopeli went out followed by the taller and shorter man. After a while Pw1 followed them. They eventually returned and said they would accept M12 000.00. It would be difficult to identify Chief Mopeli's boys. Lin did not have M12 000.00, he only had M2000.00. They accepted it with an undertaking that they would bring papers for the vehicle. Chief Mopeli and another said M500.00 would be needed for the spare-wheel. Lin produced M300.00 - which was also accepted. It was agreed that the parties would meet again on the 20th June which was a Friday. Accused 4 had taken the money, counted it and passed it on to one of the men with him.

After the transaction they wanted to be taken to Maseru, it was agreed that they be taken to the Bus stop. One of the men produced the keys which were passed to Lin by Chief Mopeli. On the way out Pw2 saw a Nissan vehicle in the dark. He could not say what its colour was.

On Friday Lin came to the place of Pw2 to find out if they were coming. They waited, but they did not come. The following day, they still did not come.

When it was late at night they went to Pw1's home where they did not find him. As they were going away, they met Pw1 who went back with them to go and phone. Pw1 phoned and said Chief Mopeli was coming.

At dusk Pw1 came to the place of Pw2 in a Cressida vehicle with Chief Mopeli and two young men. They said they were going to that house where they had previously met. Pw2 sent a message to Lin. When they got there they found Pw1, Mopeli and two or three other men standing under a spot light. The owner was not there, therefore they worked outside. Lin asked for a document, but it was not there, Pw2 noticed things were being done quickly. One of the young men who was with Chief Mopeli said papers would be sent soon. When they were supposed to part Chief Mopeli said he would like Pw1 and Pw2 to go and meet him. One of the men had driven away the Cressida, only Pw1, Chief Mopeli and Two lads were at the place where payment had been made. They met at Pw1's house where Chief Mopeli came with three other men and gave Pw2 M1000.00 and Pw2 went home.

About a week later armed police men who were wearing blankets pointed a gun at him. They were in a vehicle without registration numbers. They allowed him to put his personal effects at home and took him away. They wanted

information about the vehicle that was bought. He took them to Lai lai Wholesale where Lin was not there, he was at Pitseng. At Pitseng they found Lin who took them to Rampais where the vehicle was supposed to be. They found other Chinese gentlemen where the vehicle was found and taken to the Butha-Buthe police. From Butha-Buthe Pw2 was taken back to Hlotse Leribe where he remained when the police passed on to Maseru taking the vehicle they had found with them.

On Tuesday Pw2 was told to report to Maseru CID where he found himself in a room with injured people waiting for a person he did not know. Later he was locked up in a cell where he slept without knowing the reason. The following day he was told the owner of the vehicle had been killed. Pw2 was then asked to tell what he knew about the vehicle. He gave a statement and was released.

Pw2 says Pw1 had been given M500.00 on the occasion of the second visit of Chief Mopeli and his men. Mr. Lin preferred having him around, he had not played any special part.

Under cross examination Pw2 admitted that on all occasions he saw Chief Mopeli, it was at night. He cannot identify Chief Mopeli because maybe they were together for a short time. Mistakes are possible as people have similar

features. It is possible for a person intent on mischief not to reveal his true identity. It can also happen for a person to use other people's names. Pw2 disagrees with Accused 4 that he was not at Hlotse. He believes the features of Accused 4 reveal him to be the man he saw. His hesitation is caused by the fact that he sees him among many people.

The Crown then called Kenalemang Kotola as the third witness (Pw3)

On oath Pw3 said he was a neighbour of Pw1. In 1997 he saw Posholi Accused 1 in the company of three men going to the home of Pw1, Pw2 was at home at the time. His home is about 70 metres from the home of Pw1. Accused 1 and his companions were in a white Nissan van with blue stripes on the sides. He did not notice the registration number. Accused 1 who had worked with him at Katse Dam was known as Push. Accused 1 asked Pw3 if the place Pw3 was at that time was in fact the home of Pw3. From there Accused 1 went and his companions went to the home of Pw1. Pw3 said he knew Accused 1 very well as they had worked together for two years but he did not know the other three. It was in the morning at about 9 am when he saw them.

Under cross-examination it was shown that Accused 1 agrees that he and Pw3 know each other. Pw3 did not agree with Accused 1 that Pw3 was mistaken

when he said they met in June 1997 at Hlotse. He denied that in June 1997 he quod for work at Mohale after he had been retrenched from Kats'e Dam. Pw3 denied that he ever met Accused 1 and his three friends at Caltex Garage in Hlotse around May 1997 or that he ever bought them drinks. He also denied pointing at his home from there. Pw3 also denied knowing Accused 1's girl friend Malitaba. Pw3 insisted that he saw Accused 1 and his three companions going to the home of Pw1 in a Nissan vehicle in June 1997.

It was read to Pw3 a portion of his statement that gave the impression that he already knew the name of Accused 1 which is Posholi. Pw3 in reply said he only knew Accused1 as Push, it is possible he might have already known Accused1 was Posholi. The Police referred to Accused 1 as Posholi at the time they had come to the home of Pw3, but he is not sure.

After this witness the Crown called Leuta Mahao as the fourth witness (Pw4)

Pw4's sworn testimony was to the effect that he knew Accused 1,2 and 3. They worked with Accused 3 as security guards Fahida Cash and Carry. On the 16th June 1997 they had been drinking with Accused 1, 2 and Accused 3 at his home. Pw4 says he had been cleaning his father's pistol and during this drinking, it was

lying on his bed. Accused 3 kept on handling it. Its Number is 3771 if he is not mistaken. The following day he realised it was missing. The following day the 17th he went to the residence of Accused 3 to look for this fire-arm but found no people. He found Accused 3 at the home of Accused 1. Accused 3 told him they had the gun he and Accused 1 would take it to the residence of Pw4. On the 18th June 1997 between 4 and 5 am Accused 1, 2 and 3 came to his residence, they were with Accused 3. They came in a white Nissan with blue stripes on the sides. They told him they could not bring the pistol for reasons beyond their control. They did not bring that gun the following day.

The day after that, he went to accused 3's residence, but found no people. He then proceeded to the home of accused 1's father. Accused 1's father showed him the home of Mannini who cohabited with Monate. Pw4 asked Mannini where accused 1, 2 and 3 were. She did not know. He waited for them for a long time and they did not come. Pw4 made two other attempts to find them at Mannini's but was not successful. On the 2nd June he found accused 3 at Mannini's place. They went to find accused 1, they found Accused 1 moving house. It was only on the 22nd that he went to a house that was pointed to him - there he found Thato accused 7 who is the sister of accused 1. Pw4 asked accused 7 to call accused 1. Accused 1 gave him his father's pistol which no more had ammunition, when it

had had 8 bullets. On the way from accused 1, Pw4 met accused 2 and 3. Accused 3 promised to replace the ammunition.

On the 29th June the police came to the residence of Pw4, he saw Accused 2 in the police vehicle. They asked Pw4 where the firearms were. He produced his father's pistol, but they were not satisfied, they also wanted a big gun that he did not have. They then searched the house and took Pw4 to the Charge Office.

Cross examination revealed that Pw4 was a former member of the Lesotho Defence Force from 1986 to 1990. Pw4 had deserted when he claimed his resignation was not accepted. He admitted he was dishonourably discharged from the Lesotho Defence Force for desertion. He denied he had a drinking problem. He denied that he left the army in 1994.

Pw4 said in answer to questions he had heard from the police that Accused 1,2 and 3 had committed an offence. He does not remember how long he was detained. He had signed his statement to the police in the margins, there was his signature at the end of his statement, but he never was taken before a Commissioner of Oaths - although there is an appearance on the statement that he was taken before a Commissioner of Oaths. He had also signed blank pages. The

statement was signed on the 5th day of his confinement. He had lost conception of time as he was always taken from a cell for interrogation. Within 48 hours of his detention, he and Accused 2 were taken to the magistrate Court. Pw4 was released after making a statement.

Pw4 was the son of a policeman and he had taken his father's firearm to clean it although his father could clean his own firearm. He had taken it because his father had no cleaning equipment. His father was 62 years old at the time although his statement shows he was only 51 years old. That is wrong. Pw4 noted there was an error in the description of his fathers pistol. He admitted he had taken the fire-arm without his father's knowledge, but his father sent his mother to find out and he told his mother that he had taken the pistol. He denied refusing to return it. Pw4 observed some mistakes in his statement Pw4 insisted that Accused 3 did not go to work during the week he was looking for him. From the day he was looking for the pistol he had not gone to work. Accused 3 had started not going to work before Pw4 started absenting himself from work. They had been in the day shift with Monate and Accused 3 for 3 to 4 months before this incident.

Pw4, further answering questions said Accused 1,2 and 3 did drink at his

place and on one occasion came in a Nissan in a vehicle. Pw4 also denied that Accused 1 had been at Mohale Dam looking for a job between 16th and 21st June 1997. In cross-examination it was put to Pw4 that it is correct that Accused 1 was moving house from Lower Seoli to Qoaling - and Pw4 said that is what he was told. Pw1 denied he did not find Accused 1 on the 22nd June and he gave him a pistol. Even if Accused 1 says he has no drivers licence - Pw4 told the court that he saw Accused 1 driving the Nissan van.

The next sworn Crown Witness was Thabang Makole (Pw5). He said sometime in June 1997 accused 1 came and knocked at Pw5's house. It was at 11 pm in the night. Pw5's wife said Pw5 was not there although Pw5 was still in the house. In the morning he found a white van that looked like a Ford Curia parked near his house. It had green below the window just above the door. It bore South African numbers. Pw5 sent for Accused 1 and his father. The father of accused 1 eventually came. While Pw5 was talking to the father of Accused 1, accused 1 and 2 came in the company of a third man. Accused 1 apologised for parking his vehicle at the place of Pw5 in the absence of Pw5. The third person who was with Accused 2 looked like Accused 3. Accused 1 said he parked the vehicle at the home of Pw5 because he found the gate at his home locked. Pw5 said he told them to leave his premises and they complied. Accused 1 was the driver of that

vehicle.

In cross-examination Pw5 noted that Accused 1 remembered the incident. The father of accused 1 had said Accused 1 had been away for two weeks. He could not deny if Accused 1 said the third person had been Thabang Tau from Nazareth. Pw5 could not deny if he was told the vehicle belonged to Thabang Tau. Pw5 said he was a motor mechanic.

Pw6 Mokhoele Mahao was the sixth Crown witness. Duly sworn he said Pw4 had taken his firearm without permission. It is an auto pistol - rifle Cerka RSA Serial NO. 32771 calibre 7.65 - .303.

The Crown called Pw7 Mabusetsa Francis Malooa as its seventh witness. Pw7 under oath said gave evidence about a Galil Rifle L701150 which had been issued to him as a member of the Royal Defence Force. He use to share a locker with Accused 6 and he had asked Accused to go and put that rifle in a Chubb safe. After a while that rifle vanished. On the 15 July 1997 he was called to the CID Office to come and identify it, it no more had a butt. It had a different sling from the one it used to have.

Cross-examination revealed Pw7 had not known how it was at one time issued to accused 6. Pw7 also did not know the butt of the rifle was lost when the vehicle overturned. Pw7 did not know that Accused 6 retained that rifle afterwards. Pw7 did not even know that accused 6 retained possession of the rifle until it was taken from him by Trooper Sekopo.

The Crown at that stage called Maliau Phate as the eighth witness (Pw8) to give sworn testimony.

In May 1997 Mannini had rented a room at the home of Pw8. Mannini at the time lived with Monate and Accused 3 with the encouragement of Mannini Pw8 became a lover of Accused 3. There was a time that Accused 3 went away for a week and came back with Accused 1 and 2. This was in May. She saw the firearm that used to be in the possession of Monate and Accused 3 in the hands of Accused 1. Accused 1 had quarrelled with Mannini and he had pointed that gun at Mannini. As no one else was intervening, Pw8 intervened and with the help of other people wrested the fire-arm from Accused 1 and hid it. Accused 3 later asked for it and took it. After some time they went away for about three days.

During this period Accused 7 came to the residence of Pw8 at night followed by an angry man. This man started looking for something and turning

the room of Pw8 upside down. He said he was looking for government property. That man took Pw8, and Accused 7 out of the house. Outside they met Accused 6 and Moratua. Pw8 did not know Accused 6 at the time. Accused 6 called Pw8 aside and told her they were looking for a gun and Pw8 should plead with Accused 3 to return the gun. Accused 3 would be given money to flee to South Africa. Eventually Moratua, Accused 7 and Pw8 were released and they slept at the residence of Pw8 after this ordeal. The following day Accused 3 came and Pw8 gave him a report about what happened the previous day. Accused 3 said he had already given the gun back. Accused 3 who was with Accused 1 and 2 went away together with them and was not seen for a little while.

Three days later the police invaded the premises of Pw8's parents looking for them. Accused 1, 2 and 3 came at night to buy beer at the premises of Pw8's parents. Pw8 told them police were looking for them. Thereafter they went away again. Two days later she saw Accused 3 with torn clothes saying he was being chased by the police. The following morning she heard gun reports. The police knocked at the door and said they were looking for Accused 1 and 2. They took Pw8 and others with them saying, they would tell them where Accused 1 and 2 hide. The police wanted them to produce the butt of a firearm. They did not know where it was. When Accused 3 has been arrested following his explanation they

were loaded in a police vehicle and vent to the premises of 'Mamohale Mohale where Pw8 also stays. When Pw8 and others got there, Pw8 saw Accused 3 take out that butt in a hole of a cement block bricks which was on top of a pile of cement block bricks.

In answering questions, Pw8 said Mannini and Monate had hired a single room. Accused 3 also lived with them. Mannini is the elder sister of Accused 7. Accused 3 used to visit Pw8. Pw8 said although she could not deny Accused 3 was a security guard, she had never seen Accused 3 going to work of in a Security Guards uniform. Accused 3 and Monate claimed they were soldiers.

Pw8 said he saw Accused 6 only once at night when it was not dark. It was on the night they demanded Government Property. Detective Mosili had detained or imprisoned Pw8 along with her baby. She slept on a sofa chair with the baby. The police were rough in their words during interrogation but she was not afraid of them. She was very angry and aggrieved at the humiliation she suffered because of the detention. Pw8 insisted she saw the police start at Accused1's home and she saw the police go with Accused 1 and come out with a bag.

Mamohale Mohale was the ninth Crown witness (Pw9)

Pw9 duly sworn said although she is not sure of the exact year, in July 1997 the police came to her home with Accused 1, Accused 3, Accused 7 that, Moratua and Pw8. The police asked for permission to look for something and she allowed them. She saw Accused 3 emerge from a police vehicle, go to a pile of bricks (cement blocks). Accused 3 put his hand in a hole of a brick and took out a black thing which was said to be part of a firearm. This black thing made of metal was described by Mosili (a policeman) as part of a gun. It looked like a butt of a firearm, Accused 3's hands and feet had handcuff.

Michael Molefe was the tenth witness (Pw10) of the Crown.

In his sworn testimony Pw10 said he knows Posholi Accused 1 very well. Early in the morning at about 6.30 am he heard a hooter. When he went to investigate he saw Accused 1 and 2. Pw10 says he did not know the name of Accused 2, but he had seen Accused 2 many times. Accused 1 and 2 said they were selling a motor vehicle. It was a white Nissan van, it was parked outside. Accused 1 said the vehicle was straight and clear, and that it had come with a friend from Cape Town. Pw10 said to Accused 1 and 2, that he was interested in 4x4, Pw10 recommended Accused 4 as a person who might buy that vehicle. Pw10 added that he does not know if Accused 1 and 2 did go to Accused 4 as he had suggested. Accused 1 and 2 were in the company of a third person whom he

was seeing for the first time. In answer to questions Pw8 said he was not sure if he was the man from Cape Town. It was accused 1 who had said he was selling that vehicle.

The Prosecution called Khubelu Khateane Pw11 as the eleventh witness.

In his sworn testimony Pw11 said during the July winter of 1997 he met Accused 1 (whom he already knew) near Bakubung Shop. Accused 1 said police were looking for him. Accused 1 told Pw11 to fetch a bag of his from Mojela and give it to his sister Accused 7. He got a grey bag from Mojela and gave it to Accused 7.

A few days later Accused 1 put up at the home of Pw11 and when he went away he left a light brown jersey because he claimed to have been heavily dressed. Pw11 told the court that he wore this jersey and went to play snooker because Accused 1 is his friend. When he returned home he put it in a plastic bag and put it under a mattress. It was here that the police got it at Pw11's home in his absence. This jersey was fawn and had white colours. It was marked ID 4.

Under cross-examination Pw11 admitted he had hidden it because his parents had forbidden him to wear other people's clothes. Pw11 said he heard

from his own father that Accused 1 and the police came to retrieve the jersey in the absence of Pw11.

Pw11 denied that Accused 1 had left a different jersey from that one, he insisted Accused 1 lent him the jersey before court ID 4. In fact Accused 1 has only left that jersey with him, Pw11 never actually borrowed it from Accused 1. Pw11 insisted that at that time Accused 1 claimed the police were looking for him although this did not appear in his statement to the police, in fact Pw11 actually saw the police who were looking for Accused.

The Crown called Detective Trooper Lekhetho as the twelfth witness Pw12.

Duly sworn Pw12 said he is a policeman assigned to the robbery and car-theft squad. On the 8th July 1997 he followed information that led her to Maputsoane (Mannini) and Accused 7 Thato. He introduced himself to them and showed his identification card. Pw12 asked Maputsoane and Accused 7 about the shoes that Accused 7 had brought. Maputsoane the elder sister of Accused7 produced a pair of light brown boots. Accused 7 gave an explanation about those boots. The light brown shoes were handed in as an exhibit and marked exhibit 1.

These shoes the court observed were exceptional in that they were double-skinned. Pw12 says he charged Accused 7 with all the charges.

Pw12 proceeded to Leqeles where he found Accused 6 following the information he had got. From under the bed Accused 6 produced a Galil rifle without a butt. In its magazine it had six rounds of ammunition. Accused 6 was charged with all the charges. The Galil rifle is marked Exhibit 2 and the 6 rounds of ammunition marked Exhibit D2AC

Under Cross-examination Pw12 Trooper Thulo or Sergeant Mosili did not seize those boots exhibit 1 and the rifle exhibit 2 despite what the RLMP 12 form states. All he can say is that they were members of his investigating team.

The crown then called Trooper Mankoe Sello as the thirteenth witness (Pw13).

Giving sworn testimony he told the court that on the 13th July 1997 he and trooper Tauli got information that enabled them to arrest Accused 1. Pw13 then gave Accused 1 a charge and later handed him to the CID. Pw13 says he was the one who got the jersey that he described as cream white from Matsepe Khateane. He showed the court what were dark brownish spots which he described as a red

spots. This jersey is the ID 4 to which the court had already been referred to.

Detective Inspector Sello Mosili was the fourteenth crown witness (Pw14)

Pw14 after being sworn in told the court that he was invited by the then head of the CID Colonel Telukhunoana to head the investigation of the murder of Pieter Johannes Groenewald. The vehicle the deceased had been robbed of was a white Nissan van - Registration Number BFHI93FS. Engine Number Z 24002039Y, Chassis Number S 081421, Model 1997 Fuel Petrol.

Pw14 says on the 27th June 1997 two days after taking charge of the investigation Team, information led him to a row of rooms of T'seliso Mapota. There he went to the Makhethang Nkabane's room. She gave her information that led them to Lower Seoli where they found Moratuo Dlamini and Accused 7. Having introduced themselves and cautioned them that they are policemen, Moratuo Dlamini and Accused 7 gave them an explanation. Pw14 and his team took Moratuo Dlamini and Accused 7 with them to the home of Makhethang Nkabane. Moratuo Dlamini and Accused 7 asked for a key from Makhethang Nkabane. When this happened they were with the Chief's messenger Dyke Makhetha. The room was opened and as they searched the house they found the

following items of property:

- A man's wrist watch
- RPN scientific calculator written P. Groenewald
- Black and Red torch
- Green Sesotho Medicine
- A radio for Communication
- A black electric lamp
- Black hand gloves
- A surveyors telescopes

Pw14 told the court he siezed this property and arrested Accused 7 and Moratuoia Dlamini. On the way to the police station Accused 7 showed them three men. When they stopped their vehicle, the three men began to run. These men would not stop even when they fired into the air. Pw14 they were able to arrest Accused 2 because he locked himself into some one's house. Pw14 not only arrested him but gave him a charge as well. Pw14 told the court that he took Accused 2, Accused 7 and Moratuoia Dlamini to the charge office. When they got to the charge office, Accused 2 produced a ring and gave it to Pw14 together with an explanation.

On the 28th June 1997 Accused 2 took Pw14 and his team to Abias. This he did voluntarily without any coercion Accused 2 brought Pw14 together with Pw4 Leuta Mahao. Pw14 told this court that he did not need to introduce himself to

Pw4 Leuta Mahao because they were old acquaintances. Accused 2 asked Pw4 to produce the firearm that Pw4 had lent them. Pw4 produced the Ceska pistol, Accused 2 gave an explanation in relation to the pistol. All this was done without coercion. From there Accused 2 went to a line of rooms where he had lived and gave Pw14 a blue anorak (which was described by Pw14 as a blue lumber jacket made of cloth).

On the same day (28th June 1997) Accused 2 took Pw14 to Hlotse to a place called Amerika. Pw14 was with his team. This is an area where the Chinese live. Accused 2 looked for him, the information given was that he was at Pitseng. They went to Pitseng with Accused 2. When they got to Makhoalibe's shop (manned by Chinese) Accused 2 pointed at Lin who was Chinese. Accused 2 said to Lin that he should give them the vehicle DKoloiC Lin took them to Rampais where they found the Nissan 2.4 van which had all the particulars of the vehicle they were looking for in the engine and chassis.

Pw14 corrected his testimony by saying they found the surveyors telescope on the 28th not 27th June 1997. Accused 2 had led them there. The bundle of keys that Pw14 had, opened the doors and started the ignition of the vehicle. Pw14 says he arrested Lin and took him and the Nissan van to Maseru. John Slade Baker the

administrative manager of LTA construction identified the vehicle as that of deceased. He had worked with deceased. He used the deceased registration certificate on which there was a chassis and engine number which tallied with those on the Nissan van to identify it.

On the 30th June 1997 J.A. Williams came to Pw14's office where he identified the scientific calculator with deceased's name on it, citizen golden wrist watch, 2 way radio communication radio (released to deceased's wife) Navy blue anorak as belonging to deceased. Accused 2 was present when this was done.

On the 2nd July 1997 accused 2 took Pw14 to Khomo-e-ts'oana Donga below the village of Toki. Freely and voluntarily Accused 2 gave an explanation and pointed at place. Senior Inspector Hlaahla and Detective Trooper Thulo were present and video were taken by Colonel Hlaahla. Detective trooper Thulo was taking photographs. Following an explanation of Accused Pw14's team went to Chief Mopeli Accused 4 . He cautioned Accused 4 that anything he says might be written because he Pw14 was a policeman. Accused 4 freely and voluntarily gave him an explanation. He took Pw14 to Maselepe Mopeli in Mazenod and demanded a car radio from Maselepe Mopeli. Maselepe Mopeli produced it, and it was handed by Accused 4 to Pw14. It was a Pioneer radio with a cassette player

model 1150 serial QK 089019. Pw14 seized the radio and charged Accused 4 with murder, robbery and kidnapping.

Pw14 then went to arrest Accused 3 on the 1st July 1997 at a shack in the yard Motlalepula Khoeli, a herbalist. Pw14 found Accused 1 at the CID office. Then Accused 1 freely and voluntarily took Pw14 to Lower Seoli where he pointed at some blue jeans trousers at his father's place Malebanye Mosili, Pw4 seized it. Accused 3 took Pw14 to Qoaling where he pointed out a butt of a Gallil rifle on a pile of bricks by inserting his right hand in it and taking out that butt. He then handed that butt to Pw14. On arrival at the charge office Pw14 charged Accused 1 and 3 with murder, robbery and kidnapping.

On the 15th July 1997 Accused 3 took Pw14 to Khomo-e-ts'oana donga at the village of Makhoathi where he pointed at a certain place inside the donga. Senior Inspector Letsie was making a video and Detective Trooper Chikando taking pictures. Khomo-e-ts'oana donga is the place where deceased's body was allegedly found from information Pw14 had got. Accused 1 did the same on the 16th July 1997. Pw14 then handed in the following items as Exhibits:- Ceska pistol it was marked Exhibit 3, lamp that gets attached to the slot for cigarette lighter marked Exhibit 4, surveyors telescope marked Exhibit 5, Gallil rifle butt

marked Exhibit 6, Blue anorak marked Exhibit 7, light blue jean trousers marked Exhibit 8, scientific calculator Exhibit 9, pair of black hand gloves marked Exhibit 10, gold wrist watch marked Exhibit 11, finger golden ring marked Exhibit 12, silver finger ring marked Exhibit 13.

As something of an amendment to his evidence Pw14 said he was with Pw2 Thabo Mphana and Accused 2 when he went to Pitseng and Rampai to get the Nissan vehicle. Pw2 acted as a kind of interpreter. Pw14 said he found Accused 6 at the CID office. It was then that Accused 6 went with Pw12 and other policemen, to bring the Gallil rifle exhibit 2 after giving him an explanation.

Under cross-examination Pw14 admitted there was pressure from the police authorities to get results in this high profile case. Pw14 admitted he succeeded remarkably in getting voluntary explanations from the Accused in a remarkably short time. In this particular case they appeared to co-operate instantly. Pw14 was surprised to hear Pw1 was very uncomfortable and had his hands and feet tied during the period he was transported from Leribe to Maseru. Although he got this treatment from a team from which Pw14 was head, Pw14 said he did not know the type of treatment Pw1 expected, but he was absent. Pw14 was surprised Pw2 Mphana also complained of bad treatment at the hands of the police. Pw14 said

he only fired when Accused 2 and his companions started running. Pw8 was not pleased with the way she was interrogated because she was not used to police methods.

Accused 7 was charged by Pw12 although the RLMP 12 shows otherwise. A lot of things including the rifle Exhibit 2 were seized on his behalf: Colonel Telukhunoana the then head of the CID was also the ballistic expert. Pw14 denied influencing the outcome of the ballistic examination to suit their investigation. Pw14 insisted his version of the seizure of the Ceska pistol was the correct one and not that of Pw4 and in particular, it was Accused 2 who demanded the pistol from Pw4. Pw14 insisted on this despite his written report of an earlier date.

Pw14 denied she recovered most of the exhibits where Tlokotsi Monate lived. Pw14 said they were recovered in a room next to that of Makhethang Nkabane. Pw14 added that it was accused 7 who asked for the keys of the room from Makhethang Nkabane because she Accused 7 stayed there. It was Accused 7 who stayed there. Pw14 said in this room Accused 1, Moratuo Dlamini and Accused 7 stayed there. Pw14 denied that Tlokotsi Monate was the one who lived there. Tlokotsi Monate to the best of his recollection was never arrested, although Pw14 did not clearly recall the fact. Pw14 said Tlokotsi Monate was met and did

help with investigations for a short time at Seoli's. When it was put to Pw14 that Accused 7 would say that when she was arrested the van of the police was already full of things which included the Exhibits such Exhibit 9 the calculator, Exhibit 11 the wrist watch, black hand gloves Exhibit 10, the lamp Exhibit 4 and other things - Pw14 said that would be untrue. To the Accused 7's claim that Tlokotsi Monate was handcuffed, Pw14 said that is incorrect, Tlokotsi Monate was not even there. When further cross-examination was directed at the fact that Tlokotsi Monate (like Accused 1, 2, and 3) was taken to Khomo-e-ts'oana Ha Tonki and a video taken of him pointing at places - Pw14 denied this. Pw14 denied he ever assaulted Tlokotsi Monate, Accused 1, 2 and 3, he insisted Tlokotsi Monate was not even there. Pw14 denied he had dictated to the Accused what to say.

Pw14 said if Accused 2 denies giving him a finger ring Exhibit 12, surveyors telescope Exhibit 5 and a dark blue anorak Exhibit 7, Pw14 insisted that Accused 2 did. At that time Accused 2 had not been given a charge although he had been arrested on the 27th June 1997. If Accused 2 said they broke into the residence of Accused 2, Pw14 denied this. If Accused 2 denied he was ever at Hlotse, Pitseng and Rampais, Pw14 insisted Accused 2 was there. Pw14 denied planting the butt of a gun Exhibit 6 which Accused 3 pointed out. Pw14 denied first peeping at the place Accused 3 found the Butt of a gun. Pw14 denied

assaulting Accused 1, 2 and 3 with sticks and knobkerries or making them remain in cells while they had leg-cuffs and handcuff on because that is contrary to regulations. He denied detaining the accused for too long a period contrary to law. Pw14 claimed he kept applying for warrants to extend his detention of the accused before a Magistrate at different dates. Pw14 in short denied suffocating the accused with tubes of tyres or torturing them in anyway while in detention.

Dealing with further cross-examination pw14 admitted that he was subjected to a lot of pressure by his superiors. He released to radio of the motor vehicle to deceased's wife although RLMP 12 (Exhibit 3) had directed Pw14 to keep it until it was produced at the trial. Pw14 said he never consulted Accused 4 before he released the radio as he was expected to do - he had no time. The South African Embassy was putting pressure. He insisted without producing evidence that the Clerk of Court modified her order. The radio had been found in the possession of Maselepe Ts'iu, which was not the residence of Accused 4.

The Crown then called No 7808 Detective trooper Motlatsi Moeletsi as the 15th fifteenth witness (Pw15).

In his sworn testimony he revealed that he found the body of a European at Khomo-e-ts'oana donga following information received. He found many people

gathered there. The body was naked except for the under trousers. There was one sock on the left foot. The body was tied with a belt on the left wrist. In examining the body he found a wound on the forehead. One big open wound at the back of the head. An open wound at the neck towards the left, an open wound on the cheek in front of the right ear, there were scratch wound at the back mainly to the right .

Next to the body there was a spring attached to a rod of iron that looked like part of a gun. An empty shell of a 7.65 mm was found next to the deceased. Pw15 took photos of the scene and took the body to Queen Elizabeth II hospital mortuary. On the way the body did not sustain any injuries Pw15 handed in an album Exhibit DCC of the photographs he took of the deceased. The empty shell was handed in and marked Exhibit 13. There was already an Exhibit 13, (which was a silvery finger ring) but the fact was overlooked by mistake by the court and both the Crown and the Defence counsels who were assisting it. This empty shell will therefore for convenience and clarity of identification be referred to as Exhibit 13(a). The rod of iron attached to a spring was marked Exhibit 14.

The Crown then called David Stefanus as its sixteenth witness (Pw16)

Miss Nku the Crown Counsel informed the court that the Nissan vehicle was

outside the court. She invited the Court and Defence Counsels to go and inspect it. The court made a few notes. The vehicle was a by common consent a Nissan 2.4 S.E bakkie (van). It had green stripes on the sides below the windows, these began at the door and continued to the bakkie on both sides. It had no Canopy. It is a 1997 model. It was agreed by both parties that its registration numbers had changed, consequently the new registration numbers were not recorded.

The court then examined the Chassis Numbers and recorded NO. 8 &ADNB570000S 081421. Engine Number Z 2400209X. On all windows the last of the Chassis Number S 081421 was printed on the glass. The radio of the vehicle was a Cardio. It was not disputed that this was a new radio.

David Stephanus Marais was called as the sixteenth witness (Pw16)

Duly sworn he showed that on the 16th May 1997 he had sold a motor vehicle, a Nissan Registration Number BFH193FS to the deceased. Its Engine Number was Z 24002639Y, Chassis Number ADNB570000 S 081421. It had been fitted with a radio pioneer 1150 model.

The Crown called Celia Straus as its seventeenth witness (Pw17)

Duly sworn Pw17 said she was married to the deceased Peter Johannes

Groenewald. On the 17th June 1997 Peter Johannes Groenewald did not return from work. They had resided at Ladybrand. On the 19th June Pw17 was informed her husband had passed away. The last time he saw him, deceased had been wearing light blue jeans, light brown shoes, wrist watch, cream white jersey with white and brown assorted colours, navy blue lumber jacket, he also had in his possession a calculator labelled P Groenewald and his Identity Book. She was then pregnant and was living with her mother and her daughter.

He was invited to Group 5 offices where her late husband had worked, there he found a sergeant of the Lesotho Mounted Police who took her to a place where she identified her husbands items. She identified her husband jeans Exhibit 8 which she now finds torn, Light brown shoes Exhibit 1, Citizen watch Exhibit 11, a blue lumber jacket Exhibit 7, a cream white jersey ID 4, and there was a Pioneer radio similar to the one that had been fitted to the vehicle of her husband. Pw17 also identified her late husbands vehicle which the defence admitted was outside court and there was no need to go to it.

It is significant that Pw17 said the two rings Exhibits 12 and 13 and the handgloves Exhibit 10 did not belong to her husband. One of the rings had been voluntarily had (according to Pw14) been voluntarily handed to him by Accused

2 who also was said to have given an explanation.

Pw14 was recalled to hand over the White Nissan with green stripes on both sides below the windows which was outside court. It was marked Exhibit 13. It should be noted that there were already two Exhibit 13 which were the silvery finger ring and the empty shell found next to the deceased's body. I have already in the judgment decided to refer to the empty shell as Exhibit 13(a) to avoid confusion. I will therefore refer to the Nissan bakkie as Exhibit 13(b) for the same reason.

Miss Nku for the Crown decided to hand in the ballistic report in the form of an affidavit made by the late Colonel Telukhunoana into evidence in term of Section 223 of the Criminal Procedure and Evidence Act of 1981. Miss Nku found the Section ambiguous and self contradictory. The defence had no objection to its admission as secondary evidence. It was admitted as Exhibit C1. But the court was not happy with the bare assertion that the empty shell of 7.65 Exhibit 13(a) was fired by the pistol Exhibit 8. The Crown produced a photograph and distributed copies of it to the defence and the court. While the court was examining it, Inspector Phuthipali began explaining it to defence counsel. The

court remarked that it was necessary for this photograph to be explained to it as well.

Inspector Phuthipali was therefore called as Pw18 for the purpose. This photo which was mounted on a paper with a title Royal Lesotho Mounted Police Ballistic Section Court Chart with a Lab Ref Number F101/97 dated 8/12/97 compiled by J. Telukhunoana was first referred by the court as Exhibit C3 but this was changed to Exhibit C2 and Exhibit C2 was written on that Ballistic Section court chart. The court looked at exhibit C2 and found it highly unsatisfactory. The basis of similarity in this blown up microscopic chart was an area less than 1 millimetre. This was according to Pw18 an ejector mark. The court which had dealt with photographs of this nature was not at all impressed with this photograph. It was not even referred to in the affidavit Exhibit C1. Pw18 then produced another photograph marked exhibit C3 which he claimed also related to this empty shell Exhibit 13(a). He said it bore marks of imprints of the chamber of the pistol Exhibit 3. This could persuade that the two photos of empty shells being compared were from the same weapon. The court was surprised it was not intended for use in court. It became clear that since Exhibit C3 was the only photo and it had not been in any way referred to and reconciled with the affidavit Exhibit C1, it had no probative value.

The Crown then called Maselepe Mamajara Mopeli as its nineteenth witness (Pw19):

Duly sworn Pw19 said Makhabane Mopeli the son of Tsiu Mopeli and Lesole Lefa came to her house at about 8 or 7 pm in July 1997. Makhabane had a plastic bag intended for Palesa. They asked where Palesa was. Pw19 told them to leave it. When Palesa came she put it in the wardrobe. In July about a week later Accused 4 the father of Makhabane came with a gentleman who turned out to be a policeman Pw14. Accused 4 asked for the plastic which he had asked Palesa to keep. After Accused 4 had been given the plastic parcel, he took a radio out of it. There was a van waiting with several people outside, Accused 4 went away in that van, two weeks later the CID police took a statement from her. The radio was about 30cm by 20cm. At all material times Pw19 was ill and in bed. She rose from the sick bed to come and testify.

Under cross-examination Pw19 said in 1997 she was even more ill than she was in court when she gave evidence. Pw19 insisted she was telling the truth and burst into tears when she was accused of not telling the truth.

A list of admissions of facts was handed in read into the record by one of the defence counsels and marked Exhibit DAC. Those admissions were the

following:

1. The findings of the medical doctor who performed the post- mortem on the deceased Peter Johannes Groenewald as regards the cause of death were admitted.
2. That some time in 1997, a white van was seen being driven into a donga. Further that it was already dark at the time it came out of the donga was admitted.
3. That on the 19th day of June 1997, a white van with green stripes on both sides was seen parked by the donga at Khomo-e-ts'oana. Further that there was nobody by it. This fact was also admitted.
4. That on the 19th day of June 1997, a dead white man was found at Khomoetsoana donga. The body had no clothes on except for a pair of underpants. This was admitted too.

The post-mortem report was handed in and marked Exhibit D. The cause of death was severe blood loss due to a perforating projectile wound in the neck. There was a description of the external appearance of the body. The deceased was in his early 30s.

The Crown closed its case.

All three accused except Accused 6 gave evidence in their defence.

Accused 1 was the first defence witness.

Under oath Accused 1 said he resides at Seoli's and was arrested on the 13th July 1997. He denied he was ever involved in the murder, robbery and kidnapping with which he is charged. Furthermore in June 1997 he never drove a white Nissan with blue stripes. He had not been in Leribe 1997 with other people as alleged. He was not among the people who washed a vehicle which was sold to some Chinese gentlemen. Accused 1 told the court that he knows Accused 2 and 3 but he does not know Accused 4, he first met him here in court. He had not met Accused anywhere before then. As for Accused 6, Accused 1 said he first met him in the magistrate court when he was read the charges. Accused 2 and 3 were mere acquaintances not friends.

Accused 1 told the court that he know Pw3 because they met at Katse Dam where they both worked. He denied Pw3 had ever seen him in a white Nissan vehicle in Leribe. He met Pw3 in June 1997 when he was going with three people to 'Muela to look for a job. Those people were not any of the Accused before court. They were using public transport. Pw3 had bought them liquor at a liquor restaurant at Caltex garage. Pw3 called him (Accused 3) outside and showed Accused 1 his home. Accused 1 told Pw3 that Pw3 lived near his girl friend

Malitaba. In June 1997 Accused said he was in Mohale Dam for the whole month, only visiting home on week-ends. He had gone there to look for a job and had to stay because there were always promises.

Accused 1 told the court that he knew Pw4 by sight and he met him in street. Accused 1 said therefore he only knows Pw4 lives in Lithoteng. He lived 700 metres from the residence of Accused 1. They used to meet at the liquor restaurant at Cheapside. Accused 1 emphatically denied he had ever been to the home of Pw4 where there had been drinking. He had never borrowed Pw4's pistol. They never talked about that pistol subsequently - as Pw4 alleged. Accused 1 denied what Pw8 said to the effect that he pointed a gun at his own sister and that Pw8 took that gun away.

Accused 1 said he know nothing about the multi-coloured jersey ID4 which was with Pw11. By consent the jersey ID4 was handed in by consent as an exhibit at the insistence of the court. The jersey was marked by mistake as Exhibit 14 because the Prosecution, the Defence and the Court were unaware that there was already an Exhibit 14 which was a metal road to which was attached a spring which was handed in by Pw15. For convenience the court will refer to the multi-coloured jersey ID4 as Exhibit 14(a) Accused 1 denied he ever handed a pair of

jeans Exhibit 8 to Pw14 at Accused's parental home at Qoaling. Pw7 who is his sister also stayed at his parental home.

Accused 1 denied ever renting premises around June 1997 at Qoaling. I was a bit surprised by this because in cross-examination of Pw5 it was put on behalf of Accused 1 that Accused 1 had been moving house in June 1997. It became puzzling how this could happen if he had been living at his parental home. The bulk of Exhibit which Pw14 found at Qoaling such as Exhibit 4 the lamp, Exhibit 5, the surveyors telescope, Exhibit 9 the scientific calculator, Exhibit 10 the hand gloves, Accused 1 said they were in his possession. Accused 1 said he was not there when they were found. Accused 1 described how he was handcuffed and leg-cuffed with legging and kept bound hand and foot in a cold cell at the border post, and the Central Charge Office for 3 days. He also described how he was suffocated with a tyre tube to which water was added. All this was done to extract a confession from him.

Pw3 had mixed up dates on which they met in Leribe. Pw4 was implicating him falsely because it is Pw4 who should be on trial, not Accused 1. Pw8 was saying what she said about Accused 1 because of the ill-treatment he received at the hands of the police. Pw11 tried to pin the jersey ID4 or Exhibit 14(a) because

he Accused 1 was already under arrest when the jersey was found in the hands of Pw11. Pw14 the head of the investigation team was implicating Accused 1, the way he was doing because he is the investigator of the case.

Cross-examined by the Crown, Accused 1 said witnesses were schooled by the police. Accused 1 said he does not know why Pw4 and Pw14 had given the evidence against him when there are so many other people. Accused 1 said he does not know why Pw5 Thabang Makole had said he came to his place driving a white bakkie because he (Accused) cannot even drive. Accused 1 had come with Accused 2 and one Brown from Cape Town trying to sell Pw10 a vehicle. When Pw10 did not buy it because it was not a 4x4. Brown the owner proceeded to Cape Town in that vehicle.

The second Defence witness was Accused 2

Duly sworn Accused 2 said he was 38 years old and was a builder. He knows Accused 1 and 3 and had known them before arrest. He does not know Accused 4. He saw Accused 4 when they attended remands at the Magistrate court. Accused 2 said he know Accused 7. Accused 2 denied involvement in all the charges. He had been arrested by Pw14 when Pw14 and his colleagues started

firing at them for no apparent reason. Accused 2 denied the finger ring Exhibit 12 and the blue anorak were found in his possession or that he handed them to Pw14.

Accused 2 denied seeing the Ceska pistol Exhibit 3 anywhere. He also denied taking the police to Pw4 and demanding the Ceska pistol from Pw4. Accused 2 denied any knowledge of the Nissan vehicle Exhibit 13(b) or selling it to a Chicness gentleman. Accused 2 denied going to Hlotse Pitseng and Rampai where that Nissan vehicle was recovered. Accused 2 denied taking Pw14 to Makhoathi and Khomo-e-ts'oana. Accused 3 said it was Pw14 who took him to those places. Pw1 was not telling the truth when he said Accused 2 was involved in the selling of the Nissan vehicle. He did not know Pw1 and saw him for the first time in court. Accused 2 said he was brutally assaulted with a heavy **lebetlela** stick in an attempt to force him to confess; but he refused.

Cross-examination Accused 2 said he was taken to Khomoetsoana by Pw14 and was told to say that is where they killed the white man and he was photographed . Accused 2 denied he took the police to Lithoteng. He says he only saw Pw4 being brought into the vehicle while the vehicle was in Lithoteng. Accused 2 denied travelling in that Nissan vehicle. He was a passenger in a Nissan belonging to Brown with Posholi and a white man called Brown. In fact

Brown was a coloured and he wanted to sell that Nissan. Pw10 Molefe would not buy it because it was not a 4x4. He said they should go to his friend at Mazenod who was looking for a vehicle. They never went . Pw10 had said they should go to Accused 4. The people he was with never took the vehicle to Accused 4. Accused 2 denied that he Accused 1,3 and 4 were seen in a Nissan with green or blue stripes trying to sell it in Leribe.

Answering further questions Accused 2 denied knowing Lin Ming Ren who was Accused 5. A Chinese gentleman was an awaiting trial prison. It was the first time he saw the surveyors telescope Exhibit 5 - Accused 2 denied giving it to Pw14. Accused 2 said he was not there when Accused 1 promised to replace the ammunition of Pw4. All he remembers about is Pw4 being brought out of a house at Lithoteng carrying a fire-arm.

The Defence then called Accused 3 as the third defence witness:

Under oath accused 3 said he is 37 years old and is married. He knows Accused 1 and 2. He does not know Accused 4, he first saw him when they were remanded before the Magistrate together. He knows Pw4 Leuta Mahao, Pw8 Maliau Phate, Pw9 Mamohale Mohale and Inspector Mosili Pw14.

Pw4 had worked with Accused 3 at Eagle Security. Accused 3 says he stopped working there in July 1997 when the police arrested him. When this happened Pw4 had long stopped working for eagle Security. Accused said he was innocent of all charges. He never even took part in the sale of the Nissan Van Exhibit 13(b). He had not been in Leribe in June or July in that Nissan van with blue stripes on the side. Pw1 who claims he saw Accused 3 where the vehicle was disposed is wrong. Accused 3 does not even know him. Pw4 is not telling the truth when he says Accused 3 took his pistol after playing with it on Pw4's bed while they were drinking. This drinking episode never occurred. Pw3 never saw him in a white Nissan van. He never promised to replace the bullet of Pw4.

Pw8 Maliau Phate was his girl friend or lover. Pw14 never saw Accused 3 produce the butt of a Galil rifle. It Pw14 who brought him bound hands and feet to the place where Pw14 pointed at a hole in the pile of cement blocks bricks. Pw14 took it out and showed it to the owner of the residence Mamohale Mohale Pw9.

Accused 3 told the court that he was arrested with Pw8 Maliau Phate who had once been his lover. He was taken to Khomo-e-tsoana by the police, he never went there voluntarily. He was then photographed there after handcuffs were

removed. He had been assaulted because the police wanted him to admit that he had killed a white man. Pw8 had seen him (Accused 8) being assaulted by the police. Accused 3 said he did not know why Pw4 associate him with the pistol Exhibit 3. As for Pw14 he testified falsely to build up his case against Accused 3.

In Cross-examination said he does not know that the police are not allowed to assault him in front of his girl friend. Accused 3 said he was assaulted badly on the buttocks and ribs with a Lebetlela stick. But he never admitted anything even after such a savage beating.

Accused 3 denied washing a Nissan motor vehicle at Leribe. He also denied removing the radio of that vehicle. Accused 3 told the court that he first saw Pw1 in court, he does not know him. Pw4 told his lies out of envy because he worked in a low security role while Accused 3 was guarding cash in transit, a job Pw4 considered himself better qualified for because of his prior military training. Pw5 Thabang Makole was wrong to associate Accused 3 with a van parked in his yard without permission, he was not there. Accused 3 said he first came to know Lin Ming Ren while they were out on bail. They used to be remanded together. Accused 3 counsel objected when the contents of his affidavit were used to

discredit him by giving a different statement under oath. The objection of Accused 3 was sustained not because such a step was impermissible but because of the special circumstances of this case. This court in doing so distinguished **Lempe v Rex 1997 - 98 LLR & B 195 at 224**. In this case Accused 3 had blamed his counsel who had drawn the affidavit for bail without taking proper instructions. This court also believed this prior affidavit might prejudice Accused 3 as its significance might escape the assessors.

The Defence called Accused 4 Ts'iu Mopeli as the fourth witness (DW4)

Duly sworn Accused 4 said he was 63 years old and is the Chief of Thotamoli and Phuthiatsana Ha Paki. Accused 4 told the court that he does not know Accused 1, 2, 3, 4, 6 and 7. He denied of the Nissan van exhibit 13(b). He saw this Nissan vehicle before this court for the first time Accused 4 told the court that he quarrelled or earned the enmity of Pw1 when he refused to allow a friend of his to buy the diamonds of Pw1 because those diamonds were of poor quality. Pw1 was desperate for money at the time. He never with Accused 1,2, and 3 sold a Nissan bakkie to a Chinese gentleman. Accused 4 added that it is untrue that he had asked Pw1 to find him buyers for vans.

Accused 4 denied he had taken Pw14 to Pw19 where he asked for a radio -

which Pw19 produced. Pw14 had come to him (Accused 3) already in possession of a car radio and had asked Accused 3 if he knew that radio. After that Pw14 had taken Accused 14 to the CID office, when he got to the CID office, he found Pw1 police vehicle lying down on its bakkie bound hands and feet. Accused 4 told the court he was asked no questions but was locked up for four days at the Charge Office at the end of the five days he was given a charge and released on bail. He had never seen the radio that Pw14 had shown him. Advantage had been taken of Pw19's forgetfulness by forcing her to testify against him (Accused 3). That is why Pw19 was crying. Pw19 who is the wife of his younger brother has been sick for a long time. In 1997 Pw19 was even more ill than the presently is.

Pw2 had never met him. It is untrue what Pw2 was saying to the effect that he sold the Nissan van to a Chinese gentleman. If that incident happened, some one must have been impersonating him. This is nothing unusual criminal sometimes impersonate prominent people like him when they commit crimes Pw2 may even have taken the name Chief Mopeli from Pw1.

Answering questions Accused 4 said he had met cases of impersonation in the course of his administrative duties. If Pw10 had directed accused 1 and 2 to him when he failed to buy the Nissan they had, Accused 1 and 2 never came to

him. Accused 4 persisted in denying that he went to Pw19 with Pw14 where a radio was produced. The police never told him why he was arrested, he first came to know this when the Magistrate read him the charges.

Thato Mosili (Accused 7) was the fifth and the last witness (DW5)

After taking the oath Accused 7 said she is 21 years old. In June 1997 she lived at her maiden home at Ha Seoli, Accused 1 is her brother. She knows Accused 2 and 3. She does not know Accused 4 and 6. She had nothing to do with the three offences she is charged with either directly or indirectly. She and accused 1 lived at their parental home. She was not aware that Accused 1 had rented any premises - in fact he had not.

Pw1 never took her- nor did she take Pw1 to Upper Qoaling. She never unlocked any premises where Pw14 found part of the property which forms exhibits before court. It is not correct what Pw14 saw in court to the effect that she and Moratua Dlamini took him to Qoaling in June 1997. None of them unlocked those premises. Moratua Dlamini is the wife of Accused 1.

Answering questions Accused 7 said the yellow boots Exhibit 1 were recovered from her sister Maputsoane or Mannini who is now deceased. Accused

7 told the court that she was present when Pw12 Trooper Sekopo took the boots from the late Mannini. Accused 7 told the court she does not know where Mannini had taken the boots from. She was never asked for an explanation, only Mannini her sister was asked for one. The shoes Exhibit 1 were brought by Mannini in a plastic bag. Pw12 never said to Mannini that she should bring the parcel or shoes that she Accused 7 had brought. No policeman ever gave Accused 7 a charge in respect of Exhibit 1 the shoes. Her sister Mannini was never arrested.

It was Pw14 and his colleagues who arrested Accused 7, he told her she was being charged after Accused 1 had been arrested. She had already spent two weeks in custody without being asked any questions.

Accused 7 told the court that she was arrested with Moratuo Dlamini, her brother's wife, Maliau Phate Pw8 and Ntulela Dlamini the sister of her brother's wife. They were not being asked questions. She was only asked by the police how they could get at her brother Accused 1. Accused 7 told the court she is surprised that they say they asked her sister about the shoes that were alleged to be from her and which were produced by her sister she and Moratuo never got a key from Makhethang and opened a door of a room. They were never with Dyke Makhetha the Chief's messenger. Accused 7 added that she does not even know

the house where Exhibits 9 and 11 were found. Pw14 is simply not telling the truth. They never showed Pw14 three men who were arrested.

The prosecution and the defence made their address. Miss Nku for the Crown told the court there is not enough evidence on which Accused 6 could be convicted. She pressed for the conviction of Accused 1, 2, 3, 4 and 7.

Evaluation of the evidence

There were some problems in the description and numbering of Exhibits that crept into the record. These were the following:-

- (i) There were three Exhibit thirteens (13). These were
The silver ring (handed in by Pw14)
The empty cartridge shell (handed in by Pw15)
The 2.4 Nissan bakkie or van (handed in by Pw14)
- (ii) There were also two Exhibit fourteens (14) These were:-
The iron rod with a spring (handed in by Pw15)
The fawn or light brown jersey ID4 (handed in by consent at the insistence of the court)

Such confusion in exhibits was inevitable because the court and counsels on both sides did not keep exhibits control sheets. With the case having so many postponements confusion was bound to happen. I discovered this as I was carefully going over my notes as I was writing this judgment.

I solved the problem of mixing up Exhibits in the judgment by describing the Exhibits as follows:

The silver ring was described in the judgment as Exhibit 13.

The empty cartridge shell was described as Exhibit 13(a)

The 2.4 Nissan bakkie was described as Exhibit 13 (b)

The iron rod with a spring was described as Exhibit 14.

The light brown (fawn jersey ID4 was described as Exhibit 14 (a)

There is in the courts view no prejudice to the Accused in having adopted this method for avoiding confusion caused by giving more than one Exhibit the same number.

There were some errors in the way the engine number and chassis number of the 2.4 Nissan bakkie was described in the evidence of Pw14, the admitted facts Exhibit A and the results of the inspection in loco done by the court. The only

significant possible error was that the court had omitted a 3 in the last three numbers of the engine number. Mr Ntlhoki Counsel for Accused 1, 2, 3, 4, 6 and 7, during addresses, argued that he was entitled to use Thebe errors to the advantage of the Accused. The court ruled that since issue had never been joined on the identity of the vehicle, and the Accused never claimed the vehicle, he could not take advantage of these minor discrepancies. In any event the Accused had already admitted the description of the vehicle (whatever it might be), and by consent allowed exhibit A to be handed in. The court further reminded Mr Ntlhoki that (as an officer of the court) he could not deliberately allow errors to creep into the record then take advantage of them.

There is no doubt that deceased was killed and his vehicle taken and sold to Lin Min Ren. Whether he was kidnapped before he was killed or was killed during the taking of his vehicle we cannot be absolutely certain, we can only make deduction. The fact that deceased was killed leaves us no room for any other conclusion but that he was robbed. The list of admissions Exhibit A read with the post-mortem report leads us to the conclusion that deceased was shot. This was in June 1997 between 16.00 and 17.00 hours. This might have been on the 17th June 1997 because that is the day on which deceased did not come home. A white van had been seen going into the Khomo-e-tsoana donga. What happened after

that, is not certain. On that day when the white van went in the donga of Khomo-e-ts'oana it came out after dark. It was admitted into evidence in terms of annexure A that a white van with green stripes at the side was seen parked by the Khomo-e-ts'oana donga with no occupants on the 19th June 1997. On the same day the dead body of a white man with no clothes except an underpant was found in the Khomo-e-ts'oana donga.

The issues for determination are who killed this man Pieter Johannes Groenewald and robbed him of his white Nissan bakkie with green stripes on both sides below the windows. There is no definite evidence of kidnapping. Even if kidnapping can be inferred. It is so much part of the robbery that separating kidnapping and robbery might amount to unlawful splitting of charges. The possibility of the use of fire-arms such as the Gallil rifles and short fire-arms such as pistols is within the realm of possibility. What is lacking is direct and definite evidence during the robbery. It seems beyond doubt that either during the robbery or later the deceased was shot with a short fire-arm such as a pistol or a revolver. It is not difficult to assume that a rifle was not used because it would have done much more damage at short range.

This court must therefore focus on offences that have been substantiated

with adequate evidence. This court is therefore trying a case of robbery and murder. What this court has to determine is who killed and robbed Pieter Johannes Groenewald.

I have already observed that the evidence that connects the Ceska Pistol Exhibit 3 with the murder of deceased is not satisfactory despite the sworn affidavit of the late Colonel Telukhunoana that the shell Exhibit 13(a) was fired from the Ceska pistol exhibit 3. It was wrong for the late Telukhunoana to assume he does not have to demonstrate to the court how he reached this conclusion. With finger prints, fire-arms and disputed handwritings it is now the common practice to show the court the marks that led the expert to reach his conclusion.

In Rex v Khiba 1979 (1) LLR 92 the court found itself dealing with this issue of experts. In that case a handwriting was in issue. In that case Pw3 Mr Hugh Allardyce had said the writing of a bank clerk was that of the second Accused and that second Accused had forged a signature on a cheque. **Rooney J** was not prepared to describe Pw3 as a fraud and charlatan. At page 95 his Lordship said:-

I would not go so far as to agree with that description, as Allardyce believed in his own pretensions. But, I do say that he should never

again be presented in this country as an expert in the examination of questioned documents. ‘

This court had occasion to deal with a case in which the late Colonel John Tlhabi Telukhunoana acted as a fire arm examiner. It was in the case of **Rex v Kubutu Kubutu** 1991 - 1996 LLR 975. The court at page 982 was critical of the fact the court was not provided with magnified photographs on which the then Major John Tlhabi Telukhunoana based his conclusions. He had given the impression that the shell (fired cartridge case) might or might not have been fired from the suspected weapon of the accused. But in court Major Telukhunoana (as he then was) said even with the naked eye it was clear that the fired cartridge case could not have been fired from the suspected Komando rifle because its ejector made a deep gash at the back of the shell or fired cartridge case.

In the case before me there was no clear evidence that Exhibit C2 that was the photograph intended for evidence had markings similar to those of the control fired cartridge case. Pw18 again spoke of a mark of an ejector on the control fired cartridge case that he claimed had very small characteristics of the fired cartridge case Exhibit 13(a) that had been collected from the scene by Pw15. There was nothing that related the photograph Exhibit C2 to the affidavit of the late Colonel

Telukhunoana. Pw18 showed me a photograph Exhibit C3 which might have been a better photograph to draw conclusions from, but it had not been intended for use in court. With Exhibit C2 there were several photos that were even distributed to assessors I therefore concluded that the evidence of ballistic examination was not helpful.

The next point of difficulty was that of Exhibits that were allegedly found by Pw14 at a rented room of Tseliso Mapota where a key had been allegedly obtained from Makhethang Nkabane. The Exhibits found at this place were highly incriminating if they could clearly and unequivocally be linked with any of the accused. We have the evidence of Pw14 linking Moratuoia Dlamini the wife of Accused 1 and Accused 7. Among the Exhibits was the deceased's scientific calculator Exhibit 9 on which the names of the late Groenewald are written, a man's wrist watch Exhibit 11, the black electric lamp with red switch Exhibit 4, the surveyors telescope Exhibit 5 which were identified by deceased wife as belonging to the deceased.

Dyke Makhetha Thaele who was the Chiefs messenger was not called. Similarly Makhethang Nkabane would have helped in the corroboration of Pw14 a single witness who had so much on his hands . This became necessary because

Pw14 made clear mistakes in his evidence. Among these was the fact that he claimed the Nissan vehicle Exhibit 13(b) was found in the presence of Accused 2 with Accused 2 doing all the talking. No reference was made to Pw2 Thabo Mphana was made by Pw14 initially. When Pw14 tried to include Pw2 in the finding of the Nissan vehicle the whole exercise was not convincing. The evidence of a single witness has to be viewed with caution. See R v Mokoena 1956 (3) SA 81. This is because in the evidence of a single witness standing alone there is nothing to check its accuracy against (R v Abdoorham 1954 (3) SA 163). It is according to Broome JP a matter of common sense than strict law. I am of the view that Pw14's evidence is in need of corroboration because it is not satisfactory in every material respect (R v Mokoena 1932 OPD 79 at page 80). That being the case I am unable to accept the evidence of Pw14 on how these Exhibits were recovered.

The finding of the blue anorak from Accused 2 and the light blue jeans from Accused 1 suffers from the same defect. It did not help matters that the ring from the pocket of Accused 2 which was voluntarily handed to him according to Pw14 was not found by Pw17 deceased wife as belonging to the deceased. The same is true of the pointing out at Khomo-e-ts'oana that was videod and photographed at which Pw14 presided. In our civilization this reliance on self-incrimination which

Pw14 relied upon did not help Pw14 as much as he expected. Dealing with section 229 (2) of the Criminal Procedure and Evidence Act 1977 of South Africa, which is similar to Lesotho's section of the Criminal Procedure and Evidence Act 1981 Ackermann JA in S v Sheehema 1991 (2) SA 860 at page 861 said

A pointing out is essentially a communication by conduct and, as such is a person by a person pointing out. If it is a relevant pointing out unaccompanied by an exculpatory explanation by an accused, it amounts to a statement by the Accused that he has knowledge of relevant facts which Prima facie operates to his disadvantage and it can thus in an appropriate case constitute an extra -Judicial admission. It is also a basic principle of our law that an accused cannot be forced to make self incriminating statements against his will, and it is therefore inherently improbable that the Legislature with a view to sound policy, could have had an intention in section 218 (2) of Act 51 of 1977 to authorise evidence of a forced pointing out.

The Court of Appeal has endorsed the finding in S v Sheehema in the case of Malefetsane Mabope v Rex 1993-94 LLR & B154 that a pointing out has to be free and voluntarily. Crown witnesses have given the indelible impression that what occurred when they were in the hands of Pw14 was not that gentle and persuasive. Although the accused tended to exaggerate their ordeal, I believe they have succeeded in rebutting the suggestion that they were doing those pointing

outs voluntarily.

The next Exhibit that received attention was the Nissan van Exhibit 13(b). Pw1 testified that Accused 1, 2, 3 and 4 went to sell it in Hlotse Leribe. Pw1 claims to have seen all the Accused in the late afternoon after his return from where he had gone on business. He already knew Accused 4 well, a fact Accused 4 concedes. Pw1 told the court he was seeing Accused 1, 2, and 3 for the first time. Accused 1 and 3 even washed the Nissan van while they were waiting for a meeting with the Chinese gentleman who was supposed to buy the Nissan van Exhibit 13(b). Pw1 does not specify what accused 2 was doing while Accused 1 and 3 were washing the Nissan vehicle, but Pw1 and Accused 4 had during that period at one stage had gone to buy food for the group. When they returned Accused 1 and 3 had not finished washing the vehicle. Accused 1 and 3 turned off the tap and the five of them ate the food Pw1 and Accused 4 had bought for them.

After Accused 1 and 3 had finished washing the vehicle they went to check on Thabo Mphana Pw3, they found he had not yet come home. Accused 4 complained it was becoming late. Pw1 knew where this Chinese gentleman lived because he had once gone with Thabo Mphana Pw2 and Peter Topaz to sell that Chinese gentleman a car. The Chinese gentleman did not buy the car because he

wanted a van. When Pw1 and Accused 4 got to the Chinese gentleman, with all the four Accused the Chinese gentleman refused to do business with them in the absence of Thabo Mphana Pw3. It would seem, in the circumstances, that Pw1 had had sufficient time to be able to identify Accused 1, 2, and 3. Although no identification parade was subsequently held.

However care should be taken not to trust Pw1 because he had been up to the ears in the transaction of disposing of the Nissan vehicle illegally without papers. Pw1 had been overpaid for his efforts as what he called a facilitator and where he might have been paid M50.00 he had been paid M500.00 when the selling price had been M12 000.00, of which M2000.00 had been immediately paid to Accused 1, 2, 3 and 4 on the day the said agreement was concluded. Pw1 had been paid M500.00 which is 25% of the deposit of M2000.00. In my view it is clear that Pw1 was in the category of an accomplice. Consequently he could not be trusted. He could conveniently implicate falsely at will any of the accused because he had an inside knowledge of the illegal disposal of the Nissan van Exhibit 13(b). See Rex v Ncanana 1948 (4) I will therefore treat the evidence of Pw1 with great caution.

Nevertheless Pw1 had another opportunity to see all four accused under the

electric light when the remaining M10 000.00 was paid under an electric light at night outside Teboho Kou's house. On the previous occasion Accused 1 had been with the four accused inside Teboho Kou's house where the deal was struck. Pw1 seems therefore to have been in a position to identify all four Accused and to implicate or not implicate these Accused in the crime at will for whatever motive. The court also noted that Pw1 at first described the vehicle that he had seen as a white 4x4, but during evidence he had called it a Nissan van. The court also noted that he began to sweat during cross-examination when he was asked to reconcile his statement to the police with his evidence in court on the taking out of the radio. In his statement to the police, Pw1 had said Accused 4 took out the radio from the Nissan van. Before this court Pw1 had said the radio was taken out by Accused 1 and 3 on Accused 4's instructions. Pw1 might have been sweating because he might have been running as he claimed, nevertheless the court noted his discomfort.

Pw2 Thabo Mphana corroborates Pw1 about Accused 4's involvement in the sale and the fact that four people had been to the Chinese gentleman before sunset. This confirms that the opportunities for Pw1's observation of the four Accused were good. Pw1 is also corroborated by Pw3 that Accused 1 was identified by a person that knew him in the neighbourhood of Pw1's residence.

They only differ on the questions of time and circumstances. Pw1 had said he heard a neighbour call Accused 1 at a time that must have been in the late afternoon. Pw3 Kotola told the court that it was at 9.am in the morning when he and Accused 1 met in the morning at his residence. Accused 1 said he met Pw3 who knew him well in different circumstances.

I am satisfied that Pw1 identified the fourth Accused and that Pw2 was a credible witness who gave his evidence well and was not shaken under cross-examination. With the corroboration in many respect of the evidence of Pw1 by Pw2 about the presence of the Accused 4 and three people selling the Nissan vehicle, the danger of wrong conviction is reduced. Accused 1 was also identified by Kotola Pw3 in the morning with that white Nissan. Pw3 was not shaken on this point. There is no reason not to believe Pw1 that a neighbour called Accused 1 later in the afternoon. Nor can we disbelieve Pw1 when he said the neighbour had explained to him that he knew Accused 1 from Katse Dam. Although Pw1 positively identified Accused 2 and Accused 3 it is safer that some corroboration of a circumstantial nature be found to back up Pw1's evidence.

There is corroborated evidence about the alleged origin of the Nissan vehicle that was sold to buyers. Pw2 Thabo Mphana told the court that Accused4

called the other Accused his boys who sometimes had vehicles and lived in Cape Town. These boys according to Pw1 were Accused 1,2, and 3. Pw10 Michael Molefe whose evidence was not challenged, told the court Accused 1 and 2 had brought him a Nissan van to buy. They claimed it was from a man from Cape Town. Pw10 had told the court that Accused 1 and 2 were with a man he did not know. In cross-examination it was put to Pw10 that the third man was from Cape Town. Both Accused 1 and 2 agreed they had been to Pw10 with a Nissan van with a man from Cape Town. This association of the Nissan van with Cape Town during seems not to be a coincidence. People who sold had chosen Cape Town as their place of origin.

While Pw10 and Accused 1 had not made any suggestion that the man allegedly from Cape Town was different from them, Accused 2 had said the man they were with was a white man, later he said was a coloured. Pw10 had advised Accused 1 and 2 to go to accused 4 who might buy their Nissan van because Pw10 could not buy it because he was only interested in a 4x4. Later as Pw1 has said Accused 1 and 2 were in the company of Accused 4 when they sold a Nissan van Exhibit 13(b) in Hlotse Leribe. This seems strange when Accused 1 and 2 have told this court that they did not take the advice of Pw10.

Pw4 Leuta Mahao also told the court he saw Accused 1, 2, and 3 in a Nissan van during the time he wanted his father's firearm returned. Pw4's story that Accused 3 stole that fire-arm is very suspect. This weapon (though not convincingly established) might be the weapon that was used to kill deceased. Pw4 might have lent this weapon to Accused 3 or have been actually the perpetrator of the murder of the deceased. Consequently his evidence has to be treated with great caution. He claims accused 1, 2 and 3 were friends and had actually come to drink at Pw4's place.

Pw4 Leuta Mahao on the use of a white van is partially corroborated by Pw5 Thabang Wesley Makole who says in June 1997 at 7.30 am he saw a white van parked near his house. It was white in colour and green just below the windows above the doors. It had South African numbers. It was a van D according to his imagination C, it looked like a Ford Cortina. In Sesotho to say D according to his imagination D means according to his recollection. Accused 1 and 2 had later come for the vehicle, they were with a man who looked like Accused 3. Accused 1 was the driver. Pw5 did not deny under cross-examination that the third man might not have been Accused 3 because it was the first time he saw that person Pw5 was a mechanic.

The fact that Accused 1,2 and 3 were seen together in circumstances that reveal that they were not casual acquaintances (as these three Accused alleged) is confirmed by Pw8. She claimed she saw them together. It was in May 1997. They were there when Accused 1 threatened to shoot his sister Mannini with the fire arm that used to be kept by Monate and Accused 3. In June 1997 after Accused 6 and his companions had raided the premises of Pw8, Accused 7, Moratua Dlamini (Accused 1's wife) and detaining them demanding a Government fire-arm, Pw8 gave Accused 3 a report of this incident. Accused 3 who was with the Accused 1 and 2 said he had given it back to Accused 6. This clearly shows that the three Accused were not casual acquaintances as they would have this court believe.

It was suggested Pw8 had been intimidated or told by the police to implicate the Accused falsely. Pw8 told the court that was not true, the bad treatment she received angered and humiliated her, but she was never afraid of the police. Pw8 impressed me as being a truthful witness who had nothing to hide. I am satisfied Accused 1, 2, 3 and 7 were not truthful in saying what Pw8 was saying was false. They were distancing themselves from the truth because there were things they did together. They had been constant companions during June 1997 as Pw4 Leuta Mahao, Pw5 Thabang Makole, Pw1 and Pw10 have shown accused 2 as having

been in the company of Accused 1 oftener than they would have us believe.

I believe therefore that Accused 1, 2 and 3 were in fact seen in the Nissan van exhibit 13(b) which they later sold to a Chinese gentleman Lin Ming Ren in the company of Accused 4 and Pw1.

Against Accused 1 there is also the evidence of Pw11 that he left a light brown multicoloured jersey ID4 which was later marked Exhibit 14 (a). Pw11 took a bag from Accused 1 to Accused 7 Thato Mosili. Later Pw12 says he recovered yellow shoes Exhibit 1 from the late Maputsoane or Mannini which Pw12 had told Maputsoane he had information that Accused 7 had brought those shoes there. Both Maputsoane or Mannini and Accused 7 Thato were the sisters of Accused 1. Exhibit 1 the yellow boots and the light brown multi coloured jersey ID4 or Exhibit 14(a) were identified as the property of the deceased Pieter Johannes Groenewald. Although Pw11 might have been under pressure to distance himself from this multi-coloured jersey, his evidence was credible.

Accused 4 was at pains to distance himself from the Nissan van Exhibit 13(b). The evidence of Pw1 is corroborated by that of Pw2. On the taking of the radio of the Nissan vehicle, Pw1 is corroborated by Pw19 who is Accused 4's

sister in law. I believed Pw19 she had no reason to give false evidence against Accused 4. It will also be noted that Pw2 was found to be credible, therefore counsels for defence largely pointed out that he was mistaken.

I will not deal with evidence against Accused 6 because it is insufficient to support conviction for crimes in respect of which he is charged. Accused 6 is shown by uncontroverted evidence to have lent the Gallil rifle to Accused 3 and possibly Monate a long time before the crime was committed. Accused 6 desperately looked for the fire-arm and was among the people who detained Pw8, Moratua Dlamini (the wife of Accused1) and Accused 7 (the sister of Accused 1) demanding its production. According to Pw8 that was because Accused 6 claimed some crime had been committed with that Gallil rifle. There is not even any direct or clear evidence that this Gallil rifle was used in the commission of any crime.

Accused 7 has very little that really implicates her in the robbery, and the murder. She could be said to have received the yellow shoes Exhibit 1. These were mens shoes and she lived with Accused 1. These shoes were produced by the late Mannini. It is hard to say she had any intention to steal or receive these shoes knowing them to be stolen because they are men's shoes. There is evidence from

Pw11 that Accused 1 sent her a grey bag which contained some things. Accused 7 is a liar and has shielded his brother Accused 1 who is connected to the possession of deceased's Nissan van Exhibit 13 (b) and light brown multi-coloured jersey ID 4 or exhibit 14 (a). It seems to me she should not simply be convicted because she is a liar. She is therefore given the benefit of doubt in respect to all charged.

Verdict

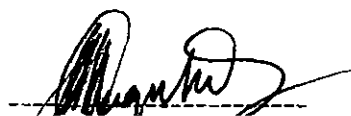
I am satisfied that Accused 1, 2 and 3 are guilty of robbery in respect of the deceased's Nissan Van Exhibit 13 (b) which they sold to Lin Ming Ren. They are also guilty of murder of the deceased either as principal offenders or as accessories after the fact.

Accused 4 who became their partner as soon as they approached him participated in the selling of the Nissan vehicle is guilty of receiving stolen property knowing it to be stolen. He received the money, paid facilitators of the sale of the vehicle namely Pw1 and Pw2. M1000.00 each. Accused 4 had not bought the Nissan van as Pw10 had suggested, he joined the partnership for the sale of the Nissan van belonging to the deceased.

Stand up Accused:

- (a) Accused 1, 2 and 3 are guilty of murder as charged.
- (b) Accused 1, 2 and 3 are guilty of robbery as charged.
- (c) Accused 4 is guilty of receiving stolen property knowing it to be stolen
- (d) Accused 6 and 7 are given the benefit of the doubt and are found not guilty and are discharged.

My two Assessors agree



W.C.M. Maqutu
Judge

For Crown : Miss Nku

For Accused: Mr. Sooknanan
Mr. Phafane
Mr. Ntlhoki