

IN THE HIGH COURT OF LESOTHO

In the matter of:

R E X

vs

SEKESE 'NYANE

JUDGMENT

**Delivered by the Honourable Mr. Justice B.K. Molai on
14th December, 2001**

The accused is summarily charged with the crime of murder, it being alleged that during the month of September 1996, the exact date unknown to the prosecutor, he unlawfully and intentionally killed Ntšiuoa 'Nyane.

When the charge was put to him, the accused pleaded not guilty. Mr. Molefi, who represents the accused in this trial, told the court that the plea of "*not guilty*", tendered by the accused, was in accordance with his instructions. The plea of not guilty was accordingly entered.

It is, perhaps, necessary to mention, at this stage, that the accused was

originally charged together with a certain Masilonyane 'Nyane. It is common cause that the latter has since died. He was, therefore, not available to plead to the charge when the trial commenced. Accordingly the accused is the only person charged, in this case.

Furthermore, it is worth mentioning that the original charge, to which the accused pleaded, read:

“In that upon or about the 12th day of October, 1996 and at or near Lithabaneng in the district of Berea, the said accused did unlawfully and intentionally kill Ntšiuoa 'Nyane.”

However, before closing the crown case Miss Makoko, who represents the crown in this trial, applied to amend the charge by deleting the words “*upon or about the 12th day of October*” and substituting therefor, the words “*during the month of September*”. On behalf of the accused, Mr. Molefi told the court that the defence did not object to the amendment. Nor did he propose to alter the plea of “*not guilty*” originally tendered by the accused person.

Nine (9) witnesses were called to testify in support of the crown case. No witnesses were called to testify on behalf of the defence. However, the accused himself gave evidence on oath, in his defence.

P.W.9, D/Tpr. Sojane, told the court that he was a member of the

Lesotho Mounted Police Service, attached to the C.I.D. and stationed at T.Y. police station, in the district of Berea. On 12th October 1996, he received a certain information following which, he and a certain Tpr. Putsoane proceeded to the village of Lithabaneng. On arrival at Lithabaneng they introduced themselves to the Chief's representative, whose name he (P.W.9) no longer remembered, presumably because the Chief himself was not in. P.W.9 told the court that after he and Tpr. Putsoane had introduced themselves and explained their mission to him, the Chief's representative took them to a forest at some cliffs, on the outskirts of the village, where they found a corpse which was dressed in a greenish T. shirt, an off-white dress and a cream-coloured panty. There was a pair of brown sandals next to the corpse.

In his evidence, P.W.9 told the court that, whilst they were at the scene, he heard the Chief's representative saying: "***these people say they identify the corps by its clothes, as being that of Ntšiuoa 'Nyane'***" or words to that effect. As many people had already gathered at the scene, P.W.9 did not notice the people referred to by the chief's representative. Nor did he bother to find who those people were.

It is significant to mention that neither the chief's representative nor the people he allegedly referred to were called to testify as witnesses, in this trial. What they are alleged to have said is, therefore, of no assistance to the court.

P.W.9 went on to testify that in trying to remove the clothes from the deceased, the flesh was going off with them. He was, therefore, unable to undress the corpse and examine it for injuries. In the circumstances, the corpse was carried to the village from where it was transported, in a police vehicle, to the mortuary of Teya-teyaneng government hospital without P.W.9 having observed any injuries on it. According to him, P.W.9 took the brown pair of sandals to the police station. He properly labelled and kept it in a separate room from the exhibit-room at T.Y. police station. The reason therefor, was because the exhibit-room was full. However, anybody could have access to the separate room in which he had kept the pair of sandals. In the circumstances, the pair of sandals had since gone missing and could not be handed in as exhibit, in this trial.

P.W.9 told the court that he personally did not attend the post-mortem examination which was conducted on the corpse, at the mortuary of T.Y. government hospital. A certain D/Tpr. Maloi did. However, before D/Tpr. Maloi went to attend the post-mortem examination at the mortuary, he (P.W.9) had explained to him what kind of corpse he would find at the mortuary. It is, again, significant to mention that D/Tpr. Maloi was not called to testify as a witness, in this trial.

P.W.9 testified that, in the course of his investigations, he contacted and brought the accused to T.Y. police station. He confronted him with Masilonyane 'Nyane who was already detained at the police station. After he had cautioned them, the accused and Masilonyane gave him (P.W.9) some

explanation in connection with a certain rosary. They then took him to the spot where the corpse had been found, at the cliffs. He was in the company of D/Inspector Sebele, D/Tpr. Ntela and Detective L/Sergeant Monyane. When they searched the vicinity of the spot where the corpse had been found, P.W.9 and his team of police officers, found a white rosary. The rosary was lying amongst the bushes next to the spot where the corpse had been found. According to him, P.W.9 took possession of the rosary. It had since been in the police custody. He handed it in as exh. "1" and part of his evidence, in this trial.

It is, perhaps, necessary to mention that exh. "1" is not broken in pieces. It is a rosary which is still in tact. The significance of this is because P.W.9 was shown another white rosary which was, however, broken in pieces. P.W.9 told the court that there was a time when D/Tpr. Sebele showed him the broken rosary with the explanation that it had been handed to him by Mantšiuoa 'Nyane, the mother of the deceased in this case. He (P.W.9) himself knew nothing about it. Again, D/Tpr. Sebele was not called to testify as a witness, in this trial. He could not, therefore, confirm what P.W.9 said he had done.

P.W.9 told the court that from the place where exh. "1" had been found, he and his team of police officers returned, with the accused and Masilonyane, to the police station. Both the accused and Masilonyane gave him explanation after he had duly cautioned them. Following their explanation, P.W.9 gave the accused and Masilonyane a charge of the murder

of the deceased, in this case. They were subsequently taken to the magistrate court for remand. Under cross-examination P.W.9 conceded that he had escorted the accused to the office of the magistrate before whom he (accused) wished to make a confession. That confession was, however, not used as evidence, in this trial. P.W.9 categorically denied the suggestion that whilst in police custody the accused was assaulted or tortured, in any way.

It is worth noting, at this juncture, that by the agreement of both Miss Makoko and Mr. Molefi, counsel for the crown and the defence, respectively, a post-mortem examination report was handed in from the bar, as exh. "A". According to exh. "A", at about 2:50 p.m on 17th October 1996 a medical doctor performed a post-mortem examination on a dead body of a 15 years old female African child at the mortuary of T.Y. government hospital. The body was identified as being that of Ntšiuoa 'Nyane by D/Tpr. Sojane (P.W.9). The examination revealed that the deceased's body was decomposed and mummified beyond recognition. On that finding the medical doctor formed the opinion that the cause of death could not be determined.

It is significant to observe that although in exh. "A" the medical doctor wrote that P.W.9 had identified the dead body, before him, the latter denied it. He (P.W.9) told the court that he personally did not attend the post-mortem examination. Instead D/Tpr. Maloi did. For obvious reasons, neither the medical doctor nor D/Tpr. Maloi could be cross-examined, on this issue. Assuming the correctness of the evidence of P.W.9, it stands to

reason that the medical doctor could not be right in writing, as he did, that the dead body was identified, before him, by P.W.9, as being that of Ntšiuoa 'Nyane. In the circumstances, the possibility that the dead body examined by the medical doctor, on 17th October 1996, might well have not been that of Ntšiuoa 'Nyane, the deceased in this case, cannot be ruled out.

Be that as it may, the court heard the evidence of P.W.6, 'Mantšiuoa 'Nyane, who testified that she lived in the village of Lithabaneng ha Kepi, in the district of Berea. She was illiterate. She knew the accused. The accused was the son of her brother who lived at Likotopong, in the district of Maseru. She also knew the deceased (Ntšiuoa 'Nyane) in her life time. The deceased, who was her own daughter, was born in 1979.

According to P.W.6, some time in 1996 her brother, the accused's father, who was working in the mines of the Republic of South Africa (R.S.A.) wrote her a letter in which he informed her that the accused was about to graduate from the circumcision school at Likotopong. He, therefore, instructed P.W.6 to proceed to Likotopong together, with Masilonyane 'Nyane (his younger brother), presumably to make preparations for the occasion of the accused's graduation from the circumcision school. In compliance with the instructions of her brother, the accused's father, P.W.6 did proceed to Likotopong. She went there in the company of her daughter, Ntšiuoa 'Nyane, the deceased in this case. Masilonyane, who also lived in the same village as P.W.6 did, followed them at a later stage.

P.W.6 told the court that it was whilst she was at Likotopong and before the accused's father himself could return home for the occasion of the accused's graduation from the circumcision school that she and other members of the family received the sad news that her brother, the accused's father, had passed away at his place of work, in the mines of the R.S.A. As a result of the sad news of the death of her husband, the accused's mother was required to go to the mines in the R.S.A. The family decided that P.W.6 should accompany her. She (P.W.6) obliged. When P.W.6 and the accused's mother went to the mines, in the R.S.A., Ntšiuoa 'Nyane (deceased) remained at Likotopong at the special request of the latter who said she (deceased) should assist in preparing food for the accused. The corpse of the accused's father was brought home and buried at Likotopong. After the funeral of the accused's father P.W.6 went back to her home, at Lithabaneng ha Kepi. She, however, left the deceased (Ntšiuoa) at Likotopong, again, at the request of the accused's mother who claimed that, following the death of her husband, she was still not feeling well. The deceased should, therefore, remain to assist her. She promised to send her (deceased) to Lithabaneng as soon as money was available.

According to P.W.6, the accused's mother herself brought the deceased to Lithabaneng ha Kepi after about three (3) months. They were in the company of accused's brother by the name of Lithakong. On arrival at P.W.6's home, the accused's mother reported that the deceased had been made pregnant by some unnamed village men at Likotopong. P.W.6 then questioned the deceased about the name of the person who had made her

pregnant. In the presence of the accused's mother, the deceased replied that it was the accused who had made her pregnant. That was, however, disputed by the accused's mother.

Thereafter, the accused's mother and Lithakong left P.W.6's home and returned to Likotopong. According to her, P.W.6 then went to her chief, at Lithabaneng, and requested him to assist by arranging a meeting between herself and the accused's mother in connection with the alleged pregnancy of the deceased by the accused. He (chief) did assist by writing to the chief of Likotopong who subsequently sent the accused and her mother to Lithabaneng ha Kepi. A family meeting was held at the home of P.W.6's house, on the advice of her chief who further advised that in the event of its failing to reach an agreement the family meeting should bring the matter before him for his decision. According to P.W.6 the family did hold a meeting which was attended by herself, Mphaka Rasunyane, the accused's mother, Masilonyane 'Nyane, the elder sister of Masilonyane's wife, the deceased and the accused himself. When she was questioned about her pregnancy the deceased told the family meeting that the person who had made her pregnant was the accused. The accused also admitted that he was, indeed, the person who had made the deceased pregnant. P.W.6 and the accused's mother then agreed that their children *viz.* the deceased and the accused should get married to each other. However, the accused's mother claimed to have no money, at the time. She could not, therefore, return with the deceased to her home at Likotopong. The accused himself promised that, as soon as money was available, he would come to fetch the deceased. I

shall return to the evidence of P.W.6, later in the judgment.

P.W.2, 'Mapaseka Seseli, testified that she was married at a place called Tabola, in the district of Leribe, where she lived. However, in 1996 she was not yet married. She then lived at her maiden home *viz.* Lithabaneng ha Kepi, in the district of Berea. She knew the deceased, Ntšiuoa 'Nyane, who was her personal friend.

P.W.2 recalled that at about 4:00p.m one day in 1996 - the exact date she no longer remembered - the deceased came to see her at her maiden home. She was wearing a pair of black jeans and a greenish T. shirt. On arrival at her maiden home, the deceased assured P.W.2 that she was not going to be long with her because she still had to go and cook at her home. After they had chatted briefly, the deceased left. As she was leaving the deceased asked P.W.2 to take her half-way and the latter obliged. When they were at the village spring, P.W.2 noticed a person coming down towards them. That person was wearing a "tiger" blanket and white gumboots. The deceased then told P.W.2 not to leave her alone because the person who was coming towards them was Sekese (accused), her boy friend. However, P.W.2 did not wait with the deceased for the accused. She returned home. As she was returning home, P.W.2 noticed the deceased running towards the accused. That was the last time she saw the deceased alive.

The evidence of P.W.3, Tsietsi Molefi, was that he was 62 years old. He was literate and had passed std. 9 when he left school. He lived in the

village of Lithabaneng ha Kepi, in the district of Berea. He knew both the accused and the deceased, in her life time. The deceased's mother (P.W.6) was his next door neighbour. The accused had been introduced to him by his (accused's) paternal uncle, Masilonyane 'Nyane, on 9th September, 1996. According to P.W.3, on 10th September 1996 he was outside his home when he saw the deceased and the accused walking together, in the direction towards T.Y. town. The accused was wearing a "tiger" blanket and white gumboots whilst the deceased was wearing a full dress of which colour he no longer remembered.

53 years old Matsietsi Seseli testified as P.W.4 and told the court that she lived at Lithabaneng ha Kepi, in the district of Berea. She knew the accused, P.W.2 and the deceased, in her life time. She had once seen the accused at the home of P.W.6 who was his paternal aunt. P.W.2 was the daughter of her own sister. The deceased's mother (P.W.6) was her co-villager.

According to P.W.4, during the forenoon of one day in September 1996 - the exact date unknown - she was returning from T.Y. town when she passed the accused standing with the deceased on the side of the tarred road leading from the town to a place called ha 'Matjotjo. The deceased was wearing a green T. shirt and a pair of trousers. The accused was wearing a maroon hat and white gumboots. He was also holding a stick in his hand. That was the last day P.W.4 saw the deceased alive.

P.W.4 further told the court that the spot, where she had seen the accused and the deceased standing, was between the homes of P.W.3 and a certain Thulo Masela. She believed P.W.3 had also seen the deceased and the accused because he (P.W.3) was, at the time, sitting outside his house which was within view, from the spot where the deceased and the accused were standing.

In her evidence, P.W.4 did not know that, after she had seen her standing with the accused, the deceased went missing from her home, in the village. However, one day she was working in the fields when she heard an alarm being raised. She herself did not go to where the alarm was raised. However, P.W.4 later learned from some villagers that the deceased had been found dead. She personally never saw the dead body of the deceased.

P.W.1, Tšepang Phunkola, testified that he too lived at Lithabaneng ha Kepi, in the district of Berea. He knew the deceased, in her life time. The accused used to visit the home of one Masilonyane 'Nyane in the village of Lithabaneng ha Kepi. He (P.W.1), therefore, knew, the accused although he did not know his name i.e he only knew him facially.

In his testimony, P.W.1 told the court that he was a builder by trade. One day, in September 1996, he was building a house of one 'Malefaso in the village of Lithabaneng ha Kepi. At about 1:00p.m, on the day in question, he noticed the accused, the deceased and Masilonyane 'Nyane passing next to where he was working. The deceased was wearing black

jeans, whilst the accused and Masilonyane 'Nyane were wearing multi coloured blankets. After they had passed next to where he was working, P.W.1 did not observe where the deceased, the accused and Masilonyane went to. However, he later learned, from P.W.6, that the deceased had passed away. He then informed her (P.W.6) that the last time he saw her, the deceased was passing next to where he had been working and was in the company of the accused and Masilonyane.

52 years old Tšele Masele testified as P.W.7 and told the court that he lived at Lithabaneng ha Kepi, in the district of Berea. He knew the deceased, in her life time. She lived with P.W.6, her mother, in the same village as he did.

According to P.W.7, there was, in his village a crime prevention unit of which he was a member. The practice was to report the presence of every visitor in the village to the crime prevention unit. He remembered that some time in March 1996 Masilonyane 'Nyane brought the accused, and reported his presence in the village, to him (P.W.7), as a member of the crime prevention unit. He (P.W.7), therefore, knew the accused.

P.W.7 went on to testify that one day in September 1996 - the exact date unknown - he was cutting down a wattle tree in the village when Masilonyane 'Nyane came and asked him for tobacco. It could have been 8:00 a.m when Masilonyane came to him. He did give Masilonyane the tobacco which he smoked whilst they were chatting. Eventually Masilonyane

left and he (P.W.7) continued with his work.

P.W.7 told the court that, at about 1:00p.m. on the day in question, he was still at his work when he noticed a person walking fast towards the village of Lithabaneng ha Kepi. He was from the direction of T.Y. town. P.W.7 watched at that person closely and positively identified him as the accused who was wearing a “tiger” blanket, white gumboots and holding a timber stick (lebetlela) in his hand. The accused went to P.W.6's home where he stood on the forecourt for a while before going back. Thereafter, P.W.7 noticed the deceased emerging from a passage leading to the village spring which was above the home of P.W.2. The deceased then went to the accused who was standing at a pole next to the passage. According to P.W.7, when he saw her, the deceased was wearing black jeans, a yellowish dress with some black spots and a green skipper. After the deceased had come to him, the accused walked with her in the direction towards T.Y. town. The two walked together until they were out of his view. That was the last time P.W.7 saw the deceased alive.

After the accused and the deceased had gone out of P.W.7's view Masilonyane 'Nyane again came to where the latter was working. On arrival, Masilonyane told P.W.7 that he had information that his visitor was in the village and asked him (P.W.7) whether he had not seen that visitor. When P.W.7 asked him whether he meant the accused, Masilonyane replied in the affirmative. P.W.7 then replied that he had seen the accused going with the deceased in the direction towards T.Y. town. Masilonyane, who appeared

to be in a hurry, then left saying the accused might have brought some messages for him from his (accused's) home. He, therefore, wanted to meet the accused before he could leave T.Y. town for his home at Matsieng, in the district of Maseru. According to P.W.7, when he left him Masilonyane first went to his house. Shortly, thereafter, he returned from his house, passed where he (P.W.7) had been working and took the direction towards the centre of T.Y. town.

At about 5:00p.m. on the day in question, P.W.7 left the place where he had been working and returned to his house for the night. However, at about 9:30 p.m on that day, P.W.6 came to his house and reported that the accused had allegedly been seen going with her daughter (deceased) during the day. The accused was present at the home of Masilonyane but the deceased was no where to be seen. Following that report, P.W.7 immediately proceeded to the home of Masilonyane. He was accompanied by P.W.6 herself and some of the members of the crime prevention unit *viz.* Nyane Seate, Setsibi Seseli and Thabiso Lephema. When they approached the door of Masilonyane's house, the lights went off in the house. Nonetheless, P.W.7 went and knocked at the door. The lights were then put on in the house. Masilonyane opened the door and came to where P.W.7 and his party were standing on the forecourt, outside the house. P.W.7 introduced himself and his party to him. He then asked Masilonyane whether he had found the accused and the deceased after he had parted with him, during the day, saying he was going to look for them, in town. Masilonyane took some time before he could answer P.W.7's question. P.W.6 then said "*Sekese (accused) is*

present here.” It was then that Masilonyane conceded that the accused was, indeed, present and was sleeping with other boys in one of his (Masilonyane’s) huts. P.W.7 told Masilonyane to go and fetch the accused from the hut in which he was sleeping so that he could disclose the whereabouts of the deceased. Masilonyane did oblige.

When Masilonyane returned with the accused, P.W.7 asked the latter the whereabouts of the deceased. He denied knowledge of her whereabouts. He further said he had, in fact, come to Lithabaneng to fetch the deceased but had not been able to find her. When P.W.7 asked him whether the person he had seen him going with, during the day, was not the deceased, the accused angrily replied. **“Bo-ntate, ntate o shoele. Motho ea belaelang ka Ntšiuoa a palame le ‘na ho ea haeso Matsieng hosasa. Feela a hlokomele a khutla a se a sa phele.”** (Loosely translated: fathers, my father has passed away. A person who suspects me about Ntšiuoa may go with me to my home at Matsieng, tomorrow. He should, however, be careful that he might not come back alive).

According to him, P.W.7 pleaded with the accused to calm down. He did not calm down. Instead, the accused wielded his stick and wanted to fight. P.W.7 then left the accused alone and addressed himself to Masilonyane. He asked Masilonyane whether he followed what his son (accused) was saying. When Masilonyane replied in the affirmative, P.W.7 asked him with whom he found the accused after he had hurriedly parted with him (P.W.7) saying he wanted to meet him (accused) before he could leave

T.Y. town and return to his home, at Matsieng. Masilonyane's response was that when he came to the bus rank, in town, he noticed the accused coming towards him alone i.e. the accused was not going with the deceased. According to him, Masilonyane then returned to his home, at Lithabaneng, with the accused.

P.W.7 told the court that thereafter he directed Masilonyane to report himself, together with the accused, at the chief's place early in the morning of the following day. He and members of his crime prevention unit returned to his (P.W.7's) home. P.W.6 also went to her home. In the morning of the following day, P.W.7 waited outside his home to see if Masilonyane and the accused would go to the chief's place, as he had directed them to do on the previous night. To his observation they did not do so. Eventually, P.W.7 had to go to Masilonyane's home from where he personally escorted him and the accused to the Chief's place. When they were asked the whereabouts of the deceased, the accused said that question should be directed to Masilonyane who, in turn, said it should be directed to the accused. Eventually the chief wrote a letter which P.W.7 took, to T.Y. police station, together with Masilonyane and the accused. After they had been questioned by the police, Masilonyane and the accused were released to go home. They both went to Masilonyane's home, in the village of Lithabaneng ha Kepi.

According to him, P.W.7 specifically told Masilonyane to see to it that his son (accused) did not leave the village and return to his home, at Matsieng, before the whereabouts of the deceased could be established. He

(P.W.7) and members of his crime prevention unit started mounting the search for the whereabouts of the deceased. They looked for her in the village of Lithabaneng ha Kepi and its surroundings, but all in vain. However, two days after he had told Masilonyane to see to it that the accused did not leave the village and return to his home, at Matsieng, until the whereabouts of the deceased had been established, P.W.7 learned that Masilonyane and the accused had disappeared from the village of Lithabaneng ha Kepi. He immediately proceeded to the home of Masilonyane and enquired, from his wife, the whereabouts of her husband. The reply he received was that he had gone to Matsieng, together with the accused.

According to him, P.W.7 and members of his crime prevention unit continued with the search for the deceased. They eventually found her corpse. It was placed in a cave at the cliffs on a mountain behind the village of Lithabaneng ha Kepi. In his evidence, P.W.7 told the court that he and his men had, during the search, already passed the spot where the deceased's corpse was later found. It was definitely not there. In any event, when it was found, P.W.7 observed that the corpse appeared to have just been placed in the cave. The two breasts had been cut off, as well as the head which had been skinned and left lying on the side of the corpse. Although there was some flesh, from the knees downwards, the rest of the body were just bones.

It is significant to observe that P.W.7 was the only witness who testified that the deceased's breasts had been cut off. If P.W.7 were, indeed, testifying to the truth, in that regard, one would have expected P.W.9 and exh. "A" to have mentioned it. However, neither P.W.9 nor exh. "A" did so.

Be that as it may, P.W.7 went on to tell the court that he identified the corpse as being that of the deceased by the clothes she had been wearing when he last saw her still alive i.e on the day he saw her going with the accused. According to P.W.7 those clothes had been folded up in a bundle and placed next to a “*lelothoane*” bush at the cliffs where the corpse was found. Again, that was denied by P.W.9 who told the court that the deceased’s corpse was still wearing its clothes where it was found. However, he could not undress and examine it for injuries because in trying to do so, the flesh which had stuck to the clothes was removing with the clothes.

P.W.7 told the court that after he and members of his crime prevention unit had found the corpse of the deceased, they raised an alarm. He himself actually went to report the finding to the chief and the police. As a result, many villagers, the chief and the police came to the spot where the corpse of the deceased had been found. However, Masilonyane ‘Nyane was not amongst the people who had gathered there. If he were there, P.W.7 would have noticed Masilonyane amongst those people.

According to P.W.7, the bundle of the deceased’s clothes was taken possession of by the police. He was not in a position to know what the police did with the clothes. The corpse itself was carried from the cave at the cliffs to the village. From the village it was again taken, in a police vehicle, to the mortuary of T.Y. government hospital. P.W.7 told the court that he was not present at the mortuary when the post mortem examination was performed on the corpse of the deceased.

In his evidence, P.W.7 testified that after the corpse of the deceased had been transported to the mortuary, he escorted Masilonyane to T.Y. police station where he was detained. He confirmed the evidence of P.W.9 that the police then went to the accused's home from where he (accused) was brought, under arrest, to T.Y. police station.

It is to be remembered that, in his evidence, P.W.7 told the court that about two days after the disappearance of the deceased he learned that Masilonyane and the accused had gone to the latter's home, at Matsieng. How and when Masilonyane returned to his home village of Lithabaneng ha Kepi from where P.W.7 escorted him to T.Y. police station after the deceased's corpse had been transported to the mortuary of T.Y. government hospital, was not clear from his (P.W.7) evidence.

18 years old Moliehi Seboka testified as P.W.5 and told the court that P.W.6 was her own mother with whom she lived at Lithabaneng ha Kepi, in the district of Berea. She knew the late Ntšiuoa 'Nyane (deceased) who was her elder sister. She also knew the accused who was the son of her maternal uncle and, therefore, her cousin. She knew the late Masilonyane 'Nyane, in his life time. He was her maternal uncle.

P.W.5 testified that one morning in September 1996 - the exact date unknown - she left the deceased at home and went to school. When she left her at home, on that morning, the deceased was wearing a pair of black jeans, a green bottle neck skipper, a brown dress, a pair of maroon shoes and a

white rosary. On her return from school, in the afternoon of the same day, P.W.5 did not find the deceased at home. She was told by 'Mathuso, her younger sister, that the deceased had left home in the company of the accused. 'Mathuso was, however, not called as a witness to testify, in this trial. Later on that day, P.W.5 learned from P.W.6, her mother, that the deceased had disappeared from home and a search was being carried out for her whereabouts.

According to P.W.5, at about 6p.m on the day in question, she saw the accused at Masilonyane's home which was not far from her parental home. In fact, the sites of her parental home and that of Masilonyane were separated just by a fence. P.W.5 told the court that she was not seeing the accused for the first time on the evening of that day. Some time back the accused and his mother had visited Lithabaneng ha Kepi and were both staying at her own parental home. She had, therefore, no difficulty in identifying the accused on the evening of the day she saw him at the home of Masilonyane.

In her testimony, P.W.5 went on to tell the court that following her disappearance from home and in the course of the search for her whereabouts, she learned that the deceased had been found dead. However, she herself was not present when the dead body of her elder sister (deceased) was found. Even during her funeral which was held at her home, P.W.5 was not afforded the opportunity to see the corpse of the deceased, as it is the practice according to the Sesotho custom, presumably because she (P.W.5) was still

too young, at the time, or, as exh. "A" has indicted, the corpse was decomposed and mummified beyond recognition.

P.W.5 further testified that one morning, after the deceased had been buried, she was getting ready to go to school whilst her late maternal uncle, Masilonyane, was dismantling a shack which had been erected with corrugated iron sheets outside her parental home, presumably on the occasion of the deceased's funeral service. As she was brushing her teeth in front of her house P.W.5 noticed Masilonyane throwing something behind the house. After doing so, Masilonyane immediately peeped at P.W.5 who was still in front of the house. That arose the suspicion of P.W.5.

After Masilonyane had left her home and returned to his home, P.W.5 quickly went behind the house. She wanted to find out what it was that Masilonyane had thrown behind the house. When she looked around, P.W.5 noticed a white rosary. It was broken and some of its beads were scattered about. According to P.W.5, there were, besides the broken rosary, other articles e.g. stones and pieces of wood. As it had been raining on the previous night, the other articles were wet. The broken rosary was, however, quite dry. P.W.5 assumed, therefore, that the broken white rosary was the article that Masilonyane had just thrown behind the house. On examining the rosary, P.W.5 noticed that some of its beads had red stains which looked like blood or rust. According to her, P.W.5 did not know that rosary. She, however, took possession thereof and kept it in the house so that she could show it to P.W.6 who was not at home, at the time. She had gone elsewhere

for the removal of a mourning cloth.

P.W.5 told the court that in her family the deceased was the only child who used a rosary. She, in fact, had two rosaries *viz.* the white one she had been wearing on the day she disappeared from home and a brown one which was still at home. The rest of the children, in the family, were using the miraculous medals of the Blessed Virgin Mary. When P.W.6 eventually returned home, P.W.5 explained to her about the broken rosary which she handed to her. P.W.6 said nothing to P.W.5 when the latter handed the broken rosary to her. She merely took her (P.W.5) to the police at T.Y. Police station, together with the broken rosary. It was not clear from the evidence of P.W.5 if the police, at T.Y. police station, asked her any questions about the broken rosary.

Now, returning to her evidence, P.W.6 testified that one morning, in September 1996, she left home and went to the mountain to get some wild vegetables. It could have been two months after the accused had promised to come and fetch the deceased. According to P.W.6, when she returned home from the mountain, the deceased was not at home. She (P.W.6) was informed by Masilonyane's son, called Tefo, that the accused had come to fetch the deceased. P.W.6 was in the company of another lady by the name of Anna when Tefo told her that the accused had gone away with the deceased. In her evidence, P.W.6 told the court that she was surprised that the accused had gone away with the deceased who was not wearing clean clothes on the day in question. When she (P.W.6) last saw her, in the

morning of that day, the deceased was wearing brown sandals, a pair of black jeans, a green skipper with long sleeves, a white rosary and a yellowish dress with black spots. The dress was muddy and, therefore, dirty as the deceased had put it on whilst redecorating the house with mud on the previous day.

In any way, P.W.6 told the court that, after Tefo had informed her that the deceased had gone away with the accused, she decided to go and buy tobacco at the shops in T.Y. town. She was still in the company of Anna. On their way to town, P.W.6 asked P.W.1, who was working next to the road, whether he had not seen the deceased. In reply P.W.1 told her that he had seen the deceased and the accused going in the direction towards T.Y. town. Thereafter, P.W.6 continued on her way to the shops, in town, bought the tobacco and returned home. On her way back home, she called at a certain house from where she noticed Masilonyane and the accused walking together in the direction towards T.Y. town. According to P.W.6, the accused was wearing a “*tiger*” blanket, a brown balaclava hat, white gumboots and holding a “*lebetlela*” (timber) stick. When she asked them where they were going to, Masilonyane told P.W.6 that he was going to show the accused where his wife was working, in town. He told P.W.6 to wait for them where she was as they would soon return from town. According to her P.W.6 did sit down and waited for the accused and Masilonyane to return from town.

Eventually Masilonyane and the accused did return from town. When they arrived where she had been waiting for them, Masilonyane first bought a scale of beer from the house next to which she was seated and drank it.

Thereafter, P.W.6, the accused and Masilonyane walked together to the village of Lithabaneng ha Kepi. They went to P.W.6's home where the accused asked her something which had to do with the Sesotho custom. She no longer remembered what it was. According to her, P.W.6 did not reply to the accused's question. Instead, she asked him the whereabouts of the deceased who, she learned, had left home with him, during the day. The accused told P.W.6 that he had not even seen the deceased on that day. In fact he had come to Lithabaneng ha Kepi to fetch her. Masilonyane was also quick to tell P.W.6 to leave the accused alone because, at the time she saw them going to town, the latter had just arrived in the village.

When she heard the accused denying knowledge of the deceased's whereabouts, P.W.6 left him and Masilonyane at her home and went to fetch Tefo. In the presence of the accused and Masilonyane P.W.6 told Tefo that the former was denying to have been with the deceased during that day. In reply Tefo said if the accused was then denying it, he did not know what to say. Tefo then left P.W.6's home and returned to his home. P.W.6 told the accused that, since Tefo had told her that he had seen him going away with the deceased, he (accused) and Tefo would have to produce her (deceased). Thereafter, Masilonyane said to the accused: "let us go because you know nothing about that child (deceased)." They then left P.W.6's home and went to the home of Masilonyane. It was then at dusk.

Again, Tefo was not called to testify as a witness, in this trial. What he was alleged to have said, was not of assistance to the court.

After the accused and Masilonyane had left her home, P.W.6 proceeded to the home of P.W.2 who was a personal friend of the deceased. When she asked her about the deceased, P.W.2 told P.W.6 what she had already said before this court. P.W.6 then returned to Masilonyane whom she found in his house in the company of his wife and their son, called Khosi. When she reported to him that P.W.2 also confirmed that the accused had been with the deceased, during the day, Masilonyane told P.W.6 to stop causing troubles because that child (deceased) would appear from Makau's place. However, when P.W.6 asked him what he meant by that, Masilonyane kept quiet. Instead, it was Masilonyane's wife who replied and said Masilonyane was correct in saying the deceased would appear from Makau's place because there were many boys there during the day. When P.W.6 asked her what she meant by that, Masilonyane's wife replied that she said so because the deceased was in the habit of going to the home of Makau. Masilonyane's son, Khosi, also replied and said the boys who were at Makau's place during the day were the ones who had taken away the deceased because they were boys from the mountain, presumably from the circumcision school.

Khosi was, again, not called to testify as a witness, in this trial. What he allegedly said was, therefore, of no assistance to the court.

According to P.W.6, there were two people by the name of Makau, in the village. From Masilonyane's place, she proceeded to the home of Makau, who was her next door neighbour, and found him in, when she reported to him what Masilonyane had said, Makau was surprised as to why Masilonyane

could have said the deceased would appear from his home. He did not even know that the deceased had gone missing from her home, on the day in question.

From Makau's home, P.W.6 proceeded to the chief's place and reported the disappearance of the deceased. The chief instructed her to go and report the matter to members of the crime prevention unit, in the village. She complied by going and reporting the disappearance of the deceased to P.W.7 and some of the crime prevention unit members *viz.* Setsibi Seseli and 'Nyane whose surname she did not know. The evidence of P.W.6 corroborated, in material respects, that of P.W.7 as to what happened after she had reported the disappearance of the deceased to him and the other members of the crime prevention unit.

In her evidence, P.W.6 told the court that whilst the search for the whereabouts of the deceased was being carried out by members of the crime prevention unit, she too was looking for her missing child (deceased). She called at the homes of all the people she knew the deceased used to visit in the village and even reported the matter to the police, but all in vain. Eventually she learned that her daughter (deceased) had been found dead at the cliffs of a mountain behind the village of Lithabaneng ha Kepi. She herself was not present when the dead body of the deceased was allegedly found at the cliffs. Even at the mortuary she was prevented by the mortuary people from seeing the dead body of the deceased. She was not allowed to see the corpse of the deceased when it was brought home for the burial. According to P.W.6 she was only told that some of the clothes, the deceased

had been wearing, on the day she last saw her alive, had been buried with her whilst others were in the possession of the police at T.Y. police station, presumably exh."1" and the sandals.

P.W.6 confirmed the evidence that one day after the deceased had been buried she returned home, from where she had gone to remove a mourning cloth, when P.W.5 handed to her a white broken rosary with the explanation that she had taken it behind her house where Masilonyane had thrown it away. P.W.6 told the court that she did not know that rosary which definitely did not belong to her late daughter, the deceased. She confirmed, however, that she subsequently took the rosary to T.Y. police station, together with P.W.5. Her reason, therefor, was merely to enable the police to interrogate Masilonyane about the rosary which he had allegedly thrown behind her house.

The evidence of P.W.8, 'Majulia Makau, was that she was 36 years old married woman. She lived at Lithabaneng ha Kepi, in the district of Berea. She knew the accused and P.W.6 who was her neighbour. She had a daughter who was a friend of the deceased. Her daughter and the deceased often visited each other. She, therefore, knew the deceased very well, in her life time.

P.W.8 recalled that, one day in September 1996 at about 6:00p.m. she learned from P.W.6 that the deceased had gone missing from her home. She assured the court that she had not, on the day in question, seen the deceased

at her home or, for that matter, anywhere else. However, on the evening of the day preceding the one on which P.W.6 reported the disappearance of her daughter, P.W.8 had seen the deceased at her home. The deceased, who was wearing a pair of black jeans and a green skipper, was, as usual, visiting her daughter. The two were sitting and chatting together, within her yard. That was the last time P.W.8 saw the deceased alive.

P.W.8 went on to testify that one Saturday, in October 1996, she was walking along the tarred public road that passed through her home village when she heard an alarm being raised. As a result of the alarm she proceeded to the cliffs behind the village. On arrival at the cliffs, P.W.8 found a large crowd of people already gathered around what appeared to be a human skeleton. She and many other people were not allowed to go close to that skeleton. They crowded on top of the rocks from where she (P.W.8) could only have a glance at the skeleton. To her observation the skull was lying separate from the main skeleton. A dress and a skipper were placed on the skeleton just to cover it. i.e the skeleton was not wearing those clothes. There was also a pair of brown sandals next to the skeleton. According to her, P.W.8 identified the dress, the skipper and the pair of sandals as the property of the deceased. She assumed, therefore, that the human skeleton she saw at the cliffs behind her home village was that of the deceased (Ntšiuoa).

P.W.8 told the court that on the Monday following the Saturday on which the skeleton of the deceased had been found, at the cliffs behind her village, she accompanied P.W.6 to T.Y. police station where the latter had

been required to report herself. Initially P.W.8 told the court that she herself did not make a statement at the police station. Only P.W.6 did. However, when she was shown a document which had her signature on it, P.W.8 conceded that the document was the statement she had made at the police station, on the Monday in question.

In his defence the accused testified, from the witness box, as D.W.1 and told the court that he lived at Likotopong ha Andreas, in the district of Maseru. The deceased was the daughter of P.W.6 who was his paternal aunt. He, therefore, knew the deceased, in her life time.

D.W.1 confirmed the evidence that, one day in 1996, he and his mother left their home and went to the village of Lithabaneng ha Kepi at T.Y. in the district of Berea. According to D.W.1 they did so at the request of his paternal uncle, Masilonyane. He denied, therefore, the evidence of P.W.6 that it was at the request of the chief of Lithabaneng ha Kepi. According to him, on arrival at Lithabaneng D.W.1 and his mother went to the home of Masilonyane and not to the home of P.W.6 as she (P.W.6) had claimed.

In any event D.W.1 confirmed that, after he and his mother had come to Lithabaneng, a family meeting was held. He and the deceased were confronted about the pregnancy of the latter. D.W.1 confirmed that at the meeting the deceased claimed to have been made pregnant by him. He admitted that he was, indeed, the person responsible for the pregnancy of the deceased whom he was prepared to take as a wife. The meeting agreed that

the deceased and D.W.1 should get married to each other. As D.W.1's mother claimed to have no money, at the time, they could not return home with the deceased. It was, however, agreed that D.W.1 would come to fetch the deceased when money was available.

It is to be remembered, that, in the evidence of P.W.6, about three (3) months after she had left the deceased at Likotopong and returned to Lithabaneng ha Kepi, D.W.1's mother brought her home. The deceased was then pregnant. D.W.1's mother reported to P.W.6 that her daughter (deceased) had been made pregnant by some unnamed village men whilst the deceased said it was the accused who was responsible for her pregnancy. When D.W.1's mother returned home, there was, therefore, unresolved dispute between her and P.W.6 about who had made the deceased pregnant. According to her, P.W.6 had to ask for help from her chief who intervened by writing a letter to the chief of Likotopong requesting him to send his subjects *viz.* D.W.1 and his mother back to Lithabaneng so that the unresolved dispute about the pregnancy of the deceased could be resolved by the two families.

If it were Masilonyane who had sent for D.W.1's mother to return to Lithabaneng, together with D.W.1, as he (D.W.1) wished the court to believe, I find it incredible that P.W.6 could have deceived the court by saying it was through the intervention of her chief and not Masilonyane, who was admittedly her own brother, that D.W.1's mother returned to Lithabaneng, together with D.W.1 himself, to have the unresolved dispute

about the pregnancy of the deceased settled by a family meeting. I am inclined to accept as the truth the evidence of P.W.6 and reject as false D.W.1's version, on this point.

Be that as it may, D.W.1 went on to tell the court that one day, in September 1996, he left his home, at Likotopong, and went to Lithabaneng ha Kepi, intending to abduct the deceased. He arrived at Lithabaneng ha Kepi at about 2:30p.m and went straight to the home of his paternal uncle, Masilonyane. He found him in. He conceded that he was wearing a “tiger” blanket and white gumboots on that day. From the home of Masilonyane’s place he could see that there were no people at P.W.6's home which was nearby. The two homes were separated just by a fence. After a while he and Masilonyane left for T.Y. town where the latter wanted to show him the work place of his wife. On their way to T.Y. town they did not meet anybody known to him (D.W.1). They eventually reached the place where the wife of Masilonyane was working, in town. They remained with her till she knocked off duty. They then returned with her to Masilonyane’s home in the village of Lithabaneng. Again, on their way to Masilonyane’s home they did not meet anybody known to D.W.1.

D.W.1 told the court that, whilst he was with Masilonyane, his wife and their children at their home, P.W.6 came and asked him the whereabouts of the deceased. She said the deceased had allegedly been seen with a young man whom she thought was him (D.W.1). In reply D.W.1 told P.W.6 that he did not know the whereabouts of the deceased. He had not seen the deceased

on that day and could not, therefore, have been the young man allegedly seen with her. He had, in fact, come to fetch the deceased. Thereafter, P.W.6 left Masilonyane's home. However, later on the night of the same day, Masilonyane came and knocked at the door of the house in which he (D.W.1) and Tefo were sleeping. Masilonyane told him that there were some people outside the house. They were in the company of P.W.6. According to P.W.6 the deceased had disappeared from her home after she had allegedly been seen going with him during the day. He (D.W.1) should, therefore, wake up and go with him (Masilonyane) to those people. D.W.1 complied. On arrival where they were waiting outside the house, one of those people asked Masilonyane whether he (D.W.1) was the one. When Masilonyane replied in the affirmative, those people started asking him (D.W.1) the whereabouts of the deceased with whom he had allegedly been going, during the day. He told them he had never been with the deceased during the day and did not, therefore, know her whereabouts. Eventually those people and P.W.6, who had been with them all the time, left Masilonyane's place. Thereafter, D.W.1 returned to the house in which he had been sleeping.

It is significant to observe that the evidence of P.W.1 that he had seen the deceased going in the company of D.W.1 was corroborated by that of P.W.2, P.W.3, P.W.4 and P.W.7. Notwithstanding D.W.1's denial that he was seen going in the company of the deceased, on the day in question, the evidence is simply overwhelming against him. There is not the slightest

doubt in my mind that D.W.1 was not being honest with the court in his denial that he was seen going with the deceased, on the day in question. I am prepared, therefore, to accept as the truth the evidence of P.W.1 corroborated by P.W.2, P.W.3, P.W.4 and P.W.7 and reject as false the uncorroborated version of D.W.1, on this point.

Continuing with his evidence, D.W.1 admitted that, in the morning of the following day, he and Masilonyane were escorted to the chief's place. He denied, however, that P.W.7 was the person who escorted them to the Chief's place. At the chief's place, he and Masilonyane were again asked the whereabouts of the deceased. When they denied knowledge of it, Masilonyane was released to return to his home. He (D.W.1) himself was escorted, by a group of men, to T.Y. police station, where he was detained for the night.

D.W.1 and Masilonyane were both suspects, at the time. I find it incredible that only D.W.1 could have been escorted to the police station. In my view, the evidence of P.W.7 that he escorted both D.W.1 and Masilonyane to the police station is more probable than D.W.1's story that he alone was escorted to the police station.

Be that as it may D.W.1 told the court that on the following day he was released on the ground that there was no charge to be preferred against him. Upon his release, from T.Y. police station, D.W.1 went to Masilonyane's home and reported that he was returning to his home at Likotopong.

Masilonyane then offered to accompany him to Likotopong, so that he could explain to his (D.W.1's) mother, what disappointment he had received at Lithabaneng ha Kepi. D.W.1 accordingly returned home, accompanied by Masilonyane.

In any event, D.W.1 told the court that about two (2) weeks after he had returned home from Lithabaneng, he abducted, and got married to a girl called Moliehi with whom they subsequently got two (2) children. According to D.W.1, he was in love with the deceased at the same time that he was in love with Moliehi. When he learned, presumably from P.W.6, that the deceased had allegedly been going with a certain young man on the day she went missing from her home, D.W.1 assumed that the deceased had eloped with that young man. He, therefore, decided to take Moliehi as his wife. However, after he and Moliehe had got married, D.W.1 only heard over the radio that the deceased had been found dead.

D.W.1 went on to testify that about one month after he had returned home, in the company of Masilonyane, the police came to his home at Likotopong. They did not find him. However, they left a message that on his arrival at home he should report himself at Simione police post. On his return home, later on the day on which the police had been looking for him, D.W.1 did receive, from his mother, the message. Early in the morning of the following day, he accordingly went and reported himself at Simione police post. He was detained by the police. Later on the same day, the police from T.Y. police station arrived, in a police vehicle. They took him back to

T.Y. police station, in the district of Berea.

On arrival at T.Y. police station, D.W.1 found Masilonyane already in police detention. As it has been stated, earlier in the judgment, it was not clear, from the evidence of D.W.1, when Masilonyane had returned to his home, Lithabaneng, from Likotopong. In any event D.W.1 told the court that he was confronted with Masilonyane in whose presence he (D.W.1) was again asked the whereabouts of the deceased. When he denied knowledge of the whereabouts of the deceased, the police informed D.W.1 that Masilonyane had already told them that he and him (D.W.1) had killed the deceased. He denied it. The police then started beating him up with a black object he could not describe. As they were beating him up, the police said he should admit that he and Masilonyane had killed the deceased. To save his skin, D.W.1 eventually admitted that he and Masilonyane had killed the deceased. They were then asked whether they could go with the police and point out the spot where they had killed the deceased. According to him, D.W.1 told the police that he could not take the police to that place because he did not know it. However, Masilonyane said he could take the police to the place where he would point out the spot. D.W.1 and Masilonyane were then locked up in the cell together with some other people he (D.W.1) did not know. On the following day, Masilonyane did take the police and him (D.W.1) to some cliffs where he pointed out the spot he said was the one at which the deceased was killed. According to D.W.1, that was not in a cave. It was an open place where there was grass. He observed that the spot was fatty indicating that a dead body could have been left there for some time.

From the cliffs D.W.1, Masilonyane and the police, returned to the police station. Masilonyane and D.W.1 were told that they would be taken to the Magistrate court, to repeat before the Magistrate the statements they had already made to the police about the death of the deceased. According to him, D.W.1 was taken into the office of a lady Magistrate before whom he made a statement. He did not know what had happened to that statement.

It is significant to mention that, at this trial, no confession, allegedly made by D.W.1, was handed in as an exhibit. It can, therefore, be assumed that the statement, D.W.1 allegedly made before the magistrate, was found to amount to no confession.

Be that as it may, D.W.1 told the court that from the office of the lady Magistrate, he was taken into the court room from where another Magistrate remanded him into custody. He was taken to prison but later released on bail.

In his evidence, D.W.1 told the court that he had sustained weals on his body, as a result of the assault which had been perpetrated on him by the police, at T.Y. police station. He did not, however, report the matter to any of the senior police officers because he did not know who of the police officers he saw, at T.Y. police station, was senior or junior. To him they all appeared to be the same. However, the prison officer who received him at the prison, did ask him whether or not he had any injuries on him. In reply D.W.1 told him that he had been assaulted by T.Y. police officers and sustained injuries, as a result. He was then told to remove the clothes he had

been wearing so that the prison officer could see if he had, indeed, injuries on him. According to him, D.W.1 did remove the clothes he had been wearing and the prison officer saw the weals on his body. Nonetheless, the prison officer accepted him into prison without saying he (D.W.1) should first be sent to a doctor for medical examination. Again, after he had been released on bail, D.W.1 did not go to see a doctor for medical examination and treatment because his injuries had completely healed.

I must say it is a well known practice in our prisons that before a person who is remanded into custody can be received at the prison, the prison officers satisfy themselves that such person has not sustained injuries, as a result of unlawful assaults on him. If it is found that the person has sustained injuries, as a result of unlawful assault, perpetrated on him outside the prison, the prison officer does not receive such person. Instead he requires that such person be first sent to a doctor for medical examination. If it were true, therefore, that when he came to prison, D.W.1 was found to have sustained injuries, as a result of the assault perpetrated on him outside the prison, the prison officer would have demanded that he should be taken to a doctor for medical examination, before he could accept him into prison.

In his own mouth D.W.1 told the court that on arrival at the prison he was examined and found to have sustained injuries by the prison officer who received him. He was, however, received into prison without first being sent to see a doctor for medical examination. I can think of no good reasons why D.W.1 would have been given a treatment which was quite different

from the normal practice if, indeed, he had injuries on him, on arrival at the prison. In my view, D.W.1 was simply not being honest with the court in his evidence that he had been assaulted and had sustained injuries on him on arrival at the prison.

Considering the evidence as a whole, I find that the deceased did go missing from her home on the day he was seen going with the accused, in September 1996. There is, however, no conclusion evidence that the dead body, on which the medical doctor conducted the post mortem examination after it had been found at the cliffs, was that of the deceased. The clothes by which the dead body was allegedly identified as that of the deceased were not handed in as exhibits, in this trial. Neither the chief nor the people he was allegedly heard saying they identified the clothes as the property of the deceased were not called to testified as witnesses, in this trial. P.W.8 who also told the court that he identified the clothes as belonging to the deceased and, therefore, assumed that the dead body, found at the cliffs, was that of the deceased, testified that she had only a glance at them and the dead body. In her evidence, she could not have a clear vision as she was standing amongst a large crowd of people and they were all not allowed to go close to where the dead body and the clothes were.

According to exh. "A" the medical doctor performed a post-mortem examination on a dead body which was mummified and decomposed beyond recognition. Notwithstanding that, the dead body was identified as being that of the deceased by P.W.9 who, however, gave evidence and told the court,

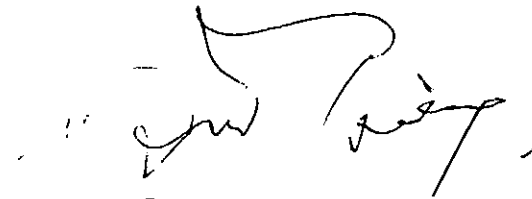
on oath, that he never identified the dead body as being that of the deceased. Indeed, he told the court that he did not even attend the post-mortem examination. P.W.6, the deceased's own mother, who could perhaps, have given some light as to the identification of the dead body as being that of her own daughter, told the court that she was never, at any time, allowed to see the dead body that had allegedly been found at the cliffs, subsequently examined by the medical doctor at the mortuary of T.Y. government hospital and buried at her home.

Even if I were wrong and it is held that the dead body found at the cliffs and subsequently examined by the medical doctor, at the mortuary, was that of the deceased, there was only circumstantial evidence that the accused was the person who had killed her simply because, on the day she admittedly disappeared from her home, the deceased was seen walking with the accused. From the fact that he had been seen in her company, the only inference to be drawn could not, in my view, be that the accused killed the deceased. The possibility that her death might have come about by some other ways could not be ruled out. However, the accused could have thought that, because the deceased had died in a mysterious way, if he admitted to have been in her company, on the day in question, it would be inferred that he was responsible for her death.

By and large, I have serious doubts that, on the evidence adduced before this court, it can safely be said it has been proved, beyond reasonable doubt, that the accused committed the offence against which he stands

charged. In our law, the benefit of such doubt must always be given to the accused person. I accordingly give the accused the benefit of my doubt, find him not guilty and discharged.

My Assessor agrees with this finding.

A handwritten signature in black ink, appearing to read 'B.K. Molai', written in a cursive style.

B.K. MOLAI

JUDGE

For Crown : Miss Makoko
For Defence: Mr. Molefi