189/59

IN THE SUPREME COURT OF SOUTH AFRICA

(Appellate Division)

In the matter betwen:-

SHADRACK MATTHEWS and 11 OTHERS Appellants

and

R E G I N A Respondent

Coram: Schreiner, Van Blerk et Ogilvie Thompson, JJ.A.

Heard:11th and 14th December,1959. Delivered:17th December, 1959.

J U D G M E N T

SCHREINER J.A. :- The appellants and two other persons were jointly tried in the Witwatersrand Local Division on a charge of murder before De WET J. and assessors. I shall refer to the appellants by the numbers used at the trial. Of the fourteen persons who were tried two (Nos. 8 and 13) were acquitted. The remaining 12, who are the appellants, were convicted. Nos. 1 and 12 were sentenced to death, Nos. 7 and 15 to fifteen years imprisonment and the remaining eight to twelve years imprisonment. Leave to appeal to this Court was granted by the trial judge.

The evidence established that between 12 noon and 2 p.m. on the 13th January 1958 a group of persons, eight or thereabouts in number, entered a yard adjoining the house of one Ben Mchileba at the corner of Rooth street and Second

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avenue, Alexandra Township, Johannesburg. From a room in the house they forcibly removed one John Monake, also known as Maklatsi. He was taken in an awaiting motor car to a place at the junction of Selborne street and Twelfth avenue in the same township, where No.1 appellant's office was situated and where he conducted a rent collecting business. Two days later Maklatsi's body was found beside the Johannesburg - Pretoria road about nine miles from the township. There were four bullet wounds in the head and the probability is that the murder had been carried out where the body was found and that it had taken place on the evening or night of the day on which the deceased was kidnapped. There is no doubt that the kidnappers were the persons, or among the persons, responsible for the murder.

This bare statement of facts reveals that the kidnapping was part of a prearranged plan to deal in a violent and illegal way with the deceased, whether or not the fatal conclusion was envisaged at every stage as being inevitable. The evidence makes it clear that the enterprise was linked up with the rivalry between two groups of gangs referred to as the Spoilers and the Msomis. The Crown sought to explain the crime on the basis that the appellants were members of the Msomi gang, that on the 28th December 1957 the motor car of appellant No.1 had been burned by members of the Spoilers gang, including

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one bearing the nickname of Badman, that on the night of the 12th/13th January 1958 a bioscope at which several members of the Msomis were employed was burned down and that the deceased was, or was believed by the Msomis to be, a Spoiler who would be able to furnish information as to the whereabouts of Badman.

The principal Crown evidence related to the happenings on the day of the murder and was directed to showing that each one of the appellants was a member of the party that kidnapped the deceased and subsequently held him apparently for questioning before he was put to death. But the evidence was also directed to showing as an inference from their conduct that the appellants were members of the Msomi gang, and from happenings in the township over a considerable period, both before and after the murder, that the Msomi gang, ~~was~~ formed it may be to combat but later rivalling, if not outdistancing, the Spoilers in criminality, engaged in acts of violence including robbery, extortion by the extraction of so-called "protection money" and murder, commonly carried out in broad daylight, with reliance for impunity not so much upon stealth as upon terrorisation and the bribery of members of the police force.

The trial court was satisfied that the appellants were members of the Msomi gang and that they took part in the kidnapping and holding of the deceased on the day of

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his death for which accordingly they were responsible.

The appeal was argued on two main lines. It was contended in the first place that inadmissible and prejudicial evidence had been admitted, and in the second place that even including that evidence the complicity of the appellants had not in each case been established beyond reasonable doubt.

I shall deal first with the contention that the evidence in question was inadmissible. It was rightly conceded on behalf of the appellants that, as the Crown was entitled to prove a probable motive in order to connect the appellants with the crime, it could lead evidence (a) to show the rivalry between the Msomis and the Spoilers and (b) to show the appellants' membership of the Msomi gang. It was also rightly conceded that evidence of acts of violence by Msomis against Spoilers and vice versa on other occasions would be admissible and that membership of the Msomi gang could be proved not only directly but by evidence of acts from which membership could be inferred. Evidence relevant to these issues would admittedly not be rendered inadmissible by the fact that it involved proof of the commission of crimes other than the crime charged.

But it was contended that evidence of acts of violence which did not tend to prove inter-gang hostility/.....

-tility or membership by the appellants of the Mscmi gang was not admissible. We were not referred in this connection to details of the evidence objected to but certain categories were mentioned which it was said embodied evidence which was open to objection, as amounting to a general description of the criminality of the Msomis and consequently of the appellants.

Some criticism was indeed directed to specific features of the cross-examination by the Crown of individual appellants, as tending to show the commission of crimes not charged. No. 1 appellant for instance, who testified that his rent collecting business was a large one, was cross-examined as to whether he had paid income tax and he said that he had not. Objection was taken to his being pressed as to why he had not done so and as to whether he had rendered returns of income. The evidence was in some degree related to the appellant's credibility and also to the amount and sources of his income, which could bear upon his disputed membership of the Msomi gang. The cross-examination was not in my view open to objection. In so far as any specific evidence or line of cross-examination affected a particular appellant and was open to objection it could of course have a bearing upon the case of that appellant on appeal. But the line of attack upon the verdicts with which I am presently concerned affects all the appellants alike and challenges the admissibility of the evidence about

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the general behaviour of the Msomi gang.

The evidence of this kind came principally from four witnesses. Two of these, David Mokwena and James Bamba, had themselves been Msomis, and they described inter alia assaults and robberies committed upon the public and demands openly made for so-called "protection fees" by Msomis generally and not by the appellants in particular. Another witness was John Nekgoe, who at the time conducted a restaurant near to the office of appellant No.1. In addition to giving evidence of what he saw on the day of the kidnapping, he described what he said regularly happened over a period - that members of the Msomi gang used to congregate at the office of ~~kkmx~~ Appellant No.1 and then disperse in groups in different directions. They used to assault people getting off busses and take money from them. They often patronised his restaurant and some of them openly produced pistols there. The fourth of these witnesses, Coetzee, an official of the Peri-Urban Health Board, who in 1958 had duties in Alexandra Township, spoke of receiving from time to time complaints of robbery, extortion and murder. The complainants were frequently in a state of fear and were reluctant to report to the police at Wynberg, the nearest police station, where little attention seemed to be paid to them. Coetzee kept the office of No.1 appellant under observation during the period May to August 1958 which was

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before the appellants had been arrested. He saw numbers of natives from time to time going into the office and into the yard at the back. Then groups of 10 to 15 would go off from the office in different directions and they would stop passers-by and would search and assault them.

The contention that this type of evidence was inadmissible rests on the principle that the only proper subjects for investigation at a trial are the facts in issue and the facts relevant to the facts in issue and that these fields do not extend to facts that are only related to the facts in issue because of general similarity. The problems connected with the admissibility of evidence of "similar but unconnected facts" are often difficult. In Rex v. Katz (1946 A.D.71), WATERMEYER C.J. in giving this Court's judgment, at page 79 rejected the view that similar fact evidence must be brought within one or other of a list of categories before it becomes admissible, and stated that the examples given by LORD HERSCHELL in Makin's case were mere illustrations of relevancy and were not intended to be exhaustive. The exclusionary rules, said the learned Chief Justice, only operates to exclude similar fact evidence,"when such evidence is solely relevant to show that the accused, by reason of his bad character or his commission of other crimes, had a criminal propensity and was, therefore, -

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likely to commit the crime which was charged. If, for any other reason, it is relevant to the question before the Court it is admissible." There have been later discussions in this Court of the same subject (see Regina v. Roets, 1954(3)S.A.512 at page 520; Regina v. D., 1958(4)S.A.364 at pages 368 and 369; Regina v. Solomons, 1959(2)S.A.352 at pages 361 and 362) but none which directly throws light upon the application of the principles to facts like the present.

Relevancy is based upon a blend of logic and experience lying outside the law. The law starts with this practical or common sense relevancy and then adds material to it or, more commonly, excludes material from it, the resultant being what is legally relevant and therefore admissible. In the particular field with which we are dealing Katz's case is authority for asking oneself whether the questioned evidence is only, in common sense, relevant to the propensity of the appellants to commit crimes of violence, with the impermissible deduction that they for that reason were more likely to have committed the crime charged, or whether there is any other reason which, fairly considered, supports the relevancy of the evidence.

Now in the first place it is to be observed that the Crown case is essentially that there was concerted action by persons who as a group, the Msomi gang, had a

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motive to seize the deceased and, if circumstances so indicated, to kill him. It was contended, in effect, that, gang rivalry being established by proof of inter-gang fighting, the issue of motive was then exhausted and evidence could not properly be led of gang violence not directed against the other gang. I do not agree with this contention. Wherever it is relevant to prove motive, in order to prove that an act was done, it must be relevant to show the full strength of the motive since, while the commission of the crime by the accused might be explainable by the presence in any measure of a particular motive, it might be more readily explained, and therefore be more probable, if the motive were present in a more powerful form. Rivalry between competing organisations may lead to members of one being glad to hear of harm to members of the other and, in different degrees, to their being ready to contribute to that harm. But it may well require an analysis of the nature of the organisations and the nature of the competition between them in order to appreciate the strength of the motive to injure and, consequently, the lengths to which the motive could carry the persons entertaining it. If one takes the rivalry of competing football teams, the mild form of enmity possibly existing between its members could hardly explain or render probable the murder of the captain of one team by the members of the other. But in gangs of the kind referred to in the evidence it

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is clear that there was in truth a deep-seated competition in violence which could provide a motive for the most heinous crimes.

It may be that social science can more accurately explain the frustrations underlying the development of such gangs as the Spoilers and the Msomis, but it is at least clear that economic factors are of great importance. One way of gaining a living is by robbery and extortion and, if a group of ~~oppressors~~ persons living by those means flourishes in favourable surroundings, it is likely that other groups will arise to share in the evil harvest which can be reaped by open violence where the ~~employment~~ enforcement of law and order is insufficient. The peaceful citizen is physically deprived of his goods and money, or is forced by threats of harm and promises of protection to buy himself temporary immunity. In order to estimate properly the strength of the motive that might lead ~~to~~ the members of one gang to murder a member of another, it is clearly relevant to consider the scope of the gang operations and the extent to which it might render probable the resort to extreme violence in the furtherance of gang interests. To understand the nature and depth of their rivalry there had to be an appreciation of the fact that the strength of each gang depended ultimately on its terrorising the public more effectively than its competitors. And to that end evidence of the Msomi gang outrages could properly be adduced.

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It was submitted that to permit evidence of crimes by unspecified members of the Msomi gang was to make one man responsible for the acts of another. But once the Crown seeks to establish concerted action the evidence of acts and executive statements by various persons, whether accused or not, may properly be considered in order to ascertain whether after correlation they tend to support the conclusion that there was the concerted action alleged. The question was referred to in Regina v. Mayet (1957(1) S.A.492) where the earlier cases in this Court were cited. Reference may also usefully be made to the remarks of CLAYDEN J. in International Tobacco Company (S.A.) v. United Tobacco Co. (1955 (2) S.A. 1 at page 15. The case was a civil one for damages arising out of certain methods used in the course of commercial competition. A question having arisen as to the admissibility of certain evidence the learned trial judge said, "Normally of course that X had done acts of a certain nature could not go to show that Y was likely to do them. But if persons are shown to be engaged in a common purpose and to be conferring on the means to be used, or adopting the means used by each other, to bring about that purpose, what is proved to be done by the one may help to show that evidence that it was done by the other is acceptable." As an exposition of what in certain circumstances may be a legitimate ground of inference, I agree with this statement, which supports the view that, given the Crown's case that the crime was committed by the Msomi gang out of revenge or to further their struggle against the

Spoilers, evidence was admissible of conduct by Msomis other than the appellants, to show that the evidence that the appellants committed the crime charged was acceptable.

In this connection it is interesting to note the American practice, in robbery cases, of admitting evidence of other robberies in order to show that the one charged was committed in furtherance of a conspiracy to commit a series of criminal acts and was part of the accused's scheme of conduct (42 A.L.R. (2nd series),.at pp. 869 et seq). It is, however, not necessary in this case to decide whether this wide view of relevancy accords with our law or whether, if it does, it would involve undue extension to apply it to the present facts.

The contention that the evidence was inadmissible was also presented in an alternative form. Assuming it to be strictly admissible, counsel argued that its prejudicial effect was such as to outweigh its legitimate use to establish the nature and strength of the probable motive for the killing. Consequently, it was contended, the trial judge should, by appropriate intimation to the prosecutor or otherwise, have prevented the evidence from being brought to the notice of the assessors, who formed the majority of the triers of fact.

It was suggested in R. v. Roets, loc. cit., that this way of meeting a difficult situation might be more appropriate to jury than to non-jury trials, but, however that may be, the legitimate probative force of the evidence in this case was considerable and any prejudicial effect it might have could not be said to be "out of proportion to its true evidential value".

The alternative form of the argument can, therefore, not be upheld.

For the above reasons I conclude that the appellants' first contention fails and that the evidence of criminal violence on the part of members of the Msomi gang on other occasions was admissible and was properly taken into account by the trial court.

I turn now to the cases of the individual appellants.

Against Appellant No. 1 there is principally the evidence of Anna, the wife of the deceased. She said that she was present when No. 1, No.12 and another man named Maxie entered the room where her husband was with the sick owner of the house. Anna admittedly knew No.1 and it ought not to have been possible for her to make a mistake as to his identity. DE WET J. said that she was "a witness who impressed us as being intelligent and accurate in her evidence". She went to the house where her husband was kidnapped in the company of a man named Kadietsa who also gave evidence for the Crown and named No.1 as having been a party to the kidnapping. But the trial court found him to be an unsatisfactory witness who contradicted himself and also gave evidence that differed from what he had said at the preparatory examination. It is clear that the trial court attached very little

importance to his evidence. On appeal it was argued for the appellant that if any weight at all was attributed to his evidence it was too much. I am prepared to assume that this was so. There was other evidence which it was contended went to show that No.1 was not at the scene of the kidnapping. An important Crown witness, Selebogo, who said that his taxi was commandeered to take the kidnappers, or some of them, from the neighbourhood of No.1's office and who brought a number of them back, together with the deceased, told the court that he did not see No. 1 among the persons in his taxi. There was evidence that there was also another car which came from Third Avenue and entered Rooth street soon after Selebogo's taxi had gone past the corner on its way back and there was also evidence that some of the persons who had entered the yard where the kidnapping had taken place had gone round the corner into Third avenue. It is conceivable that No.1 travelled both ways in this other car.

There is also the defence evidence to be considered. There is no doubt upon the evidence that No.1 attended an identification parade at the Wynberg police station soon after 2 p.m. on the day in question. Most of the evidence was vague as to the time of the kidnapping but Selebogo thought it was about 1.30 p.m.. As will appear later Anna had said at the preparatory examination that it was about 2 p.m. It was

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however on evidence that it would not take more than five minutes to travel from the office of No.1 to the Wynberg police station and from the corner of Rooth street and Second avenue to the police station would take substantially less. Conceivably No.1 could have gone straight from the kidnapping to the identification parade. There was also called on behalf of No.1 a female clerk named Florence who worked in his office and who said that she remembered well that on the 13th January 1958 No.1, after fetching money from the bank in the early part of the morning, did not leave the office again until he went off to the identification parade. The day was one on which he paid out the persons entitled to receive rent. Florence said that she had first thought back on the matter just before the trial which was more than 18 months after the murder. The trial judge merely said of her evidence that the court was satisfied that her statement that No.1 did not go out all morning could not be correct. Certainly the reasons she gave for remembering that this was so are not impressive, and there is no good ground for attaching more weight to her evidence than did the trial court.

Then there is the evidence of No.1 himself. He denied that he took part in the kidnapping or the murder and he also denied that he had had any connection with the Msomi gang. The trial judge in his judgment dealt so briefly with the evidence given by the appellants, that it is hardly possible

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to gather from the judgment what the court's reasons were for holding that evidence to be not only unreliable but also untruthful. The point is however made that their professed ignorance of the doings of the Msomi gang is beyond belief. In this I entirely agree with the trial court and this affects the case of No. 1 as well as the cases of the other appellants. No. 1 said that he first heard of the death of the deceased on the 25th April 1958 when he had a conversation with the Crown witness Selebogo. That conversation must be referred to in some detail but the point that is presently important is that it is to me quite incredible that No. 1 first heard of the murder more than three months after it took place. Bearing in mind the rest of the evidence relating to what used to happen in the neighbourhood of No.1's office such persistent ignorance was in my view impossible even if he had had no connection with the Msomis.

Selebogo, the taxi driver whose taxi was used on the day of the kidnapping, gave evidence that on the 25th April 1958 No.1, who was with No.5, approached him at the Tower Garage near Alexandra Township and asked him whether the police had got into touch with him. Selebogo said that they had, and he told No. 1 what he had told the police. He had not disclosed the name of No, 1 to the police as he had not seen him at the kidnapping. No. 1 told him not to disclose the names of any

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of those concerned and said that he had already "destroyed this case at the Wynberg Police Station." The case in question was, according to Selebogo, the case arising out of the murder of Maklatsi. At the invitation of No.1, Selebogo, after privately receiving instructions from the police, went to No.1's attorney and signed a statement which included a passage, which he said was dictated by No.1, to the effect that the police had tried to get him, Selebogo, to implicate No.1 but that he had refused. At the Tower Garage, according to Selebogo, No.1 promised him a firearm with which to shoot any of thefamily of the deceased "if they have anything to say". No.1 also said that if Selebogo did not point out any of "these people" the Msomi Council would not kill him either.

I may interpolate that in connection with the Msomi Council De WET J. asked Selebogo a question about its reputation which it was contended was improperly prejudicial to the appellants. No doubt evidence of reputation is generally hearsay and, if not for some exceptional reason admissible, must be excluded. But De WET J. went on to point out that he was only asking the question in relation to the effect which No.1's remark had on Selebogo, who said that he did regard his life as being in danger.

According to No.1's version it was Selebogo who approached him and told him that he had been to the

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police and had made a statement to them and had told them that he, No. 1,"was not among those people", but that the police had tried to get him to implicate No.1. Thinking that the police were trying to implicate him falsely No.1 then arranged with Selebogo to go to his attorney and make the statement, which was in no part dictated by No. 1.

No. 1 was, curiously enough, not asked what he thought Selebogo was talking about when he opened the conversation, or who he thought "those people" were. There is no doubt, however, that what they were talking about was the murder of the 13th January 1958, and even if it was Selebogo who opened the conversation one would certainly have expected No. 1 to make some enquiry as to what Selebogo was talking about unless he knew a great deal about it.

The trial court was satisfied that Selebogo's evidence was the truth and that No. 1's version was "a tissue of lies". This conclusion was challenged on appeal and it was argued that there were probabilities in favour of No.1's version. It is unnecessary to review the argument in detail. Although counsel was able to point to some elements that support some features of No.1's version, I am left with the strong impression that Selebogo(s account was by far the more probable. I see no reason therefore for disagreeing with the estimate formed by

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the trial court, which heard the evidence given and saw the witnesses.

I return now to the evidence of Anna. This was subjected to a close criticism by counsel for No.1 . He was able to show that in certain respects she had given evidence as of her own knowledge which afterwards turned out to have been told her by the deceased or possibly by someone else. She said at the preparatory examination that the kidnapping took place at about 2 p.m. According to a police witness he saw No.1 at the latter's office at 2 p.m. and summoned him to go to the parade, which he at once did. At the trial Anna denied that she had said at the preparatory examination that the kidnapping was at about 2 p.m. We were pressed by counsel with the acquittal of Nos. 8 and 13 by the trial court, although both had been identified by Anna as having been at the kidnapping. Both were ex-policemen and there was evidence in regard to the movements of one of them which the court thought made it unlikely that he could have been present at the kidnapping. There was no such evidence about the movements of the other. It was contended that it was illogical to acquit Nos. 8 and 13 and to convict No.1.

There is, however, more reason for thinking that Anna could be mistaken about Nos. 8 and 13 than about No.1. For, according to her, No. 1 was one of the three who came into the room and took out the deceased, while she only

claimed to have seen Nos. 8 and 13 outside in the yard. In acquitting Nos. 8 and 13 the trial court apparently had considerable doubt as to whether this should be done, since there was only a "faint" possibility that Anna was mistaken about them. So far as No. 1 was concerned De WET J. said "We are satisfied that it is impossible for Anna to have been mistaken and we are also satisfied that she has not concocted her story." There is no reasonable doubt on the evidence that No. 1 was a leader of the Msomi gang, and it is equally clear that the murder was the work of that gang. He might normally refrain from active participation in the gang's work but the occasion was a special one. The two acts of arson following closely upon each other may well have seemed to him to call for personal intervention by himself. That he maintained the keenest interest in the murder is shown by Selebogo's evidence of the Tower Garage incident. With these supporting considerations it is not possible for this Court to hold that the trial court was wrong in convicting No. 1. His appeal must accordingly be dismissed.

No. 2 appellant was identified by Selebogo as having been in his car on the way to the kidnapping. Selebogo was found by the trial court to have been a reliable witness and a perusal of the record supports this view. No. 2 admittedly lived in the yard of No. 1's house as his tenant and

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he was one of the persons whom Nekgoe, also a reliable witness, used to see at No.1's office. David Mokwena also identified No.2 as having been present in the room in which the deceased was being held after he had been kidnapped. Of Mokwena the trial judge said that he "was obviously a very frightened and a very reluctant witness.....he could have told the court very much more than he did.....but what he did tell the court was the truth." It was, however, pointed out by coursel for the appellants that in a statement made to the police it was recorded that Mokwena said that No. 3 appellant had interrogated the deceased in the room while in his evidence Mokwena said that it was No. 12. There was little room for mistake as No. 3's name was used several times in the statement in this connection. Cross-examined on the point, Mokwena insisted that it was a mistake on the part of the police but the policeman who took the statement was called and said that the statement as recorded was undoubtedly correct, having been read over by Mokwena, before he signed it. This evidence was unfortunately not dealt with by De WET J. and it was obviously of importance in estimating the trustworthiness of Mokwena. The trial court's conclusion that what he stated was the truth was clearly too sweeping. So far, however, as No. 2 ~~xx~~ is concerned his identification by Selebogo, together with the supporting evidence of his association with No. 1, suffices, despite his denial of complicity/.....

-plicity, to justify the trial court's verdict, which cannot be disturbed. His appeal is dismissed.

No. 3 was identified by Anna as having been one of the two men who stood at the door of the room from which the deceased was removed when he was kidnapped. I have dealt with such criticism of Anna's evidence as there is in discussing the appeal of No. 1. No. 3 was admittedly closely associated with No. 1. Despite his denial of having been where Anna says she saw him, there seems to be no room for mistake on her part. Disregarding therefore the identification of No. 3 by Kadietsa and Mokwena the evidence of Anna, supported by No. 3's association with No. 1 suffices to justify the conviction. Nos.3's appeal is dismissed.

No. 4 was identified by Nekgoe as one of the persons whom he saw taking the deceased to the room where he was detained after he had been kidnapped and brought to the corner of 12th Avenue and Selborne street in Selebogo's taxi. No. 4 was also one of the people whom Nekgoe used to see at No. 1's office. Disregarding the evidence of Kadietsa and Mokwena who also implicated No. 4 there is no reason to disagree with the trial court's verdict. No. 4's appeal is dismissed.

No. 5 was identified only by Mokwena and Kadietsa. He was, it is true, with No. 1 when the latter met

Selebogo/.....

Selebogo at the Tower Garage in April 1958, but there was no evidence that he took any part in the conversation. As there was no reliable evidence that he took part in the kidnapping or holding of the deceased he should not have been convicted and his appeal is allowed.

Against No. 6 there is the reliable evidence of Selebogo and Nekgoe that he was one of the kidnapping party. His appeal is dismissed.

No. 7 was identified by Anna as having been at the door of the room from which the deceased was removed. He was also identified by Nekgoe as one of those who took ~~mark~~ the deceased from the taxi to the room near the office of No. 1. No. 7's appeal is dismissed.

No. 9, apart from being identified by Mokwena was stated by Selebogo ~~as~~ to have ~~ing~~ been put in charge of Selebogo's passenger when the latter was turned out of the commandeered taxi. When Selebogo returned No. 9 was still with the passenger. There clearly was no room for mistake on Selebogo's part. It was suggested that Selebogo might have implicated No. 9 because he was also a taxi-driver but the suggestion has nothing to support it and has no inherent plausibility. The appeal of No. 9 is dismissed.

Nos. 10 and 11 are identified by the two self-confessed members of the Msomi gang, Bamba and Mokwena.

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In his judgment De WET J. said that their evidence had been scrutenised with great care on the same basis as the evidence of accomplices. I have, however, pointed out that the important conflict between Mokwena's evidence and his statement to the police on the subject of who questioned the deceased was not, so far as appears from the judgment, closely investigated. In the circumstances it is unsafe to allow the convictions of Nos. 10 and 11 to stand on the evidence of these two witnesses alone. Their appeals are allowed.

No. 12 was identified by Anna as one of the three persons who removed the deceased from the room when he was kidnapped. He was also identified by Nekgoe as one of the men who took the deceased from the taxi to the room where he was held. The appeal of No. 12 is dismissed.

No.14 was also identified by Anna as having been at the place of the kidnapping and Nekgoe said that he saw him helping to remove the deceased from the taxi to the room where he was detained. His appeal is dismissed.

In the result the appeals of Nos.5, 10 and 11 are allowed and their convictions and sentences are set aside. The appeals of Nos.1,2,3,4,6,7,9,12 and 14 are dismissed.

Van Blerk, J.A.
Ogilvie Thompson, J.A.

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