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Judgment  
41, 1964

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

NO.16 of 1964

ON APPEAL FROM THE SUPREME COURT OF  
THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

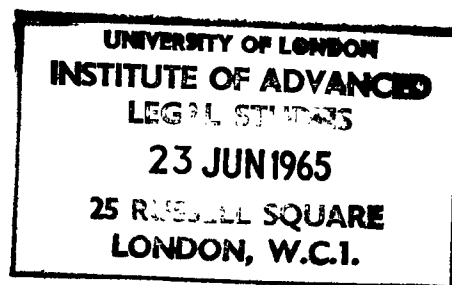
BETWEEN:

CHIU NANG HONG (Defendant) Appellant

and

THE PUBLIC PROSECUTOR (Prosecutor) Respondent

RECORD OF PROCEEDINGS



78859

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IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

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B E T W E E N :-

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(Defendant) Appellant

and

THE PUBLIC PROSECUTOR

(Prosecutor) Respondent

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RECORD OF PROCEEDINGS

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1.

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF  
THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N:

CHIU NANG HONG (Defendant)Appellant

and

THE PUBLIC PROSECUTOR(Prosecutor)Respondent

10

RECORD OF PROCEEDINGS

No. 1

CHARGE

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

Selangor Criminal Trial No. 30/62

(K.L.Magistrate's Court Arrest Case No.3192/62)

PUBLIC PROSECUTOR

vs.

CHIU NANG HONG

In the High  
Court

No. 1

Charge,  
29th October  
1962

20

Chiu Nang Hong, you are charged at the instance of the Public Prosecutor and the charge against you is:-

That you, on 10th May, 1962, at about 11.00 a.m., at 1A, Lorong Parry, Kuala Lumpur, in the District of Kuala Lumpur, in the State of Selangor, committed rape on one Philomena Lim, and thereby committed an

In the High Court

offence punishable under Section 376 of the Penal Code.

No. 1

Dated this 29th day of October, 1962.

Charge  
29th October  
1962  
(contd.)

(Sgd.) HARUN M. HASHIM

(HARUN M. HASHIM)  
Deputy Public Prosecutor,  
Federation of Malaya.

Evidence for Prosecution

No. 2

EVIDENCE OF TAN TONG TECK - P.W.1.

No. 2

Tan Tong Teck,  
P.W.1.  
Examination,  
20th November  
1962

Tuesday, 20th November, 1962  
In Open Court

10

NOTES OF EVIDENCE

Before Ong.J.

Charge read and explained.

Accused claims trial.

Harun Hashim, D.P.P. for Prosecution.

Eugene Lye and M.S. Naidu for defence.

D.P.P. calls -

P.W.1: TAN TONG TECK: affirmed, states in English.

Chemist, Federation of Malaya, of Department of Chemistry, Petaling Jaya. On 15.5.62 at about 12.25 p.m. I received a sealed package from D.S.P. Sudarshain Singh. On opening I found a cotton swab in a test tube.

20

I found seminal stains in the swab from which I isolated spermatozoa.

Ex.P1

I resealed exhibit and returned to D.S.P. on 24.5.62. This is the test tube (Ex.P1).

Cross-examination

Cross-examined: In this instance I did not test the spermatozoa for grouping because I was not requested.

Re-examination: Nil

No. 3EVIDENCE OF SUDARSHAN SINGH - P.W.2.

P.W.2: SUDARSHAN SINGH: affirmed, states in English.

D.S.P., I an Assistant O.C.C.I., Selangor. On 12.5.62 at about 12 noon I was informed of Campbell Road Report 3721/62. I commenced investigation.

10 At the station were the complainant, her husband, A.S.P. Selvanayagam and A.S.P. Mohd. Kassim.

20 After going through report I proceeded to 29 Ipoh Road - a dancing studio - with complainant and D.P.C. 8341. On arrival I met one Mr. Daniel the proprietor of the Dancing School. From 29 Ipoh Road I went to 1A Lorong Parry, Kuala Lumpur travelling via Ipoh Road, Princess Road, Circular Road, Yap Kwan Seng Road, Ampang Road, Jalan Parry. At junction of Jalan Parry and Lorong Parry the car was stopped at request of complainant, Philomena Lim. She looked around the locality and then directed me into Lorong Parry. At the end of the lane, complainant directed me to a house on top of a hill - 1A Lorong Parry - the last house on the road.

We went to the side door, which is on the right if one faces the house from Lorong Parry.

30 We entered by side door. It was shut, I pushed it open and we went in. Complainant directed me to a room in the house, which is third on the left if one enters by side door; it is the end room along the corridor. On entering I saw a male Chinese seated in the hall - Loo Yat Loong - and a female Chinese in the kitchen close to the hall - Wong Mee Kwee - and a Chinese girl was seated on a chair near the front door of the house.

40 I went into the 3rd room with Philomena Lim. When we came out to the hall I saw a cardboard box containing a bed-sheet pointed out to me by Philomena Lim. I took possession of it. (Ex.P2) - Ex. 2 produced.

In the High Court

Evidence for Prosecution

No. 3

Sudarshan Singh  
P.W.2.  
Examination,  
20th November  
1962

In the High  
Court

Evidence for  
Prosecution

No. 3

Sudarshan Singh  
P.W.2.

20th November  
1962

Examination  
(continued)

ExP3

Inside the Bedroom No.3 I found a double bed, with 2 pillows on it, a dressing table, wash-basin with mirror on wall, coat-hanger, round table with 3 chairs, 2 pairs of slippers and a partly used roll of tissue-paper on the dressing table which was very close to the bed. This is the tissue paper (P3).

The door of the bedroom was fitted with a Yale lock. There was no key in the key-hole, but the lock fastens automatically. On the inner side are 2 knobs on the lock - the bigger one to turn for opening door, and the smaller one to prevent opening door with key from outside. The small knob I found to be out of order.

10

Next to the door there is a window and above the window there is an opening about 3" wide which was covered with a piece of zinc plate. Another window faced Lorong Parry - above it another opening was covered similarly.

I examined the house - it contained 6 bedrooms in all - all with double beds etc. Two near the kitchen were used by the servants, whose clothings were inside.

20

The other 4 bedrooms did not then appear to be currently occupied - but they were ready for use. In room No.1, I found 4 persons, 3 men and 1 woman, when we arrived. They were from different places according to what I learned from their identity cards. This room No.1, which is the only one on the right as one enters by side door, there was a space between the top of the side wall and the roof-ceiling - and this space was covered up with sacking and cloth.

30

Ex.P4A to  
P4Z etc.

I phoned for Police Photographer from there- and D.P.C.29995 came. I told him to take a number of photographs. These are they (Ex.P4A to Z etc.)

I then went into the kitchen. There I saw a telephone. In the refrigerator I saw a number of bottles of beer and in the cupboard a large number of bottles of beer. Outside the kitchen, close by, was a fowl house, and alongside it crates of unconsumed bottles of aerated waters. In the open I saw a large number of empty bottles.

40



The house is surrounded by tall trees etc. which concealed the house from the approach road.

In the High Court

Two staircases lead to front door - (vide P4B, C & D).

Evidence for Prosecution

10 on 13.5.62 I arrested Chiu Nang Hong, the accused. On same day (13th) I sent Philomena Lim to Hospital, accompanied by woman-Inspector Thangaletchmi, who brought back to me a test tube and two slides. I handed the test tube (P1) to Chemist (P.W.1). On the 14th I collected wearing apparel from complainant - jeans (P5) blouse (P6), scarf (P7), underpants (P8).

No. 3

Sudarshan Singh  
P.W.2.  
20th November  
1962  
Examination  
(continued)

On 16.5.62 I took Sgt.8559 to Lorong Parry and instructed him to prepare a sketch plan of the house - this is it (Ex.P9 for identification). I now mark the Room No.3 with "X" in red. The Sgt. made another plan showing situation of the house (Ex.P10 for identification).

Ex.P5  
P6  
P7  
P8  
P9  
P10

20 On 17.5.62 at Petaling Jaya Police Station I received 1 champagne glass (Ex.P11) and 2 wine glasses (P12) from complainant.

P11  
P12

On 20.5.62 I went to the house again with the accused and D.P.C.8341 and I went again into Room No.3 with accused.

It was on the 13th that I collected the tissue-paper (P3).

30 Cross-Examined: I see P4L, M, N, O. I see a swing door. Entering by side door, the door of room No.3 is beyond the swing door, but close to it.

Cross-  
Examination

As to P4,0 I see opening of a wall - the opening at window of Room No.2. Ex.P4,0 is taken of inside of Room No.3. Room No.3 has 2 doors - one leading to hall the other into corridor.

This photo now shown to me, I agree, looks like Room No.3 - (D.13 for identification) and this is photo of Room No.3 from outside i.e. from the hall (Ex.D14 for identification).

Ex.D13  
Ex.D14

40 Re-Examined: On P9, the 2 doors of Room No.3 were clearly indicated.

Re-Examination

6.

In the High  
Court

No. 4

EVIDENCE OF WEE HOCK SWEE - P.W.3.

Evidence for  
Prosecution

P.W.3: WEE HOCK SWEE: D.P.C.29995, affirmed,  
states in Malay.

No. 4

Wee Hock Swee  
P.W.3.  
20th November  
1962  
Examination

Police Photographer, Kuala Lumpur.

On 12.5.62 I went to 1A Lorong Parry and there  
I took a number of photographs on instructions of  
P.W.2. These are they (P4).

On 16.5.62 I took 5 more on instructions of  
P.W.2. I produced the negatives of all the  
photographs taken by me (Ex.Pl5).

Ex.Pl5

10

Cross-Examination: Nil.

No. 5

No. 5

EVIDENCE OF BAHARUDIN BIN ZAINAL - P.W.4.

Baharudin bin  
Zainal, P.W.4.  
20th November  
1962  
Examination

P.W.4: BAHARUDIN BIN ZAINAL: Sgt.8559, affirmed,  
states in Malay. Attached to High Street P.S.

On 16.5.62 I went to 1A Lorong Parry and I  
prepared 2 plans - (Ex.P9 & 10 for identification)  
now marked P9 and Pl0.

Cross-Examination: Nil.

20

No. 6

No. 6

EVIDENCE OF GOH CHIN HEE - P.W.5.

Goh Chin Hee  
P.W.5.  
20th November  
1962  
Examination

P.W.5: GOH CHIN HEE: affirmed, states in English.

A.S.P., now O.C.P.D., Sungei Besi.

In May I was in Circular Road, Secret Society  
Branch. On 12.5.62 at 10.45 a.m. a friend Phang  
Meow Test brought a Chinese couple to me - Mr. &  
Mrs. Lee Swee Leong.

I took them to Campbell Road Police Station  
where I received a report from the wife. I  
produce certified copy (Ex.Pl6).

Ex.Pl6

30

Cross-Examination: Reserved.

No. 7

EVIDENCE OF THANGALETCHNI - P.W.6.

P.W.6: THANGALETCHNI: affirmed, states in English.

Woman Inspector, attached to Secret Societies Sub-Branch, Circular Road, Kuala Lumpur.

On 13.5.62 I took Philomena Lim to General Hospital for examination. I handed her to a Lady Medical Officer and from the Lady Medical Officer I received a test tube and 2 slides which I delivered to P.W.2.

10

Cross-Examination: Nil.

In the High Court

Evidence for Prosecution

No. 7

Thangaletchni P.W.6.  
20th November 1962  
Examination

No. 8

EVIDENCE OF PHILOMENA LIM - P.W.7

P.W.7: PHILOMENA LIM: affirmed, states in English:

I am 28. I live at Petaling Jaya. Housewife. Wife of Lee Swee Loong.

I have been married last 9 years.

I have 3 children - eldest is 6, second is 3, last will be 2 in March.

20

I was typist first 4 years of my married life. My husband is Government servant. We lived in Scremban until about 1956 when he was transferred to Kuala Lumpur. Since then I have been housewife the whole time in Kuala Lumpur.

I see accused.

I met him first time on 4.5.62. There was an appointment for a ball at Selangor Club. We were guests of Mrs. Merry Roberts - i.e., my husband and I. We went to collect her at her house in my husband's car and at her request we went to the Cold Storage Snack Bar on Mountbatten Road. Accused, was already there and Mrs. Merry Roberts made the introductions. From there we went to the Selangor Club at about 8 p.m. We found the dance had been postponed.

30

No. 8

Philomena Lim P.W.7.  
20th November 1962  
Examination

In the High  
Court

—  
Evidence for  
Prosecution

—  
No. 8

Philomena Lim  
P.W.7.  
20th November  
1962  
Examination  
continued

We proceeded to Eastern Hotel Cabaret - in my husband's car. We stayed till the last dance there. Somebody suggested supper. We went back to the Snack Bar - as accused had left his car parked on Mountbatten Road. Mrs. Roberts and accused went in his car and we joined up at Lake Gardens Canteen, stopping there till about 1 a.m., when we went home.

The second time I saw accused again was 9th May. On 7th I had phone call from Mrs. Roberts inviting us to the Eastern Cabaret to have supper with a Jap friend of hers. I said I would have to ask my husband. I asked him and as requested by Mrs. Roberts, I phoned acceptance next day.

10

On 9th evening my husband and I went straight to the Eastern Cabaret. We were a little late. We had dinner there. The party were - we two, Mrs. Roberts, accused and the Japanese, 5 in all. After dinner in the restaurant, somebody suggested going over to the Cabaret. An Indian man, a Chinese girl and a Malay girl joined us. They were friends of accused who invited them to join us. We stayed till 11 p.m. or a little later; then someone suggested going to a night club.

20

We went, all 8, to the Cosmopolitan Club.

In the Eastern, the accused brought out a bottle of Whisky, or something like it. The bottle was finished.

At the Cosmopolitan Club there were more drinks - not bought by the bottle. At the Club, accused suggested, at about 1 a.m. when there was some talk of going home, that we should go out for some supper at the nearby stalls. The Japanese man and Malay girl left together, the remaining 6 of us went for supper. After supper, my husband suggested we go back to the Club to finish the unused coupons which he still had.

30

We left about 3 a.m. By then the coupons had been exhausted, so were we.

During the evening I left everything to my husband. I did not suggest going home when the party broke up. I drove the car home. Before we left, the accused gave me 2 wine-glasses, before

40

we first left the Club for supper. He took the glasses from the table and put them inside my handbag. These are the 2 (Ex.P12). He took my handbag off the table and put the glasses in. We were in quite a gay mood - all of us.

In the High Court

Evidence for Prosecution

No. 8

Philomena Lim  
P.W.7.

20th November  
1962

Examination  
(continued)

When we came out just before 1 a.m. ( as we were going for supper) the accused put the champagne glass (Ex.P11) - identified - inside our car - on the back seat.

10 When he first gave me the 2 wine-glasses I said "What is this all about?" He said they were for a souvenir.

Finally I drove car home as my husband was very tipsy.

20 Next morning I followed my husband when he went out to work, because I had an appointment for dancing lesson. I had been having dancing lessons then for more than a month. I was introduced to Daniel by Mrs. Roberts. I went daily for lessons. Latterly I went in the mornings, leaving the house the same time with my husband.

On 10th morning I went out with my husband as usual. He complained of terrible headache. I got out at Federal House, and took a bus to Ipoh Road. I reached the dancing school at about 9 a.m. and started on lesson.

30 During lesson a phone call for me was received by Daniel. I went to the telephone. Daniel had told me Chiu Nang Hong was on the line. He asked if I was Mrs. Lee. I said yes. He said my husband had phoned him to say that he was having a terrible headache and Chiu advised my husband to have another stengah.

Chiu said he was going with my husband to Chiu's friend's house, and that my husband had told him to come and fetch me to meet him at the friend's place.

He asked me what time my lesson would be over. I said at 10.30 a.m.

40 I continued with lesson and when my lesson was just over Chiu came in. I was seated on a long settee then and he came up and sat at the

In the High  
Court

far end. He asked if the lesson was over. I said yes. Then he said we might as well go.

Evidence for  
Prosecution

I followed him to his van - a small delivery van.

No. 8

Philomena Lim  
P.W.7.  
20th November  
1962  
Examination  
(continued)

I sat beside him. There was nobody else. From there he brought me to a house, by way of Princess Road, Circular Road and then finally to this house. I had never been to the house before. He drove the car up to the side of the house. There were a few cars there at the time in the car park by the side of the house. I noticed a car with a D.C. plate. The previous night I had noticed a D.C. plate on the Japanese man's car.

10

On arrival Chiu got out and went towards the side door. Then he came back to my side of the car and asked why I had not got off the car yet. He added "Your husband is inside the house". So I followed him, and entered the house after him.

On entering I saw a corridor ahead with doors on either side. I passed 2 doors, and on reaching the 3rd door on the left side of the corridor, there was a swing door just in front of the 3rd door. He pushed the spring door with his back, and when I got near him, he gave me a push from the back; as a result I found myself in the 3rd room.. There was no one there. I had expected to find my husband with some friend. It was a bedroom I found myself in.

20

(I order court to be cleared at this stage).

As soon as he pushed me inside the room he placed a chair against the door. Then he told me not to shout. He said if I were to shout he would strangle me. He put his hands near my neck while saying that. He said if I were to shout it would be of no use, as the people there were all his friends.

30

Then he stripped me.

He took off my blouse first. This is it (P6). He next took off my brassiere; then my jeans (P5) and my panties (P8).

40

I was standing still. I was too frightened. I just stood still. After having undressed me, he

carried me to the bed. Then he took off his own trousers, and came on top of me. He parted my legs with one of his knees, and he put his penis inside my vagina. He did the act of sexual intercourse with me. He achieved penetration. I think he did discharge, inside me. He was kissing me on the ear.

In the High  
Court

—————  
Evidence for  
Prosecution

—————  
No. 8

Philomena Lim  
P.W.7.  
20th November  
1962  
Examination  
(continued)

10 He got up, took a roll of tissue paper (like Ex.P3) and threw it to me. While I was putting on my clothes, I asked why he should do such a thing to me. He said: "Forbidden fruit tastes sweeter."

During all the time I was in the room I did not ask for help, because I did not know the place and I could not get any help.

I did believe it when accused said he would strangle me if I cried out. He appeared as if he meant to do as he said.

I did not struggle.

20 I was shocked, and because of his size, I did not dare to put up a fight. I did not consent to the sexual act.

(I declare open court now).

After that he took me back to my house in Petaling Jaya in his van.

As I was leaving the house I saw a female Chinese servant - with white dress and black trousers, carrying a basket of vegetables. (Wong May Kiew - identified).

30 Arriving home, I found my servant girl was in the house with my 2 younger children.

Usually I returned home from dancing lesson by bus. The bus stop is only a few houses away. That was the first time I returned home from any dancing lesson by car. The time was before 11.30 a.m.

I went into bathroom and washed myself. I started to do cooking.

My husband did not return for lunch. He did

In the High  
Court  
-----  
Evidence for  
Prosecution  
-----

No. 8

Philomena Lim  
P.W.7.  
20th November  
1962  
Examination  
(continued)

not come back for lunch that day. He returned about 6.30 p.m. He stayed only a few minutes and then rushed to Assunta Hospital to bring his mother home. He brought her home at 8.30 p.m. He had no dinner but went straight to bed.

I did not speak to him at all that night. The following morning he was late leaving the house for work. I went out with him and he dropped me as usual outside Federal House and I went on by bus to the dancing school. I did not finish full lesson but left early and took a bus home. 10

I did my household chores as usual. About 8.30 p.m. my husband returned with a friend, Phang Meow Tet. My husband showed me bruises on his knees from a motor-car accident. He stayed a short while and then left to see about his car. He came home past midnight. I was already asleep. He woke me up, having brought some Chinese cakes for me.

I took a cake - it was in the hall - he was sitting on the settee in the hall. Then I told him what had happened between the accused and myself. 20

I brought up the subject myself. I told him I would not want to meet the accused any more. He asked me why. Then I told him what happened.

My husband was upset and angry. He said: "Well it is up to you whether you want to keep up an affair with him or make a report."

Then only I knew I could make a report.

The following morning Mr. Phang took me and my husband to Circular Road Police Station where I met Mr. Goh. He took us to Campbell Road Police Station where I made my report. 30

The incident took place on 10th at about 11 a.m. I did not tell my husband till past midnight on 12th - about 36 hours later. I took this time because I was afraid, frightened and shocked and I had no opportunity to speak to my husband.

I was frightened - I mean I felt nervous and frightened. At the Police Station I met P.W.2 and I showed him the way to the house. Following day, I was sent to General Hospital accompanied by a Woman Inspector. On 14th I handed my clothing worn 40



on 10th to the D.S.P. On 17th at Petaling Jaya Police Station I handed over the wine glasses to D.S.P.

Adjourned at 12.35 to 2.30 p.m.

Resumed at 2.30 p.m.

Eugene Lye reports that Ramani will be able to attend court tomorrow.

Adjourned to 9 a.m. tomorrow.

Bail extended.

In the High Court

Evidence for Prosecution

No. 8

Philomena Lim P.W.7.

20th November 1962

Examination (continued)

10

(Sd) H.T. Ong.

Wednesday, 21st November 1962:

Resumed at 9 a.m.

Counsel as before with addition of Mr. Ramani.

21st November 1962

P.W.7: Examination-in-chief (continued): On former oath.

On 10th May in the Dancing School I received a phone call from accused. On 9th evening I did mention to my husband about my morning appointment in the Dancing School.

20

On 11th May, I took my last lesson.

When I arrived at Lorong Parry house I saw a car with DC plate, like the car used by the Japanese the previous night and I expected to see the Japanese gentleman or some others of the previous night's party.

I did not see my husband's car. I was not surprised because I thought he might have gone there in the Japanese gentleman's car or had been brought there earlier by Chiu.

30

I had been married 9 years, coming December. During this time, my husband kept charge of the money for household expenses. Whenever I wanted relevant tinned goods etc. I would order and he would pay. I would tell him first, then order.

Vegetable man comes to house daily, I buy on credit and he is paid end of the month.

In the High  
Court

Evidence for  
Prosecution

No. 8

Philomena Lim  
P.W.7.  
21st November  
1962

Examination  
(continued)

Cross-  
Examination

I met accused first on 4th, next on 9th and then 10th. Apart from these three meetings I had no other contact with the accused. Before 4th May he was a complete stranger.

Cross-Examined: (by Ramani):

On 9th I did mention to my husband about my dancing appointment. I remember giving evidence in court below. Put to me that at Cosmo Club before leaving for home I asked accused to telephone me, I deny I had done so. 10

I did say what I did yesterday as to what Chiu told me over the telephone. I thought my husband might have gone in the Japanese man's car or he might have gone earlier.

I saw Chiu on 3 occasions only -- on 4th, 9th and 10th. I was learning dancing. My husband was anxious that I should not appear backward to his friends. He does know dancing. On the 4th and 9th I danced with accused each time he asked me to the floor. I don't know whether he is a good dancer or not as I am only a learner. On 4th night I danced each time he asked. Again, likewise, on 9th at Eastern and Cosmo Club. We were together 6 -- 7 hours. 20

I did not feel attracted to accused, as dancer or friend.

On 9th the manner of our dancing was same as on the 4th. If alleged that I was clinging to him while dancing on the 9th -- I say I was not clinging to him, because I was taught to dance with my back straight, and not to put my left hand on the man's shoulder. 30

On 9th a Malay girl joined our table -- to keep the Japanese gentleman company. By her appearance I think she was a dance hostess. She was with us at Eastern and Cosmo Club until she left with the Japanese gentleman.

If the dance hostess said I was dancing with Chiu cheek to cheek, that is not true.

I did not dance with him cheek to cheek on the 4th. On 4th, while dancing, I did not burst into song. I know "Surrender" a slow fox trot, was played on the 4th. As I was dancing, the accused was singing 40

away. I did not. He remarked I had a good singing voice, because my husband had mentioned that if I had time and opportunity to train my voice, I would be able to sing well. My husband had said this before we went on the floor. When we got up to dance, accused was singing and he asked me if I knew the song. I said it was an old song, I knew it, but had forgotten the words and the tune.

In the High  
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Evidence for  
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No. 8

Philomena Lim  
P.W.7  
21st November,  
1962  
Cross-  
Examination  
(continued)

10 On 4th accused did say he was selling musical instruments. Mrs. Roberts said when introducing us that he was Mr. Nang Hong, and he said his shop was at Batu Road etc. He did say he sells pianos.

I was not interested in the piano. I cannot play a single note. I don't know if a piano is essential to learn singing. I cannot say if it was a friendly party on 4th - I sat and listened.

20 On 4th there was to be a ball at Selangor Club. I had received 2 tickets from Mrs. Roberts. She was the one who introduced me to Daniel, the dancing teacher.

On 9th the party was more lively and more gay. I cannot say I was very friendly, but I answered when he talked to me. I think I enjoyed myself that night. He asked me to dance more often that night.

30 While sitting out between dances, at one stage accused suggested change of seating order and Mrs. Roberts went over and accused came and took a seat beside me for a short while. We were not that close that our limbs were touching each other. Our arms were not touching.

At the Cosmo Club he gave me 2 wine glasses. My handbag was on the table. He did it openly. My husband was beside me.

40 Making a gift in this manner I cannot say what it signifies to Chinese people. Maybe he was paying more marked attention to me on the 9th. We were his guests. Mrs. Roberts was known to accused already and accused knew us through her. We went to Cosmo Club - I cannot say at whose suggestion.

Halfway through the time at the Cosmo we

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Cross-  
Examination  
(continued)

went out for supper. The Japanese and the Malay girl slipped away. My husband wanted to go back to finish unused coupons. We left at about 3 a.m. My husband had had "quite many" drinks. He was tired and tipsy and he asked me to drive.

We all went out to the car. As I was opening door to driving seat, both accused and my husband came to help. I did not ask assistance of accused. I did not know which key opened the lock of the door.

10

When it was decided I should drive home, we were at the steps coming down from the Club and the car was parked on opposite side of the road.

My husband went by back of the car to get round to his seat.

While dancing at the Cosmo I deny I asked accused to phone me at the dance school next morning.

As I opened the driving seat door and my husband was going round by the back, I deny whispering to accused about the next morning.

20

When I went home, the same night I put the 3 glasses on the dining table before going to bed.

10th morning, my husband drove me as far as Federal House; from there I took a bus to the dancing school. Before accused's Phone call, I had received no other phone call there - nor after accused's call.

I had known my husband was unwell before leaving the house - I was told he was going to have another stengah to get rid of his headache. It did not occur to me to phone my husband at his office to find out what his condition was.

30

I thought my husband wanted to see me to go home together after he had his drink.

Accused said he was coming to fetch me - so I waited. He had asked me what time lesson was over - I said 10.30 and he said he would fetch me.

I knew he had a bad headache. I did not know

the place to go unless accused took me there. He had told me to wait for him, so I did not tell him to come at once.

I cannot say exactly what time the call was.

I did not ask to be taken at once, since I was told by accused to wait for him, and I was not told that my husband's condition had worsened.

In the High Court

Evidence for Prosecution

No. 8

Philomena Lim  
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1962

Cross-  
Examination  
(continued)

10

Put to me that my reason for leaving the Dance Studio was not true reason, I say it was the true reason.

My husband had never previously asked me to be fetched by a friend - as no previous occasion had arisen for this to be done.

This occasion I believed - because I thought really that my husband was with accused's friend. Nobody had told me he was in serious condition. I did not think he was in serious condition. I am certain I did not feel that he was in a serious condition.

20

(Ramani - refers to page 23: "It occurred to me that my husband was in serious condition.")

I did say so. After the phone call I did think that perhaps he was in a worse condition. Put to me the attitude of a good wife - I say I had to wait till accused came to fetch me. I never liked to ask people for favours.

On evening of 4th I saw accused was driving a small van, which he parked at the Creamery. Same van, I think, came to fetch me on 10th.

30

Adjourned 5 minutes at 10 a.m.

Resumed at 10.10 a.m.

On 4th I am certain he used a van - not a car. I don't know accused has a car of his own. On 10th I know it was a van I got into. I did not notice the writing on the van.

Daniel's dancing school is on Ipoh Road - next to petrol station, an end house. As one comes into Kuala Lumpur from North, the petrol

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Court

Evidence for  
Prosecution

No. 8

Philomena Lim  
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1962  
Cross-  
Examination  
(continued)

station is reached after the school. The van was parked in front of the petrol station. From door of dance school I had to walk about 50 feet to the van. I did not notice the writing on the side of the van.

I opened door for myself. He got into the driving seat.

The same van was used to take me from Lorong Parry to Petaling Jaya.

I don't always wear a scarf. 10

When I got into the van I think I tied the scarf round my head after van got moving. The previous night, on account of the party, I had set my hair, and I did not want my hair to be ruffled. Otherwise I don't use the scarf. I felt the breeze blowing, so I tied the scarf.

I did not wind up the window. I think the winding mechanism was spoilt. I saw a handle on the "shelf" under the dashboard.

I did not use scarf for reason that I did not want to be seen in the vehicle. 20

I thought I was being brought to a house where my husband was resting, and having a stengah.

As the van went up to the side-door, the front of the vehicle was away from the door. It's rear was facing the door - but the van was distance of 2 cars away from door. There were other cars there.

If I turned my head towards the left I could see the side door.

I did not get off at once, as it was his friend's house. It was courtesy and modesty that someone else show me in, rather than my going in on my own. It was up to him to tell his friend that I was going in. 30

I did not get out and follow him - as he went away a short time.

Put to me that I stayed in van to wait and see the coast was clear, I deny that to be the reason.

I wanted to see my husband - that was my only thought.

In the High Court

I entered by the side door on to a corridor. Before the swing door, there were 2 doors to the left and one to the right. I thought I might be taken to a hall, or to a room, I don't know.

Evidence for Prosecution

No. 8

When the spring door is open one sees the hall. As soon as swing door was pushed open - partly only - I could not quite see whether it was a hall or another room ahead.

Philomena Lim  
P.W.7.

21st November  
1962

Cross-  
Examination  
(continued)

10

At home, when I call out to my husband, I call him "Seong". I didn't see why I should call out to him. I did not call his name.

I did hear some murmur of voices. Why should I call when I was being taken to him?

I was pushed into the room.

(I order court cleared at this stage).

I found no one inside.

20

I did not immediately shout out my husband's name because I was too shocked. I am a nervous type. When I was pushed in, and my husband was not there, I felt helpless.

Accused did not offer me a drink - no drink. He did not leave the room.

(In answer to question: Didn't he get out to fetch 2 bottles of Green Spot - each bottle with straw? I saw no bottle and no straw.)

30

Only after I went back with P.W.2 I noticed there were 2 doors. I deny accused walked out by the door to hall to fetch drinks. He did not leave the room.

I did not notice the Police officer open the other door. After I went into the room with P.W.2, and then noticing the other door, I went out to sit and wait in the hall.

I said accused put a chair against the door by which I entered, - only that door. I think that

In the High  
Court

Evidence for  
Prosecution

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Philomena Lim  
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1962  
Cross-  
Examination  
(continued)

other door had a bolt - on the inside. I noticed that on my last visit with D.S.P.

I thought it was no use to shout - and he said "It's no use your shouting". I think he thought I might shout. So he threatened. I did not make any struggle as I was frightened.

I have been married 9 years - but I have never met a man like him.

I knew I was trapped when I saw him putting the chair there. I knew his intentions were no good. I was midway between the bed and the door.

10

The window was open.

Within those minutes I did not know what to do.

I don't scream when excited or frightened. I keep still.

I thought he might kill me because he showed what he would do with his hands. I thought if I struggled he might kill me.

He stripped my blouse from behind - undoing the buttons. I stood still in fright and from the shock. I don't know how long he took to undo my blouse buttons.

20

I was standing straight with arms hanging down. He stripped my blouse off.

Next he removed my brassiere - one with shoulder straps and 3 hooks at back. One needs to use only one hook.

He whispered no endearments to me. He did not kiss me - except only when I was on the bed - and then he kissed me on the ear.

30

He did not kiss me or hug me when disrobing me. I don't know why he took off my blouse and brassiere if not to kiss and hug me.

I always wear glasses. I am short-sighted. He removed my glasses. I was wearing sun-glasses. I don't know when he removed my sun-glasses - whether I was standing or when I was in bed.



I was standing somewhere between the door and the bed which was against the wall.

In the High Court

He removed my jeans while I was standing. The jeans had zip, hook and a press-button. It is tight-fitting at waist. If zip is undone the jeans would slip down. There was no difficulty getting my jeans down my hips.

Evidence for Prosecution

No. 8

Philomena Lim  
P.W.7.

21st November  
1962

Cross-  
Examination  
(continued)

10

(I have no grudge - if he had not done this to me why should I complain against him. If I like I could become his second wife).

When he carried me to the bed the jeans were hanging by one leg and when I got on the bed I found the jeans on the floor.

20

I was wearing same shoes I am wearing today. The shoes slip off easily. He did not remove my shoes, but they came off easily. He pulled one leg aside for jeans to come off, and when he carried me to the bed the jeans came off. He just pulled. He did not ask me for my consent. I did not consent to my jeans being removed.

I was frightened.

(Witness - in distress - asks leave to sit down- Ramani suggests giving her a few minutes to compose herself and for someone to fetch her a glass of water. Witness prefers to carry on).

While I was on the bed he undressed himself. I was looking at him.

30

Put to me that I was not in a state of shock- I say I was - I did not feel like fainting. I did not faint at any time. In the report I made to the Police - I did ask where my husband was. As to the stripping being carried out when I was put on the bed, I was not very clear when I made this report. The police officer said it was only a brief report: I could give details in High Street Police Station. I was confused, but when I thought things over then I recalled how it all happened.

40

I did not change to make it easier to explain my stripping.

I had lipstick on, very lightly.

In the High  
Court

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Evidence for  
Prosecution

\_\_\_\_\_

No. 8

Philomena Lim  
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21st November  
1962  
Cross-  
Examination  
(continued)

He did not take me in his arms.

I was on the bed when he took his shirt off.

Yesterday I said he used one knee to part my legs. I remember it was one of his knees. Maybe the Magistrate must have misheard me. I know it was with one of his knees.

I did not sob and cry that morning when it was all over. I had to go back to my duties and attend to my children.

(I declare open court).

(Resumed at 11.35 after 15 minutes recess).

When accused took me back from Parry Road to Petaling Jaya in same van I was "all quiet". I wouldn't like to continue in his company for the time it took to get to Petaling Jaya.

I did not ask to be put down at taxi stand as I did not think of that. I just thought only of getting home as soon as possible.

I did not mind - as I was not thinking of anything else except to get home.

Accused had never been to my house before. I had to direct him. I knew I had been tricked.

There is a phone next door - I seldom make calls from there but take calls sometimes.

I did not think of making call to my husband. The thought did not strike me.

When my husband came home that evening after going to Hospital, he went to bed. I did not tell him. He had gone to sleep as soon as he came home - headache and lack of sleep from previous night - I did not want to wake him. I wanted to tell it to him at a proper quiet time.

If only I knew I should make a report straight away, I would have done so. I felt I had to explain to him at a proper time. He had accident and all that and I wanted to tell him at an opportune time.

As a marital duty, I knew I had to tell him sooner or later. He was not well and he went to bed.

Next day I accompanied him to Federal House. He was late for work - and there was heavy traffic. He was very moody and I was depressed.

10 The second night - it was all quiet - and everybody had gone to bed and I thought it was the proper time to tell him then as we two only were awake.

I did not want to meet the accused again at the proposed ball, as Mrs. Roberts might ask us, and I did not want to go.

I leave decisions as to appointments to my husband.

20 (Ramani refers to page 19: "We were not sure when ball would be held again when we learned it was postponed. We had no intention of going to the postponed ball - although tickets were still in my husband's pocket. No suggestion that we would go to the postponed ball.")

The tickets were still with us. Mrs. Roberts wanted us to go - she who had invited us might invite us again.

I did not want to meet accused again in case my husband wanted to go to the ball - so I had to tell him.

30 My husband said: "Well, it is up to you whether you want to keep up an affair with him or make a report."

He gave me the choice - that if I like the man I could go to him.

I told my husband exactly what happened and as to what he said to me - I don't know what made him to say so.

Lately I passed driving test.

I smoke at times, when offered. I don't drink. Those nights out I took orange juice, and

In the High Court

Evidence for Prosecution

No. 8

Philomena Lim  
P.W.7.

21st November  
1962

Cross-  
Examination  
(continued)

In the High Court

on 9th I think I had "Baby Cham" - I heard the name.

Evidence for Prosecution

When I was taken to Police Station at Circular Road we met Mr. Goh and there no written statement was taken.

No. 8

Philomena Lim P.W.7.

On 10th morning, I did not tell - I don't remember telling Daniel of a good time the night before.

21st November 1962

Cross-Examination (continued)

Put to me that my story is false and incredible unless I consented, I say I never consented.

10

I don't know what made me go on 11th. I had made an appointment with Daniel to go and I felt I must go.

Re-Examination

Re-Examined: On 9th at Cosmo Club I wore the shoes I had on yesterday - with, I think, 1" heel.

I think top of my head reached accused's shoulder.

To Court: Q. Why didn't you beg?

A. I did beg and I said why do such a thing to me? I am a mother of 3 children.

20

I begged before the intercourse.

(Witness says she feels ill - I release witness to go home to rest.)

No. 9

No. 9

Aloysius Daniel, P.W.8. 21st November 1962 Examination

EVIDENCE OF ALOYSIUS DANIEL - P.W.8.

P.W.8: ALOYSIUS DANIEL: Affirmed, states in English.

I run a Dancing School at 29 Ipoh Road. I have been teaching all my life. I have had this school 10 years. Pupils came from all walks of life. P.W.7 was one of my pupils - for about a month. Her last appearance was on 11.5.1962.

30

She had been introduced by a Mrs. Roberts. Mrs. Lee attended lessons almost daily - all lessons are by appointment. Practically all lessons were

given her in mornings - lessons last 30-40 minutes. In the High Court

Usual time was between 9 and 9.15 a.m. starting.

Evidence for Prosecution

No. 9

I remember 10th May. She came between 9 and 9.15 a.m. There was a phone call for her. I answered the call; at about 9.30 a.m. It was Chiu Nang Hong who called. I am definite about it. I know the accused and I know his voice, and Mrs. Lee had told me during tuition that she and her husband had been out to dances with him.

Aloysius Daniel  
P.W.8.

21st November  
1962

Examination  
(continued)

10

I have known accused more than 10 years. He wanted to speak to Mrs. Lee. I called her to the phone.

After that lesson continued for about 10-15 minutes and then accused arrived. I was still teaching her. He came and sat on a settee and waited - perhaps 5-10 minutes.

20

She went and sat on other side of the settee, talking (what I couldn't hear) and then they went out.

Next day she came for lesson round about 9 to 9.20 a.m. - the last lesson she had. That day, the course in fact had not ended.

She was not her usual self - she seemed rather listless and depressed. I was teaching her - but she did not respond very well. I cannot remember if I spoke to her about it. A few days later a D.S.P. came to see me, with Mrs. Lee.

30

After this visit I had a phone call - soon after the police officer's visit. The call was from accused. He said: "What's all this about?" I cannot remember what my reply was. It was something about Mrs. Lee and himself.

He came personally to see me. He asked me what I had told the police. I cannot remember what my answer was.

I did not know Mrs. Lee before she came for lessons.

In the High  
Court

Evidence for  
Prosecution

No. 9

Aloysius Daniel  
P.W.8.  
21st November  
1962  
Examination  
(continued)

During the month she took lessons, she was quite plain - without make-up except occasionally a touch of lipstick.

Cross-Examination: Nil.

No.10

Lee Swee Seong  
P.W.9.  
21st November  
1962  
Examination

No. 10

EVIDENCE OF LEE SWEE SEONG - P.W.9.

P.W.9: LEE SWEE SEONG: affirmed, states in English.

40 years old, living in Petaling Jaya. I am Government servant. My wife is P.W.7 - married 9 years. We have 3 children. My and her first marriage.

10

I know accused - met first on 4th May, second time on 9th May.

Mrs. Roberts, a mutual friend, invited us on behalf of accused to a party. I told her to accept. We went to Eastern. After dinner at Restaurant we went to Cabaret, thence to Cosmo Club - 8 of us.

I did not have very much to drink, at the Eastern. At Cosmo more dancing and drinking followed. At about 1 a.m. we went for supper - 2 persons left. I had some coupons for drinks left and I suggested going back to use them up - there were 6 of us. We broke up at about 3 a.m.

I did not know how the wine-glasses came to be in my house until I saw them and asked my wife.

My wife drove the car back. I was very sleepy and slightly tipsy.

Next day I took wife to town as usual. I did some routine work. I had a severe hangover. I told my wife. I phoned about 9 to accused to thank him for his hospitality and I mentioned I had a severe headache. He advised me to have another

30

drink and to take a day off from office.

I normally don't return for lunch. I went home at about 6.30 p.m. - then went to fetch my mother home from Hospital at about 8.30 p.m. I had no dinner, as I was feeling unwell, and I went straight to bed. I did not speak to my wife that night.

10

Next morning I got up and went a bit late to office. My wife came with me. We did not talk on the way. Traffic was heavy. I was feeling slightly better - almost normal - but my wife looked very depressed and withdrawn into herself. I did not ask her why.

20

That evening on my way home I had an accident. I told my wife and left again with the friend who brought me home. We went to Mordeka Stadium Restaurant, staying till about 12 midnight. I bought some Chinese cakes home. Wife was asleep. I woke her up. While she was eating and after she finished she said to me she did not want to go to the ball which had been postponed to some date in June.

I asked her why she did not want to go.

She was very reluctant to tell me why. Eventually she broke down, crying, and she told me why she did not want to go.

I was shocked and angry.

30

I told her if she had been done this injustice, I would leave it to her to decide whether she wanted to make a report to the police.

She said yes, she would report.

Next morning, we went to Police. My wife took dancing lessons, as she wanted to be more modern in her outlook and learn to dance like others.

I give wife money from time to time to run the house.

40

The 4th and 9th were late nights. My wife had never been out on any social parties previously to as late an hour. It was her first visit to a

In the High Court

Evidence for Prosecution

No.10

Lee Swee Seong P.W.9

21st November 1962

Examination (continued)

In the High Court

night club - or to a cabaret. I had never taken her to one before.

Evidence for Prosecution

She was a typist when we married. Since 1956, she was no longer working, but looking after the house and the babies.

No.10

Lee Swee Seong  
P.W.9.  
21st November  
1962  
Examination  
(continued)

Cross-Examined: "Well it is up to you whether you want to keep up an affair with him or make a report". I did not actually say those words. My wife is not a very educated woman. She may have thought that I said such words.

10

I told her that I would leave her to decide.

Cross-  
Examination

I cannot remember the exact words I used. There is the possibility that I might have said so.

Re-Examination: Nil.

To Court: I did not state to her the alternative to her decision whether or not to report. If she chose not to report, I should have had to bear the burden of silence.

Adjourned at 12.50 to 2.30 p.m.

Resumed at 2.25 p.m.

20

No.11

No.11

Phang Meu Tet  
P.W.10.  
21st November  
1962  
Examination

EVIDENCE OF PHANG MEU TET - P.W.10.

P.W.10: PHANG MEU TET: affirmed, states in English.

I live at Petaling Jaya - District Manager of Wing On Life Assurance Co. I know P.W.9.

On 11 May at about 7 p.m. I received a phone call from him from High Street Police Station to fetch him. I took him home, at about 8.30 p.m. After a short while I took him out again to collect things from his crashed car in Bungsar Road. Car was damaged. After that we went to Mordeka Restaurant for dinner - remaining till 12 midnight. I was trying to sell him a policy.

30

On way home he bought some "pow" (dampplings) and he also asked me for a lift for next morning.

I went next morning to collect him and his



wife. He asked if I knew any police officers and so I took him to Circular Road P.S. to see A.S.P. Goh, who was known to me.

In the High Court

Cross-Examined: I arrived at Lee's house on 12th morning between 8.30 and 9 a.m. I had an appointment at Old Market Square myself, so I stopped there on the way for a few minutes before proceeding to circular Road. We got to Circular Road about 9.30.

Evidence for Prosecution

No.11

Phang Meu Tet P.W.10.

21st November 1962

Examination (continued)

Cross-Examination

10 When we went there Mr. Goh was not in - so we waited.

I did not learn why they wanted to see Goh. After introduction, I left them there with Goh.

Re-Examination: Nil.

No.12

No.12

EVIDENCE OF WONG MAY KIEW - P.W.11.

Wong May Kiew, P.W.11.

21st November 1962

Examination

P.W.11: WONG MAY KIEW (f): affirmed, states in Cantonese.

20 I am 53, living at 1A Lorong Parry. I am servant and have been there past 8 years. I receive \$30 p.m. Living in the same house are Low Yat Loong and a gardener named Chow Kee.

There are 6 bedrooms in that house - 2 next to kitchen are used by me and by Yat Loong respectively. No others live there permanently.

30 The other 4 rooms were for friends who play mah-jong and came to pass the night -- friends of my employer, Low Wong Onn. Each of these 4 rooms has a double-bed with mattress, pillows etc., wash-basin; 2 pairs rubber slippers.

My employer called daily in afternoons, about 1 p.m. or 2 p.m. - just to sit down i.e. to pay a visit.

Friends came at no fixed hours, i.e., at all hours. The friends are men - all men. Sometimes they came accompanied by women.

In the High  
Court

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Evidence for  
Prosecution

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No.12

Wong May Kiew,  
P.W.11.  
21st November  
1962  
Examination  
(continued)

There is a phone in kitchen. I take calls, or Low did. Calls to make inquiries about visitors or to ask if my employer was in.

There is a refrigerator in the kitchen - for cooling bear and aerated waters. The friends who came for mah-jong would want refreshments. They were purchased by my employer. The cost of drinks supplied to friends would be paid for by them. They leave the money on the table.

When I serve drinks they would leave cash plus 10 tip on the table. All the guests do that.

I return the cost to the employer who would replenish the stock.

I see the accused. He was one of the friends who visited the house from time to time.

I remember 10.5.62. I went to market at about 10 a.m. as usual - returning soon after 11. When I left there was no visitor. Yat Loo was out. Chow Koo was outside the house.

When I returned nobody was inside the house. 20  
As I was going in I saw a car being driven away by the accused. I saw another person seated in front, but I don't know the person. I did not notice whether that person was male or female. Accused waved to me. I acknowledged the greeting. I went in.

My duties include washing of bed sheets. On 13th a police officer came - I cannot say exactly what date. He took possession of a bed-sheet from a card-board box in the hall. This bed sheet 30  
came from a room - I cannot remember which one.

Clean washed sheets were placed in the cardboard box. This sheet (Ex.P2) - shown to me - had been washed.

There are 2 sheets of this pattern. The other sheet was in a cupboard when the police officer came.

When I returned on 10th from market, there were no visitors. On my returning, I started cooking and after food and wash up, I went round the rooms for tidying-up purposes. 40

I tidied one room - the one nearest swing door.

Cross-Examined: This room has 2 doors, opening into hall and into corridor. Only this room has 2 doors. The door between room and hall has no fastening on the hall side - but has a bolt on the bedroom side.

When I went to tidy this room, I found two Green Spot bottles - on the round table, empties. The bottles contained straw.

Re-Examined: Sometimes, empty bottles were left in the bedrooms by visitors. That was the only room with 2 empties. No money was left. I saw no money. The 2 bottles would have cost 50 cents. I don't know who drank. I am sure the 2 bottles were not there before I went out.

I remembered these bottles when I went to other court. But I cannot remember about bed-sheets because there were so many bed-sheets.

I did not tell the police officer about these 2 bottles. It was a small matter and I was not asked.

To Court: All visitors who took refreshments left the cost on the table. If money was not left on table, I was paid in person.

If I wasn't paid - I would tell my employer. I did tell my employer that I was not paid for those 2 bottles.

Nobody has come to pay me for those two bottles yet .

3 kinds of soft drinks were stocked - cocoa-cola, green spot & ice-cream soda, and soda water and "Red Lion" orange. I don't keep daily check of the use of each kind.

I remembered the 2 empties were green spot because I saw Green Spot bottles. "Red Lions" to me mean big bottles.

In the High Court

Evidence for Prosecution

No.12

Wong May Kiew,  
P.W.11.

21st November  
1962

Examination  
(continued)

Cross-  
Examination

Re-Examination

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In the High  
Court

No.13

Evidence for  
Prosecution

EVIDENCE OF DR. AMOR ANGELES - P.W.12.

No.13  
Dr. Amor  
Angeles, P.W.12.  
21st November  
1962  
Examination  
Cross-  
Examination

P.W.12: DR. AMOR ANGELES: affirmed, states in English.

L.M.O. at General Hospital, Kuala Lumpur. On 13.5.62 Woman Inspector Thangaletchmi brought to me Madam Philomena Lim.

I examined her.

I found no external injuries, found in vulva or any part of her body.

I took a smear from the vagina to be sent to I.M.R. I took a swab from vagina and sent it in a test tube by the woman Inspector.

Cross-Examined: There was allegation of rape. I looked for injuries consistent with rape. I made a full and thorough examination of the genital and other organs of the body.

Q. Were you convinced in your own mind that there was no evidence that you observed consistent with the allegation?

(I disallow question in this form.)

Q. Did you find any evidence of force used to achieve penetration?

A. It is very difficult to answer that question. She is a married woman.

The smears were taken from inside the vagina. Force used would not necessarily cause contusions in vagina - depends on a variety of circumstances.

Re-Examination: Nil.

Case for prosecution

Adjourned to 10 a.m. tomorrow.

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Thursday, 22nd November, 1962

In the High Court

As before.

Defendant's Evidence

Ramani - calls.

No. 14

No.14

EVIDENCE OF CHIU NANG HONG (Appellant)-  
D.W.1.

Chiu Nang Hong,  
D.W.1.  
22nd November  
1962  
Examination

D.W.1: CHIU NANG HONG: affirmed, states in English.

10

I am proprietor of business in Batu Road -  
G. Nang Hong & Co. I have been in Kuala Lumpur  
since 1.1.1940.

20

I have heard evidence of Mrs. Lee. I met  
her first time on 4. 5.1962. I was introduced by  
a Mrs. Mary Roberts whom I had known since Japanese  
Occupation. I believe she is Taiwanese. We were  
to go to a ball at the Selangor Club. We were to  
meet Cold Storage Milk Bar at Mountbatten Road.  
The 4 of us went to Selangor Club. The ball had  
been postponed. We adjourned to Eastern Hotel  
Cabaret. I left my car outside Cold Storage.  
We went in Lees' car. It was a Fiat car I used  
that evening.

We had many dances and drinks. I danced  
many times with Mrs. Lee. I found her a fairly  
good dancer. I dance quite well myself.

30

After the initial dances I found she was  
becoming very friendly. She danced very closely  
to me. She indicated she could sing. During one  
dance the song "Surrender" was played. Apparently  
she knew the words of the song. I hummed the first  
few bars. Then she continued to sing the words of  
that song. I made comments on her voice when we  
resumed our seats. I remarked to Mr. Lee that his  
wife appeared to have a good singing voice. Mr.  
Lee confirmed it and said if a good teacher could  
be found she would take singing lessons.

After the dancing we went to Lake Gardens  
for supper and then went our several ways.

40

On 4th May, I sent Mrs. Roberts home. As a  
result of our conversation I planned a party for  
the Commercial Attache of the Japanese Embassy.

In the High  
Court

Defendant's  
Evidence

No.14

Chiu Nang Hong,  
D.W.1.  
22nd November  
1962  
Examination  
(continued)

I thought there should be enough women for dancing after dinner. So Mrs. Roberts invited the Lees. Five of us sat down to dinner at the Eastern. We had drinks - and after dinner adjourned to the dance hall. I booked a dance hostess to join our table, her name is Masna - making up 6. An Indian friend and a Chinese girl also joined us. We enjoyed ourselves dancing and drinking.

I danced with Mrs. Lee - very many more dances than on 4th. I found her more friendly than before. She danced closer to me than the previous occasion and held my left hand very tightly, frequently pressing my hand.

10

We danced the Tango. She said she wanted to learn the Tango and I showed her some of the steps.

When Cabaret closed about midnight, we went to Cosmo Club. We had consumed quite a lot of liquor by then. The Cosmo is a private club. The Japanese was only member of the Club and we went as his guests. We had more drinks and dancing.

20

I danced with Mrs. Lee - many times. The party was much gayer then. The party broke up at about 3a.m. Before that, at about 1.30 a.m. we had supper at a stall outside. Then we went back on Mr. Lee's insistence. The Japanese left about 1.30 before we went for supper. The Malay hostess left with the Japanese. It was about 2 a.m. we went back to the Club. I danced again with Mrs. Lee. She was very much more friendly than earlier that evening.

30

During one of the dances she whispered to me: "Will you give me a call at the Daniel's School of Dancing." The Dancing School had already been spoken of on 4th. I knew the school and Mr. Daniel also.

I asked "What time?" She said "Any time between 9 and 10.30 in the morning."

I said "All right - provided I can get up that early after the late night."

I see the wine glasses (P12). At the Cosmo Club I picked them up and put them in Mrs. Lee's handbag. It was on the table between the wife and husband. I opened the bag myself and put the

40

glasses in. Everyone, including the husband, knew what I was doing. By about 3 a.m. we were all getting ready to leave. The Indian and Chinese girl left in his car.

As to Mr. & Mrs. Lee - Mrs. Lee drove their car. Mr. Lee was in no condition to drive. It was thought wiser that she should drive home. She agreed.

10 Mr. Lee handed keys to Mrs. Lee - a bunch of keys. She went over and was trying to open the door. The car was parked on opposite side of road to the Cosmo. Mr. Lee was standing in the middle of the road, talking to the others.

20 I noticed her fumbling with the keys. I went over to help her. Her husband did not come up to help. I helped to open the door and she got into the driving seat. As she was getting in she whispered "Don't forget to call me in the morning." Mr. Lee got in and they drove off. I took Mrs. Roberts home.

30 I live upstairs of my business premises. I got up at about 9 a.m. on 10th. I got a telephone call from Mr. Lee. I was already in my office. He called to say he enjoyed the party greatly and to thank me for it. He said he had a headache. I told him to take a small brandy which would relieve the headache and to take a rest. He said he was calling from his office. I advised the usual prescription for hangovers and advised rest for the day.

That call reminded me of my promise to ring up Mrs. Lee. I did so. Mr. Daniel answered the call first. I asked if there was a Mrs. Lee taking dancing lessons. Daniel recognised my voice. I asked for Mrs. Lee. She said "I am glad that you remembered to call me."

40 I told her that her husband had rung me up and I told her what he had said. She asked if I was free and if so to call over at the School at 10.30 when her lesson would be over. The time was about 9.30 a.m. I presumed to go and I did. I used my small pick-up van - used for my business. Name of business appears very plainly on both sides. Distance to school was 5 minutes drive. From my place the school is on right. I had to turn car

In the High Court

Defendant's Evidence

No.14

Chiu Nang Hong,  
D.W.I.

22nd November  
1962

Examination  
(continued)

In the High  
Court

Defendant's  
Evidence

No.14

Chiu Nang Hong  
D.W.1.  
22nd November  
1962  
Examination  
(continued)

round. I parked in front of adjacent petrol pump. I went into the School - the ground floor is used as dance studio.

Mrs. Lee was seated on a long rattan chair. I sat down on same chair. I met Daniel also.

She asked me if I would like a drink and also offered me a cigarette. I said I just had my coffee and I was already smoking one of my cigarettes. She asked about my conversation with Mr. Lee. I repeated it to her. 10

Then I asked her if lesson was over. If so, what did she want me to do.

We left. We walked to my van. I opened the door for her. I got into driving seat. I asked her where she wanted to go.

She said "Any where".

I asked "Anywhere?"

She said "Anywhere quiet".

I asked her if she would like to go to my friends' mess. She said "All right". I then started up the car. 20

She took out a yellow scarf from the bandbag and tied it round her head.

I heard her say she had to tie scarf over her head because of breeze. My van is an Austin A35 Countryman. The window is closed by being pulled up. No winder is used to wind up the glass. I bought the van in November 1960.

She was wearing spectacles when I went into the School. In the car she was wearing sun-glasses. 30

I drove to Lorong Parry. On the way she was quite jovial.

I drove up to the farther side of the side door by the parking lot.

I got out. I told her I would go in and see if there was any room vacant.



On arrival there were two or three cars already there. There was no vehicle with D.C. plate when we arrived.

She sat in the car while I went in. From where she sat she could see the door by which I entered by turning her head slightly.

I called out for the caretaker - Ah Loong - but there was no reply.

10

I walked into the hall, but there was no one there. I passed first 2 rooms on left. The doors I found closed. The third door beyond the swing door was opened. The curtain was down. I lifted it to see if anyone was in. It was vacant.

I went back and asked Mrs. Lee if she would like to go in. She followed me in.

The swing door swings both ways. I pulled the door back and she walked past me. She had clear view of the hall. I lifted the curtain of door of Room No.3 and I followed her in.

20

I pushed the door. The Yale lock locks itself.

I put no chair behind it; no reason for me to do so. I had been in that room previously. Unless someone uses a key no one could get in from outside.

That is the only room of the 6 with 2 doors.

Having gone in - I saw the other door bolted from inside.

30

I asked her whether it was quiet enough. She smiled. I asked her if she would like a drink as I felt like having one myself. She replied "Yes".

I went out by the other door towards the kitchen. I took 2 bottles of "Green Spot" opened them, put 2 straws in and fetched them into the room by the same door. The door had remained open in the meantime.

I bolted the door again. I gave her a bottle. She was not standing. She was sitting on the bed, her legs hanging down its side. We

In the High Court

Defendant's Evidence

No.14

Chiu Nang Hong  
D.W.1

22nd November  
1962

Examination  
(continued)

In the High  
Court

Defendant's  
Evidence

No.14

Chiu Nang Hong  
D.W.1.  
22nd November  
1962  
Examination  
(continued)

had a drink - but we took only a few sips and left the bottles on the table.

I removed her glasses - sun glasses. She was not wearing the scarf when I came back. She had removed her scarf herself.

I took her in my arms and I kissed her. She was most willing. We had some kissing and cuddling. I said "Let me remove my shirt first before it is marked by the lipstick". I then went to the window and closed the windows. When I turned round she was lying on the bed.

10

(I order court cleared).

I was dressed that morning in a white long-sleeved shirt, without neck-tie. She wore blouse and jeans.

I lay down beside her and we kissed.

I cuddled her, pressed her breasts and she hugged me and kissed me. We were kissing for quite some time and I slowly unbuttoned the buttons of her blouse. The buttons were on back. She had to roll over herself to let me get at the buttons. I tried to undo the "bra" and found some difficulty. She put her own hand to her back and undid the bra herself. It was with straps. I pressed her breasts and when I tried to kiss them she felt ticklish and giggled.

20

Her blouse and bra were still on her body. We continued love making and kissed.

I rubbed her "cunt" and when I tried to unbuckle the waistband of her jeans. Once again I found difficulty. She helped unbuckle. I put my hand under the jeans and continued rubbing her and kissing her on the mouth and also pressing her nipples.

30

I found her panties were getting wet and I got up and pushed her jeans down. She had to wriggle, as we were lying down and I had to pull the jeans off.

By that time, I had taken off her blouse and bra off her body. I took these over to the coat-hanger where I had hung my shirt.

40

I undressed myself. She was lying on her back with only her panties on when I went to the coat-hanger.

I was wearing long trousers myself.

At that time she had only her panties on.

I came back to the bed, lifted her legs up and put them on the bed, lay down beside her, kissed her and I continued making preliminary love play.

In the High  
Court

Defendant's  
Evidence

No.14

Chiu Nang Hong  
D.W.1.  
22nd November  
1962  
Examination  
(continued)

10 I took off her panties and then we made love.

I had taken other women to that house before. Normally, with unmarried women I used contraceptives. On this occasion I was unprepared. On the bed we were more than 20 minutes.

Then I got up. I took a roll of toilet paper, tore a piece and wiped her bottom dry. Then I dressed myself. I helped her button up her blouse when she dressed.

20 When it was all over I brought her back. I did not see the caretaker on my way out. When I came out I noticed a D.C. car was right in front of the door. I cannot remember except there were 2 or 3 cars there. I paid no particular attention to the D.C. car.

I asked her where she would like me to take her. She said "Please drive me home".

I have never been there before.

She had to direct me, all the way to her house.

30 (I declare open court now).

On the way, in the van, there was conversation. I remembered she was asking me what is the best piano. She said she would be interested in piano lessons for her child and also if she should take up singing lessons.

She asked me whether I could get her one at a very special price.

In the High  
Court

Defendant's  
Evidence

No.14

Chiu Nang Hong  
D.W.1.  
22nd November  
1962  
Examination  
(continued)

I told her that at the moment I had no stock of Knight Pianos and that we were assembling some pianos to be exhibited at the "Made in Malaya" Trade Fair.

By then we reached her house. She got out at her doorstep. I turned car round, as her house was situate on a cul-de-sac.

When we arrived, she invited me in for a cup of tea. I did not accept because I had to go to the Bukit Bintang Park re preparations for the exhibition.

10

So I did not enter the house. As I passed by she waved to me from the doorsteps in front of her door and I waved back.

Hers was a compound house and she was standing at the gate.

Cross-  
Examination

Cross-Examined: I helped my father in his business since 1934. I get to know customers. Sometimes I can size up people, sometimes not.

I met the Lees first on 4th. The husband sat next to the wife.

20

On the 9th they sat again next to each other. On 4th we spent about 2 - 3 hours together - nearer by 4 hours I think - on 9th, 6 - 7 hours.

I did not form any opinion, one way or the other, whether the husband or wife was the dominating personality in the home.

Places were changed sometimes during the dances. At the table the husband talked more. She joined in - and she wasn't staying dumb. As usual the men talk more among themselves.

30

They were introduced to me as Mr. & Mrs. Lee. I knew on 4th she was having dancing lessons. After first few dances she was dancing close to me - not the usual way one dances with strangers. On 9th she danced closer to me than on the 4th.

She put her arm round my shoulder - and one or two occasions, if I remember correctly - around my neck.

We danced slow fox-trots and waltzes. I would describe her as clinging to me - the clinging was not because she was a poor dancer. I did not force her towards me.

In the High Court

Defendant's Evidence

No.14

Chiu Nang Hong  
D.W.1.

22nd November

1962

Cross-  
Examination  
(continued)

10

During a dance at the Cosmo she had asked me to call her up. My reaction was nothing out of the ordinary. We had been having a lot of drinks and I was not paying any particular attention. The renewed invitation caused no particular re-  
action either. Put to me, she never made the invitations, I say she did.

On 10th Mr. Lee did telephone me that he had a headache. I advised him as stated. The call was to thank me. As a result I was reminded to ring her up. I cannot remember the time - about 9.30 roughly.

I do say it was about 1 hour between my call and my arrival at the studio.

20

We left Daniel's just past 10.30 a.m. I was surprised at her suggestion to go to a quiet place. When I drove off and she had on her scarf and put on sun-glasses, I knew what she was inviting me to do.

She had been introduced to me as Mrs. Lee. We were no longer strangers on the 10th. I took her to the mess.

30

I pulled the swing door to let her pass. The corridor is not narrow. I pulled aside the curtain of Room 3 and she walked in herself. I am not too stout to let her pass.

(To me: I am 5' 8½").

I deny pushing her in. All the bedroom doors had curtains.

Q. Can you give any explanation why she made this complaint?

A. I don't know. A woman is always fickle.

Re-Examination: Nil

To Court: I left her at Petaling Jaya about 11.45 a.m. When she put on her sun-glasses and tied the

In the High Court  
Defendant's Evidence

No.14

Chiu Nang Hong  
D.W.1.  
22nd November  
1962  
Cross-  
Examination  
(continued)

scarf round her head, I think she did not want people to notice her easily. Her house had neighbouring houses around. She stood at the gate and waved to me.

I did not say "No" when she wanted a piano at a very special price.

Adjourned at 12.30 p.m. to 2 p.m..

Resumed at 2 p.m.

On 4th complainant was merely clinging. It was on the 9th she pressed my hand - and much more clinging. She was clinging and close both in upper torso and lower torso. Sometimes we were dancing cheek-to-cheek. Both cheek-to-cheek and torso to torso.

10

I am 5'8". (I make P.W.7 stand side by side with accused - her head barely reaches his shoulder). Now and then only we danced cheek to cheek.

No.15

Benjamin Henry Sheares, D.W.2.  
22nd November  
1962  
Examination

No.15

EVIDENCE OF BENJAMIN HENRY SHEARES-D.W.2.

D.W.2. BENJAMIN HENRY SHEARES affirmed, states in English.

20

I am Specialist in Gynaecology & Obstetrics.

I have read the evidence of complainant - also the report of the Chemist and the evidence of Dr. Angeles.

I have listened to accused's evidence in court today.

The report is consistent with both complaint's and accused's evidence.

"P.V. examination showed no abrasion, no bruise or other injuries seen on the vulva or labia minora."

30

No external injuries mean no resistance - consistent with consent.

P.V. Examination: Even with consent there could be abrasion. Absence of bruises can be consistent with her story - also with his.

I heard evidence of accused as to preliminary sexual stimulation. Vaginal lubrication will be usual result of love play. In the case of an unwilling woman, who was shocked - and was under mild shock - shock in medical sense means depression of the functions - feeling of faintness - drop in blood pressure. If man is seen disrobing with intent to carry out his designs, her shock would increase. One would expect her to collapse or faint.

In such state of shock her reflexes would be dull. In such state of shock her powers of perception and recollection would be dulled.

She stated item after item of the way she was disrobed and how he disrobed himself - it won't be likely that she could give such details. As she gave such detailed account of events, it is unlikely that she was in any great degree of shock. Her narration showed that she was in full retention of her senses. She should have made some attempt at resistance - in that case one would expect some evidence of bruises or injuries as a result of struggles.

Contusions could be seen for at least a week.

For a woman in possession of her senses, minded to resist coitus, some strength, but not too much, was enough for prevention of the act. Having seen her, she could have put up some resistance so that there would be tell-tale marks.

A married woman's struggle could be more purposeful to prevent penetration - because she is more experienced and she should be more resourceful.

She was either so petrified as to submit or she was a willing partner.

It is normal practice to examine the man also if he is willing - because her resistance might result in injuries to his person.

Spermatozoa can be grouped - but no facilities are available here in Kuala Lumpur or Singapore.

Cross-Examined: It is possible for rape to be committed without injury.

In the High Court

Defendant's Evidence

No.15

Benjamin Henry Sheares, D.W.2.

22nd November 1962

Examination (continued)

Cross-Examination

In the High  
Court

Defendant's  
Evidence

No.15

Benjamin Henry  
Sheares, D.W.2.  
22nd November  
1962  
(continued)

No.16

Maswa Binti  
Mohd.Salleh  
D.W.3.  
22nd November  
1962  
Examination

Re-Examination: Nil

To Court: If she decided not to resist - there  
need be no injuries.

No.16

EVIDENCE OF MASWA BINTI MOHD. SALLEH  
D.W.3.

D.W.3: MASWA BINTI MOHD. SALLEH: affirmed, states  
in English.

I am a dance hostess at Eastern Cabaret.  
I know accused. A few months ago I remember I  
was booked by accused for a party which included a  
Japanese gentleman. That was only occasion of  
this type. We went after Cabaret to the Cosmo  
Club. I left about 1½ hours later. I remember  
seeing Mr. Lee and Mrs. Lee. 10

On that occasion we had drinks and dances.  
Accused danced, with me, with Mrs. Roberts, and  
with Mrs. Lee, He danced most of all with Mrs.  
Lee.

Accused and Mrs. Lee were friendly - not  
like acquaintances but like friends. 20

They danced very close - like an embrace.  
I also was dancing.

They were friendly - a very gay party -  
everyone enjoying.

That was first time I met the Chinese lady,  
Mrs. Lee.

Cross-  
Examination

Cross-Examined: I was booked by accused to  
dance.

Re-Examination: Nil. 30



No. 17

EVIDENCE OF WONG HONG WAH- D.W.4.

D.W.4: WONG HONG WAH: affirmed, states in Cantonese.

I am employed by Eastern Photographers. Last Saturday I went with Mr. Naidu to 1A Lorong Parry and took some photographs.

These are 2 of them. (Ex.D13 & 14).

Cross-Examination: Nil.

Case for defence.

10

No.18

JUDGE'S NOTES OF CLOSING ADDRESSES OF COUNSEL

Ramani: Question of fact - not necessary to summarize.

Essentially - version of one vs. the other.

Test of credibility by surrounding circumstances.

20

Absence of injuries - prosecution explanation.

Prof. Sheares' explanation.

Suggestion - threat with death.

s.375 - third category.

Submit not subjective test - objective test.

Gour Vol.III (7th Ed.) p.1847 - 8.

Circumstances before and after -

(1) 2 bottles of 'Green Spot'

30

(2) car window

In the High Court

Defendant's Evidence

No.17

Wong Hong Wah D.W.4.

22nd November 1962

Examination

22nd November 1962

No.18

Judge's Notes of Closing Addresses of Counsel

*22nd November 1962*

In the High  
Court

          
No.18

Judge's Notes  
of Closing  
addresses of  
Counsel  
22nd November  
1962  
(continued)

(3) begging to be let off

(4) the second door.

Bottles - after thought?

Corroboration: Where is there corroboration?

Her report to her husband - nearly 40 hours after  
the incident.

The curious remark of the husband.

Remorse: Was it not remorse?

Vital contradiction between the report and her  
evidence - as to where she was when stripped.  
Absolutely no corroboration of her evidence.

10

(1942) A.I.R. (Bom.121).

Submit:

Evidence even on both sides.

Medical evidence is best evidence.

Complainant does not hesitate to improve  
story.

No corroboration.

D.P.P. - in reply

Most of facts undisputed - question is  
consent or no consent.

20

If consent - she would hide from husband  
the fact.

Complainant was taken there to 1A Lorong  
Parry by trick.

2 bottles of Green Spot

Did she beg?

(1) Wife told husband voluntarily.

(2) No evidence of any contact between accused  
and husband or wife after the event of 10th  
to date of report - why then the report.

30

No.19

CONVICTION AND SENTENCE

In the High Court

No.19

Conviction and Sentence  
22nd November 1962

I find the accused guilty.

I convict him as charged.

I ask Ramani anything to say.

Ramani says nothing.

I ask accused.

Accused says - I am innocent, I have not committed rape.

10 Mrs. Lee told lies - all lies.

I sentence accused to 18 months imprisonment.

Bail \$1,000/- on accused's own recognisance.

(Sd) H.T. Ong  
JUDGE.

No.20

FOUNDATIONS OF JUDGMENT

No.20

Foundations of Judgment,  
2nd January 1963

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT OF KUALA LUMPUR

Criminal Trial No.30/1962

20 Public Prosecutor vs. CHIU NANG HONG

FOUNDATIONS OF JUDGMENT

The accused was charged with having committed rape of a married woman, Philomena Lim, at about 11 a.m. on May 10, 1962, in premises No.1A Lorong Parry, Kuala Lumpur, in contravention of section 376 of the Penal Code. I convicted him and sentenced him to imprisonment for eighteen months.

30 The crucial question in this case was whether or not the accused had had sexual intercourse with the complainant under circumstances falling within

In the High  
Court

\_\_\_\_\_  
No.20

Grounds of  
Judgment,  
2nd January  
1963  
(continued)

the following description, namely, with her consent, when her consent had been obtained by putting her in fear of death or hurt. There was, in general, no dispute as to the facts except in so far as they had some bearing on the question whether her consent was voluntary or coerced.

The complainant is a housewife, 28 years of age, living with her husband, Lee Swee Seong, and their three children in Petaling Jaya. The couple had been married 9 years, that is to say, when she was 19. 10  
The husband is a Civil Servant 12 years her senior, and, since his transfer from Seremban to Kuala Lumpur 6 years ago, she had relinquished her job as a typist in order to look after her husband, children and home. She had been taking lessons in ball-room dancing for about a month prior to May 10 in Daniel's Dancing School at No.29, Ipoh Road. Her husband had never taken her to any dance hall or night club until May 4. On the evening of May 4, the complainant and her husband had been invited to a ball in the 20  
Selangor Club by a Mrs. Roberts - a Japanese national of Taiwanese parentage - and they were introduced by her to the accused at the Cold Storage Creameries' Milk Bar in Mountbatten Road. Unbeknown to them, however, the ball had been postponed. So the four of them proceeded, instead, to the Eastern Hotel Cabaret, where they remained till the last dance, and from there went on to the Lake Gardens Canteen for supper before going home.

The accused was then planning with Mrs. Roberts 30  
to invite the Commercial Attache of the Japanese Embassy to a party on May 9 in his honour, and on May 7 Mrs. Roberts extended the accused's invitation to the Lees who duly accepted. On May 9 five persons sat down to dinner in the dining room of the Eastern Hotel. They were the guest of honour, the complainant and her husband, Mrs. Roberts and the accused. After dinner they adjourned to the hotel ball-room, the Eastern Cabaret, for dancing. 40  
There they were joined by an Indian friend of the accused, who was accompanied by a Chinese girl, and also a Malay dance hostess booked by the accused to join his table. After the last dance at midnight the entire party of eight proceeded to a night-club called the Cosmopolitan Club as guests of the Japanese gentleman who was a club-member, for more dancing and liquid refreshments. At about 1 a.m. the accused suggested supper at the neighbourhood eating-stalls, and, before leaving

the club, he opened the complainant's bandbag to put in two used wine-glasses which were on their table. The Japanese declined supper and left with the Malay dance hostess, while the remaining six people went out for their supper. Lee, the complainant's husband, had some unused coupons left and he suggested returning to the night-club which they all did. The party broke up at about 3 a.m. when they as well as the coupons became exhausted. On leaving the club premises, the accused carried off a champagne glass which he left on the back seat of the Lees' motor car. Lee by then was somewhat under the influence of alcohol and his wife drove their car home.

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(continued)

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The next morning, when Lee left by car to go to work, the complainant accompanied him, as she was wont to do since her daily appointments for dancing lessons came to be fixed for early in the day. She alighted from the car at Federal House and went the rest of the way by public omnibus to the dancing school. During the lesson the accused telephoned to speak to her, and shortly afterwards he showed up at the school in person. They left together in an Austin van. He drove to a secluded bungalow-house, No.1A Lorong Parry, used by his friends as a mess. In one of the bedrooms intercourse took place. The conflicting versions of the complainant and the accused as to the circumstances thereof will be discussed later. After the episode was over the accused brought the complainant to Petaling Jaya in the same van, leaving her on the doorstep of her house shortly before noon. Lee, who never used to go home for the midday meal, returned in the evening at about 6.30 p.m. but remained for only a few minutes before rushing off to the Assunta Hospital, where his mother had been a patient, to fetch her home. They returned at about 8.30 p.m. and Lee, still feeling the effects of a hangover and lack of sleep from the night before, went straight off to bed. The next morning, May 11, the Lees left home together, he to go to work, and she to continue with her dancing lesson, after which she returned to Petaling Jaya by herself. Lee came home at about 8.30 p.m. with a friend, Phang Meow Tet, who had given him a lift after Lee's car had been involved in an accident. They left again to see to the damaged car, and Lee eventually arrived home after midnight. He had brought back

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some cakes to his wife for supper and awakened her. Then she brought up the subject and related to him what had happened between her and the accused on May 10. The next morning, complainant made her report to the Police that she had been raped by the accused.

After careful consideration of the evidence adduced by the prosecution I was of the opinion that a case had been made out against the accused which, if unrebutted, would warrant his conviction. I accordingly called on the accused to enter upon his defence. His own evidence served to confirm my belief in his guilt. 10

At the outset I would observe that the credit of the complainant's husband was in no way attacked or shaken. According to him she was a domesticated sort of person who for the past six years had gone to no social gatherings and who had never previously seen the inside of any public dance-hall or night-club. He was holding a secure job enabling him to provide for the needs of his family. She was not in need of pin-money. Nor was there any suggestion that he was what one might euphemistically describe as a complaisant husband, or that that she was a flighty person with any weakness for baubles or frivolities. The human frailty revealed about her was the one not uncommon among those of her sex and her station in life - the desire to keep up with the Joneses by acquiring some social poise and polish in learning how to dance. 20 30

The background of the complainant and her way of life being as above stated, the next step was to test the truth of the conflicting stories regarding the telephone call and why it came to be made. According to the complainant, it was known to the accused in the course of casual conversation on May 4 and 9 that she had been taking daily dancing lessons at Daniel's School of Dancing, and consequently he knew that he could communicate with her there. Her allegation was that on May 10 he reported to her that her husband had telephoned him to say that he (Lee) was suffering from a severe headache, that accused himself was going with Lee to the house of a friend of accused and that Lee had requested the accused to fetch her there. The accused's story, however, was that during the previous two evenings, she had set out to be seductive, had pressed his hand, danced with 40

10 him in increasingly intimate fashion, and even cheek-to-cheek; that, while dancing with him on May 9, she had whispered, "Will you give me a call at the Daniel's School of Dancing", telling him to do so "any time between 9 and 10.30 a.m.", and that before driving home she had again reminded him "Don't forget to call me in the morning." He said that as a matter of fact he only did so because Lee had rung him up the next morning to thank him for his hospitality and thereby reminded him of her invitation to call her up at the dancing school. When he went there to pick her up, it was, according to him, by her special request to be taken to "anywhere quiet" and, with her knowing consent to go to a men's mess that he took her to No.1A Lorong Parry. Thus the tenor of his story is that, far from his taking advantage of an unwilling female, it was she who threw herself at him from the first.

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20 I believed the complainant. Her evidence throughout had the ring of truth, whereas the accused's story sounded like a broken cymbal. First, I did not think that there was in fact any voluntary demonstration of undue familiarity during those two evenings by her towards a man who had hitherto been an utter stranger. The ice had just been broken. During the first evening, there were only four people, one of whom was her husband. Hence any alleged amorousness on her part towards the accused during dancing must be set down to mere imagination on his part or a misinterpretation of ordinary feminine coquetry. As to their second encounter, the accused would have the Court believe that the timid quondam typist who had suddenly blossomed forth into a veritable courtesan who practised on him, during the course of one evening, the arts and wiles of a seasoned wanton. According to him, her behaviour was very suggestive, she was clinging close to him with both her upper and lower torso, and dancing with him cheek-to-  
40 cheek. Not only were all these acts of undue intimacy denied by the complainant, but when it was expressly put to her by counsel for the defence that the Malay dance-hostess would be testifying that she, the complainant, was actually dancing cheek-to-cheek with the accused, that particular allegation was never substantiated by the hostess when called in due course as a defence witness. Moreover, when I made the accused and complainant stand side by side in court for a comparison of

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their height, it could clearly be seen that the top of her head barely reached his shoulder. Hence I did not think it possible that they could have danced cheek-to-cheek as he alleged. In short, I found nothing in the evidence for the defence to alter my opinion that only the accused's own conceit could have led him to conclude that the complainant was so smitten by his masculine charm that she was brazenly inviting him upon their second encounter to have an affair with her.

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Secondly, and as a logical corollary, since I accepted the complainant's evidence regarding what took place - or rather did not take place - between her and the accused during their two encounters, I accepted also her version of the telephone conversation of May 10. I came to the conclusion, and I found as a fact, that she had never invited him to call her up, and that her husband's indisposition merely provided the accused with a readymade pretext to inveigle her to No.1A Lorong Parry.

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Thirdly, I was satisfied and I found as a fact that, when the complainant was threatened, as described by her, with personal injury if she did not submit to the accused's will, she was so paralysed with fright that she had neither the courage to resist nor the presence of mind to face the situation with the resourcefulness which a more intelligent or worldly-wise woman would have shown: believing that he would resort to force, if necessary, to have his way, she had simply lost her will to resist. There is a line to be drawn between willing consent and passive submission, and though in certain cases the line may not be a clear one, I was satisfied that in this instance she submitted from fear of injury. In this connection the evidence of P.W.11 Wong May Kiew, the maidservant and caretaker, received my careful consideration. Whereas she was vague as to where she had collected the soiled bed-linen from, yet when she was cross-examined on behalf of the defence, she appeared to have had a surprisingly good recollection of finding two empty "Green Spot" bottles, with straws in them, while tidying the bedroom nearest the swing door, although there could be no doubt that the soiled bed-linen and the empty bottles must have come from one and the same room. If accepted, her evidence would of

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course have afforded strong corroboration of the accused's story that, given ample opportunity to make her escape, the complainant had chosen not to do so. However, I rejected this servant's evidence because I was satisfied that she was not a witness of truth. The caretaker of a place used for immoral purposes who was paid the insignificant monthly wages of \$30 obviously had to have gratuities. Beverages were not supplied by the tenant of the establishment to his clients and friends free of charge. This witness said of the refreshments provided: "They were purchased by my employer. The cost of drinks supplied to friends would be paid for by them. They leave the money on the table. When I serve drinks they would leave the cost plus tip on the table. All the guests do that. All of them paid for their drinks." In answer to my questions she said: "All visitors who took refreshments left the cost on the table. If money was not left on the table I was paid in person. If I was not paid I would tell my employer. I did tell my employer that I was not paid for those 2 bottles. I told him I did not know who had taken 2 bottles of Green Spot without paying for them. Nobody has come to pay me for those two bottles yet."

According to his own evidence the accused had previously been to the mess on a number of occasions, he knew his way about, and he did not say that he was not aware of the rules of the house as regards paying for refreshments. In my opinion the caretaker's evidence as to the empty bottles was spurious, and its falsity was shown by her unwitting disclosure that she had found no money on the table to pay for the drinks which the accused alleged he had taken. No explanation was offered by the accused why he should have helped himself to such refreshments without paying for them either forthwith or later. I was therefore satisfied that her evidence was false because the hallmark of its veracity was missing.

Fourthly, I had asked myself: why did the complainant have to make the belated confession to her husband if she herself was so anxious to have an affair with the accused? Were she a nymphomaniac, then the achievement of her sexual gratification would have made her desire all the more to continue rather than terminate the liaison.

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Or, if from mercenary motives she had entertained hopes of exchanging her favours for a free piano, still those hopes had not been falsified by any word or deed on the part of the accused and it was not in her interests to turn against her prospective benefactor. If, again, it was thought that she anticipated her husband being told by someone of her being seen in the accused's company, and had to whitewash herself, this argument was less than plausible for the simple reason that being found in the company of their host of the previous evening and accepting a lift home in his vehicle was not a case of her having to explain away some compromising situation which her husband would otherwise have regarded with grave suspicion. I have referred to this point because the accused had himself suggested that the complainant had tied a scarf over her head and donned sun-glasses as a means of cloaking her identify in case she should be seen with him in his van. Such a suggestion was meant to discredit the complainant and to show that she wanted to keep from prying eyes the fact that she was keeping an unholy trust with him. Yet he himself exploded that very suggestion by telling of their openly cordial parting at high noon which was visible to all her neighbours who had eyes to see. Lastly, was the complainant so tormented by her conscience over having deceived her husband that she felt bound to unburden herself by a confession? This was Mr. Ramani's suggestion as a probable explanation for what otherwise appeared to be an inexplicable act of unprovoked treachery towards a man who had done no more than yield to her seduction. With the greatest respect, I did not think that any such motive was reasonable or probable, and for that reason I rejected it. It was - if the accused's evidence was true - a case of the woman setting her cap on him from the very beginning, deliberately inviting him, in the cold light of day and without even the excuse of alcoholic weakening of inhibitions, to have a liaison with her in any place of his own choosing. It was not a case of a sudden succumbing to temptation. I did not think the pangs of a remorseful conscience were in keeping with the character of such a female as the accused tried to make her out to be.

Were she such an actress and schemer as to blame an innocent person falsely for her own sins, I should have thought it more consistent for one of that type to have fabricated some evidence of

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her own unwillingness. She could very easily have torn a button-hole of her blouse, or pulled off a button or two, or ripped her underclothes, or bruised herself a little, to lend verisimilitude to her story. She was content to leave it plain and unvarnished, and I could not but come to the conclusion that she was speaking the truth, and that in all material circumstances her evidence was corroborated by the facts.

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10 I had not overlooked the arguments for the defence as to the belatedness of her complaint, nor the alleged discrepancy between the evidence of the complainant and her husband regarding the nature of the decision which he left to her. On the former point, I accepted her explanation. I believed she had undergone a long mental struggle within herself and had finally found both the time and circumstances propitious when she told him.

20 On the latter point, the topic of conversation must have been terribly upsetting for both of them at the time and it is only natural that neither of them could have remembered the words then said with exactitude and clarity so as to be able to reproduce the gist of their discussion in perfect accord some months afterwards. As to the expert opinion of Dr. Sheares, I thought it contained nothing so cogent that the reasons for coming to my conclusion, as stated above, were untenable or

30 that I should have felt reasonable doubts about the guilt of the accused. I accordingly found the accused guilty and convicted him.

I thought the sentence of 18 months appropriate because a longer period of imprisonment could have very serious effects on his business. Perhaps I might have been more lenient, had I not felt that the accused was adding gross insult to injury by his unwarranted attack on the character of the complainant.

(Sgd.) H. T. ONG

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Kuala Lumpur,  
2nd January 1963.

J U D G E,  
SUPREME COURT,  
FEDERATION OF MALAYA.

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In the Court  
of Appeal

No. 21

NOTICE OF APPEAL

No.21

Notice of  
Appeal,  
22nd November  
1962

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

F.M. CRIMINAL APPEAL NO. 44 OF 1962

CHIU NANG HONG

APPELLANT

Versus

PUBLIC PROSECUTOR

RESPONDENT

(In the matter of Selangor Criminal Trial No.30 of  
1962

10

Public Prosecutor

Vs.

Chiu Nang Hong )

TAKE NOTICE that Chiu Nang Hong, the appellant  
above-named appeals to the Court of Appeal, Federat-  
ion of Malaya against the decision of the Hon'ble  
Mr. Justice Ong given at Kuala Lumpur on the 22nd  
day of November, 1962, whereby the appellant was  
convicted on a charge of rape under Section 376 of  
the Penal Code and was sentenced to eighteen months  
imprisonment. 20

The appeal is against the conviction and sentence.

Dated this 22nd day of November, 1962.

BRADDELL & RAMANI

Chiu Nang Hong

Signature of Appellant's  
Solicitors.

Signature of  
Appellant

The address for service on the appellant is  
Messrs. Braddell & Ramani, Advocates and Solicitors,  
2nd Floor Chan Wing Building, Kuala Lumpur.

No. 22No.22PETITION OF APPEALPetition of  
Appeal,  
14th January  
1963

The Petitioner, CHIU NANG HONG of No.207 Batu Road, Kuala Lumpur, sheweth as follows:-

1. Your Petitioner the abovenamed Chiu Nang Hong was charged with

10 "That you on 10th May, 1962 at about 11 a.m. at 1A Lorong Parry, Kuala Lumpur, in the District of Kuala Lumpur in the State of Selangor, committed rape on one Philomena Lim, and thereby committed an offence punishable under Section 376 of the Penal Code".

and convicted at the High Court held at Kuala Lumpur on the 22nd November, 1962 and the following Order was made thereon

"Convicted and sentenced to 18 months imprisonment."

2. Your Petitioner is dissatisfied with the said Judgment on the grounds following:

- 20 I. The learned Judge's finding that the complainant's evidence had the 'ring of truth' and that of the accused the 'ring of a cracked cymbal' was wholly against the weight of the evidence.
- 30 II. Had the learned Judge examined the complainant's evidence in fuller detail and in relation to the medical evidence that was before him, and this he never did, he could not have come to the conclusion that the complainant's evidence had the ring of truth.
- 40 III. Further, the learned Judge's method of examination of the evidence should have been, as it was not, to consider first of all if the quality of the evidence for the prosecution was such as to have established the prosecution's case; and then test its truth or probability in the light of the evidence for the defence, so as to ascertain if or not such evidence raised a reasonable doubt as to the guilt of the accused.

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The learned Judge would appear to have examined the evidence for the defence by way of testing its truth or probability in itself so as to discover how far it answered the case of the prosecution.

In the result the learned Judge's approach to the whole of the evidence was vitiated by the desire to ascertain in effect, which of two contradictory versions of the incident he could accept and he rejected the evidence of the defence and therefore accepted that of the prosecution, upon reasons based on probabilities, unrelated to the actual evidence before him.

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IV. The learned Judge did not pay any regard, either adequately or at all, to the medical evidence given by the Prosecution and the expert evidence called by the defence, having regard to the fact that in prosecutions for rape, the medical evidence is vital and fundamental, both as a test of the truth of the complainant's story and as the means of corroborating or contradicting it.

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V. The learned Judge in any event was wrong in law in proceeding to convict without looking for and finding corroboration of the complainant's story in its essential parts; had he done so the learned Judge would have come to the inescapable conclusion especially on the medical evidence, which he never examined, that there was in fact no corroboration whatever of the complainant's story.

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VI. The learned Judge ought to have held that the complainant's story was self-contradictory, was inherently improbable and in any event was not only not corroborated in the slightest degree but was in fact destroyed by the medical evidence.

VII. The learned Judge should have acquitted the accused.

3. Your Petitioner prays that such judgment or sentence may be reversed or that such order may be made as justice may require.

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Dated this 14th day of January, 1963

Sd. Braddell & Ramani  
Solicitors for the Appellant.

The address for service of the Appellant is care  
of Messrs. Braddell & Ramani, Advocates and  
Solicitors, Room No.201, 2nd Floor, Chan Wing  
Building, Mountbatten Road, Kuala Lumpur.

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Petition of  
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No. 23

No.23

JUDGMENT OF COURT OF APPEAL DELIVERED BY  
THOMSON, C.J.

Judgment of  
Court of Appeal  
delivered by  
Thomson, C.J.  
24th January  
1962

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

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F.M. Criminal Appeal No. 44 of 1962

(K.L. High Court Criminal Trial No. 30/62)

Chiu Nang Hong Appellant

v.

The Public Prosecutor Respondent

Cor: Thomson, C.J.  
Hill, J.A.  
Syed Sheh Barakbah, J.A.

JUDGMENT OF THOMSON, C.J.

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This appellant was convicted before Ong, J.,  
for rape in contravention of section 376 of the  
Penal Code and sentenced to eighteen months' im-  
prisonment. Against that conviction and sentence  
he has now appealed.

The appellant is a piano dealer and the  
prosecutrix is a married woman, aged 28, who has  
been married for 9 years and has 3 children.

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At this stage it is not in question, and at  
the trial it was admitted, that during the morning  
of 10th May, 1962, at premises in Lorong Parry,  
Kuala Lumpur, the appellant had sexual intercourse  
with the prosecutrix.

It was the case for the prosecution that

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although the prosecutrix consented to the act of intercourse her consent was obtained by the appellant putting her in fear of death or hurt and therefore what he did amounted to rape within the meaning of the third paragraph of section 375 of the Penal Code which makes it clear in terms that sexual intercourse with a woman with her consent is still rape when "her consent has been obtained by putting her in fear of death or hurt."

The defence was that there was no question of putting her in fear and that her consent was freely given.

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Briefly, the story of the prosecutrix was that in company with her husband she met the appellant for the first time on 4th May, 1962, at a party where there was drinking and dancing. She met him, again in the company of her husband, at a similar party on the night of 9th May. The following morning she accompanied her husband, who was apparently suffering from having taken too much alcohol the previous night, to his place of employment. She then went on to a dancing school where she had been taking lessons for some time. She said the appellant was aware that she took dancing lessons at this school because the subject had been discussed in the course of conversation in his hearing at one of the parties. While she was there the appellant rang her up and said her husband was with him and was not feeling well and had asked him (the appellant) to fetch her. She agreed to this and shortly after the appellant arrived at the dancing school in a labelled trade van which he used for his piano business. She went with him in this vehicle and was driven to a house which is apparently some sort of a private brothel in a secluded part of the suburbs of Kuala Lumpur. The appellant said her husband was there and invited her to enter. When she did so he pushed her into a room and secured the door. He told her not to shout and putting his hands over her neck said if she shouted he would strangle her. She was shocked and because of his size did not dare to put up a fight. She was so frightened that she just stood still in the middle of the room. The appellant then took off her clothes, carried her to the bed and had sexual intercourse with her.

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Afterwards he took her to his van and drove her home to her house in Petaling Jaya. The following night, that is the night of 11th May, she told her husband what had happened. Her husband told her it was up to her to decide whether she would make a report to the Police. She decided she would make a report to the Police and she did so the next morning.

10 The appellant's story was that at the party on 4th May and to a greater degree at the party on 9th May the prosecutrix showed signs of affection for him by dancing with him in improper and suggestive proximity. At the end of the second party her husband was too drunk to drive himself home so the prosecutrix did so but before leaving she whispered to him a request that he should ring her up at her dancing school the following morning.

20 The following morning her husband rang up to thank him for the party. He said he had a headache and the appellant advised him to take some brandy and have a rest. That reminded him that he had promised to ring up the prosecutrix. He did so and she asked him to go to the dancing school. He went there and after some conversation they left and she said she wanted to go to somewhere quiet. He then took her to the premises in Lorong Parry, with which he was familiar. He took her in and after some preliminary approaches  
30 which were entirely amicable he removed her clothes with her assistance and had connection with her with her consent. He then took her home in his van. While doing so there was some conversation about letting her have a piano cheap. At no time did he offer any explanation as to why, if his story was true, the prosecutrix should have commenced proceedings against him beyond saying that women are fickle.

40 There was a considerable amount of evidence as to what happened at the two parties on 4th and 9th May and as to events subsequent to the alleged rape. At this stage most of that evidence has ceased to be of any great probative value because most of it goes little way in assisting to answer the questions really in issue as these questions formulated themselves in the course of the trial. Accordingly it does not require to be mentioned here except perhaps the medical evidence. The

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prosecutrix was examined on 13th May by a woman doctor who found no traces of any injury either externally or in the vulva. But of course that evidence was of little importance because it was no part of the prosecution case that the prosecutrix had been forced in any way. Again a gynaecologist called for the defence who had not examined the prosecutrix expressed the view based on what he had heard that if at the material time the prosecutrix was in a state of shock as a result of threats by the appellant it was unlikely that she would have been able to give a very detailed account of what had taken place. As she was able to give a detailed account of what had taken place it was unlikely that she was in any great degree of shock and her narration showed that she was in full possession of her senses. He was not examined however as to the possible effects on her powers of recollection of the questioning she must have undergone on more than one occasion between the incident and the trial.

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At the close of the trial it became clear that there were only two questions to be decided. The first was whether or not the Court was satisfied that on the night of 9th May the prosecutrix asked the appellant to ring her up at the dancing school the following morning. That question was of importance by reason of its bearing on the second question which was the crucial question in the whole case. That was whether or not the Court was satisfied that the appellant obtained the consent of the prosecutrix to his having connection with her by putting her in fear of death or hurt. There was no question of identity because identity was admitted. There was no question as to whether sexual intercourse had taken place because sexual intercourse was admitted. There was no question of want of consent because there was consent. The question was as to how the consent was obtained.

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The trial Judge fully appreciated the questions he had to decide and in the event he answered both these questions in a sense unfavourable to the appellant and accordingly he found the appellant guilty. He clearly approached the matter with very great anxiety and he has since stated in very great detail the grounds on which he convicted the appellant. Before us these grounds have been criticised and we have considered

them almost sentence by sentence. Perhaps, however, it is necessary to add that having considered them sentence by sentence we have then gone on to consider them as a whole.

10 Having done so we are forced to the conclusion that the trial Judge was overwhelmingly influenced by the impression, admittedly a subjective impression, which he formed of the credibility of the prosecutrix and that compelled him to accept her evidence as evidence of truth even after the most meticulous examination of every piece of the prosecution evidence and of the evidence of the appellant and of the defence witnesses.

20 That being so it is difficult to see any ground on which this Court can interfere. Reading the notes of evidence in cold print it may well be that in our own minds we might feel something less than satisfaction as to the guilt of the appellant. Nevertheless we must remember that we have had no opportunity of observing the appellant; we have had no opportunity of observing the prosecutrix. The trial Judge, who is a very experienced Judge, has had these opportunities and in that connection it must be remembered that he, unlike ourselves and unlike counsel for the appellant, is of the same race as the parties. In the circumstances unless we were satisfied there had been a miscarriage of justice (and we are not so satisfied) 30 it would be wrong for us to interfere.

4- It is true, and this is one of the main grounds on which the conviction has been attacked, to say that it is a rule of prudence that in cases of this nature it is unsafe to convict on the uncorroborated testimony of the woman and that although there is no rule of law against a conviction on such evidence nevertheless in every case a caution as to the possible danger of such a course should be administered to the trier of fact. In the case of a trial by jury this Court looks at the Judge's charge to the jury and if we find no such warning we say there is misdirection. Similarly, in a case where the Judge himself is the trier of fact, if this Court were satisfied that the Judge had not administered to himself such a warning we would hold he had misdirected himself just as if he had misdirected a jury. There is, however, this difference.

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1963  
(continued)

A jury cannot be expected to be aware of the need for such a warning by the light of nature and it must be administered to them in clear and suitable terms. A Judge, however, can be expected to be aware of it and whether or not he has administered a suitable warning to himself is not to be determined on the inclusion or omission of some particular formula in his grounds of judgment but on an examination of his approach to the question as a whole.

10

In that light we have examined the grounds of judgment of Ong, J., in the present case and it is abundantly clear that he had such a warning before him from beginning to end. It is clear that he was well aware that the only evidence to support a conviction was the uncorroborated evidence of the prosecutrix. It is clear that he examined the rest of the evidence to find if there was such corroboration and that he did so because he recognised the wisdom of having it. And it is clear that he did not find such corroboration, that he was aware he had not found it and nevertheless with his eyes open he felt himself unable to resist the compulsion to accept the prosecutrix's evidence as true.

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It was urged before us that the prosecutrix's story was lacking in probability and, in particular, that her explanation as to why she delayed telling her husband what happened until 36 hours later was particularly improbable. But again it is clear that the trial Judge had considered all that and yet in spite of it he felt himself compelled to convict.

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After the most careful consideration we find ourselves compelled in all the circumstances of the case to dismiss the appeal.

In every system of administration of law more advanced than the exercise of tribal justice by the assembly of the tribe there must be some organ of society to whom society delegates its powers of deciding such matters as the guilt of offenders. That is the Judge. In our view there is much wisdom in the aphorism "Optima est lex, quae minimum relinquit arbitrio iudicis". So far as we are concerned, however, it is not for us to criticise the limits which the law imposes on the judicial power, it is our duty to accept them and if necessary to interpret them. And, so long as the

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authority to which that power is delegated keeps within these limits and observes the rules appointed by the law for the exercise of that power then his decision must be accepted.

10 We know of no case that would justify us in interfering with the findings of a trial Judge on a question of fact which are based entirely on the assessment of credibility, which ignore no relevant fact, which take into no account no fact that is irrelevant and where there has been no substantial contravention of any rule of law or judicial procedure.

As regards sentence, rape is a serious offence and we cannot regard the sentence imposed in this case as in any way excessive.

The appeal is dismissed.

CHIEF JUSTICE,

FEDERATION OF MALAYA.

20 Kuala Lumpur,  
24th January, 1963.

Messrs. R. Ramani and M.S.Naidu for appellant.  
H.S.Ong, Esq., D.P.P., for respondent.

No. 24

ORDER GRANTING SPECIAL LEAVE TO APPEAL

S E A L

APPEALS FROM THE SUPREME COURT ORDINANCE,  
1958

ORDER UNDER SECTION 5 (1)

30 WHEREAS there was this day submitted to His Majesty the Yang di-Pertuan Agong a Report from the Judicial Committee of the Privy Council dated the 2nd day of October, 1963 in the words following viz:-

In the  
Judicial  
Committee of  
the Privy  
Council

No.24

Order granting  
Special Leave  
to Appeal  
26th February  
1964

In the  
Judicial  
Committee of  
the Privy  
Council

\_\_\_\_\_  
No.24

Order granting  
Special Leave  
to Appeal  
26th February  
1964  
(continued)

" WHEREAS by virtue of the Federation of Malaya (Appeals to Privy Council) Order in Council 1958 there was referred unto this Committee a humble Petition of Chiu Nang Hong in the matter of an Appeal between the Petitioner and the Public Prosecutor Respondent setting forth that by their Report to the Head of the Federation of Malaya dated the 1st day of April 1963 their Lordships of the Judicial Committee of the Privy Council reported as their opinion 10 that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Order of the Supreme Court of Malaya dated the 14th day of January 1963: that the Privy Council Agents acting for the Petitioner upon further examining the Record discovered that the date of the said order was the 24th day of January 1963 and not the 14th day of January 1963 as set forth in the Petition to the Head of the Federation praying for special leave to appeal: And humbly praying that their Lordships' 20 aforesaid Report may be amended and the proper date the 24th day of January 1963 substituted as the date of the Order of the Supreme Court of Malaya in place of the 14th day of January 1963:

AND THE LORDS OF THE COMMITTEE in obedience to the said Order in Council have taken the humble Petition into consideration and do this day agree to report to the Head of the Federation as their opinion that their Report dated the 1st day of April 1963 ought to be amended so that their opinion be that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Order of the Supreme Court of Malaya dated the 24th day of January 1963." 30

NOW, THEREFORE, His Majesty the Yang di-Pertuan Agong having taken the said Report into consideration was pleased to approve thereof and to order as 40 it is hereby ordered that the same be punctually observed, obeyed and carried into execution.

DATED this 26th day of February 1964.

BY COMMAND

MINISTER OF JUSTICE

(F.M.CRIMINAL APPEAL NO.44 of 1962)

E X H I B I T S

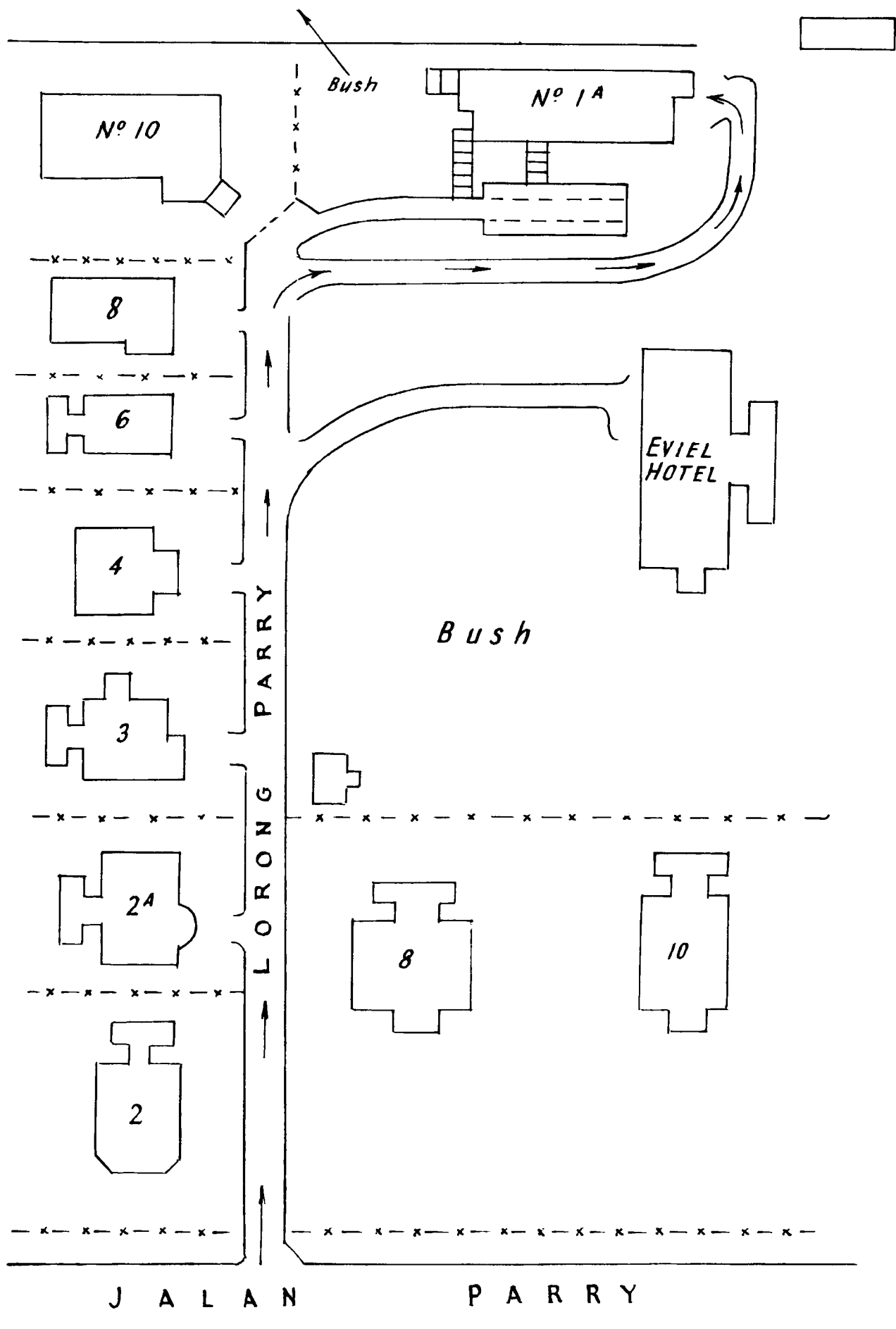
Exhibits

SKETCH OF HOUSE  
NO. 1A, LORONG PARRY

P.9.  
Sketch of  
House

SKETCH OF HOUSE N<sup>o</sup> 1A  
FROM JALAN PARRY, K.L.

EXHIBIT P.9



Exhibits

KEY TO PLAN

P. 9.  
Sketch of  
House  
(continued)

A.....DRESSING TABLE

D.....DOOR

S.....SHANK

W.....WINDOW

T.....TABLE

M.....MIRROR

X.....CHAIR

I.....ICE BOX

B.....BED 2 PERSONS

X.....SCENE OF CRIME



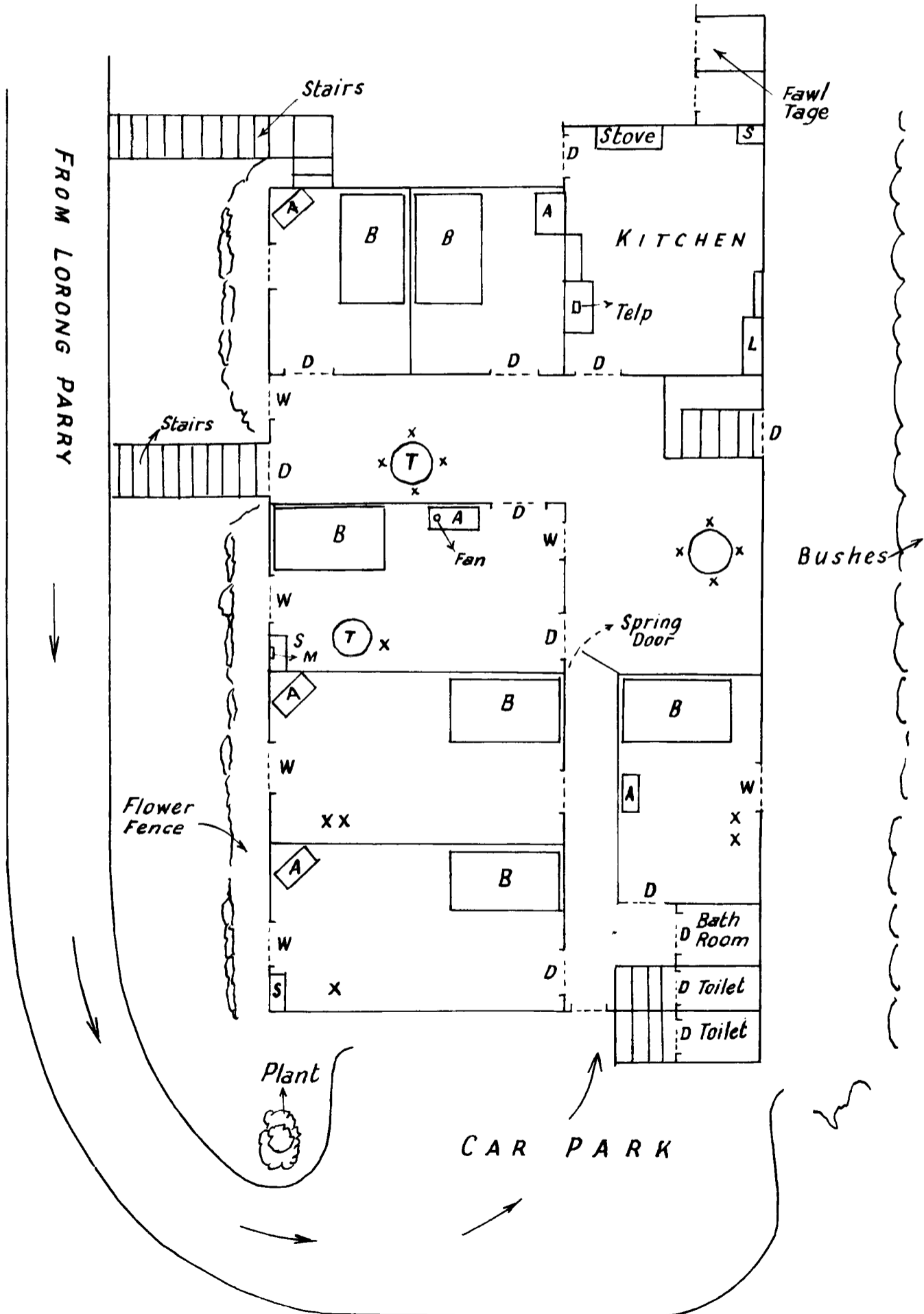
Exhibit P.10

P.10  
Sketch Plan  
showing  
situation  
of house

SKETCH PLAN showing Situation of House  
No.1A from Jalan Parry, K.L.

EXHIBIT P.10

SKETCH OF HOUSE  
NO 1A LORONG PARRY



Exhibits

P.16  
 Police  
 Report,  
 12th May 1962

Exhibit P16Police Report

POLIS DI-RAJA PERSEKUTUAN.

SALINAN REPORT

No. Report 3271/62. Rumah Pasong Campbell Road  
 Pada 10.45 hrs. pagi 12.5.1962 Fasal.

Aduan Philomena Lim.

Umor 28. tahun. Kerja Housewife.

Dudok di 10.8/3B, Petaling Jaya.

Jurubhasa ..... daripada..... kepada.....

10

Saksi-nya.....

Kata aduan....

On 10.5.62 at about 10.35 am one Nang Hong the proprietor of C.Nang Hong piano shop at Batu Road came to A.Daniel's Dancing School at Ipoh Road in his shop van and picked me up intending to bring me to see my husband. Earlier, he rang up to say that my husband had a terrible headache and that he had advised my husband to have a stengah to clear the headache, meanwhile he would come to fetch me to meet my husband. He came about 10-15 minutes after the call. I sat in the front seat of his van and Nang Hong was the driver. We passed Princess Road, circular Road and after that I lost track. Subsequently we arrived at a house on a hill slope. Upon arrival he got down from the van and told me my husband was in the house and he led me in. When we came to the doorway of a room he pushed me into the room and immediately locked the door from inside. I was shocked to find my husband not in and demanded from him where my husband was. He laughed. He then carried me to the bed and stripped me. Whilst doing so he threatened to choke me to death if I were to scream or make trouble. He then raped me. After having raped me he took me in his car and left me at my house. This morning at about 1 a.m. I told my husband what Nang Hong did to me and he took me to see you to

20

30

71.

make a report.

This is my report. I did not tell my husband earlier because I was scared.

Before me, Sign. Complt.....?

(Goh Chin Hee) A.S.P. 12.5.62.

Exhibits

          
P.16  
Police Report  
12th May 1962  
(continued)

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

NO.16 of 1964

ON APPEAL FROM THE SUPREME COURT OF  
THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

BETWEEN:

CHIU NANG HONG (Defendant) Appellant

and

THE PUBLIC PROSECUTOR (Prosecutor) Respondent

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RECORD OF PROCEEDINGS

GRAHAM PAGE & CO.,,  
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41, Whitehall,  
LONDON, S.W.1.

Solicitors for the  
Appellant.

WRAY SMITH & CO.,  
1, King's Bench Walk,  
Temple,  
LONDON, E.C.4.

Solicitors for the  
Respondent.