

10

IN THE JUDICIAL COMMITTEE OF

NO.5 of 1972

THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

B E T W E E N :

- 1. LIM YAM TEK alias AH THAW
- 2. TAN LAU CHUAN alis TAN AH LIAK  
(Defendants)  
Appellants

- and -

THE PUBLIC PROSECUTOR  
(Prosecutor)  
Respondent

R E C O R D O F P R O C E E D I N G S

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
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(i)

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(Prosecutor) Respondent

RECORD OF PROCEEDINGS

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1.

IN THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

B E T W E E N :

1 LEM YAM TEK alias AH THAW  
2. TAN LAU CHUAN alias TAN AH LIAK  
(Defendants) Appellants  
- and -  
10 THE PUBLIC PROSECUTOR  
(Prosecutor) Respondent

RECORD OF PROCEEDINGS

NO. 1

AMENDED CHARGE

IN THE HIGH COURT IN MALAYA AT IPOH

Ipoh Assizes

Perak Criminal Trial  
Nos.13/70 & 18/70

PUBLIC PROSECUTOR

vs.

20 1. LIM YAK TEK alias AH THAW  
2. TAN LAU CHUAN alias TAN AH LIAK

AMENDED CHARGE

To the abovenamed accused.

You are charged at the instant of the Public Prosecutor and the charges against you are:

30 1st Charge: "That you, jointly together with two others on the 19th day of April, 1969, at about 8.30 p.m. at Seberang Port Weld, Taiping, in the District of Larut and Matang, in the State of Perak, in furtherance of the common intention of all, did commit murder by causing the death of one ONG CHAN TIAN alias ONG AH PEOW, and that you have thereby committed an offence punishable under

In the High Court in Malaya at Ipoh

No.1

Amended Charge

2nd November 1970

In the High Court in Malaya at Ipoh

section 302 read with Section 34 of the Penal Code."

\_\_\_\_\_  
No.1  
Amended Charge  
2nd November 1970  
(continued)

2nd Charge: "That you, jointly together with two others on the 19th day of April, 1969, at about 8.30 p.m. at Seberang Port Weld, Taiping, in the District of Larut and Matang, in the State of Perak, in furtherance of the common intention of all, did an act, to wit, stabbed ONG YU SEW with a dagger with such intention and under such circumstances that if by that act you had caused the death of the said ONG SU SEW you would have been guilty of murder, and that you caused hurt to the said ONG YU SEW by the said act and that you have thereby committed an offence punishable under section 307 read with section 34 of the Penal Code."

10

Dated at Ipoh this 2nd day of November, 1970.

Sd. Haidar bin Mohd. Noor  
(Haidar bin Mohd.Noor)  
Deputy Public Prosecutor,  
Perak, States of Malaya.

20

No.2

NO. 2

Prosecution Evidence

P.W.1 - Dr. (Mrs.) Padmakanthan a.s. in English:

Dr. (Mrs.) Padmakanthan

I am attached to the General Hospital, Ipoh.

23rd November 1970

On 19.4.69 I was attached to the District Hospital, Taiping. At about 10.00 p.m. on that day I examined a male Chinese named Ong Ah Peow. When I examined this male Chinese he was already dead. The next day at about 10.00 a.m. I conducted a post-mortem on the body of Ong Ah Poew. Before I conducted the post-mortem the dead body was identified to me by P.C.2092.

30

I found that the dead body was about 5'7" tall and he was about 25 years old.

On external examination I found multiple tri-radiate stab wounds on several parts of his body. The stab wounds were about 1.5 c.m. x 1.5 c.m. x

1.5 c.m. These stab wounds were at the following places:

1. On the left chest just medial to the nipple.
2. On the right chest 2" above the right nipple.
3. On the right chest 2" medial to the right nipple.
4. On the right iliac fossa region.
5. On the right loin.
6. Just below the left shoulder blade.
- 10 7. On the left lower chest on its posterior aspect.
8. 5 stab wounds along the right hand.
9. 6 stab wounds along the left hand.

Bleeding was seen from the left chest wound.

On internal examination I found the following:

1. The left lung showed that it had collapsed.
2. A tri-radiate stab wound leading from outside wound was seen at the collapsed lung. It was a penetrating wound.
- 20 3. There was a similar wound on the right ventricle of the heart perforating the heart.
4. The chest cavity had blood within it.
5. The abdominal organs were intact.
6. The skull was intact.

Cause of death was haemorrhage due to stab wounds of the heart and the lung. Death in this case was almost instantaneous. In my opinion these injuries were caused by a sharp instrument of tri-radiate shape.

30 On 19.4.69 at about 9.40 p.m. I examined a male Chinese named Ong Yu Siew (identified). He was in a state of shock. He also had similar multiple tri-radiate stab wounds on his body.

In the High Court in Malaya at Ipoh

\_\_\_\_\_  
No.2

Prosecution Evidence

Dr. (Mrs.) Padmakanthan

23rd November 1970  
(continued)

In the High Court in Malaya at Ipoh

No.2

Prosecution Evidence

Dr. (Mrs.) Padmakanthan

23rd November 1970 (continued)

XXD: Ong Ah Peow must have had excessive bleeding as a result of the stab wounds. After receiving those injuries I think he must have staggered for a few feet and then must have fallen down. I do not think that he could have run away for a distance of about 100 yards after receiving those injuries.

RE-XN: Nil.

By Jury: Nil.

By consent witness is released.

NO.3

10

PROSECUTION EVIDENCE

ONG YU SEW

No.3

P.W.2 - Ong Yu Sew @ Ong Ah Sew a.s. in Hokkien:

Ong Yu Sew

I am 27 years old and I am a fisherman residing at No.18 Kampong Bharu, Port Weld.

23rd November 1970

I/C No.4046407 of Ong Chan Pian marked P1 and shown to witness.

I know the person whose photograph appears in P1. I knew him since childhood days. He was a friend of mine. He was known to me as Ah Peow.

20

On 19.4.69 at about 7.00 p.m. I went to see a Chinese stage show at Sebarang, Port Weld, which is on the other bank of the river. I went to see the stage show in the company of Ah Peow. The show commenced at about 8.00 p.m. There were many people watching the show. The area was brightly lighted with electric lights. It was an open air show. We sat on a bench to watch the show. No sooner after we arrived at this place Ong Bun Kim (identified) and Ong Chan Kee @ Ong Chuan Heng (identified) also arrived at the same place. These two people stood behind us about 10 feet away.

30

While Ah Peow and I were seated together on the bench watching the show people came from behind



and they stabbed Ah Peow and he fell down. On seeing that I started to run away. Before I ran away I had a look at those people who stabbed Ah Peow. There were four people who stabbed Ah Peow. I know all these four persons and I also know their names. They are (1) Lau Weng Thong (2) Lau Kee Chui (3) Lim Ah Thaw (points at 1st Accused) and (4) Lau Chuan (points at 2nd Accused). I saw that all these persons were armed with knives. The knife was about 1 foot long but I cannot say what kind of knife it was. I saw all those four persons attacking Ah Peow with their knives.

10

After I had run for a short distance the same four people caught up with me and they stabbed me. When I first received the stab wounds I was conscious and I was running but subsequently I lost consciousness. I know of no reason why they stabbed us. I know well the four persons who stabbed Ah Peow and I. I knew those four persons long before this incident.

20

XXD: This stage show was held in honour of the Chinese Temple at Sebarang Port Weld. Sebarang is in fact an island on the river.

On the evening of 19.4.69 Ah Peow and I went to see the show by appointment. I went to see Ah Peow first in his house. When I arrived there his two brothers Ong Chuan Kee and Ong Bun Kim were also there. I did not speak to Ong Chuan Kee or Ong Bun Kim. I was in Ah Peow's house only for a short while and then we both left for the show. Most of the houses on Sebarang are on stilts. In order to get to the place where the show was being held we had to walk from Ah Peow's house over wooden platform built on stilts. The distance from Ah Peow's house to the show place is not far away.

30

I do know one Ong Eng Kek (identified) who is the Chairman of the Local Council of Sebarang Port Weld. I agree that on our way to see the show we had to pass Ong Eng Kek's house. This house is also a short distance away from the show place.

40

I deny that at the time of the incident I was a member of a secret society. I do not know if Ah Peow was a member of a secret society.

There were a lot of persons watching the show but I do not know the number. There was quite a big crowd. Soon after I arrived the show started. Ah Peow and I

In the High Court in Malaya at Ipoh

—  
No.3

Prosecution Evidence

Ong Yu Sew

23rd November 1970  
(continued)

In the High  
Court in  
Malaya at  
Ipoh

—  
No.3

Prosecution  
Evidence

Ong Yu Sew

23rd November  
1970

(continued)

had to go through a crowd to get to our seats. There were spectators all around us. Between us and Ong Chuan Kee and Ong Bun Kim there were also several spectators, some were seated and some were standing. Ah Peow and I were seated next to each other.

I first noticed the four persons when they were stabbing Ah Peow and not after Ah Peow had fallen down. I cannot remember if I said at the P.E. that the first intimation I had of the assailants' presence was when I found the deceased lying down on the ground. The assailants came from behind.

10

Ah Peow and I were more or less seated at about the middle in the front half facing the stage. When Ah Peow fell there was a confusion and many people started to run away. I agree that the whole incident started very fast. After the incident I ran towards the temple but I did turn round to see who were coming after me. I was stabbed on my back. After I became unconscious I did not know what happened. I was first stabbed at the place where I saw the stage show. The stage show and the temple were at the same place.

20

I do know a person by the name of Puah In Tian @ Cha Bo (identified). I know him by the name of Puah Cha Bo. This is the only person I know as Puah Cha Bo. He lives in Sebarang Port Weld. I did not see Puah Cha Bo at the stage show on the night of 19.4.69. I did not see him in the company of the 1st Accused.

30

I had no ill feeling against the four assailants whom I had named. I also do not know of any ill feeling between Ah Peow and the four assailants. Prior to this incident I did know Lau Weng Thong. He is now dead. He died a few months ago. Lau Kee Chui the brother of Lau Weng Thong is still alive. I did have a quarrel with Lau Weng Thong over fishing about 2 or 3 years previously. After that we were not on talking terms. Prior to that quarrel we were on talking terms. That was the only quarrel we had. I never had a quarrel with him over a game of "mahjong". I do not know how to play "mahjong". I did not mention to Ah Peow about the quarrel I had with Lau Weng Thong. I do not know if Ah Peow had stabbed Lau Weng Thong before.

40

Ah Peow and I were seated together at

a distance of about from the witness box to the wall opposite - a distance of 38 feet. The stage was right in front of the temple separated by an open space where the spectators watched the show.

In the High Court in Malaya at Ipoh

When I regained consciousness I found myself in the District Hospital, Taping. It was the next day. I deny that I did not have an opportunity of seeing the assailants.

—  
No.3

Prosecution Evidence

10 Enche Gill applies under section 113 of the C.P.C. for the court to examine the witness' statement to the police regarding his quarrel with Lau Weng Thong and whether he was aware that Ah Peow had stabbed Lau Weng Thong and the number of the assailants.

Ong Yu Sew

23rd November  
1970  
(continued)

I find there is no material discrepancy and I dismiss Enche Gill's application.

20 It is not true that the two Accused were not in the group of 4 assailants that attacked Ah Peow on the night in question. I deny that at the beginning of 1968 Ah Peow and I invited the two Accused to join a secret society and they refused. I know that both Accused were friendly with Lau Weng Thong.

Re'Xd: I had to pass by the house of the Chairman of the Local Council of Sebarang from Ah Peow's house to get to the show place. The people behind us at the show place were not close together.

By Jury: Nil.

Adjourned to 9.15 a.m. to-morrow

Sgd: Pawan Ahmad

---

In the High  
Court in  
Malaya at  
Ipoh

NO. 4

PROSECUTION EVIDENCE

ONG BAN KIM

No.4

P.W.3 - Ong Ban Kim @ Ong Cha Koon a.s. in  
Hokkien:

Prosecution  
Evidence

30 years old, fisherman, residing at No.90  
Sebarang, Port Weld.

Ong Ban Kim

24th November  
1970

I do know P.W.2 (identified) He is known as  
Ong Ah Sew. He was a friend of my younger  
brother named Ong Ah Peow who is now dead. P.1  
(identified) shows the photograph of my said  
younger brother. I live on the island in the river  
on the other side of Port Weld. The police  
station is in Port Weld town.

10

On 19.4.69 at about 6.00 p.m. I went to see the  
stage show in Sebarang. I went to see the show  
alone. I also have a younger brother named Ong  
Bang Kok (identified). He is also known as Ong  
Ah Heng and also as Ong Chuan Kee. No sooner after  
I arrived at the show place I suddenly noticed that  
Ong Ah Heng was by my side and at that time the  
show had already started. This place was brightly  
lit by fluorescent lamps.

20

When I was watching the show I noticed that Ah  
Peow was also watching the show and he was in front  
of me about 28 feet away. Ah Peow was seated on a  
bench and P.W.2 was by his side. Ong Ah Heng and I  
were standing when we were watching the show.

After watching the show for a short while I saw  
people coming from behind Ong Ah Peow and then I saw  
them stabbing Ong Ah Peow. I saw four persons  
stabbing Ong Ah Peow. I know all these four persons  
and I also know their names. They are (1) Lau Weng  
Thong (2) Lau Kee Chui (3) Tan Lau Chuan (points at  
2nd Accused) and (4) Lim Ah Thaw (points at 1st  
Accused). I could make them out clearly.

30

After they had stabbed Ong Ah Peow he fell down.  
Two of the four persons then chased after P.W.2.  
The other two continued to stab my brother. P.W.2  
ran away and I did not know what happened to him.  
After the stabbing all the four assailants ran away.

40

I then went up to Ong Ah Peow to render aid to him. Ah Heng accompanied me there and we lifted Ong Ah Peow and took him to a sampan. Then we went across the river to Port Weld town. We managed to get transport and Ah Heng took Ah Peow to the District Hospital Taiping. In the meantime I went to the Port Weld police station and there I lodged a report to Hassen bin Man, P.C.22960 (identified). I did not sign the report. After that I went with A.S.P. P.C. De Silva (identified) to the scene and subsequently I returned home.

10

The next day I went to the District Hospital Taiping and I identified the dead body of Ong Ah Peow to a policeman whom I now cannot recognise.

I know the four assailants since my childhood days. I do not know if there was any ill-feeling between Ong Ah Peow and the four assailants. To the best of my knowledge Ah Heng is not mentally sound. He had gone to the District Hospital Taiping for psychiatric treatment twice before. This is the photograph of Ong Ah Peow P.2 (Identified) after he had been stabbed.

20

XXD: On the day in question I did not see P.W.2 in my house. I also did not see him going to see the show in the company of Ong Ah Peow. I cannot remember if I said at the P.E. that "deceased and Ong Yu Sew walked together there". The deceased stood up after he was stabbed and then he fell.

30

I do know the Chairman of the Local Council of Sebarang named Ong Eng Kek (identified). In order to get to the show place from my house I had to pass the house of Ong Eng Kek. In fact I had to pass a number of houses. From Ong Eng Kek's house it was not possible to see fully the stage show. I agree one could only see the rear portion of the stage from his house. From the position where I was standing watching the show it was not possible to see Ong Eng Kek's house.

40

There was a big crowd watching the show. In between myself and the deceased there was no one standing or seated. I was standing at the end of an open passage of about 5 to 6 feet wide. There were people on either side of the open passage. I agree that there were people sitting and standing between the deceased and I. There was a lot of noise and there were many people present. Some of these people

In the High Court in Malaya at Ipoh

\_\_\_\_\_  
No.4

Prosecution Evidence

Ong Ban Kim

24th November  
1970  
(continued)

In the High  
Court in  
Malaya at  
Ipoh

\_\_\_\_\_  
No.4

must have also seen the stabbing incident. I saw my brother fall to the ground. I agree that the whole incident was very fast. The deceased fell at the spot where he was stabbed. I deny that Ong Ah Peow ran and was stabbed in front of Ong Eng Kek's house. Altogether four persons stabbed deceased. I deny that only Lau Weng Thong stabbed deceased.

Prosecution  
Evidence

Ong Ban Kim

24th November  
1970  
(continued)

I did lodge a report at the police station after the incident. When I lodged the report I gave my name to the police constable as Ong Sun Kim. Ong Meng Kok is my brother. I did not make use of his name when I lodged the report.

10

When I lodged the report I was aware of the identity of the assailants. I cannot remember whether or not I gave to this P.C. the names of the four assailants. I agree that when I lodged the report I was anxious that the assailants would be arrested. I now remember that at the P.E. I did say that I gave the names of the four assailants to the P.C. I now remember that I did give the names of the four assailants to the P.C. when I lodged the report. I do not know if Ong Meng Kok lodged a report of the incident.

20

I did not see P.W.2 being stabbed. I do not know how he received the injuries. I agree that at the P.E. I did say that P.W.2 ran away after being stabbed. I now say I did not know whether P.W.2 was stabbed or not. I agree that when the incident took place many people also ran away. I went to my brother's assistance after the crowd had dispersed. It is not true that I did not witness the incident.

30

I deny that Ong Ah Peow, myself and P.W.2 threatened 1st and 2nd Accused separately sometime in early 1968 to join a secret society and they both refused. I was never a member of a secret society. I had no grudge against 1st or 2nd Accused. It is true that 1st and 2nd Accused also assaulted the deceased on the night in question.

I do know Puah In Tian @ Puah Char Bo (identified). I do not know if Ong Ah Peow knew him. I have no quarrel with Puah In Tian. We are good friends.

After lodging the report I returned home. I did not tell my mother that Ong Ah Peow had been stabbed. I went to sleep. I did not tell anyone

else on that night about the stabbing.

RE'XD: The people in front of me did not block my view of Ong Ah Peow. I saw the stabbing of Ong Ah Peow by the four persons I had mentioned. When I lodged the report at the police station I was still in fear. On the night in question I did not see Puah In Tian @ Puah Char Bo at the stage show. After Ong Ah Peow had been stabbed by the four assailants they ran away but I cannot say whether together or separately.

10

By Jury: Nil.

In the High Court in Malaya at Ipoh

\_\_\_\_\_  
No.4

Prosecution Evidence

Ong Ban Kim

24th November 1970  
(continued)

NO.5

PROSECUTION EVIDENCE

HASSAN BIN MAN

P.W.4 - Hassan bin Man. P.C.22960 a.s. in Malay:

I am stationed at Port Weld.

On 19.4.69 at about 9.00 p.m. I was on duty at the police station at Port Weld. At about that time P.W.3 (identified) came to the police station and he looked very frightened and very excited. I reduced what he said in writing. Report No.97/69 (identified), P.3 is the said report that I took down. P.W.3 did not sign the report. I wrote it as the complainant. P.W.3 did not sign the report because he immediately left after giving the information to me. Later I informed A.S.P. P.G. De Silva about this report by phone and he came to the police station.

20

No.5

Prosecution Evidence

Hassan bin Man

24th November 1970

YXD: When P.W.3 lodged the report he did not give the names of the assailants to me. If he had given their names to me I would have recorded them in the report. P.W.3 was not very conversant in Malay but I could understand him. He could also understand me. I did not read back the report to P.W.3 because he had already left by the time I completed writing it down.

30

RE'XD: I wrote down only the gist of P.W.3's report.

By Jury: Nil.

In the High  
Court in  
Malaya at  
Ipoh

NO.6

PROSECUTION EVIDENCE

HARUN BIN YEOP SAID

No.6  
Prosecution  
Evidence  
Harun bin  
Yeop Said  
24th November  
1970

P.W.5 - Harun bin Yeop Said, P.C.2092 stationed at police Station, Taiping, a.s. in Malay:

On 19.4.69 I was on 24 hour duty at the District Hospital, Taiping. At about 9.30 p.m. on that night the body of a male Chinese was brought in a car by Ong Chuan Kee @ Ong Ah Heng @ Ong Meng Kok (identified). This dead body was examined by P.W.1 on the same night and I identified this body to her. The next day before the post-mortem P.W.3 identified this body to me. P.2 (identified) is a photograph of the deceased.

10

XXD: Nil.

By Jury: Nil.

No.7

NO.7

Prosecution  
Evidence

PROSECUTION EVIDENCE

MOHD. TAIB BIN HAJI AHMAD

Mohd. Taib  
bin Haji  
Ahmad  
24th November  
1970

P.W.6 - Mohd. Taib bin Haji Ahmad D/Cpl. No.4277 a.s. in Malay:

I am a police photographer attached to police station, Taiping.

On 19.4.69 at about 9.30 p.m. on the instruction of A.S.P. P.G. De Silva I took a photograph at the Taiping Hospital. P.2 (identified) is the said photograph. I produce its negative - P2N (identified). At about 10.40 p.m. I took four photographs of a stage show in front of a Chinese temple in Sebarang, Port Weld, on the instruction of A.S.P. P.G. De Silva. These are the said four photographs - P.4 A to D. I now produce their negatives - P.4 AN to DN respectively.

30

XXD: Nil.

By Jury: Nil.

By consent P.W.4, P.W.5 and P.W.6 are released.



NO. 8PROSECUTION EVIDENCEA.S.P., P.G. DE SILVA

In the High  
Court in  
Malaya at  
Ipoh

—  
No.8

Prosecution  
Evidence

A.S.P., P.G.  
De Silva

24th November  
1970

On 19.4.69 I was the Deputy O.C.P.D. Crime for Taiping.

At about 9.05 p.m. on 19.4.69 I received a phone call from P.W.4 and I immediately proceeded to District Hospital, Taiping. At the mortuary of this hospital I saw the dead body of a male Chinese. I recovered an I/C from this dead body. P.1 (identified) is the said I/C. I also took possession of the clothing of the deceased. I now produce the pair of trousers - P.5, a singlet P.6 (identified) and a shirt - P.7 (identified) which I recovered from the deceased. At this hospital I also saw P.W.2 and he was very badly injured. He was unable to speak to me. At my instruction P.W.6 took a photograph of the deceased. P.2 (identified) is the said photograph.

After that I proceeded to Sebarang, Port Weld, the scene of this incident accompanied by P.W.6. On arrival there I instructed him to take four photographs of the scene. P.4A to D (identified) are the said four photographs.

P.4 A is the side view of the stage.

P.4 B is the front view of the stage.

P.4 C is a closer front view of the stage.

P.4 D is the front view of the Chinese temple directly opposite the stage and about 50 yards away from the stage.

When I visited the scene the stage show was on. The visibility at the scene was very good. Fluorescent lighting was used to light up the stage show. On examination of the scene I found some bloodstains on a bench about 25 yards away from the stage. In the temple I found a small pool of blood on the floor of the temple.

On the following day I went to Taiping Hospital and I requested an Indian lady doctor to perform the post-mortem on the dead body.

In the High  
Court in  
Malaya at  
Ipoh

\_\_\_\_\_  
No.8

Prosecution  
Evidence

A.S.P., P.G.  
De Silva

24th November  
1970  
(continued)

On 17.12.69 the 1st Accused (identified) was arrested in Johore in connection with this case. On 5th May 1970 the 2nd Accused (identified) was arrested in Kuala Lumpur, also in connection with this case. Both of them were subsequently brought to Taiping police station.

XXD: The breadth of the open space in front of the stage was about 30 to 40 yards. Apart from the lights on the stage there were no other lights in the square open space. When I arrived at the scene I made a thorough examination of the square. The stains that I saw looked like blood to me. The stain that I saw on the bench was about 1" in diameter. I saw a few drops of blood on the ground near this bench.

10

The pool of blood was at this temple. From the jetty, I had to walk on a wooden platform built on stilts to get to the show place. All around the square at the scene there were wooden houses. In the course of my investigation I did record a statement from Puah In Tian @ Puah Char Bo (identified).

20

RE'XD: The bloodstain that I saw on the bench at the scene was damp.

By Jury: Nil.

At this stage the D.P.P. closes the case for the prosecution and offers the following witnesses to the defence -

1. Ong Piau @ Ong Ah Gong.
2. Ong Chuan Kee @ Ong Ah Heng @ Ong Meng Kok.
3. Mahadi bin Sarja, ex-sgt.4249.
4. Goh Toh Chuan D/PC 30094.

30

Enche Gill states that he requires only Mahadi bin Sarja and Goh Toh Chuan. The other two witnesses offered by the prosecution are hereby released.

Case for the prosecution.

Adjourned to 9.30 a.m. to-morrow.

Sgd. Pawan Ahmad

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NO.9DEFENCE EVIDENCELIM YAM TEK (1ST APPELLANT)

In the High  
Court in  
Malaya at  
Ipoh

Wednesday, 25th November, 1970.

\_\_\_\_\_  
No.9

I now put the three elections to each of the two accused persons. Both Accused elect to give evidence on oath.

Defence  
Evidence

D.W.1 (1st Accused) - Lim Yam Tek @ Ah Thaw  
a.s. in Hokkien:

Lim Yam Tek  
(1st  
Appellant)

10           24 years old, fisherman, residing at No.14  
Sebarang, Port Weld.

25th November  
1970

20           I had my early education in a Chinese school in  
Port Weld town. I left school at the age of 15 years.  
After that I helped my father in building houses and  
I also helped my brother in catching fish until the  
middle of 1968. After that I went to Singapore to  
work in Singapore as a lorry attendant. My employer  
in Singapore was one Lim Mun Seng. Sometime at the  
beginning of April 1969 I received a letter from my  
family in Sebarang. This letter was from my mother  
asking me to go back to Sebarang to attend the  
festival of the birthday of the temple god at  
Sebarang and also to worship it. This festival used  
to be celebrated by all the people living in Sebarang.  
My family and I attach great importance to this  
festival. As a result of my mother's request I  
obtained one week's leave from my employer. I left  
Singapore on the evening of 16th April 1969 and I  
arrived in Sebarang on 17th April 1969. On the 18th  
30           and 19th April 1969 my mother and I worshipped at  
the temple in Sebarang.

40           On the evening of 19th April 1969 at  
about 7.30 p.m. while I was in the house Puah In  
Tian @ Puah Char Bo (identified) came to see me.  
While we were in the house he asked me about  
Singapore and later he invited me to see the stage  
show in Sebarang. I accepted his invitation and we  
both went to see the show. I saw that there was a  
large crowd at the show place. While we were  
watching the show I did not see anything else but  
I heard a commotion. The commotion came from the  
spectators on the righthand side of the stage.  
Those people in that area then pushed their way to

In the High  
Court in  
Malaya at  
Ipoh

—  
No.9

Defence  
Evidence

Lim Yam Tek  
(1st  
Appellant)

25th November  
1970  
(continued)

our side. I was standing there for about 5 minutes after the commotion commenced. Then gradually those people slowly walked away. Then at Puah Char Bo's suggestion we left the show place. I went to my house and Pua Char Bo went to his house. When I arrived at home I went to sleep.

The next morning on 20.4.69 my mother and I went to the temple to worship again. I returned to Singapore on the evening of 20.4.69 and I continued to work there. I was arrested in Singapore. 10

On the night of 19.4.69 I did not stab Ong Ah Peow or P.W.2 (identified). I was never in the company of Lau Weng Thong on the night of 19.4.69.

In January 1968 I met Ong Ah Peow, P.W.2 and P.W.3 (identified) and they forced me to join their gang, the Green Dragon Secret Society. I told them not to force me and if they did I would report them to the police. Then the three of them spat at me. They also warned me to look after myself.

XXD: I am a good friend of Puah Char Bo. On 18.4.69 at about 4.00 p.m. when I went to the temple to worship I met Char Bo there and that was how he knew that I had returned from Singapore. Then I met him on that occasion he did not tell me that he would come and see me the following evening. Char Bo knows my mother. When I met Char Bo at the temple his cousin brother was with him outside the temple. 20

Char Bo and I spoke for about half an hour in my house on the night of 19.4.69 before we decided to go and see the stage show. When I was talking to Char Bo in my house my mother was present. It was Char Bo who invited me to go and see the stage show. 30

When Char Bo and I were watching the show we were to the left hand side of the stage about 30 to 40 feet away from the stage. Char Bo and I were standing together and we subsequently left the show place also together. Later we parted and each of us went on our way home. I was not interested in watching what the commotion was about. During the 5 minutes that I saw the commotion I also saw people slowly moving away and nothing else. Char Bo too did not do anything. He just stood there with me. 40

I do not know why P.W.2 and P.W.3 said that they saw me stabbing Ong Ah Peow on the night of 19.4.69.

I did not lodge a report against Ong Ah Peow, P.W.2 and P.W.3 about their threat to me for fear that the gang might do harm to me when I went out fishing. It is not true that they never threatened me. I deny that I was one of the four persons who stabbed Ong Ah Peow and P.W.2. On the night of 19.4.69 I did not see Lau Weng Thong, 2nd Accused or Lau Kee Chui at the show place or anywhere else.

In the High Court in Malaya at Ipoh

\_\_\_\_\_  
No.9

Defence Evidence

10 RE'XD: Puah Char Bo and I separated at the show place and we returned home separately. After the threat made by the three persons against me I was still all right with them; but they showed sour faces and they spat at me whenever they saw me.

Lim Yam Tek  
(1st Appellant)

25th November  
1970  
(continued)

By Jury: Nil.

\_\_\_\_\_  
NO.10

No.10

DEFENCE EVIDENCE

Defence Evidence

PUAH IN TIAN

Puah In Tian

20 D.W.2 (Witness for 1st Accused) - Puah In Tian  
@ Puah Char Bo a.s. in Hokkien:

25th November  
1970

27 years old, fisherman, residing at No.104 Sebarang, Port Weld.

I do know 1st Accused (identified). On 19.4.69 I met 1st Accused at about 7.15 p.m. at his house. I went to his house and I invited him to see a stage show in Sebarang. He accepted my invitation. Then both of us went to see the show. We arrived at the show place at about 8.00 p.m. I did see the show.

30 As we were watching the show there was a commotion among the spectators on the right hand side of the stage. The spectators at the place of commotion pushed their way to our side. Later I saw the spectators slowly leaving the place. 1st Accused continued to stay where we were on the left hand side of the stage and we continued to watch the show. When I had seen the people around us had moved away I told 1st Accused that we had better go home because I heard children in the crowd saying that there was a quarrel. Then we walked out to the road and then

In the High  
Court in  
Malaya at  
Ipoh

\_\_\_\_\_  
No.10

Defence  
Evidence

Puah In Tian

25th November  
1970  
(continued)

we separated and returned home. When we separated at the road it was nearly 9.00 p.m.

While I was walking home I saw in front of the house of Ong Eng Kek (identified) blood on the ground. From the time that 1st Accused was with me on the night of 19.4.69 up to the time we parted I did not see him with any weapon and I also did not see him stab Ong Ah Peow or P.W.2 (identified). 1st Accused was with me all the time until we parted.

10

XXD: I am a good friend of 1st Accused. I came to know that 1st Accused was working in Singapore only when I met and asked him on the night of 19.4.69 in his house about his work. I met him previously on 18.4.69 at about 5.00 p.m. with his mother in front of the temple. At that time I was inside the temple. At that time I was with my cousin brother. I spoke to him outside the temple. It was on 18.4.69 when I first met 1st Accused that I asked him where he was working and he replied that he was working in Singapore. On the night of 19.4.69 I asked him about conditions of working in Singapore. I had conversation in his house on the night of 19.4.69 for about 10 to 20 minutes. When we were talking together only the mother of 1st Accused came out.

20

While watching the show on the night of 19.4.69 I was standing on the left hand side of the stage - about 39 feet away from the stage. When I saw the commotion I just stood there and continued to watch the show. After the commotion I continued watching the show for about 5 to 10 minutes. 1st Accused also did not do anything. I was not anxious to find out what the commotion was about. The place where we parted at the road was about 70 feet away from the place where we watched the show previously.

30

There was a light from inside Ong Eng Kek's (identified) house and by this light I saw the pool of blood in front of his house. There was also a light outside his house. There was blood all over the ground in patches over an area of about 3 or 4 feet in diameter. These patches of blood were in front of his house and to the right about 8 feet away. When I saw these patches of blood many people were looking at them. I deny that 1st Accused was not with me on the night of 19.4.69.

40

RE'XD: Ong Eng Kek's house was about 4 to 5 chains away from the show place. There was a five-foot-way in front of Ong Eng Kek's house.

By Jury: Nil

In the High Court in Malaya at Ipoh

\_\_\_\_\_  
No.10

Defence Evidence

Puah In Tian

25th November 1970  
(continued)

NO.11

DEFENCE EVIDENCE

TAN AH LIAK (2ND APPELLANT)

No.11

Defence Evidence

Tan Ah Liak  
(2nd Appellant)

D.W.3 (2nd Accused) Tan Ah Liak @ Tan Lau Chuan a.s. in Cantonese:

10           23 years old, fishmonger, residing at No.5 Block B, Circular Road, Kuala Lumpur.

25th November 1970

I had my early education in a Chinese school in Port Weld. I left school at the age of 12 years. After leaving school I assisted my elder brother in fishing and I also assisted my mother in her sundry goods business at Port Weld.

In October 1968 I went to Kuala Lumpur to help my father in running his business as a fishmonger at the market, Ipoh Road, Kuala Lumpur.

20           On 19.4.69 I received news that my grandmother was ill in the District Hospital Taiping and so I left Kuala Lumpur at about 1.00 p.m. by taxi. I arrived in Taiping at about 6.00 p.m. on the same day. I went to see my grandmother in ward No.15 and I found that she was seriously ill and was unable to talk. I left the hospital at about 7.30 p.m. From the hospital I walked to the taxi stand in Taiping Town. At the taxi stand I met a taxi driver named Mat bin Darus (identified) and I had a conversation with him. I told him that I wanted to go to Port Weld. I met Mat bin Darus at about 8.00 p.m. I had

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In the High  
Court in  
Malaya at  
Ipoh

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No.11

Defence  
Evidence

Tan Ah Liak  
(2nd  
Appellant)

25th November  
1970  
(continued)

to wait because there were not enough passengers and so Mat bin Darus and I went to a coffee shop for some drinks. While we were in the coffee shop an Indian came and he wanted to go to Matang. Subsequently I left with the Indian in Mat's taxi at about 8.30 p.m. We first went to Matang and the Indian alighted at a toddy shop. Then Mat continued on his journey and took me to Port Weld. I arrived in Port Weld and it was nearly 9.00 p.m. At Port Weld I alighted on the road and walked up to my uncle's house.

10

I did not stab Ong Ah Peow or P.W.2 (identified) on the night of 19.4.69 in Sebarang, Port Weld.

In the middle of 1968 I met Ong Ah Peow, P.W.2 and P.W.3 (identified). All the three of them forced me to join the Green Dragon Secret Society. I told them not to force me because if they did then I would inform the police about it. The three of them then threatened me.

20

On 21.4.69 I returned to Kuala Lumpur.

Adjourned to 9.30 a.m. to-morrow.

Sgd: Pawan Ahmad

26th November  
1970

D.W.3 (On former oath for cross-examination by D.P.P.):

Between October 1968 and 19.4.69 I never came back to Sebarang, Port Weld. I have known Mat bin Darus for the last 3 to 4 years. I used to see him at Port Weld. He also used to come and buy things in my mother's sundry shop in Port Weld. He was a taxi driver since I came to know him. He calls me by the name of Ah Chuan.

30

I was in the coffee shop with Mat before the Indian came. While we were in the coffee shop Mat asked me where I had been and I told him that I had been to see my grandmother in Taiping hospital. He told me that he had not seen me for a long time and I told him that I was in Kuala Lumpur.

The Indian went with me in Mat's taxi. Only three of us were in the taxi. I had not seen that Indian before. Mat was using a licensed taxi on

40



on that day. The Indian who travelled in the taxi did not carry anything with him. I was having a paper bag.

In the High Court in Malaya at Ipoh

10 I know both P.W.2 (identified) and P.W.3 (identified). I deny that I stabbed Ong Ah Peow. P.W.2 and P.W.3 said I stabbed Ong Ah Peow probably because in the middle of 1968 these persons forced me to join their secret society and I refused and they got angry with me. I say that P.W.2 and P.W.3 are framing the charge against me. In September 1968 I met these three persons again and they alleged that I was a police informer. I deny that I was one of the four persons who stabbed Ong Ah Peow on the night of 19.4.69.

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No.11

Defence Evidence

Tan Ah Liak  
(2nd Appellant)

26th November  
1970  
(continued)

RE'XD: Nil.

By Jury: Nil.

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NO.12

DEFENCE EVIDENCE

MAT BIN DARUS

No.12

Defence Evidence

Mat bin Darus

20 D.W.4 - Mat bin Darus a.s. in Malay:

46 years old, taxi driver, residing at Kampong Mentri, Port Weld.

26th November  
1970

30 I do know 2nd Accused (identified). I have known him for the last four years. On 19.4.69 at about 8.00 p.m. I was at the taxi stand at Jalan Iskandar, Taiping. At about this time 2nd Accused came. I asked him where he had been as I had not seen him for a long time. He replied that he had been living in Kuala Lumpur. He then invited me to go to a coffee shop for tea. He intended to return to Port Weld in my taxi. While I was in the coffee shop I saw an Indian coming up and I asked him where he was going. He replied that he was going to Matang by taxi. Then 2nd Accused told me that we could now proceed because he was willing to pay for another passenger's fare.

At about 8.30 p.m. we left Taiping for Matang. The Indian got off at Matang near a toddy shop. After

In the High Court in Malaya at Ipoh

—  
No.12

Defence Evidence

Mat bin Darus

26th November 1970  
(continued)

that I proceeded on to Port Weld. 2nd Accused got off at Kampong Bharu in Port Weld. I arrived in Port Weld at about 9.00 p.m. After dropping off 2nd Accused I proceeded on to the jetty in Port Weld. At this jetty I saw a crowd of people. After that I went to Port Weld town to look for passengers and when there was none I returned to Taiping.

XXD: When I met 2nd Accused at the Taiping taxi stand he told me he was in a hurry to go to Port Weld. When I went to the coffee shop with 2nd Accused I was also looking for more passengers. Before we went into the coffee shop I told 2nd Accused that I was looking for more passengers. He told me that he wanted to return to Port Weld in a hurry as he was very tired because he had just arrived from Kuala Lumpur. He told me that he had just gone to see his grandparent in Taiping hospital.

10

My taxi can carry four passengers. I was prepared to lose the fare of one passenger. The Indian passenger did not carry anything. 2nd Accused carried a paper bag. I used to call 2nd Accused by the name of Ah Chuan.

20

It is not true that I was not in the company of 2nd Accused between 8.00 p.m. and 9.00 p.m. on 19.4.69.

RE'XD: I did not wait for a fourth passenger because 2nd Accused was in a hurry to return home.

By Jury: Nil.

No.13

NO. 13

30

Defence Evidence  
Ong Eng Kek

DEFENCE EVIDENCE

ONG ENG KEEK

26th November 1970

D.W.5 - Ong Eng Kek a.s. in Hokkien:

52 years old, sundry goods proprietor, No.40 Sebarang, Port Weld.

I am the "ketua" of Sebarang. I did know one

Ong Ah Peow who lived in Sebarang. He is now dead.

On 19.4.69 at about 8.30 p.m. I was inside my shop. At that time I heard people quarrelling and I came out of my shop to see. I saw Ong Ah Peow lying on the road outside in front of my shop. I saw that he was bleeding.

I know that there was a stage show going on in Sebarang on the night of 19.4.69. This place was about 150 feet from my shop. One could not see the stage from my shop because of other buildings blocking the view.

XXD: Ong Ah Peow was lying about 7 to 8 feet away from my shop. I saw many people running home. Outside my shop there was a light. When I saw Ong Ah Peow lying on the ground in that condition I got frightened. I closed up my shop and I remained inside. I closed my shop for fear that people might run into my shop. I did not see who removed Ong Ah Peow from that place. I did not give any statement to the police about what I saw on that night. I believe the police were in front of my house on that night but I did not go up to them because they did not call me. Moreover I was still in fear. I am unable to identify any of those persons whom I saw running away in front of my shop. I am telling the truth.

RE'XD: When I saw the body bleeding in front of my house I was frightened. There was no police post in Sebarang. I was not called by the police to give a statement.

By Jury: Nil.

Case for the defence

NO. 14

DEFENCE EVIDENCE

DEFENCE COUNSEL'S ADDRESS

Enche Gill addresses:

The main witnesses for the prosecution are P.W.2 and P.W.3.

In the High Court in Malaya at Ipoh

—  
No.13

Defence Evidence

Ong Eng Kek

26th November 1970  
(continued)

No.14

Defence Evidence

Defence Counsel's Address

26th November 1970

In the High Court in Malaya at Opoh

P.W.2 must have run away when the deceased was stabbed and therefore he could not have seen the faces of the assailants. There are contradictions in the evidence of P.W.2 and he should not therefore be believed.

No.14

The police report did not contain the names of the assailants.

Defence Evidence

No motive has been adduced by the prosecution for the murder.

Defence Counsel's Address

Story of 1st and 2nd Accused corroborated by defence witnesses.

10

26th November 1970 (continued)

No.15

NO. 15

D.P.P.'s Address

D.P.P.'S ADDRESS

D.P.P. Addresses:

27th November 1970

Deceased had several injuries and this fact shows consistency in the evidence of P.W.2 and P.W.3 that deceased was stabbed by four assailants. P.W.3 was in fear when he lodged the report to the police and so he might subsequently have forgotten what he actually stated on that occasion.

20

Refers to Harchan Singh & Ors. v. P.P. (1969) 2 M.L.J. p.209 at p.211, para. 2, 1st column. The failure to give the names of the assailants in the report is only an omission.

Submits that the discrepancies in some of the evidence of the prosecution witnesses are of a minor nature and they do not affect the credit of these witnesses.

Adjourned to 10.00 a.m. to-morrow.

Sgd: Pawan Ahmad

30

NO.16

SUMMING UP

PERAK CRIMINAL TRIAL NO.13 OF 1970 & NO.18 OF 1970

PUBLIC PROSECUTOR

v.

1. LIM YAM TEK @ AH THAW
2. TAN LAU CHUAN @ TAN AH LIAK

10.00 a.m.

Summing Up

In the High  
Court in  
Malaya at  
Ipoh

\_\_\_\_\_  
No.16

Summing Up

27th November  
1970

10 Gentlemen of the Jury,

In due course it will be your duty to determine the guilt or innocence of each of the two accused persons on the charge and to return a true verdict according to the evidence. Your verdict will have to be based only on the evidence that you have heard in the course of this trial and not from what you might have heard or read elsewhere.

20 Yesterday you had the benefit of hearing the submissions of counsel for the prosecution and for the defence. It will now be my duty to sum up the case as a whole to you. But before doing so I have a duty to direct you on a number of important points.

Under our system of jury trial the question of law is my sole responsibility and if I should go wrong I will be corrected subsequently by a higher court of law. For the present if I say such and such is the law then you must accept it as a correct statement of the law. Further, if I give you any direction on the law you must follow it.

30 On the other hand, you are the sole judges of fact and that simply means that as far as the facts of this case are concerned you will have to consider them in the light of the evidence adduced at the trial and form your own conclusion whether to accept or reject them. You should not speculate or guess any conclusion not supported by the evidence.

40 In the course of my summing up I might express my views on some of the facts. You might, of course, consider my views but I stress that you are not bound to accept them.

In the High  
Court in  
Malaya at  
Ipoh

—  
No.16

Summing Up

27th November  
1970

It is a fundamental principle of our criminal law that an accused person is presumed to be innocent and the present case is no exception. It is the duty of the prosecution to prove its case beyond reasonable doubt and not for the accused to prove his innocence. The burden never shifts to the defence; it rests on the prosecution throughout the trial. It does not, however, mean that the prosecution must prove its case beyond the shadow of a doubt or to the point of scientific or mathematical or absolute certainty. The prosecution need only have to make you feel sure that the Accused is guilty of the offence with which he is charged. The standard of proof required by law on the prosecution as I have said just now must be one beyond reasonable doubt. Reasonable doubt is the sort of doubt which you experience when you have to make important decisions in your everyday affairs. When the prosecution has removed that sort of doubt from your minds then only it can be said that the prosecution has proved a prima facie case against the Accused. If the prosecution fails to prove a prima facie case against the Accused then you should not even consider the defence; you should immediately return a verdict of not guilty.

10

20

There is no equivalent burden on the defence. The responsibility on the defence is not a heavy one. The defence need only raise a doubt in your minds and that means that even if you are not convinced of the truth of the defence story, still if you consider that it is probable or that it is reasonably true or if you cannot make up your minds as to whether the Accused is guilty or not, then you must give the benefit of the doubt to the Accused and return a verdict of not guilty.

30

There are also a few things that I must tell you about witnesses. When you retire to consider your verdict, you will also have to consider whether or not a witness has been telling the truth. In doing so you will have to consider whether he contradicts himself in the witness box or whether his evidence contradicts with the evidence of other witnesses. When you consider the testimony of these witnesses it will be a good thing to bear in mind the station in life of these witnesses, their difficulty in expressing themselves and also their ability to remember details and sequences of events which took place over 1½ years ago. You must therefore make some allowance for their shortcomings. If the

40

discrepancies are minor or trivial they do not detract from the value of the testimony of the witnesses but if you consider they are serious discrepancies then you must reject the evidence of those witnesses.

In the High  
Court in  
Malaya at  
Ipoh

—  
No.16

Summing Up

27th November  
1970  
(continued)

10 Both the Accused are charged with the offence of murder punishable under section 302 read with section 34 of the Penal Code. I do not propose to read the charge to you as each of you have got a copy of it before you. Murder is defined in section 300 of the Penal Code. In simple language it means the unlawful killing of one human being by another human being and at the time of the killing the offender must also have the intention to cause death or to cause such bodily injury which he knows to be likely to cause death.

20 Common intention is dealt with in section 34 of the Penal Code. It means that if two or more persons acting together commit an offence in furtherance of their common intention then each of them is liable for that offence as if he had done it himself. For example, if two or more persons armed with weapons combined and caused injury to another person in such manner that each person engaged in causing the injury knew that the result of such injury would be the death of the injured person then it is no defence for any one of them to say that his individual act did not cause the death of the deceased. On the other hand, if two or more persons go out to commit theft and in the course of it one of them unknown to the others pulls out a pistol from his pocket and murders the owner of the property then the others who did not concur in the murder will not be guilty of it. Common intention implies acting together in furtherance of a pre-arranged plan. This intention cannot be proved by direct evidence. It can only be inferred from the conduct of the accused persons and from the circumstances of each particular case.

40 In order to establish its case against the two accused persons on the present charge, the prosecution will therefore have to prove that Ong Ah Feow is now dead and that he died as a result of stab wounds inflicted on him by one or more of the four assailants named by both P.W.2 and P.W.3 and on that occasion all those four assailants were acting together in furtherance of their common intention to cause death.

In the High  
Court in  
Malaya at  
Ipoh

—  
No.16

Summing Up

27th November  
1970  
(continued)

You have heard the doctor saying that she examined the dead body of Ong Ah Peow on the night of 19.4.69 and the body was identified to her the next day by a police constable before she performed the post-mortem. She was of the opinion that Ong Ah Peow died from shock and haemorrhage as a result of the stab wounds she had described she found on the body of Ong Ah Peow. I suppose you will therefore have no difficulty in coming to the conclusion that Ong Ah Peow is now dead and that he died as a result of stab wounds. This is a question of fact and it is for you to decide.

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You will next have to satisfy yourselves if it was one or more of the four assailants who had stabbed Ong Ah Peow and that they were acting together in furtherance of their common intention to cause death. In this connection, the prosecution is relying mainly on the evidence of P.W.2 and P.W.3.

P.W.2 testified that on the evening of 19.4.69 he went to the house of the deceased Ong Ah Peow and then they went together to see the stage show in Sebarang. They sat on a bench on the right hand side of the stage and shortly afterwards the show commenced. No sooner after they had arrived he noticed behind him some 10 to 15 feet away his brother Ong Ban Kim and Ong Chuan Heng standing together and watching the show. While the show was going on he said he suddenly saw some persons coming forward from behind. There were four of them and they stabbed Ong Ah Peow several times with knives about one foot long. When he saw this he got frightened and he started to run away. He said these people ran after him but before he started to run he had a good look at them and he noticed that these four persons were known to him not only by sight but also by their names, and these persons were known to him since his childhood days. He said that he also saw his friend Ong Ah Peow falling down soon afterwards near the spot where they had been sitting. He too was stabbed by them and he received some injuries on his back. Nevertheless he continued running but shortly afterwards he fell and lost consciousness. The next morning when he recovered he found that he was in Taiping hospital. The doctor who examined P.W.2 said that she also found a number of injuries on his back and she said that these injuries were similar to injuries that she found on the body of Ong Ah Peow.

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The prosecution is also relying on the evidence of Ong Ban Kim, the brother of the deceased. Ong Ban Kim stated that on the evening of 19.4.69 he too went to see the same stage show. When he had arrived at the show place for a short while he suddenly noticed the presence of his brother Ong Ah Heng by his side. While they were watching the show he noticed a group of people going forward to the place where his brother the deceased and P.W.2 were seated on the bench watching the show. These people then stabbed Ong Ah Peow several times and then Ong Ah Peow fell down to the ground. Then he noticed Ong Yu Sew running away but he did not notice whether Ong Yu Sew was stabbed or not. After the crowd had dispersed he went up to his brother Ong Ah Peow and with the assistance of his brother Ong Ah Heng they took the body into a sampan and they rowed across to Port Weld. Subsequently his brother Ong Ah Heng took the body to the hospital in Taiping and he went to the police station and lodged a report.

In the High Court in Malaya at Ipoh

—  
No.16

Summing Up

27th November  
1970  
(continued)

We have also the evidence of A.S.P., De Silva, the investigating officer. In his evidence A.S.P., De Silva said that he visited the scene and carried out a thorough examination. When he arrived he said he found that the show was still going on. The place was brightly lighted and he could see clearly the scene. After carrying out a close examination he noticed that there were some bloodstains on a bench about 25 yards from the stage and he also found some drops of blood on the ground at this place. He further stated that he found a pool of blood on the ground in the temple opposite the stage.

We have further the evidence of the doctor who said that from the nature of the injuries that she saw on the body of the deceased, she was of the opinion that the deceased must have died almost immediately after receiving those injuries and she was also of the opinion that after receiving the injuries it was not likely that the deceased could have moved very far away. In the present case the A.S.P. also did not find any trail of blood at the scene but only some bloodstains on the bench and on the ground near it and at another spot in the temple.

If therefore you are satisfied from the evidence of these prosecution witnesses that the deceased was stabbed by one or more of the four assailants named by P.W.2 and P.W.3, then the prosecution has proved a prima facie case against these two accused persons

In the High  
Court in  
Malaya at  
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—  
No.16

of the charge. If you are so satisfied then and only then you need consider the defence. But if at this stage you feel that you do not believe the evidence of P.W.2 and P.W.3 then you may straightaway return a verdict of not guilty against the Accused without having to consider their defence.

Summing Up  
27th November  
1970  
(continued)

The defence of these two accused persons is that neither of them took part in the assault of the deceased. The 1st Accused said that he received a letter from his family on the 16th of April 1969 inviting him to return to Sebarang to worship at the Chinese temple and so on the evening of 16.4.69 after he had obtained one week's leave from his employer he left Singapore and arrived in Sebarang on 17.4.69. On 17.4.69 and 18.4.69 he worshipped at the temple together with his mother. On the evening of 19.4.69 his friend by the name of Puah In Tian @ Puah Char Bo came to his house and invited him to see the stage show in Sebarang. They then left together and when they arrived at the show place a crowd had already gathered there and so they had to stand behind. They were standing together on the left hand side of the stage. While they were thus watching the show they suddenly saw a commotion and the crowd pushed their way towards them and then the crowd dispersed. That was all that he saw and after that both he and Puah Char Bo parted and each returned home separately. The next morning he left for Singapore.

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Puah Char Bo gave evidence on behalf of the 1st Accused and he corroborated him to the effect that both of them went to see the show that night and that there was a commotion and after that the crowd dispersed. Puah Char Bo went further to say that when he was on his way home he had to pass the house of the Chairman of the Local Council in Sebarang named Ong Eng Kek and while he was passing in front of his house he saw many people there and they were looking on the ground at some patches of blood. He too had a look at this blood and then he went home.

40

I shall now deal with the defence of the 2nd Accused.

The 2nd Accused said that on the 19th April 1969 when he was in Kuala Lumpur he received news that his grandmother was seriously ill in Taiping hospital. So at about 1 p.m. on the same day he

left Kuala Lumpur for Taiping and when he got there he visited the hospital and found that his grandmother was unable to speak as she was seriously ill. Then at 7.30 p.m. he left the hospital and went to the taxi stand. There he met his old friend Mat bin Darus, a taxi driver. He went there to get a seat in the taxi in order to get to Port Weld. He had some conversation with Mat and both of them then went to a coffee shop to have a drink to pass the time because there was not enough passengers yet for Mat. While they were at the coffee shop an Indian came and Mat spoke to the Indian. Mat found out that the Indian wanted to go to Matang. The 2nd Accused then suggested that he was prepared to pay for the fare of one additional passenger and so Mat agreed to take them in his taxi. They then got into Mat's taxi and they proceeded on to Matang where the Indian got off in front of a toddy shop, and then Mat drove on to Port Weld and 2nd Accused got off there and went to his uncle's house.

The taxi driver, Mat bin Darus, also gave evidence in this case on behalf of the 2nd Accused. He said that while he was waiting for passengers at the taxi stand in Taiping the 2nd Accused turned up and they had a conversation because he had not seen him for a long time. They went to the coffee shop and subsequently an Indian came and the three of them left the coffee shop. He dropped the Indian at Matang and subsequently dropped the 2nd Accused at Port Weld and then he proceeded to the jetty and there he saw a crowd of people. After that he went to the taxi stand looking for passengers but there was none. As it was late he returned to Taiping and spent the night there.

Lastly, Ong Eng Kek the Chairman of the Local Council Sebarang was called to give evidence on behalf of the defence. He said that on the night of 19.4.69 he was working in his shop in Sebarang. While he was engaged in the shop he suddenly heard people quarrelling some distance away in front of his shop. As he was then curious about the quarrel he heard he came out and he saw many people running home but he saw only one person lying on the ground seriously injured and he noticed that this person was Ong Ah Peow. On seeing this he got frightened and so he ran into his shop and locked up the shop and remained quietly inside. He also said that he did not notice who removed Ong Ah Peow from that place. In Cross-examination he admitted that he did not give any statement to the police.

In the High  
Court in  
Malaya at  
Ipoh

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No.16

Summing Up

27th November  
1970  
(continued)

In the High  
Court in  
Malaya at  
Ipoh

Now, Gentlemen of the Jury, you will have to consider the evidence of each of the accused persons and also the evidence of the witnesses that they have called on behalf of the defence.

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No.16  
Summing Up  
27th November  
1970  
(continued)

First you will have to consider whether you believe the evidence of Puah In Tian @ Puah Char Bo that he was in the company of the 1st Accused on the night in question and that the 1st Accused did not take part in the commission of the offence charged. 10

Next you will have to consider the evidence of the 2nd Accused and that of his witness Mat bin Darus and then decide whether 2nd Accused was not at the scene of the crime on the night in question and did not take part in the commission of the offence.

You will also have to consider whether Ong Eng Kek, the Chairman of the Local Council, Sebarang, has been telling the truth. You might like to ask yourselves whether as Chairman of the Local Council and the leader of the community of Sebarang Ong Eng Kek would have remained silent and not volunteer to give information to the police regarding what he said he saw if it was true. This is a question of fact for you to decide. 20

You will also in that light have to consider the evidence of the A.S.P. who visited the scene. If what Puah Char Bo said that he saw many people crowding in front of the Local Council Chairman's shop and looking at some patches of blood is true, then would it not be likely that the A.S.P. who carried out the investigation also would have noticed the presence of these patches of blood. You will no doubt recall that the A.S.P. was never cross-examined by the defence as to whether he went to the place in front of the Local Council Chairman's shop to find out whether there was any blood there or not. This is also a question of fact for you to decide. 30

The defence says that you should believe the evidence of the 1st and 2nd Accused and also the evidence of their witnesses. 40

The defence also says that you should not believe the evidence of P.W.2 and P.W.3. In the case of P.W.3 the defence said that if he knew who

the assailants were at the time when he lodged the report then why did he not mention their names to the police constable who received the report; because if he did then their names would be in the report.

In the High  
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Malaya at  
Opo

10 The law does not require that the person making a report must disclose the names of the assailants. It is for you to decide in what state of mind P.W.3 was on the day when he went to lodge the report. He no doubt said in evidence that he did give their names but we know as a fact that the names of the assailants are not in the report. It is possible that in the course of making the report he was excited and might have forgotten to give the names of the assailants. This is a question for you to consider.

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No.16

Summing Up

27th November  
1970  
(continued)

20 The defence also said that these two witnesses i.e. P.W.2 and P.W.3 should not be believed because they are members of a secret society. This allegation was made by the 1st Accused and also by the 2nd Accused because each of them said that sometime in 1968 they were separately approached by P.W.2, P.W.3, the deceased and some other persons and they threatened them to join the Green Dragon Secret Society but they refused. Both P.W.2 and P.W.3 denied this allegation. This is also a question of fact for you to decide.

30 The defence further said that in this case the prosecution has also failed to adduce any motive and that means the prosecution has not shown why these two accused persons should murder the deceased. No reasons have no doubt been put forward by the prosecution(sic) I must direct you on this point that the law does not require the prosecution to prove any motive. The motive for the murder is probably best known to the offenders themselves.

40 Gentlemen of the Jury, if after hearing the evidence of the two accused persons and their witnesses and you are in doubt about the prosecution case then you must give the benefit of the doubt to the accused persons and return a verdict of not guilty. But if on the other hand the defence does not raise any doubt but you are satisfied or you are sure that it was the accused persons who stabbed the deceased or that they took some part together with the other assailants who stabbed the deceased in furtherance of their common intention then you will return a

In the High Court in Malaya at Ipoh

verdict of guilty on the charge against the 1st and 2nd Accused.

Before you retire, Gentlemen of the Jury, you may wish to take with you some of the exhibits. If you wish, you may do so. If in the course of your deliberations you should have any difficulty on any matters you may come back and I shall be happy to explain them to you.

No.16  
Summing Up

27th November 1970  
(continued)

Lastly, before you retire I would like to tell you that I can only accept a unanimous verdict or a verdict by a majority of not less than 5 to 2.

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We will now retire.

10.45 a.m.

Taken down by me and seen by the Honourable Judge.

Sgd: NgYeowHean

Secretary to Judge  
Ipoh  
(NG YEOW HEAN)

No.17

NO. 17

Verdict and Sentence

VERDICT AND SENTENCE

20

27th November 1970

10.45 a.m. Jury retires to consider verdict.  
11.55 a.m. Court resumes.

The jury returns a verdict of guilty on the charge against each of the two Accused by a majority of 5 to 2.

I concur with the verdict of the jury.

I now pronounce sentence of death on each of the two Accused.

Sgd: Pawan Ahmad

TRUE COPY

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Sgd: NgYeow Hean  
Secretary to Judge  
IPOH (NG YEOW HEAN) 27.11.1970.

NO.18

NOTICE OF APPEAL OF  
1ST ACCUSED/APPELLANT

In the High  
Court in  
Malaya at  
Ipoh

FORM B  
(Rule 6)

—  
No.18

NOTICE ON BEHALF OF PRISONER  
IN THE FEDERAL COURT OF MALAYSIA  
PUBLIC PROSECUTOR

Notice of  
Appeal of  
1st Accused/  
Appellant

vs

5th December  
1970

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LIM YAM TEK @ AH THAW

To the Registrar of the High Court in Malaya at Ipoh

Take Notice that LIM YAM TEK @ AH THAW who was convicted in the High Court in Malaya at Ipoh on the 27th day of November, 1970 for the offence of Murder under Section 302 Penal Code and sentenced to suffer death and who is now a prisoner in this prison has informed me that he wishes to appeal to the Federal Court against his conviction and sentence.

20

The grounds on which he wishes to appeal are stated by him as follows:-

To be prepared by Counsel.

Sgd:

(SALEHUDDIN BIN MOHD.TAHIR)  
Pem.Penguasa Kanan Penjara,  
Taiping.

RTP. of Appellant LIM YAM TEK  
@ AH THAW

Filed this 5th day of December, 1970.

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Sgd:  
(Voon Thoong Shin)  
Assistant Registrar,  
High Court, Malaya,  
Ipoh.

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In the High  
Court in  
Malaya at  
Ipoh

NO.19

NOTICE OF APPEAL OF  
2ND ACCUSED/APPELLANT

FORM B  
(Rule 6)

—  
No.19

NOTICE ON BEHALF OF PRISONER

Notice of  
Appeal of  
2nd Accused/  
Appellant

IN THE FEDERAL COURT OF MALAYSIA

PUBLIC PROSECUTOR

vs

5th December  
1970

TAN LAU CHUAN @ TAN AH LIAK

10

To the Registrar of the High Court in Malaya at Ipoh

Take Notice that TAN LAU CHUAN @ TAN AH LIAK who was convicted in the High Court in Malaya at Ipoh on the 27th day of November, 1970 for the offence of Murder under Section 302 Penal Code and sentenced to suffer death and who is now a prisoner in this prison has informed me that he wishes to appeal to the Federal Court against his conviction and sentence.

The grounds on which he wishes to appeal are stated by him as follows:-

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To be prepared by Counsel

Sgd:

(SALENUDDIN BIN MOHD. TAHIR)  
Pem.Penguasa Kanan Penjara,  
Taiping.

RTP. of Appellant TAN LAU CHUAN  
@ TAN AH LIAK

Filed this 5th day of December, 1970

Sgd:  
(Voon Thoong Shin)  
Assistant Registrar,  
High Court, Malaya,  
Ipoh

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NO.20

PETITION OF APPEAL TO THE  
FEDERAL COURT OF MALAYSIA

In the Federal  
Court of  
Malaysia  
Holden at  
Kuala Lumpur

IN THE FEDERAL COURT OF MALAYSIA

FEDERAL COURT CRIMINAL APPEAL NO.31/70

No.20

(Ipoh High Court Criminal Trial Nos.13 & 18/70)

Petition of  
Appeal to the  
Federal Court  
of Malaysia

B E T W E E N : 1. LIM YAM TEK @ AH THAW  
2. TAN LAU CHUAN @ TAN AH LIAK  
Appellants

8th January  
1971

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AND

PUBLIC PROSECUTOR  
Respondent

TO THE HONOURABLE THE JUDGES OF THE FEDERAL COURT

PETITION OF APPEAL

The Appellants abovenamed having given Notice of Appeal to the Federal Court against conviction on a charge of murder under s.302 of the Penal Code and sentence of death passed by the Honourable Mr. Justice Pawan Ahmad on the 27th of November 1970 in Perak Criminal Trial No.13 of 1970 and No.18 of 1970 in the High Court sitting at Ipoh, state the following grounds for the said Appeal.

20

There was a miscarriage of justice in that -

- A. 1. The learned trial Judge directed the jury to "compartmentalise" their approach to the evidence and ordered them not to consider the Defence evidence until they were satisfied that the prosecution has proved a prima facie case against the Appellants.
- 2. The learned trial Judge directed the jury on the evidence in a manner to exclude wholly consideration of the prosecution evidence in the context of the defence evidence for the purposes of assessing credibility, drawing inferences and reaching conclusions of fact.

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The learned trial Judge erred in law in that -

In the Federal Court of Malaysia  
Holden at Kuala Lumpur

—————  
No.20

Petition of Appeal to the Federal Court of Malaysia

8th January 1971  
(continued)

- B.
1. He misdirected the jury on the quantum of proof on the prosecution - at times directing them correctly, at other times inaccurately and in general in a manner to create confusion and a mistaken approach.
  2. He failed to direct the jury that they must consider the whole of the evidence given at the trial when deciding whether the prosecution had proved beyond reasonable doubt the guilt of the Appellants. 10
  3. The learned trial Judge did not adequately put the Defence as a whole to the jury.
  4. He directed the jury to apply radically distinct criteria in the assessment of credibility of prosecution witnesses on the one hand and defence witnesses on the other hand to the grave prejudice of the Appellants.
  5. He failed to direct the jury adequately on the manifold contradictions as well as discrepancies in the evidence of the prosecution eye-witnesses. 20
  6. He failed to warn the jury of the danger inherent in the evidence of the only two eye-witnesses closely related to the deceased and interested parties being:-
    - (a) P.W.3 - Ong Ban Koon @ Ong Cha Koon, brother of the deceased
    - (b) P.W.2 - Ong Yu Sew @ Ong Ah Sew, who was a childhood friend of the deceased. 30
  7. He failed to direct the jury adequately on the contradictions in the evidence of P.W.3 as regards his failure to mention the names of the assailants in the First Information Report lodged by him especially when there was evidence adduced that the four assailants were known to P.W.3 since his childhood days.
  8. He directed the jury that D.W.5 - Ong Eng Kek did not volunteer to give information to the police regarding what D.W.5 saw on 40

the night of the 19th of April 1969 and thereby inviting the jury to draw an adverse inference. In view of the evidence and the circumstances and surroundings where the incident took place, being an isolated island, he ought not to have directed the jury to draw an unfavourable inference against D.W.5's evidence.

In the Federal  
Court of  
Malaysia  
Holden at  
Kuala Lumpur

—  
No.20

- 10 9. He directed the jury that P.W.7 - ASP. De Silva was not cross-examined by the Defence as to whether he went to the place in front of the Local Council Chairman's shop to find out whether there was any blood there or not and in so doing the learned trial Judge erred in directing the jury to draw an adverse inference against the Defence.
- 20 10. He directed the jury that since P.W.7 ASP. De Silva who carried out the investigation did not notice the presence of patches of blood in front of D.W.5 Ong Eng Kek's house and he also did not find any trail of blood at the scene, thereby requesting them to draw an unfavourable inference against the Defence when in fact it was not supported by any evidence.
- 30 11. In not directing the jury adequately on the evidence of the Appellants and their witnesses especially D.W.2 - Pua In Tian, a material witness, who had given a statement to the Police and was not called by the prosecution (page 22).
12. In not directing the jury as to what is meant by Corroboration when the learned trial Judge in his summing up referred to the evidence of the Appellant being corroborated by their witnesses D.W.2 and D.W.4 respectively.
- 40 13. Although he rightly directed the jury that the absence of motive does not weaken a prosecution case, he ought to have also directed the jury that in the circumstances of the present case where the evidence was evenly balanced that motive was a factor that should be considered in deciding the guilt of the Accused.

Petition of  
Appeal to  
the Federal  
Court of  
Malaysia

8th January  
1971  
(continued)

In the Federal Court of Malaysia Holden at Kuala Lumpur

No.20

Petition of Appeal to the Federal Court of Malaysia

8th January 1971 (continued)

14. The conviction is unreasonable or cannot be supported having regard to the evidence.

C. And the Appellants pray that the conviction may be set aside and that such order may be made thereon as justice may require.

Dated this 8th day of January, 1971.

Appellant No.1

Appellant No.2

Solicitors for Appellants

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The address of service of the Appellants is c/o Messrs. Cheang Lee & Ong, Advocates & Solicitors, No.13 Hale Street, Ipoh.

Filed this 9th day of January 1971

Chief Registrar, Federal Court, Malaysia Kuala Lumpur.

No.20A

NO.20A

Particulars of Trial

PARTICULARS OF TRIAL

IN THE FEDERAL COURT OF MALAYSIA

28th April 1971

In the High Court at Ipoh  
Criminal Appeal No.31/70

20

PUBLIC PROSECUTOR

v

- 1. LIM YAM TEK @ AH THAW
- 2. TAN LAU CHUAN @ TAN AH LIAK

Particulars of Trial

- 1. Where was the trial held? In the High Court at Ipoh

2. Date of trial? 23rd November, 1970
3. Name of trial Judge? Mr. Justice Pawan Ahmad  
b. Ibrahim Rashid
4. For what offence was the conviction?  
Section 302 read with Section 34 Penal Code.
5. What was the sentence? Both accused sentenced  
to suffer death
6. Was the appellant defended by an advocate  
and solicitor privately or at the request of  
the Court? Appellants retained Messrs. Cheang  
Lee & Ong, Advocates & Solicitors,  
Ipoh.
7. State the name of the Advocate and Solicitor  
(if any)? Mr. P.S. Gill
8. Was the appellant admitted to bail before  
trial? No

In the Federal  
Court of  
Malaysia  
Holden at  
Kuala Lumpur

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Registrar of Court of Trial

Dated this 11th day of January, 1971

Certified Copy

Assistant Registrar, High Court, Malaya  
Ipoh  
28.4.71

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In the Federal  
Court of  
Malaysia  
Holden at  
Kuala Lumpur

NO.21

NOTES OF ARGUMENT  
RECORDED BY ONG C.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
KUALA LUMPUR  
(APPELLATE JURISDICTION)

No.21

Notes of  
Argument  
recorded by  
Ong C.J.

Federal Court Criminal Appeal No.31 of 1970  
(Ipoh High Court Criminal Trials No.13 & 18  
of 1970)

10th February  
1971

1. LIM YAM TEK @ AH THAW
2. TAN LAU CHUAN @ TAN AH LIAK  
Appellants

10

v.

THE PUBLIC PROSECUTOR  
Respondent

Cor: Ong, C.J.  
Suffian, F.J.  
Gill, F.J.

NOTES OF ARGUMENT RECORDED BY ONG, C.J.

10th February 1971

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V. Jeyaratnam with PS Gill for appls.  
Gunn, Sr.Fed.Counsel for P.P., respt.

Jeyaratnam: Facts - murder @ 8.30 p.m. on  
19.4.70. P.W.2 said attack by 4, same who struck  
down decd. P.W.3 said attack by 2. P.W.3 named no  
names in his report. P.W.7 - A.S.P. - show still  
on 10.40 p.m. stains on bench. P.W.1 - 17  
stab wounds - profuse bleeding.

Defence - 1st accd. returned from S'pore 17.4.70 -  
on 19th evening he went with D.W.2 to see the show -  
Puah In Tian had given police a statement - he was  
called at P.E. - not called by prosn - but by  
defence - he saw a pool of blood outside headman's  
house - corroboration of 1st accd.

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2nd accd's story - independent witness Mat Darus  
taxi-driver - not shaken in xrn. Headman saw  
decd's body outside his house.

Petn. A.1, A.2, B.1, B.2.

Procedure in summary trials - s.173(f)(h) C.P.C.  
Jury trials - see s.214.

Karam Singh v. P.P.(1967) 2 M.L.J. @ 30L.

In instant case, directions given on p.40B.3 cf.  
p.46E.3 - and p.53E - J. didn't say - if on  
review of whole evidence there was a doubt, then  
acquit.

Woolmington (1935) A.C. @ 482.

Loh Toh Sin v. P.P. (1966) 1 M.L.J.278 @ 280L

"whole of the evidence".

Murtagh & Kennedy 39 C.A.R. 72 - blood outside  
headman's house - raises qn. where was the decd.  
stabbed? - 2 independent witnesses for defence -  
agst prosn evidence likely to be biased.

Grds. B.5, 6 & 7.

P.W.3 - brother of decd - he made police report -  
anxious to have assailants arrested - he knew them  
since childhood - he didn't tell his mother nor  
anyone else. He was with A.S.P. de Silva (p.14C) -  
a significant omission - raises suspicion - non-  
directon on material respect.

Berahim v. P.P.(1968) 1 M.L.J. 298 - non-direction -  
contradictions in prosn. evidence. P.W.2 - only other  
eye-witness - a childhood friend of decd - said he  
was stabbed by same 4 - P.W.3 said 2 (p.14) -  
assailants came from behind - p.9 line 5 - cf. p.15A.

Grd.B.8: Ong Eng Kek didn't volunteer information -  
adverse inference - p.36 cf. p.50. cf. directions  
re police report or information by P.W.3 vis-a-vis  
D.W.5.

Shanmugam v. P.P. 1963 M.L.J.125. B.9-10 - see  
p.51C-E. - evidence didn't support the direction -  
A.S.P. inspected only the audience area. np.20-21  
cf. p.16A.3 P.W.3 denial. - pool of blood - where  
was decd. stabbed to death - submit the stabbing  
was outside Chairman's house.

B.11 - accd. gave evidence on oath - unshaken -  
D.W.2 had given statement to police (p.22B) - he  
corroborated 1st accd. - his credit not impeached -  
he saw the pool of blood. 2nd accd's story was  
corroborated by D.W.4 Mat b. Darus. Nothing said in  
appellants' favour when much could have been said.

In the Federal  
Court of  
Malaysia  
Holden at  
Kuala Lumpur

\_\_\_\_\_  
No.21

Notes of  
Argument  
recorded by  
Ong C.J.

10th February  
1971  
(continued)

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In the Federal Court of Malaysia Holden at Kuala Lumpur

Alibi - jury must have been directed that the defence must be found unsound before they convict.

Gui Hoi Chan v. P.P. (1970) 1 M.L.J.243. citing Finch 12 C.A.R. 77, 79.

No.21

Finally, submit the case was not put to the jury in a way to ensure their proper appreciation of the evidence.

Notes of Argument recorded by Ong C.J.

Gunn: re procedure at trial see P.P. v. Koh Soon Poh (1935) M.L.J.120 s.60 (1).

10

10th February 1971 (continued)

The King v. Whybrow (1951) 35 C.A.R. @ 141, 150-151, 152.

Submit the jury wd have come to the same verdict in spite of the misdirection or non-directions referred to.

C.A.V.

1st April 1971

C.J's judgt read by Gill F.J.

TRUE COPY

(TNEH LIANG PENG)  
Secretary to Chief Justice  
High Court Malaya  
13.4.71

20

No.22

NO.22

Notes of Argument recorded by Suffian F.J.

NOTES OF ARGUMENT  
RECORDED BY SUFFIAN F.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (APPELLATE JURISDICTION)

10th February 1971

Federal Court Criminal Appeal No.31 of 1970 (Perak Criminal Trial No.13 and 18 of 1970)

30

B E T W E E N : 1. LIM YAM TEK @ AH THAW  
2. TAN LAU CHUAN @ TAN AH LIAK  
Appellants

AND

PUBLIC PROSECUTOR Respondent



Coram: H.T. Ong, Chief Justice, West Malaysia;  
Suffian, Federal Judge, Malaysia;  
Gill, Federal Judge, Malaysia.

In the Federal  
Court of  
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Holden at  
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NOTES OF SUFFIAN F.J.

10th February, 1971

\_\_\_\_\_  
No.22

Dato' Jeyaratnam (with Mr. P.S. Gill) for  
appellants.  
Gunn Chit Tuan, Senior Federal Counsel, for P.P.

Notes of  
Argument  
recorded by  
Suffian F.J.

10 Jeyaratnam: Refers to evidence. D.W.2 was a  
prosecution witness at preliminary enquiry -  
offered to defence in High Court.

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(continued)

(To Suffian - I agree that evidence entirely  
oral). I will deal with grounds A1, A2, B1-4  
together. Summary trial procedure - s.173 (f),  
(h), (i), (j), Criminal Procedure Code.  
Jury trial procedure -s.214. Karam Singh (1967)  
2 M.L.J. 25,30. Judge in summing up at p.40 B3.  
46 E3. He never asked the jury to review the  
evidence as a whole - p.53.

20 Woolmington v. D.P.P. (1935) A.C.462, 482 (upon  
a review of all the evidence). Lim Toh Sin v. P.P.  
(1966) 1 M.L.J. 278, 284 1st column (whole of the  
evidence). (1956) 39 C.A.R.72 Murtagh p.82-3.  
I have dealt with ground B1 to 4.

30 I now deal with grounds B5, 6, 7. P.W.3, brother  
of deceased - murderers named to the police? - he  
said he did name them - but police constable said  
he did not. P.W.3 had known assailants since  
childhood - Note p.17D "I did not tell anyone else  
on that night about the stabbing" - p.14 - he was  
with A.S.P.

I agree in law not necessary to name accused in  
report to police.

He had time to cool off on way to police station -  
was anxious to have assailants arrested - yet did  
not name them to police. Judge did not warn jury  
of danger of relying on P.W.3.

Berahim v. P.P. (1968) 1 M.L.J. 298.

40 P.W.2 discrepancies in his evidence - a childhood  
friend of deceased, p.7D - chased by 4 - P.W.3  
says P.W.2 chased by 3 (P.13).

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(continued)

Deceased had 17 stab wounds. P.10, second para.  
P.9E and p.15.

Ground B8. D.W. 5's evidence, p.34-5. Judge's  
comment p.50B was highly prejudicial to defence.  
(Note by me - I think there is no comment by judge,  
only reportage. Note also what judge says p.51 B5.)  
Shanmugam (1963) M.L.J. 125 (a witness should not  
be disbelieved simply because he made no statement  
to police).

Grounds B9-10. P.51 B5 to 52B. Probably deceased  
stabbed outside D.W. 5's house - that was our case.

10

Ground B11. D.W.2 had given statement to police  
(p.22), was a prosecution witness at preliminary  
enquiry - at High Court offered to and called by  
defence - corroborated appellant 1 - none of this  
brought to notice of jury by judge. Appellant 2  
corroborated by Mat and by D.W.5. Witnesses called  
by appellants 1 and 2 all independent - unlike P.W.2  
and P.W.3 who were not independent. Defence one of  
alibi. Gui 1970 1 MLJ 242. P.15 - a lot of people  
at time of incident - and yet not a single  
independent witness was called by the police, only  
P.W.2 and P.W.3 who were close to deceased.

20

Ground 12. Ground 13. Case not put to jury in  
way to ensure their due appreciation of the  
evidence.

Gunn addresses: Procedure. Submit no mis-direction.  
1935 MLJ 120 R. v Koh Soon Poh. S.60 Courts of  
Judicature Act, 7 of 1964, proviso.  
R. v. Whybrow 1951 35 CAR 147. Stirling 30 CAR 40.  
R. v. Cohen & Bateman 1909 2 CAR 197. Even if mis-  
direction on facts, proviso should be applied.  
Proviso could be applied even if misdirection on  
law. Shanmugam v. P.P. 1963 MLJ 125.

30

Jury must have looked at evidence as a whole, they  
are intelligent and reasonable men. Facts only  
involved in this case. "Substantial" abolished in  
England since 1966.

CAV

(Signed) M. Suffian 10.2.71.

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No.23

Federal Court Criminal Appeal No.31 of 1970  
(Ipoh High Court Criminal Trials Nos.13 &  
18 of 1970)

Notes of  
Argument  
recorded by  
Gill F.J.

10

- 1. LIM YAM TEK alias AH THAW
  - 2. TAN LAU CHUAN alias TAN AUH LIAK
- Appellants

10th February  
1971

vs.

THE PUBLIC PROSECUTOR                      Respondent

Cor: Ong.C.J.  
Suffian F.J.  
Gill F.J.

NOTES RECORDED BY GILL F.J.

Wednesday, February 10, 1971.

20

Dato Jeyaratnam with Enche P.S. Gill for appellants.  
Enche Gunn Chit Tuan, Senior Federal Counsel, for  
respondent.

Dato Jeyaratnam:

30

Appellants were charged with murder. Charge at  
page 2. Facts of the case. Evidence of P.W.2.  
Evidence of P.W.3, brother of the deceased. His  
evidence was that he saw only two assailants. Said  
he knew assailants from his childhood days. Made a  
report. Said he mentioned the names of the  
assailants in the report. Evidence of P.W.7. Stage  
show still on when he went to the scene. Instructed  
some photographs to be taken. Evidence of doctor.

Defence evidence. Evidence of D.W.1 (first  
accused). Evidence of D.W.2. Corroborated the  
evidence of the first accused. Evidence of D.W.3  
and evidence of Mat Darus. Evidence of the Chairman  
of the local council.

I will deal with grounds A1, A2, B1, B2, B3 and

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B4 together. Procedure in summary trials, section 173 of the Criminal Procedure Code. Trials by jury, section 214 of Criminal Procedure Code. Refer to Karam Singh v. Public Prosecutor, (1967) 2 M.L.J.30. Not for the jury to decide whether there is a prima facie case for the prosecution. Summing up by the trial judge in two compartments. Refer to page 40 line B3. Refer to page 46 line E2. Nowhere in his summing up did the judge direct the jury to review the whole of the evidence. Refer to Woolmington v. D.P.P. (1935) A.C.462, 482; Lim Toh Sin v. P.P., (1966) 1 M.L.J.278, 280; R. v. Dennis Patrick Murtagh (1956) 39 C.A.R.72, 82. Evidence of the Chairman, local council, was important. p.26 p.29 10

I will next take grounds B5, B6 and B7. P.W.3 is the brother of the deceased. After the incident he had the presence of mind to take the body in a sampan to Port Weld. He made a report. Evidence at page 16, line C. P.W.3 said that he knew the four assailants since his childhood days. Did not tell any one about the stabbing, evidence at page 17 line C5. Omission to mention names - important corroborative evidence. His evidence that he was interested to get the assailants arrested. Evidence of this witness should have been viewed with suspicion, and the judge should have so directed the jury. Refer to Berahim v. P.P. (1968) 1 M.L.J.298, 299. p.10 20 30

P.W.2, the only other eye witness in this case, is a childhood friend of the deceased. Said he was stabbed by the same four persons as stabbed the deceased. Evidence of P.W.3 was that only two assailants stabbed P.W.2. Other contradictions, evidence at page 9 line A4 and evidence at page 15. Judge should have directed the jury on this. p.5 p.9

I come to ground B8. Read D.W.5's evidence at page 34. Evidence referred to in the summing up at page 50 line A4. Refer to Shanmugam v. Public Prosecutor (1963) M.L.J. 125. p.22 p.31 40

Grounds B9 and B10. Refer to summing up at page 51. The place which the A.S.P. inspected was the place in front of the stage. His evidence at page 20, starting from line E2. Evidence of P.W.3 at page 16, line A2. Deceased was stabbed 17 times. p.32 p.13 p.10

10 Grounds B3, B4 and B11. Accused gave evidence on oath. First accused called a witness (D.W.2), who had earlier given a statement to the Police, as confirmed by P.W.7. Credit of D.W.2 was not impeached. Evidence of D.W.3 (second accused) was corroborated by the evidence of D.W.4. Nothing was said in favour of the appellants, when much could have been said. Defence one of alibi. Refer to Gui Hoi Cham & Ors. v.P.P. (1970) 1 M.L.J. 242. Evidence that a number of persons were watching the show when this incident happened.

Grounds 12, 13 and 14. I would finally submit that the case was not put to the jury in a way to ensure the true valuation of the evidence.

Gunn Chit Tuan: On procedure, refer to the case of Rex v. Koh Soon Poh (1935) M.L.J. 120)

20 (Chief Justice draws attention of D.P.P. to judge's direction at page 52 line D1 and failure of the judge to sum up to the jury that P.W.3 did not name the assailants in the report).

Even if there have been misdirections, has there been a miscarriage of justice?

There is the evidence of the other witness.

30 I would refer to section 60 of the Courts of Judicature Act, 1964. Refer to R. v. Whybrow (1951) 35, C.A.R.141, 150, 152. The jury would have considered the evidence as a whole. A faulty summing up is not a ground for setting aside a conviction. The jury saw the witnesses in the box. If there was substantial miscarriage, there should be a retrial.

C.A.V.

S.S. Gill

Kuala Lumpur, 1st April, 1971.

Enche Jag-Jit Singh for Cheang Lee & Ong for the appellants.

Enche Gunn Chit Tuan for respondent.

I read the judgment of the Chief Justice. Suffian F.J. reads the majority judgment. Appeal dismissed.

S.S. Gill

40 Certified true copy

Secretary to Judge.

15 APR 1971

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No.24

Judgment of  
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Federal Court Criminal Appeal No.31 of 1970  
(Ipoh High Court Criminal Trials No.13 &  
18 of 1970)

1st April  
1971

1. LIM YAM TEK @ AH THAW
2. TAN LAU CHUAN @ TAN AH LIAK Appellants

10

v.

THE PUBLIC PROSECUTOR

Respondent

Cor: Ong, C.J.  
Suffian, F.J.  
Gill, F.J.

JUDGMENT OF ONG, C.J.

By a majority verdict of 5 to 2 the jury found the appellants guilty of murder, for which they were sentenced to death by the High Court at Ipoh. Their appeal raises a number of grounds which may be said to fall under two main heads: first, misdirection or non-direction and, secondly, that the defence had not been adequately put to the jury.

20

The prosecution case depended entirely on the evidence of two witnesses who alleged that they saw four men, including these appellants, make a murderous attack with knives on one Ong Ah Peow, whose death, according to the medical evidence, was almost instantaneous from stab wounds in the heart and lung. This attack was said to have occurred at about 8.30 p.m. on April 19, 1969 during a stage performance at Sebarang Port Weld, which is a small fishing community across the river opposite the town of Port Weld. The principal witnesses were Ong Yu Sew - a friend since childhood of the deceased - and Ong Ban Kim, the deceased's elder brother.

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Ong Yu Sew's evidence was that he had accompanied the deceased to the show. The stage faced a Chinese temple about 50 yards opposite.

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Ong Yu Sew said he sat with the deceased some 38 feet in front of the stage, while Ong Ban Kim and another of his brothers, Ong Ah Heng, were some distance behind. Ong Yu Sew went on to say that while he was watching the show "people came from behind and they stabbed Ah Peow and he fell down. On seeing that I started to run away. Before I ran away I had a look at those people who stabbed Ah Peow. There were four people who stabbed Ah Peow". He was able to identify all four by name, two of them being the appellants. After he had run a short distance towards the temple the "same four people" caught up with him and stabbed him. He was rendered unconscious and recovered his senses in the Taiping Hospital the following day.

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Ong Ban Kim next testified that he was watching the show with another brother, Ong Ah Heng, from about 10 yards behind Ong Yu Sew, when he saw four persons attacking the deceased. He too gave the same four names as did Ong Yu Sew. After the deceased fell down he saw two of the four persons chasing after Ong Yu Sew, while the other two continued to stab the deceased. He did not know what happened to Ong Yu Sew after his escape, he did not see him stabbed, he did not know how Ong Yu Sew received his injuries, but admitted having stated at the preliminary enquiry that Ong Yu Sew ran away after being stabbed. When the assailants had disappeared he and Ah Heng went to render assistance to their injured brother, whom they carried across the river by boat. Ah Heng took the deceased to the Taiping Hospital while Ong Ban Kim himself went to the police station and made his report. Later, when A.S.P. de Silva, the investigating officer arrived from Taiping, Ong Ban Kim accompanied this A.S.P. to the scene and finally went home. He did not report to his mother the death of one of her sons nor tell anyone else of the stabbing. He had known all the four assailants since childhood.

A.S.P. de Silva received information at 9.05 p.m. on the same night and, after calling at the Hospital Mortuary in Taiping to see Ah Peow's body, proceeded to Seberang Port Weld, arriving there at about 10.40 p.m. The show was still continuing and he saw that fluorescent lighting was used for the stage. On examination of the scene he found a stain about 1" in diameter, which looked like blood, on a

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bench "about 25 yards from the stage". This was twice the distance stated by Ong Yu Sew. There were also a few drops of blood on the ground near this bench. At the temple he saw a small pool of blood on the floor. When cross-examined regarding the lighting available for identification purposes, he stated that "apart from the lights on the stage there were no other lights in the square open space" seating the audience - which open space occupied "about 30 to 40 yards". It will be observed, from a perusal of his evidence, that the A.S.P. had made a thorough examination only of the square itself and that even there no measurements were taken, but merely approximations of the distance in respect of various points referred to. He did not say how far the bloodstained bench was from the pool of blood on the temple floor, but from his description of the scene the distance could not have been more than 25 yards. Since the pool of blood could only have flowed from the wounds of Ong Yu Sew and Ong Ban Kim had been seated about 10 yards behind him before the attack, it is abundantly clear that Ong Ban Kim must have been an eye-witness of the felling of Ong Yu Sew, if it was true that he saw the killing of his brother.

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The defence of the first appellant, that he had taken no part whatsoever in attacking the deceased was supported by his witness Puah In Tian, alias Puah Char Bo, who stated that he was at all times with this appellant, among another section of the audience when a commotion took place elsewhere. After the incident the crowd dispersed and they went their respective ways home. This witness, I should observe, had given a recorded statement to A.S.P. de Silva in the course of investigation. The prosecution thus had the fullest opportunity to check upon its veracity, but his evidence was in no way impeached or shaken by the prosecution. The evidence he gave, therefore, must be presumed to have been entirely consistent with the recorded statement. He and Ong Ban Kim, according to this prosecution witness himself, were "good friends" - which goes a long way to show that he was wholly unbiased.

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The second appellant's defence, too, was an alibi. He was in Kuala Lumpur, assisting his father in his trade as fishmonger, when he received news that his grandmother was seriously ill at the Taiping District Hospital, He left Kuala Lumpur on



April 19 by taxi and reached Taiping at about 6 p.m. He visited his grandmother in Ward 15 and leaving her at about 7.30 p.m. he walked to the taxi stand in Taiping Town. There he met a Malay taxi-driver named Mat bin Darus at about 8 p.m. He had to wait for some time until an Indian bound for Matang turned up to fill another place in the taxi. Thereupon the taxi took the two passengers as fares to Matang and Port Weld respectively, departing from Taiping at about 8.30 p.m. This appellant reached Port Weld at about 9 and proceeded to his uncle's house. He was nowhere in Seberang Port Weld at the relevant time and so could not have taken part in the attack on the deceased. He was subsequently arrested in Kuala Lumpur on May 5, 1970. Mat bin Darus, the taxi driver, fully corroborated the evidence of this appellant in every detail and there is not an iota of evidence on the record which the prosecution could point out as showing that he was helping to concoct a false alibi.

The defence, in addition to offering evidence corroborating the alibi of each appellant, called Ong Eng Kek. He was a reputable shop-keeper, the village headman, of whom the only criticism made was that he had not volunteered to make any statement to the police. He deposed that at about 8.30 p.m. on April 19 he heard "people quarrelling" outside. He came out and saw the deceased prostrate and bleeding. Taking fright, he closed his shop and stayed in for fear that people might run inside. He was unable to identify any of those he saw running away from the scene as he came out and he did not see who later removed the body. In cross-examination he said he "believed" the police were outside his shop that night but he did not go up to them because they had not called him. He was not asked the grounds of his belief for so thinking and nowhere in the prosecution case was there any evidence that, if the police were at any time, as he thought, outside his house, they were not merely passing by on their way to and from the jetty. He was at no time sought out by the police in the course of investigation for any information. The relevance of his evidence was undoubtedly connected with what the first appellant's witness, Puah In Tian, had testified to earlier, that while walking home he had to pass the shop of Ong Eng Kek - it was then nearly 9 p.m. - and he saw in front of the latter's house a pool of blood on the ground; the blood was in patches over an area of

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about 3 to 4 feet in diameter. These patches were in front to the right of the house about 8 feet away.

The object of the defence in calling the village headman clearly was to show that the deceased died of an attack outside the headman's shop, separate and distinct from the encounter described by the prosecution witnesses. The headman had seen the deceased dead or dying in a pool of blood. Pua In Tian, too, had seen the blood while on his way home - by which time the body had already been removed. Were both these independent witnesses, on oath, telling lies? If so, it would seem to be an extraordinary way of presenting evidence in order to discredit the prosecution witnesses.

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Assuming that there was, in truth, all that much blood outside the headman's house, whose could it have been? Ong Yu Sew, who did not die of his wounds, left a pool of blood on the temple floor. The deceased had multiple stab wounds, 18 in all, from some of which he must have bled copiously, according to the medical evidence. One should naturally have expected to see blood, where he was laid low, in larger quantities than the pool left by Ong Yu Sew. Yet the A.S.P. found nothing more than a bloodstain about 1" in diameter on a bench and a few drops of blood nearby. This could not possibly have been all the life-blood which poured out of the deceased, had he fallen dead there. The explanation was provided by the two defence witnesses, who saw plenty of blood outside the headman's house. The question therefore arises: whose story was consistent with the presence of pools of blood seen at both places? The prosecution version left one pool of blood unexplained. The defence accounted for both. The jury accordingly should have been directed to find as a fact whether or not there was a pool of blood outside the headman's house, as the defence claimed. But the question was never left to them at all. This defence was one specifically raised by the defence case but never put to the jury. Instead, the learned trial judge appeared to have jumped to the conclusion, from the medical evidence, that the first blows struck were necessarily the fatal ones, because the deceased could not have run far after being stabbed in the heart. That the jury were

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invited to share the judge's view appears from these directions:-

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"We have further the evidence of the doctor who said that from the nature of the injuries that she saw on the body of the deceased, she was of the opinion that the deceased must have died almost immediately after receiving those injuries and she was also of the opinion that after receiving the injuries it was not likely that the deceased could have moved very far away. In the present case the A.S.P. also did not find any trail of blood at the scene but only some bloodstains on the bench and on the ground near it and at another spot in the temple."

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The effect these directions must have had on the minds of the jury was most unfortunate. Since they were instructed that all the evidence pointed to the deceased falling at the spot where he was said to have been stabbed, it followed that both Ong Ban Kim and Ong Yu Sew were to be believed, whereas the headman and Puah In Tian were not. It was further assumed for a fact that the blood-stain on the bench was necessarily the deceased's. Might it not have been the blood of Ong Yu Sew? It will be remembered that Ong Ban Kim admitted having stated at the preliminary enquiry that Ong Yu Sew ran away after being wounded. The defence case was that the deceased could not have been there, according to the headman, Ong Eng Kek. Had this possibility been left to the jury - leaving them with open minds regarding the defence case, that the deceased died in a separate attack elsewhere - they might very well have come to the opposite conclusion, by accepting the evidence of the headman and Puah In Tian as true. In that event it is inevitable that they must disbelieve the alleged eye-witnesses.

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As to the credibility of those prosecution witnesses, I have very grave doubts myself on perusal of their evidence. First, it may be observed that Ong Ban Kim, if indeed he was present among the audience, was not disturbed by any attack on himself. The blood-stained bench was 25 yards from the stage and so half-way between stage and temple. Ong Ban Kim did not go to the aid of the deceased until all the assailants had fled. Consequently he must also have watched the attack on Ong Yu Sew from start to

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finish. Being closer to the temple from where he sat, he could not have missed seeing Ong Yu Sew's assailants catching up on him and striking him down. Since he categorically denied seeing what must have happened in full view of himself, should his story that he was an eye-witness to the slaying of his brother be accepted at its face value?

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Secondly, Ong Ban Kim and Ong Yu Sew gave two different versions of the attack. Ong Yu Sew said he was chased and attacked by the same four who had struck down the deceased. Ong Ban Kim, however, stated that two remained behind and continued stabbing his brother. On a matter of fact, they had manifestly contradicted each other, so that one version of the incident must be false, if not both.

10

Thirdly, it seems to me highly significant that Ong Ban Kim, who saw his brother slain, told not a soul about it. He had known all the four alleged assailants since their childhood. Their names should readily have been on the tip of his tongue and he should have been anxious above all else to bring his brother's murderers immediately to book. Yet he mentioned no names at all when he made his police report; over two hours later, when he took the A.S.P. to the scene, he could have disclosed these names and led the officer to the homes of these appellants, but did not: when he eventually went home that night, he still told nobody - not even his own mother, of the death of one of her sons. The question naturally arises: What reason was there for such complete reticence unless he did not know who the assailants were? The omission was stressed by the defence, to which the judge supplied the answer. He stated the proposition - which might very well appear to the jury as one of law to start with - and next they were told to consider the question as one of fact, as follows:-

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"The law does not require that the person making a report must disclose the names of the assailants. It is for you to decide in what state of mind P.W.3 was on the day when he went to lodge the report. He no doubt said in evidence that he did give their names but we know as a fact that the names of the assailants are not in the report. It is possible that in the course of making the report

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he was excited and might have forgotten to give the names of the assailants. This is a question for you to consider."

10 In the circumstances, would it be unfair to say that the jury were invited to overlook the omission altogether? Once they gained the impression that non-disclosure of names was immaterial in law - and it must be remembered that they had been told to accept rulings on law without question - what independent conclusion could the jury have come to but regard it as immaterial also in fact? Furthermore, forgetfulness in the excitement of the moment was not the reason given by Ong Ban Kim - he gave no reason in fact. At any rate it was plain beyond dispute that he mentioned no names to the A.S.P. - long after the excitement was over - and the judge still thought the omission to disclose the names to the investigating officer gave no cause for comment. Was it not the first 20 thought which should have occurred to anyone that Ong Ban Kim's failure to name these appellants was because he did not know who were involved in his brother's death? The defence contention was that he did not know; but this question again was never put to the jury.

30 It was, of course, the prosecution case that these appellants were positively identified by two persons, so that, even if the evidence of Ong Ban Kim was rejected, there still remained the identification by Ong Yu Sew. The answer, in my view, is that there was one acid test which should have been applied to prove that both were equally unworthy of credit. Both of them stated that the deceased died at the spot where he was attacked. If what Ong Eng Kek, the village headman, and Puah In Tian said was true, that the deceased died as the result of an attack outside the headman's house, then there can be no doubt that the prosecution witnesses were lying. Why should they falsely 40 implicate these appellants? The answer again may be found in the evidence on the record. The judge did refer in his summing-up to the involvement of the persons concerned in secret societies - that these appellants had been threatened by Ong Yu Sew, Ong Ban Kim and others for refusing to join their Green Dragon Secret Society. I think there can be no doubt that the attacks on the deceased and Ong Yu Sew were the result of some secret society feud. To the knowledge of Ong Yu Sew, one of the four who

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attacked him and the deceased, has since died "a few months ago" - his name was Lau Weng Thong. Against a secret society background, it is not unreasonable to suppose that, if Ong Ban Kim had no compunction about falsely incriminating these appellants, he should have none in persuading Ong Yu Sew to do likewise. Gangsters who do not hesitate to use the knife certainly will show no hesitancy in using the machinery of justice to achieve their ends against their enemies. Even assuming that these appellants were gangsters, they were entitled to have their defence, however thin, adequately put to the jury.

10

In what light were the defence witnesses presented to the jury? No attempt was made by the prosecution to impeach the credit of the headman other than to ask why he had not given any statement to the police. His answer was that he had never been approached in the course of police investigation for any statement. How was he to know what information the police would consider relevant? Merely because he had not volunteered information which nobody appeared to have regarded him as capable of providing, was his evidence on that account to be disregarded, even if relevant? Yet the jury were invited to look at his evidence in this light:-

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"You will also have to consider whether Ong Eng Kek, the Chairman of the Local Council, Sebarang, has been telling the truth. You might like to ask yourselves whether as Chairman of the Local Council and the leader of the community of Sebarang Ong Eng Kek would have remained silent and not volunteer to give information to the police regarding what he said he saw if it was true. This is a question of fact for you to decide."

30

Of the other defence witness, the jury were directed, immediately after the above comments on the headman's credibility, "also in that light" to consider whether Puah In Tian's evidence could count against that of the A.S.P., thus:-

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"If what Puah Char Bo said, that he saw many people crowding in front of the Local Council Chairman's shop and looking at some patches of blood is true, then would it not be likely that the A.S.P. who carried out the investigation

also would have noticed the presence of these patches of blood. You will no doubt recall that the A.S.P. was never cross-examined by the defence as to whether he went to the place in front of the Local Council Chairman's shop to find out whether there was any blood there or not. This is also a question of fact for you to decide."

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10 With respect, there appears to have been some  
confusion of evidence, when reference was made to  
the crowd, as if they were still there when the  
A.S.P. arrived long after Puah In Tian had gone  
home. All that Puah said was that when he saw the  
blood "many people were looking at them". If this  
crowd had melted away by the time the A.S.P.  
arrived two hours later - and there was no evidence  
to the contrary - what was there to attract the  
attention of the police officer to the blood on the  
20 floor, invisible in the dark of night, when there  
was no longer anybody around? The jury, of course,  
looked to the judge to sift and correlate the  
evidence for them and since they were directed in a  
manner which caused them to look with suspicion at the  
evidence of the defence witnesses, it is perhaps not  
surprising that five jurymen out of seven did so to  
the point of disbelief. They were never reminded that,  
in his favour, Puah In Tian had given a statement to  
the police, on which he could have been discredited,  
had he given any evidence differing from his statement  
30 in any material respect.

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40 It is true that the learned trial judge did  
recapitulate the evidence of each defence witness in  
his summing-up. But, in view of the defence case,  
they should have been asked the specific question:  
Did they believe that the deceased died among the  
theatre audience or outside the headman's house? On  
any proper analysis of the evidence, that was the  
decision required of the jury. It was the defence  
case on two grounds: first, if they find as a fact  
that the deceased died outside the headman's house,  
the two prosecution witnesses would have been shown  
to be liars; secondly, even were Ong Yu Sew's  
evidence believed in so far as it relates to his own  
wounding by these appellants, the slaying of the  
deceased in a separate encounter elsewhere could not  
necessarily be imputed to these appellants. Of the  
deceased's death being the result of an attack  
elsewhere there was not an iota of evidence, for that  
was not the prosecution case. The defence thus

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specifically raised was not put to the jury for the simple reason that it had been assumed as a fact that the deceased died where the two prosecution witnesses said he did. In this connection it is strange indeed that among hundreds of people who were present at the show there was not a single independent witness called by the prosecution to rebut the defence case that the deceased was not struck down before their very eyes. The defence had so adumbrated their case when it was put to Ong Ban Kim in cross-examination that the deceased "was stabbed in front of Ong Eng Kek's house".

10

In this case, from first to last, the minds of the jury had been closed to the very question the defence had required them to consider. In my view this is a fatal defect in the summing-up. As the Lord Chief Justice said in R. v. Dinnick:- (1)\*

"But there is a principle of our criminal law which we think has been violated in this case - namely, that when a defence, however weak it may be, is raised by a person charged, it should be fairly put before the jury. .... It may have been very foolish and unfounded, but that defence ought to have been put before the jury - this is a paramount principle of our criminal law .....; and under the circumstances we think that the conviction must be quashed".

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In England section 2 (1) of the Criminal Appeal Act 1968 provides that -

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"..... the court ..... shall allow an appeal against conviction if they think - (a) that the verdict of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory ...."

In Reg. v. Cooper (Sean) (2)\*Widgery L.J.  
said:-

"The important thing about this case is that all the material to which I have referred was put before the jury. No one criticises the

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\*(1) 3 C.A.R. 77, 79.

\*(2) (1968) 3 W.L.R. 1225, 1228.



summing-up, and, indeed, Mr. Frisby for the defendant has gone to some lengths to indicate that the summing-up was entirely fair and that everything which could possibly have been said in order to alert the jury to the difficulties of the case was clearly said by the presiding judge. It is, therefore, a case in which every issue was before the jury and in which the jury was properly instructed, and, accordingly, a case in which this court will be very reluctant indeed to intervene. It has been said over and over again throughout the years that this court must recognise the advantage which a jury has in seeing and hearing the witnesses, and if all the material was before the jury and the summing-up was impeccable, this court should not lightly interfere. Indeed, until the passing of the Criminal Appeal Act, 1966 - provisions which are now to be found in section 2 of the Criminal Appeal Act, 1968 - it was almost unheard of for this court to interfere in such a case.

However, now our powers are somewhat different, and we are indeed charged to allow an appeal against conviction if we think that the verdict of the jury should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory. That means that in cases of this kind the court must in the end ask itself a subjective question, whether we are content to let the matter stand as it is, or whether there is not some lurking doubt in our minds which makes us wonder whether an injustice has been done. ....

We have given earnest thought in this case to whether it is one in which we ought to set aside the verdict of the jury, notwithstanding the fact they had every advantage and, indeed, some advantages we do not enjoy. After due consideration, we have decided we do not regard this verdict as safe, and accordingly we shall allow the appeal and quash the conviction."

The powers of this court in criminal appeals are as set out in section 60(1) of our Courts of Judicature Act 1964 to "confirm, reverse or vary the decision of the trial court or ..... make such other order in the matter as it may seem just". This is in identical

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terms with section 29(1) of our Courts Ordinance now repealed. It has always been the practice of our appeal courts in following the principles laid down in section 4 (1) of the Criminal Appeal Act 1907, to "allow an appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence .... or that on any ground there was a miscarriage of justice". In recent years certain doubtful decisions, as in Evans and Hanratty, have in no small degree led to the passing of the provisions now set out in section 2(1) of the Act of 1968, which enabled Widgery L.J. to allow an appeal where the court felt genuinely troubled by lurking doubts as to whether an injustice had not been done in the special circumstances of that particular case. The provisions of section 60(1) of our Judicature Act, in my view, need no amendment for the application of the same principles which now apply in England.

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In the instant case, it is perfectly true that the jury had the advantage of seeing and hearing the witnesses but such advantage cannot outweigh defects in the summing-up whereby, to quote Pickford J. in Bundy \*(3) "the trial was not satisfactory as the case was not put to the jury in a way to ensure their due appreciation of the value of the evidence". For my part, I feel that the shutting out of a defence specifically raised was not merely a matter of raising lurking doubts. In the words of Sachs L.J. in Regina v. Lamb:- \*(4)

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"..... the defendant was entitled as of right to have his defence considered, but he was not accorded this right and the jury was left without a direction on an essential matter."

The verdict there could not stand, and for my own part, I take the view that the verdict in this case should likewise be set aside.

Kuala Lumpur,  
1st April 1971.

Sgd. H.T. ONG  
Chief Justice,  
High Court in Malaya

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\*(3) 5 C.A.R.270.

\*(4) (1967) 3 W.L.R. 888,895.

Dato' V. Jeyaratnam (Panjan Singh Gill Esq. with him) for appellants.

Gunn Chit Tuan Esq., Sr. Fed. Counsel, for P.P., respondent.

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IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT  
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(APPELLATE JURISDICTION)

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Federal Court Criminal Appeal No.31 of 1970  
(Perak Criminal Trial No.13 and 18 of 1970)

20

- 1. LIM YAM TEK @ AH THAW
- 2. TAN LAG CHUAN @ TAN AH LIAK Appellants

And

PUBLIC PROSECUTOR Respondent

Coram: H.T. Ong, Chief Justice, West Malaysia;  
Suffian, Federal Judge, Malaysia;  
Gill, Federal Judge, Malaysia.

MAJORITY JUDGMENT  
(SUFFIAN AND GILL, F.J.J.)

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The main question in the trial below was - who killed the deceased? The prosecution says it was the two appellants and two others. The two appellants say that they had nothing whatsoever to do with it.

The prosecution relied a great deal on two

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eye-witnesses. Ong Yu Sew @ Ong Ah Sew (P.W.2) said that he and the deceased were watching a wayang on the night of 19th April, 1969, at Seberang, Port Weld, when suddenly four people including the two appellants came and stabbed both him and the deceased; that the deceased fell down and he himself was then chased by all the four; and that he had known all the four long before the incident. Ong Ban Kim @ Ong Cha Koon (P.W.3), a brother of the deceased, said that he was also at the wayang with a third brother some distance behind and he saw the deceased and P.W.2 being stabbed by the four assailants whom he had known since childhood, that he took the deceased by sampan to Port Weld where he arranged for the body to be taken to hospital, and that he himself went to the Police Station where he made a report.

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The defence was a complete denial. The first appellant said that, though he also was at the wayang with a friend and heard a commotion from the spectators on the right-hand side of the stage, he himself was only an innocent bystander and took no part in it. His friend (D.W.2) gave evidence in support. The second appellant said that at the time of the incident he was somewhere else in a taxi and he called the taxi driver, Mat bin Darus (D.W.4), to give evidence in support.

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There were other witnesses, but the above are the most important.

Which side were the jury to believe?

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The learned judge correctly told them that the appellants were presumed innocent, that it was for the prosecution to prove their case beyond reasonable doubt, and that the defence needed only to raise a doubt in the jury's minds. He said:

"..... that means that even if you are not convinced of the truth of the defence story, still if you consider that it is probable or that it is reasonably true or if you cannot make up your minds as to whether the appellants are guilty or not, then you must give the benefit of the doubt to the appellants and return a verdict of not guilty."

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In the event the jury by a majority of five to two returned a verdict of guilty; the learned judge obviously did not think the verdict perverse and he concurred and sentenced the appellants to death.

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In determining this appeal it is important to bear in mind that the evidence in this case is entirely oral and that there was ample evidence, if believed, to justify the majority of the jury in arriving at their verdict. That being so, it is not open to an appellate court to reverse that verdict unless it can be shown that there has been misdirection in the learned judge's summing-up.

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Dato' Jeyaratnam, counsel for the appellants, sought to persuade this court that there was misdirection.

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In considering his arguments we should bear in mind the proper principles to be applied by an appellate court when considering criticism of a summing-up. Those principles were stated by the learned Chief Justice of England in Joseph Stoddart (1) at page 245-6 as follows:

"We cannot part from this case without making some observations which may, we trust, be of service with reference to the practice of this Court. As appears from the judgment which has just been delivered, the case for the appellant was conducted by making a minute and critical examination, not only of every part of the summing-up, but of the whole conduct of the trial. Objections were raised which, if sound, ought to have been taken at the trial. Probably no summing-up, and certainly none that attempts to deal with the incidents as to which the evidence has extended over a period of twenty days, would fail to be open to some objection. To quote Lord Esher's words in Abrath v. The North-Eastern Rail.Co. (2) 'It is no misdirection not to tell the jury everything which might have been told them. Again, there is no misdirection unless the judge has told them something wrong or unless what he has told them would make wrong that which he

\*(1) 2 Cr. A.R. 217, 245-6.

\*(2) (1883) 11 Q.B.D. 440, 452.

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has left them to understand. Non-direction merely is not misdirection, and those who allege misdirection must shew that something wrong was said or that something was said which would make wrong that which was left to be understood.' Every summing-up must be regarded in the light of the conduct of the trial and the questions which have been raised by the counsel for the prosecution and for the defence respectively. This court does not sit to consider whether this or that phrase was the best that might have been chosen, or whether a direction which has been attacked might have been fuller or more conveniently expressed, or whether other topics which might have been dealt with on other occasions should be introduced. This Court sits here to administer justice and to deal with valid objections to matters which may have led to a miscarriage of justice."

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In an earlier case Arnold v. The King-Emperor \*(3) the Privy Council expressed at page 168 the same view in the following words:

"A charge to a jury must be read as a whole. If there are salient propositions in law in it, these will, of course, be the subject of separate analysis. But in a protracted narrative of fact, the determination of which is ultimately left to the jury, it must needs be that the view of the judge may not coincide with the views of others who look upon the whole proceedings in black type. It would, however, not be in accordance either with usual or with good practice to treat such cases as cases of misdirection, if, upon the general view taken, the case has been fairly left within the jury's province. Their Lordships do not say that upon any particular in this case they would differ from the views laid down by Sir Charles Fox, but these observations are made in order to discountenance the idea that in the region of fact, unless something gross amounting to a complete misdescription of the whole bearing of the evidence has occurred, this Board will interfere."

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\*(3) 41 I.A. 149, 168-9.

Applying the above Privy Council case, a Calcutta Court twenty years later in Fajer Ali Darji and Others v. Emperor \*(4) said that where all the main points in the evidence had been carefully placed before the jury, and where one or two minor details to which reference has been made before the appellate court had not been placed before the jury, that would not amount to such a misdirection as to vitiate the entire trial.

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10 We now turn to Dato' Jeyaratnam's arguments, which we shall deal with in the order used by him in this court.

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20 Dato' Jeyaratnam submitted that the learned judge was wrong in ordering the jury not to consider the defence evidence until they were satisfied that the prosecution had proved a prima facie case against the appellants. We see no merit in this argument. It is true that the learned judge himself decided at the end of the prosecution case to call on the appellants to enter on their defence. It is also true that in his summing-up he told the jury that, if the prosecution failed to prove a prima facie case against the appellants, then they should not even consider the defence and that they should immediately return a verdict of not guilty. That was perfectly proper, see subsection (iii) of section 214 of the Criminal Procedure Code.

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30 Dato' Jeyaratnam complained that the learned judge "compartmentalised" the evidence for the prosecution and that for the defence, and that nowhere in his summing-up did he direct the jury to review the whole of the evidence, and he referred to Woolmington v. The Director of Public Prosecutions \*(5), Lim Toh Sin v. P.P. \*(6) and R. v. Dennis Patrick Murtagh & Kenneth Kennedy \*(7). We see no merit in this argument. The summing-up must be read as a whole, and when that is done it will be seen that the learned judge clearly directed the jury to review, though he did not use the word "review", the whole of the evidence. As  
40 was said by the Lord Chief Justice of England in Kritz \*(8) at page 177:

- \*(4) A.I.R. 1934 Calcutta 142.
- \*(5) (1935) A.C. 462, 482.
- \*(6) (1966) 1 M.L.J. 278, 280.
- \*(7) (1956) 39 Cr.A.R. 72, 82.
- \*(8) 33 Cr. A.R. 169, 177.

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"It is not the particular formula of words that matters; it is the effect of the summing-up."

Dato' Jeyaratnam's next objection is this. The prosecution, to prove that it was the appellants who stabbed the deceased, relied on the evidence of two eye-witnesses, P.W.2 and P.W.3. P.W.3 is the brother of the deceased. After the incident he had the presence of mind to take the deceased's body in a sampan to Port Weld, where he made a report to the Police. He said that he knew the four assailants since his childhood days and yet he did not tell anyone about the stabbing. He did not tell his mother. Nor did he tell A.S.P. de Silva (P.W.7) whom he conducted round the scene a few hours after the incident. When he made the first report to P.C. Hassan (P.W.4), he said that he named the four assailants, but the P.C. himself denied it and said that, if the four assailants had been named, he would have recorded their names. The first report (Exhibit P3) did not contain their names. It was submitted that the learned judge should have directed the jury to treat the evidence of this witness with suspicion, and his failure to do so was fatal and counsel referred to Berahim v. P.P. \*(9).

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We do not think there is any merit in this argument. As was pointed out by this court in Herchun Singh & Others v. P.P. \*(10), in endorsing Sohony's Commentary on section 154 of the Indian Criminal Procedure Code (16th edition, volume 1, page 750), which is similar to section 107 of our Criminal Procedure Code, the first information report "need not contain the circumstances of the commission of the offence, nor the names of the offenders or the witnesses, for the main purpose of investigation is to ascertain these matters." Moreover, P.W.3 was not the only eye-witness. P.W.2 was also an eye-witness of the stabbing and his evidence was that he also recognised the appellants and the two other assailants whom he had known "long before this incident". There were discrepancies in the evidence. P.W.2, who was also stabbed by the four assailants, said that after he had been stabbed he was chased by all of them, and P.W.3, who said that he was present at the scene as an innocent bystander, saw only two persons chasing P.W.2. There are other contradictions

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\* (9) (1968) 1 M.L.J. 298,299.

\* (10) (1969) 2 M.L.J. 209,211.



10 in the evidence, but in our view they were of a minor nature in the face of the main question as to who were the assailants. The learned judge did not in his summing-up itemise these discrepancies, but he did warn the jury that, if they considered the discrepancies were serious, then they must reject the evidence of the witnesses concerned. The impression made on the jury by the pauses, hesitations and demeanour of the witnesses when giving evidence in court may be totally different from the impression made on us by the cold print of the appeal record. Five members of the jury preferred the evidence of P.W.2 and P.W.3 to that given by the appellants and their witnesses. They were entitled to do so, and there was evidence, if believed, to justify their verdict of guilty.

20 Mr. Ong Eng Kek (D.W.5) was called in support of the second appellant's case. Mr. Ong was ketua of the village. Dato' Jeyaratnam complained that the learned judge in his summing-up expressly referred to the fact that Mr. Ong in cross-examination admitted that he did not give any statement to the Police and thereby invited the jury to draw an adverse inference. We are of the opinion that this passage in the summing-up was pure reportage. Again and again throughout his summing-up the learned judge emphasised to the jury that matters of fact were entirely for them to consider.

30 Dato' Jeyaratnam submitted that the learned judge was wrong in directing the jury that the investigation officer had not been cross-examined by the defence as to whether he went to the place in front of Mr. Ong's shop to find out whether or not there was any blood there and in inviting the jury, since the investigation officer did not notice the presence of patches of blood there, to draw an inference adverse to the defence. The defence case in the lower court was that the deceased, on being stabbed, could not have fallen dead at or near the scene, but that he had sufficient life to run some distance to die in front of Mr. Ong's house. It was obvious from the verdict of the jury that they did not regard it as important where the deceased dropped dead. Moreover, A.S.P. de Silva gave evidence to say that he found a small pool of blood on the floor of the temple, which was not very far from the bench where the deceased was stabbed.

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Dato' Jeyaratnam's next complaint is this.

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Both appellants gave evidence on oath. The first appellant's defence was that, though he was present at the wayang, he was an innocent bystander and took no part in the stabbing. He called a witness, D.W.2, in support of his case. D.W.2 had earlier made a statement to the Police, as confirmed by the investigation officer. If his evidence was different from his statement to the Police, he could have been cross-examined on it, but that was not done, which shows (it was submitted) that his credit had not been impeached: Dato' Jeyaratnam argued that the failure of the learned judge to mention this in his summing-up was a misdirection. The second accused's defence was that at the time of the stabbing he was elsewhere in a taxi and he called the taxi driver, Mat bin Darus, to corroborate him. Dato' Jeyaratnam complained that nothing was said of his independence and of the fact that he was unshaken in cross-examination, by the learned trial judge in his summing-up. In our judgment it is no misdirection not to tell the jury everything which might have been told and non-direction merely is not misdirection. We are in the region of facts. The failure of the learned judge to refer in his summing-up to these matters has not caused a misdescription of the whole bearing of the evidence. Here again the jury were entitled to rely completely on the impression made on them in court by the oral testimony of witnesses whom they saw and heard.

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Finally Dato' Jeyaratnam submitted that the case for the defence had not been put to the jury in a way to ensure the true valuation of the appellants' evidence. We think that, on the contrary, all the main points in the evidence had been carefully and fairly placed before the jury and that therefore this appeal should be dismissed and the conviction upheld and sentence affirmed.

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Delivered at Kuala Lumpur  
on 1st April, 1971.

M. Suffian  
(M. Suffian)  
Federal Judge, Malaysia.

40

Counsel: Dato' V. Jeyaratnam (Pr. P.S. Gill with him)  
for appellants.  
Mr. Gunn Chit Tuan, Senior Federal Counsel,  
for Public Prosecutor, respondent.

Argument in Kuala Lumpur on 10th February, 1971.

Authorities cited other than those mentioned in Judgment:

- (1) Karam Singh (1967) 2 M.L.J. 25, 30
- (2) R. v. Koh Soon Poh (1935) M.L.J. 120.
- (3) R. v. Whybrow (1951) 35 C.A.R. 147.
- (4) Stirling 30 C.A.R. 40.
- (5) R. v. Cohen & Bateman (1909) 2 C.A.R. 197.
- (6) Shanmugam v. P.P. (1963) M.L.J. 125.

In the Federal Court of Malaysia Holden at Kuala Lumpur

\_\_\_\_\_  
No.25

Majority Judgment of Suffian and Gill, F.J.J.

1st April 1971 (continued)

\_\_\_\_\_  
NO.26

No.26

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ORDER DISMISSING APPEAL

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR (APPELLATE JURISDICTION)

Order dismissing Appeal

1st April 1971

Federal Court Criminal Appeal No.31 of 1970 (Ipoh High Court Criminal Trials Nos.13 & 18/70)

- 1. LIM YAM TEK alias AH THAW
- 2. TAN LAU CHUAN alias TAN AH LIAK Appellants

vs.

THE PUBLIC PROSECUTOR

Respondent

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Coram: Ong Hock Thye, Chief Justice, High Court, Malaya:  
Suffian, Judge, Federal Court, Malaysia: and Gill, Judge, Federal Court, Malaysia.

IN OPEN COURT

THIS 1ST DAY OF APRIL, 1971

O R D E R

THIS APPEAL coming on for hearing on the 10th day of February, 1971 in the presence of Dato V. Jeyaratnam (Mr. P.S. Gill with him) of Counsel for

In the Federal  
Court of  
Malaysia  
Holden at  
Kuala Lumpur

No.26

Order  
dismissing  
Appeal

1st April  
1971  
(continued)

the Appellants abovenamed and Mr. Gunn Chit Tuan, Deputy Public Prosecutor, on behalf of the Respondent AND UPON READING the Record of Appeal herein AND UPON HEARING Counsel for the Appellants and the Deputy Public Prosecutor as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for judgment AND the same coming on for judgment this day in the presence of Mr. Jag-Jit Singh on behalf of Dato Jeyaratnam of Counsel for the Appellants and Mr. Gunn Chit Tuan, Deputy Public Prosecutor, on behalf of the Respondent:

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IT IS ORDERED that this Appeal of the Appellants abovenamed be and is hereby dismissed.

GIVEN under my hand and the seal of the Court this 1st day of April, 1971.

Sgd. Anwar bin Ismail

SENIOR ASSISTANT REGISTRAR,  
FEDERAL COURT, MALAYSIA.

In the  
Judicial  
Committee of  
the Privy  
Council

No.27

Order granting  
Special Leave  
to appeal in  
forma pauperis  
to His Majesty  
The Yang di-  
Pertuan Agong

24th December  
1971

NO.27

ORDER GRANTING SPECIAL LEAVE  
TO APPEAL IN FORMA PAUPERIS  
TO HIS MAJESTY THE YANG  
DI-PERTUAN AGONG

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COURTS OF JUDICATURE ACT, 1964  
(No.7 of 1964)

ORDER UNDER SECTION 76(1)

WHEREAS there was this day submitted to His Majesty the Yang di-Pertuan Agong a Report from the Lords of the Judicial Committee of the Privy Council dated the 14th day October, 1971 in the words following viz:-

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"WHEREAS by virtue of the Malaysia (Appeals to Privy Council) Orders in Council 1958 and 1963 there was referred unto this Committee a humble Petition of (1) Lim Yak Tek alias Ah Thaw and (2) Tan Lau Chuan alias Tan Ah Liak in the matter of an Appeal from the Federal Court of Malaysia holden at Kuala Lumpur (Appellate

Jurisdiction) between the Petitioners and The Public Prosecutor Respondent setting forth that the Petitioners pray for special leave to appeal in forma pauperis from the Judgment of the Federal Court of Malaysia holden at Kuala Lumpur dated the 1st April 1971 whereby the Federal Court dismissed the Petitioners' Appeal from their conviction of murder and sentence of death in the High Court in Malaya at Ipoh on the 27th November 1970: And humbly praying Your Majesty to grant them special leave to appeal in forma pauperis against their conviction and sentence and to order that their said conviction and sentence be set aside and that Your Majesty may make such further or other order as may appear fit and proper:

In the  
Judicial  
Committee of  
the Privy  
Council

No.27

Order granting  
Special Leave  
to appeal in  
forma pauperis  
to His Majesty  
the Yang di-  
Pertuan Agong

24th December  
1971  
(continued)

THE LORDS OF THE COMMITTEE in obedience to the said Orders in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree to report to the Head of Malaysia as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal in forma pauperis against the Judgment of the Federal Court of Malaysia holden at Kuala Lumpur dated the 1st April 1971 and that the authenticated copy of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before the Judicial Committee on the hearing of the Appeal."

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 it is hereby ordered that the same be punctually observed, obeyed and carried into execution.

DATED this 24th day of December 1971.

BY COMMAND

PRIME MINISTER

F.C. Crim. App. 31/70)

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Exhibits

EXHIBIT P.3.

Exhibit P.3.

POLICE REPORT NO.97/69.

Police Report  
No.97/69

TA.454/69  
13.3.70 (Police 51A)

19th April  
1969

A..... Page .....  
POLICE DI-RAJA MALAYSIA

COPY REPORT

Translation of Police Report

Report NO:97/69	Police Station: Port Weld	
Received at: 9.00 p.m.	on 19.4.1969	10
Complainant: Hassan bin Man,	PC.22960	
Race: Malay	Age 36 years	Occupation:
		Police Constable
Address: Police Station Port Weld		

Complainant states:

At 9.00 p.m. on 19.4.69 received information from male Chinese named Ong Beng Kek of No.90 Seberang Port Weld informing that his elder brother named Ong Ah Pieow had been stabbed to death at Seberang, his friend Ong Ah Sieow injured and taken to Taiping Hospital by his friends. This is the report.

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Signed Complainant:

Hassan PC. 22960

Certified true copy.  
Signed by ISMAIL BIN HASHIM D.S.P.

Officer Commanding Police District, Taiping.

Translated by me,

Malay Interpreter,  
High Court,  
Ipoh. 1/5/71

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IN THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL

NO.5 of 1972

O N      A P P E A L  
FROM THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

B E T W E E N :

1. LIM YAM TEK alias AH THAW
2. TAN LAU CHUAN alis TAN AH LIAK  
(Defendants)  
Appellants

- and -

THE PUBLIC PROSECUTOR  
(Prosecutor)  
Respondent

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R E C O R D   O F   P R O C E E D I N G S

KINGSFORD DORMAN & CO.,  
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London, WC2A 3UA

Solicitors for the Appellants

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Gutter Lane,  
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London, EC2V 6BS

Solicitors for the Respondent