

No. 21 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE SUPREME COURT OF HONG KONG

B E T W E E N :

WONG KAM-MING

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG

B E T W E E N :

WONG KAM MING

Appellant
(Petitioner)

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

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<p><u>IN THE HIGH COURT OF HONG KONG</u></p> <p>Notes of proceedings relating to other accused.</p> <p><u>IN THE SUPREME COURT OF HONG KONG</u></p> <p>Notice of Application for leave to Appeal.</p> <p>List of Exhibits.</p>	<p>4th October 1976</p>

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG

B E T W E E N :

WONG KAM-MING Appellant

- and -

THE QUEEN Respondent

RECORD OF PROCEEDINGS

10

No. 1

AMENDED INDICTMENT

HONG KONG

IN THE HIGH COURT OF JUSTICE

In the
High Court
No.1
Amended
Indictment
16th August
1976

At the High Court held at Victoria on the 16th day of August 1976, the Court is informed by the Attorney General on behalf of Our Lady the Queen, that CHEUNG Kwan-sang, CHEUNG Fai-hung, LI Ming, CHO Shu-wah, WONG Kam-ming and LI Keung are charged with the following offences :-

20

Common Law. 1st Count
Statement of Offence

Cap.212 Murder, contrary to Common Law.

Sec. 2. Particulars of Offence

CHEUNG Kwan-sang, CHEUNG Fai-hung,

In the
High Court
No. 1
Amended
Indictment
16th August
1976
(cont'd)

LI Ming, CHO Shu-wah, WONG Kam-ming
and LI Keung, on the 28th day of
December, 1975, at 689 Nathan Road,
Kowloon, in this Colony, together
with a person known as LI Yuk
murdered LAM Shing.

2nd Count
Statement of Offence

Cap. 212
Sec.17

Wounding with intent to do
grievous boidly harm, contrary to
section 17 of the Offences against
the Person Ordinance, Cap. 212.

10

Particulars of Offence

CHEUNG Kwan-sang, CHEUNG Fai-
hung, LI Ming, CHO Shu-wah, WONG Kam-
ming and LI Keung, on the 28th day of
December, 1975, at 689, Nathan Road,
Kowloon, in this Colony, together with
a person known as LI Yuk unlawfully
and maliciously wounded LI Kwong-ye, 20
with intent to do grievous bodily
harm to persons.

3rd Count
Statement of Offence

Cap. 212
Sec.17

Wounding with intent to do
grievous bodily harm, contrary to
section 17 of the Offences against
the Person Ordinance, Cap. 212.

Particulars of Offence

CHEUNG Kwan-sang, CHEUNG Fai-hung, 30
LI Ming, CHO Shu-wah, WONG Kam-ming
and LI Keung, on the 28th day of
December, 1975, at 689 Nathan Road,
Kowloon, in this Colony, together
with a person known as LI Yuk
unlawfully and maliciously wounded
CHAN Heung-choi, with intent to do
grievous bodily harm to persons.

R.G. Penlington
Director of Public Prosecutions
10th September, 1976

To: (1) CHEUNG Kwan-sang
(2) CHEUNG Fai-hung
(3) LI Ming
(4) CHO Shu-wah
(5) WONG Kam-ming
(6) LI Keung

In the
High Court
No. 1
Amended
Indictment
16th August
1976
(cont'd)

Take Notice that you will answer to the
Indictment whereof this is a true copy at the High
Court, Victoria, on the 16th day of August 1976.

10

Sgd. (J.R. Oliver)
.....

Registrar.

No. 2

VOIRE DIRE ON APPELLANT

In the High
Court

No. 2
Voire dire
on Appellant
24th August
1976.

COURT: Perhaps Mr. Ming Huang would express his
objections as regards the next accused - as
regards the 5th accused?

MR. MING HUANG: I see, oh, yes.

20

The objection is there was no caution,
lengthy questioning while he remained silent. The
only violation of the rules was to grab his chest
and shaking his chest like that. (Counsel
indicates). There was an inducement concerning
Li Yuk, that is unless he copied they would
arrest Li Yuk and how that played up to his fear
and amounting inducement it will come forth indeed
in the evidence, and copy. It is the allegation
of the 5th defendant that what was in the notebook
was prepared by Detective Cheuk Wah-ngok and he
was forced to copy down into the notebook. The
two detectives involved here are Sergeant NG Sai-
kit and Detective Cheuk Wah-ngok.

30

COURT: All right, we will adjourn for fifteen
minutes.

11:07 a.m. Court adjourns

In the
High Court

No.2(a)
Respondents
Evidence
D.C. Cheuk
Wah-ngok
24th August
1976

No. 2(a)

RESPONDENTS EVIDENCE

11:33 a.m. Court resumes

All accused present. Appearances as before.
Jury absent.

MR. MARASH: I call Detective Constable Cheuk Wah-ngok.

CHEUK Wah-ngok OFA

XN. BY MR. MARASH:

- Q. Detective Constable, is it correct that you together with another detective constable arrested the 5th accused in this case? 10
- A. Yes.
- Q. That is Mr. Wong Kam-ming?
- A. Yes.
- Q. On what date was that arrest effected?
- A. On the 31st of December.
- Q. And at what time on the 31st was he arrested?
- A. At 15.50 hours.
- Q. Whereabouts was the arrest made? 20
- A. At stone hut No. 63 Pak Fuk Village, Fenling.
- Q. Which other officer or officers were with you at the time of the arrest?

MR. MING HUANG: My Lord, I am sorry to interrupt, D.5 is way in the back. He claims he has some difficulty in hearing. Could he change position with someone in the front?

COURT: Yes.

MR. MING HUANG: So as to make life easier for him. Thank you. 30

- A. There was DC.4069.
- Q. Is that all you were with at the time?
- A. Yes.
- Q. When was the first occasion that you personally commenced to look for the 5th accused?

10 A. We did not go to look for the 5th accused.
We were acting on instruction to stay
inside the said stone hut waiting for the
arrival of person or persons. Whoever
enters the hut would be suspected to have
connection with the case.
Q. Were you anticipating any particular person
entering the hut?
A. Yes.
Q. Who was that?
A. I was expecting that the 5th accused would
arrive.
Q. And why was that?
A. Because the stone hut was their hideout and
the 5th accused was one of the wanted
persons by the police.
Q. That was the first occasion that you went to
that address to look?
A. That was the first occasion that I went
there.
Q. And would you tell us exactly how the arrest
was effected?
A. I saw the 5th accused enter the hut. We
approached him and revealed our identities
to him. We announced that he was under
arrest because we had reasons to believe he
was connected with the homicide case which
had taken place at the Siu Nui Chin Kui.
30 Q. Who said that: you or your fellow detective
constable?
A. I did.
Q. Did you give him any further details other
than what you have just told us?
A. Yes.
Q. Go on then.
A. I told him that the place was at 689 Nathan
Rd, mezzanine floor, Siu Nui Chin Kui. At
that time several persons had committed a
homicide case at the said address. I told
40. the 5th accused that he was one of the
wanted persons on the wanted persons list.
Q. Did he say anything when you told him that?
A. He did not say anything.
Q. Was he handcuffed before he was taken away?
A. Yes.
Q. When he entered the hut were you waiting
inside the hut or outside?
A. We were waiting inside a cubicle of the hut.
Q. As far as you knew was this hut the permanent
50 residence of the 5th accused?
A. No, it is not.

In the
High Court

No.2(a)
Respondents
Evidence
D.C. Cheuk
Wah-ngok
24th August
1976
(cont'd)

MR. MING HUANG: Has he personal knowledge?

MR. MARASH: I apologise.

- Q. Did you ask the 5th accused about that?
A. Yes, I did. I asked the 5th accused whether he was living at that address.
Q. What did ...
A. ... And the accused said "No". He only went there to look for a friend.
Q. Did you ask him which friend?
A. I cannot remember now but he did tell me. 10
Q. His friend was not arrested, is that correct?
A. No.
Q. He wasn't arrested - his friend was not arrested, would you agree?
A. Not arrested.
Q. Where did you take the 5th accused from his hut?
A. We telephoned the Sheung Shui Police Station. We asked for a police vehicle to wait for us at the entrance to the village. We then escorted the 5th accused, that is myself and DC.4069 together took him to the entrance of the village waiting for the arrival of police transport. Finally we were taken to Sheung Shui Police Station in a police vehicle. We made a report to the duty officer and an entry was recorded in the report book. 20
Q. Where did you take him from there?
A. We informed Inspector Robson by telephone from Sheung Shui Police Station asking him to come to collect us with a police vehicle and to take us back to Mongkok Police Station. 30
Q. Did you eventually go back in a police vehicle to Mongkok Police Station?
A. Yes.
Q. Approximately what time did you arrive?
A. At 1845 hours. 40
Q. What did you do with the 5th accused there?
A. We first made the report at the report room where an entry was recorded and then I took the 5th accused into a small room and started to make enquiries in connection with the homicide case.
Q. Prior to doing that did you speak to any of your superior officers?
A. No.

- 10 Q. Did you take him to the small room because you yourself had decided to question him?
A. Yes.
Q. Just to clarify one matter: Detective Constable 4069, is that Liu Yik-wing?
A. Liu Yik-wing.
Q. And where did he go once you got to the report room?
A. Liu-Yik-wing went into the report room together with me and then he left. Perhaps he was engaged at other work while I handled the 5th accused.
Q. Anyway, is it correct that he didn't go to the small room with you?
A. Correct.
Q. Up to the time that you reached the small room had the 5th accused ever been cautioned, formally cautioned?
20 A. The accused had been verbally cautioned at Sheung Shui, Fanling.

MR. MING HUANG: I would prefer my learned friend not to lead the witness.

- 30 Q. Who cautioned him there?
A. I did.
Q. And what were the words of the caution that you delivered to him there?
A. When the 5th accused was at Sheung Shui he did not say anything except he indicated that he knew the reason for his arrest.
Q. Who did he say that to?
A. To me.
Q. What time was that in Sheung Shui Station?
A. Not at the station. I was referring to the time when he was arrested.
Q. So at the time you actually arrested him in the hut he indicated that he knew the reason for his arrest?
A. Yes.
40 Q. And was that before or after you have told him about the events - the allegations of the events at Chin Kui Music Parlour?
A. After I had told him about the incident at Siu Nui Chin Kui.
Q. What do you say - you are saying that he understood what you told him why you were arresting him or he knew beforehand before you told him what the reason for his arrest was?
50 A. Well, he did not know that he was under arrest before hearing what I told him. At first he thought I was his friend

In the
High Court
No.2(a)
Respondents
Evidence
D.C. Cheuk
Wah-ngok
24th August
1976
(cont'd)

- Q. When the accused said that he knew the reason for his arrest, is it correct you are saying he knew it because he was told?
A. Yes.
Q. When was he first formally cautioned?
A. 1550 hours.
Q. That was at Fanling in the hut, is that correct?
A. Yes.
Q. Who cautioned him? 10
A. I did, it was a verbal caution.
Q. What were the words that you regarded as the caution?
A. I said "You are not obliged to say anything unless you wish to do so but whatever you say will be recorded. It may be given in evidence in the future."
Q. At the hut did the accused indicate to you whether or not he understood that?
A. The accused understood. 20
Q. Did he indicate that?
A. Yes, he did.
Q. What time was it that you reached the small room in the CID at Mongkok?
A. At about 1850 hours.
Q. What happened when you got into the small room?
A. I told the accused that I was making a post-recording of the caution in my notebook.
Q. Were you and the accused both seated at that time or standing? 30
A. We were both seated.
Q. Sitting at a table on separate chairs - how was it?
A. I handcuffed the 5th accused's left hand to a straight back chair. We were sitting opposite each other face to face.
Q. Yes, go on, tell us what you did.
A. After I finished writing in my notebook I read it over to him. The accused wrote something in the notebook. 40
Q. Would you look, please, at your notebook. Tell us which page on which line you commenced to make this post-recording.
A. Starting from the first line of page one.
Q. Where does the writing of the accused and the end of that interview come about in your notebook?
A. The 5th accused's writing started on the 10th line of page two. 50
Q. And where did it end?
A. On the 11th line of page three.

In the
High Court

No.2(a)
Respondents
Evidence
D.C. Cheuk
Wah-ngok
24th August
1976
(cont'd)

- 10 Q. Having read this passage over to the accused including the caution, what happened immediately after you have read it to him?
- A. I asked him to sign. I also signed.
- Q. And what were you asking him to sign to?
- A. To signify that he had understood what I was talking.
- Q. And after the accused had signed what occurred after that?
- A. The accused started to write a passage until he ended on the 11th line of page three and he signed. I also signed. I also noted down the time.
- Q. Well, what time was that?
- A. 1935 hours.
- Q. Was the accused's signature placed at the end of that statement at your request?
- A. Yes.
- 20 Q. You have told us that he started to write. Between the time that he started to write and the time that he wrote "I understand" and his signature, what happened?
- A. Just myself and the accused were in there when he was writing.
- Q. Did he say anything before he started to write?
- A. Yes, he said something.
- Q. Tell us what he said, please.
- 30 MR. MING: (To Interpreter) Look, I think what he said was (Counsel says in Punti).
- A. He said something to me.
- Q. Tell us, please, what he said.
- A. He said "It is most unfortunate for me".
- Q. Yes, go on.
- A. I got involved into this incident because of my friends
- Q. Yes, did he say anything else?
- A. No.
- 40 Q. What did you say to him?
- A. I said "You need" - "You don't have to worry".
- Q. Yes, go on.
- A. There was no further conversation and I wrote an entry in the notebook after which I read it over to him.
- Q. Who wrote this passage - what the accused appears to have said or written - was it written by the accused or by you?
- 50 A. It was written by the accused himself.

In the High Court

No.2(a)
Respondents
Evidence
D.C. Cheuk
Wah-ngok
24th August
1976
(cont'd)

- Q. And having told you that he became involved because of his friends and it was unfortunate how come that this passage was put down on the paper after that?
- A. After hearing what the accused had told me, I stopped him from saying anything further and I wrote something in my notebook.
- Q. When you say he wrote something in your notebook, do you mean that notebook or another notebook? 10
- A. This notebook.
- Q. What did you write?
- A. I wrote "At CID Mongkok Police Station I spoke in the Punti dialect to Chinese male Wong Kam-ming and made a post-recording of the caution".
- Q. I am sorry, Detective Constable, I don't understand your evidence. I thought you told us that the first thing you did was to make a post-recording. 20
- A. Yes.
- Q. Did you make a second post-recording?
- A. There was no second post-recording.
- Q. When did you write out this passage exactly which we see starting "at 1850 hours" and ending with "I understand" and signed by the accused?
- A. I started writing this passage at 1850 hours.
- Q. Where is the passage that you say that you wrote again after the accused told you that he became involved in this matter because of his friends? 30
- A. It was after hearing what he said that I started to write in my notebook.
- Q. Is the order of events as follows: you sat down - you sat him down in the small CID room?
- A. Yes.
- Q. And then you asked him if he was involved having given him the details of what you wanted to know about? 40
- A. Yes.
- Q. After he told you that he was involved in it because of his friends?
- A. Yes.
- Q. You told him he needn't worry and then you cautioned him?
- A. Yes.
- Q. When you came to actually caution him at that time did you write it down first and read it back to him or did you say it to him and then write it down? 50

- 10 A. I wrote the caution down first and then I verbally cautioned him.
 Q. And then he signed that he understood?
 A. Yes.
 Q. Now, what happened immediately after that?
 A. After he had signed he started to write a passage in my notebook.
 Q. Did he say "I want to write something down" or did you say "Write it down" - how did it come about?
 A. I told him to write.
 Q. Did he indicate that he was willing to write?
 A. Yes.
 Q. How did he do that?
 A. He said, "Good, I shall write".
 Q. What happened then?
 A. I gave him the notebook and he started writing. I paid no particular attention to him and let him continue writing until he had finished and then I invited him to sign.
 20 Q. And who held the notebook while he was writing?
 A. He was holding - the notebook was placed at the table, no one was holding it.
 Q. Who turned the pages as he was writing?
 A. There is no need to turn the page. The writing was short.
 Q. And while he was writing were you able to see and understand what he was actually putting down?
 30 A. I was able to understand because I was watching him when he was writing.
 Q. Did he say anything while he was writing?
 A. No.
 Q. Did you speak to him in any way while he was writing?
 A. No.
 Q. And after he had finished and before he signed did you do anything?
 40 A. No.
 Q. During the course of this interview did any other person enter the small room?
 A. No.
 Q. From the time that the 5th accused came into your custody in that wooden hut until the time that he signed at the base of his statement did you or any other person in your presence either threaten or assault the
 50 A. No.

In the
High Court
 No.2(a)
 Respondents
 Evidence
 D.C. Cheuk
 Wah-ngok
 24th August
 1976
 (cont'd)

In the
High Court
No.2(a)
Respondents
Evidence
D.C. Cheuk
Wah-ngok
24th August
1976
(cont'd)

- Q. During the same time did you or any other person in your presence either make any promises or offer any inducements to the 5th accused?
- A. No.
- Q. Did you dictate or copy out for the 5th accused any part of what he has written in the statement?
- A. The whole statement was written by the accused himself. When he had made a mistake in writing the characters I asked him to initial the alteration at the side. After he had finished writing I read it back over to him. Sometimes when he made deletions by crossing out the characters, after he had finished writing I said to him "Just forget it" and I asked him to initial by the side. 10
- Q. How many times did he initial?
- A. Only once.
- Q. Do you now seek to produce the statement in evidence? 20
- A. Yes.

MR. MARASH: No further questions, my Lord.

Cross-
Examined

XXN. BY MR. MING HUANG:

- Q. Am I to understand that he made some mistake and he crossed it out or he deleted it in his statement?
- A. After he had finished writing he drew several circles to cross out a character. When I saw it I did not say anything. 30
- Q. And you told him to leave it alone?
- A. After he had finished writing I told him just forget it.
- Q. How many times he did that?
- A. He made such deletions only once.
- Q. He put a few circles over the character?
- A. Well, he made the circles so black that the character was obliterated.
- Q. Yes. Could you look at the notebook. Can you tell me which character was circled so black that you can't see it? 40
- A. The word "teng" meaning sitting room.
- Q. Is there any circle on that character?
- A. The left element was crossed out with several small circles.
- Q. Do you see circles there?
- A. Yes, these are circles.
- Q. They are circles?

- 10 A. Well, he did it like this. (Witness indicates)
Q. You said he put circles on it until the character was obliterated - deleted?
A. This word is not readable because I had to ask him later what the character was.
Q. Now, Mr. Cheuk, while he was writing it he remained completely silent, is that correct?
A. Yes.
Q. He was writing all on his own, completely silent?
A. Yes.
Q. Now, you said you arrived at the Mongkok Police Station 1845 hours.
A. Yes.
Q. And at the Mongkok Police Station I take it that you have to make a report to the duty officer?
20 A. Yes.
Q. And that would take a few minutes, isn't it?
A. It was DC 4069 who assisted me in obtaining a police form and he filled out the name and address and location where the accused was arrested while I took the accused into a small room.
Q. So in other words you took him to the small room immediately upon arrival at the Mongkok Police Station?
30 A. Right after our arrival at the Mongkok Police Station DC 4069 wrote down the name of the 5th accused.
Q. I want to know what you were doing.
A. Because we had already furnished the particulars to Sheung Shui Police Station in the Form 159. Therefore when we arrived at Mongkok Police Station it is only necessary for us to make a report in the report book and I told DC 4069 to write down the name, address of the 5th accused where he was arrested and the time.
40 Q. Mr. Cheuk, I simply ask you if you didn't make a report did DC make a report and finished with it and you took the defendant to the CID room?
A. Yes.
Q. All right, that is what I say. I said did you make a report, you said "No", you made no report and then you went to give all the details of the report. So, in other words, as soon as you reached the Mongkok Police Station you took the 5th defendant to a small room?
50

In the
High Court
No.2(a)
Respondents
Evidence
D.C. Cheuk
Wah-ngok
24th August
1976
Cross -
Examination
(cont'd)

- A. After pausing a while at the report room, yes.
- Q. All right, we hear that, right. And according to you you did not seek any instructions from anybody?
- A. It was not necessary
- Q. Right away you take him to a small room to question him, is that correct?
- A. Yes.
- Q. You did not even show him to a superior officer like Inspector Robson about the prize you got from Sheung Shui and all that? 10
- A. It was not necessary.
- Q. All right, so in other words you knew fully well what you were doing?
- A. Yes.
- Q. Now - and you take him to the small room to question him?
- A. Yes.
- Q. And at that time he was handcuffed? 20
- A. Yes.
- Q. Now, tell us how you first questioned him?
- A. I first said to him "You already know about this case because I have told you about it at Sheung Shui".
- Q. Yes, what did he say?
- A. The accused said "It is unfortunate for me. I was involved by my friends."
- Q. Yes, then what did you say?
- A. And I told him not to worry. I invited him to sit down, released the handcuff from his right hand, and handcuffed his left hand to the chair and I said "Don't say anything yet. I have to write something down first". 30
- Q. Well, you want to get as much information from him as you want, isn't it, why did you stop him from talking?
- A. That was what I did actually.
- Q. Weren't you anxious to hear as much from him as you could rather than stopping him - rather than stopping him from talking? 40
- A. But when he tried to tell me about the incident of the case I wanted to write it down.
- Q. Well, you can write it down.
- A. I wanted to record it in my notebook.
- Q. Did you record anything in the notebook?
- A. No, not yet.
- Q. Well, you seem to think that if he had talked about it you cannot record it again afterwards? 50

A. Because at that time I have not yet made the post-recording of the caution in the notebook.

Q. Well, then you can always post-record it again, isn't it, after he had said it, according to you you are post recording your caution?

A. But at that time what I had in mind was to write the caution in my notebook first.

10 Q. Then after you made the caution in the notebook did you question him again?

A. I asked him whether he had understood. He told me that he did and he signed his name. I said "You wanted to say something earlier. You can write it down now".

Q. Very easy, isn't it, this time?

A. I don't understand.

Q. Well, compared with D.2 you said you had to question him a lot?

20 A. Yes.

Q. Now when you were dealing with D.2. you were very determined and anxious to question him even at the length of one to two hours in order to get information from him?

A. Yes.

Q. And in this case while the 5th defendant was talking you had to stop him from talking?

A. Yes.

30 Q. Mr. Cheuk, can you explain why you have such a different approach to two different persons connected with the same case?

A. I don't know why but that was what I did.

Q. Well, I am suggesting to you that what you are telling the Court here is a pack of lies?

A. It is not a lie.

Q. Now, Mr. Cheuk, you have cautioned the person, isn't it, since in Sheung Shui?

40 A. Yes.

Q. And how did you caution him in Sheung Shui?

A. Well, I administered the simple verbal caution by saying "You are not obliged to say anything unless you wish to do so", saying something verbally is different from writing it down.

Q. Yes, in Sheung Shui did you tell him that whatever he said will be recorded and given in evidence?

A. That is not said.

50 Q. Why not?

A. Because I thought that I would not be able to write it down - I shall record but not to write down.

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- Q. Yes, in other words you told him in Sheung Shui that whatever he said will be recorded?
- A. Yes.
- Q. You told him that?
- A. Yes.
- Q. You are positive about that?
- A. Positive.
- Q. Now, according to you, Mr. Cheuk, in Sheung Shui he said he knew the reason for his arrest after you cautioned him? 10
- A. Yes.
- Q. Did you record that in anywhere?
- A. When I wrote later he told me that he understood.
- Q. Mr. Cheuk, answer my question, please. According to you he made such a remark. Did you record it somewhere in your notebook?
- A. No.
- Q. Why not? 20
- A. I forgot.
- Q. You forgot?
- A. Yes.
- Q. I thought it was your very special duty "whatever you say will be recorded" and you have forgotten?
- A. When he said that he knew about it and that he understood what I said these were very simple so I thought it was not necessary to record it. 30
- Q. Now, so in other words you only record what you think is necessary?
- A. Yes.
- Q. How is this - I fail to understand - connected with the remark he made in Sheung Shui: "I knew the reason for my arrest" or words to that effect - how is that explained?

INTERPRETER: I am sorry - ? 40

MR. MING HUANG:
He said he did not record it because after the caution he said "I understand".

- A. Yes.
- Q. Well, what has that got to do with it ?

MR. MARASH : I am afraid I don't understand the question at this stage.

MR. MING HUANG: The question I put to him is "Why

did you not record what he said in Sheung Shui?"

COURT: Well, he said he forgot.

MR. MING HUANG: Yes, but then the next reason he said because he had already said "I understand".

COURT: Yes.

MR. MING HUANG: So therefore I fail to see the reason how by writing down "I understand" that dispenses the necessity of recording what he said in Sheung Shui.

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10 A. My intention was to make a post-recording of the caution in my notebook and let him write down the characters "I understand". What is said verbally is different from writing it down.

Q. We know...

COURT: ... We'll adjourn now. We'll adjourn to this afternoon 2.30.

12:34 p.m. Court adjourns.

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20 2.35 p.m. Court resumes

All accused present	Appearances as before	JURY ABSENT
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CHEUK Wah-ngok On former affirmation

XXN BY MR. HUANG CONTINUES:

30 Q. Now Mr. CHEUK, this morning you have given two reasons for not writing down what D.5 said in Sheung Shui. The first one you said is because you had forgotton. The second one is because he wrote "I understand." Remember that?

A. Yes, I remember

Q. Please speak louder because all the persons have to hear you. Now according to you, at the police station he also told you that "It is most unfortunate for me. I got involved in this incident because of a friend."

A. Yes.

Q. Did you record that anywhere?

A. No.

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- Q. Why not, Mr. CHEUK?
A. I did not record it.
Q. You had warned him since in Sheung Shui that whatever he said would be recorded.
A. The fact is that I did not write it down.
Q. Isn't it your duty to write it down? What things he may say and what you may say?
A. Yes.
Q. And you have no explanation why you did not record that? 10
A. I cannot explain. I have told you the facts.
Q. After he said this you told him, "You don't have to worry."
A. Yes.
Q. Did you record that anywhere in your notebook?
A. No.
Q. Why not?
A. I did not record it. I cannot explain.
Q. Then according to you after you read the preamble to him you told him to write. 20
A. Yes.
Q. Why did you tell him to write?
A. I did tell him to write. I cannot remember why.
Q. Is there anything that you have said that you have not recorded down? Anything else?
A. I cannot remember.
Q. You forgot again?
A. Yes. 30
Q. So in spite of your clear warning to him that whatever he said may be recorded, you never took any step to record all this, correct? Either what he said or what you said.
A. Correct.
Q. And according to you you post-recorded the caution from Sheung Shui that you administered in Sheung Shui and you wrote it, you post-recorded it, at the CID office. 40
A. Yes.
Q. And that record is supposed to cover transactions between you and D.5 from the time you arrested him in Sheung Shui. Correct?
A. Yes.
Q. And do you agree now that this record is not an accurate one?
A. What are you referring to? About my writing? 50
Q. I am referring to your notebook as a record of all the dealings you had with D.5. from

- the time he was arrested in Sheung Shui.
- A. Are you referring to the entry made after my arrival at the police station?
- Q. What is in your notebook?
- A. It is true.
- Q. No, I'm asking is that a complete record?
- A. Not complete.
- Q. It's not complete. Would you also agree it is not accurate?

10 MR. MARASH: In what respect? Perhaps that could be a little bit more specific. It's one thing to say, my Lord, something is incomplete. It's another thing to say it's inaccurate.

COURT: Yes. Well, it may be a complete record but accurate ...

MR. MARASH: Of course it may be accurate as far as it goes.

COURT: Is it an accurate record of the transactions?

20 MR. MARASH: It may not be a complete one, but there's a difference, in my submission, between complete and accurate...

COURT: How could it be accurate if it's incomplete?

MR. MARASH: It can be accurate if what it has written down, but it may have left something out.

COURT: What he has written down is quite another matter altogether from what he's asking now: whether that record is accurate ...

30 MR. HUANG: ... as a record.

COURT: ... A record can't be accurate if it's incomplete.

A. Well, what I have recorded in the notebook is correct.

Q. Yes, but as a record of all your dealings with him from the moment of his arrest up to the time he signed.

A. It is the truth.

40 Q. Mr. CHEUK, you don't understand me. Your notebook is supposed to be a record of all your dealings with him from the time in Sheung Shui.

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- A. Yes, but I did not do so.
Q. Including what he said and what you said.
A. Yes.
Q. This notebook doesn't contain a lot of the things, correct?
A. Correct.
Q. And therefore it is not accurate as an accurate record.
A. I do not know whether it is accurate or not.
Q. All right. Now Mr. CHEUK, he - according to you he told you that it was most unfortunate for him to be involved in this incident because of a friend. 10
A. Yes.
Q. At the time in Sheung Shui you have already told him that you were arresting him in connection with a murder and two serious woundings. Is that correct?
A. Yes.
Q. Now if it is true, these are very serious allegations, aren't they? 20
A. Yes. I did tell him.
Q. Yes. No, what I'm saying is that if these allegations are true, these are very serious allegations against a person.
A. Yes.
Q. And from what he told you you say he said, "It's most unfortunate for me. I got involved in this incident because of a friend." 30
A. He said this to me at the police station.
Q. Yes, and immediately after that when he said these things it seems that he was involved in this incident, isn't it?
A. Yes.
Q. And you told him, "You don't have to worry."
A. Yes.
Q. Well, Mr. CHEUK, what did you mean by that?
A. I was hoping that he would not tell me so much right away. I wanted him to stay calm so that it would be easier for me. When I questioned him he would answer. 40
Q. So you wanted to calm him down so that when you were ready to question him he'd be more ready to answer you.
A. Yes.
Q. That was your intention for making such a remark.
A. Yes.
Q. And you played down the importance of the incident, toned down the importance of the incident so that he's more ready to admit. 50

- Is that your intention?
- 10 A. That is not what I meant. Not for the purpose of making it easier for him to admit, but it would be easier for me to get his answers.
- Q. Yes, make it easier for you. Well, it's two ways: easier for him to talk of his involvement so therefore easier for you to get all the answers from him.
- A. I wanted to make it easier for him to talk what he liked. I do not know what he was saying.
- Q. Well, how will that make it easier for him to talk?
- A. That is my own opinion.
- Q. That's your opinion? Yes. By the remark you make it would make it easier for him to tell you everything.
- 20 A. Yes.
- Q. And that was your clear intention at the time.
- A. Yes.
- Q. And you were anxious to get a story from him at the time.
- A. That was what I hoped.
- Q. And at that stage it was your intention to question him into all aspects of his involvement.
- A. Yes.
- 30 Q. Tell us some of the questions that you put to him so as to get his story out.
- A. Cannot remember now.
- Q. But you did ask him some questions but which you cannot remember now. Is that correct?
- A. After the accused told me that he had been involved by his friends, then I told him not to worry and then started to write a record in my notebook. That was all.
- Q. You say you forgot. When I asked you any other question you say you forgot.
- 40 A. True.
- Q. True. So in other words there were questions that you could not remember now.
- A. I cannot remember whether I did question him or not.
- Q. Now since your sole purpose was to make enquiries on him, you must have asked him a lot more questions. Would you agree?
- A. Cannot remember.
- Q. You could have done so.
- 50 A. I'm sorry, I really cannot remember. I cannot answer you.

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- Q. You cannot answer. You could not remember whether you had done so or not now.
- A. Correct.
- Q. Did he tell you anything else that you did not record?
- A. Cannot remember.
- Q. Could he have told you other things which you had forgotten and did not record?
- A. I really cannot remember.
- Q. Would it be fair to say that you cannot remember in the sense that "He could have, but I do not know the detail now." 10
- A. That is not what I meant. I cannot remember at all now.
- Q. You cannot remember because you made no record. Is that correct?
- A. No.
- Q. Why you cannot remember that?
- A. It was so long ago I cannot recall.
- Q. Now before you went to Sheung Shui, Mr. CHEUK, you seem to have been armed with a lot of information concerning this case. 20
- A. Not so.
- Q. Well, you said that this was the hideout, the hut where you went to.
- A. Yes. We were ordered to go there by our superiors.
- Q. Yes, ordered to go there, but you also told certain information, isn't it?
- A. We were given the information about the wanted persons. 30
- Q. Yes. I don't say you know everything, but what I mean is that you had a lot of information concerning this case.
- A. Not many informations.
- Q. Well, you knew who was suspected, didn't you?
- A. Yes, I knew.
- Q. And knew the name of a number of suspects, isn't it? 40
- A. I cannot remember now. I only remember him in particular.
- Q. At the time you knew the names of a number of suspects, isn't that correct?
- A. The names were not written on the list...
- Q. So what you were ...
- A. ... I noticed his name in particular.
- Q. So what you were going for then? What did you go to the hut for then?
- A. The written order given to me was that we should go to that particular stone hut and that those persons would appear there. 50

- 10 Q. Who are the persons?
A. The wanted persons.
Q. Who are the wanted persons?
A. The 5th accused was one of them.
Q. And who are the others?
A. I cannot remember who were the others.
Q. You heard of a person called LI Yuk?
A. Cannot remember.
Q. Who is suspected to be connected with this case.
A. Cannot remember.
Q. Are you sure of that?
A. Yes, because I was not detailed to investigate into this case in particular, I was sent there when I was on special duty and therefore I do not remember the details of this case clearly.
- 20 Q. I see. So you're only concerned with D.5 and all the things connected with him and nothing else.
A. I arrested him, therefore I remember his name.
Q. Yes. Do you know the contents of your notebook well?
A. I cannot quite remember clearly about the contents of my notebook.
Q. So you want to say that you don't even remember your own name now? All right. You confined to your case only your dealing with D.5. and you cannot remember anything of this case now.
30 A. I remember his name.
Q. You remember the notebook concerning D.5? You know that you remember the contents there?
A. Cannot remember.
Q. You cannot remember either?
A. No, I cannot.
Q. Are we to take it from you that ... How you remember to give evidence in this case?
40 A. I'm relying on the notes that I had made on sheets of paper when the time and the place that I had been to were recorded.
Q. So if you did not record it you would not have remembered.
A. Yes, but I definitely would make such records.
Q. Where are the notes? Where are the white papers?
50 A. Outside the court.
Q. Outside the court. So you mastered those notes before you came to the witness box.

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- A. Only the time and the place were recorded, also what I did...
- Q. But nothing else ...
- A. ... Not the details.
- Q. Only the time, the place, what you did. That's all.
- A. Nothing else.
- Q. But then how come you remember the remarks made by the 5th defendant since the 21st of December last year? 10
- A. The remark made by him was very short. Sometimes it's difficult to explain. I just happen to remember.
- Q. I see, but you quite conveniently do not remember anything else.
- A. Correct. I really cannot remember.
- Q. You really cannot remember. You remember a suspected person in this case by the name LI Yuk?
- A. I cannot remember. Well, if I do remember I will tell you. 20
- Q. Look at the notebook then.
- A. It is recorded in the notebook.
- Q. Read the first sentence. Let's hear. Read his statement, the first sentence.
- A. "It is correct. LI Yuk has done me some favours."
- Q. Well, why is there such a remark there? Nothing to do with what he said afterwards.
- A. I don't know why. 30
- Q. You don't know why? That looks like an answer to a question, doesn't it? "It is true that LI Yuk had done me a lot of favours before."
- A. I don't know.
- Q. I'm asking your opinion. Does it sound like an answer, answer to a question?
- A. Yes.
- Q. It looks like an answer to a question.
- A. Yes. 40
- Q. Now Mr. CHEUK, if the 5th defendant were to give you a story of his own involvement, why suddenly at the beginning he has such an answer, beginning with such an answer? It's got nothing to do with the rest, what he wrote.
- A. I have written the names of some persons in my caution. It was written in such a manner that perhaps the 5th accused misunderstood me and thought that I was questioning him because I had read over to him. 50

Q. Is LI Yuk's name mentioned in what you wrote?

A. No. The name of LI Yuk is not written there.

Q. Well then, why he said, "It is true that LI Yuk had done me favours before"?

A. It was up to him to say what he liked. I cannot explain. He was free to say what he liked.

10 Q. Is that your best answer?

A. It is not a question of whether it is my best answer or not. This is what I guessed he was doing.

Q. MR. CHEUK, I will come back and tell you the reason. Now in the course of the investigation did you suspect a person called LI Keung, the name of D.6?

A. Cannot remember.

Q. Cannot remember?

20 A. I really cannot.

Q. You remember a person suspected called CHEUNG Fai-hung?

A. Yes, I remember about CHEUNG Fai-hung. I personally arrested him.

Q. So unless you arrest that person you don't remember the names of others.

A. Yes, because it was such a long time ago.

Q. And you have been in this court for two weeks giving evidence in this case

30 concerning these six defendants. You have been in and out of this court for nearly two weeks.

A. Less than two weeks.

Q. And you want to say you never heard of the name LI Keung?

A. I have not.

Q. You have not. Have you seen LI Keung's picture in the CID office?

A. Cannot remember.

40 Q. You were one of the most active officers in this case, isn't it?

A. I did not belong to that special squad for this case.

Q. But you record statements from at least two persons, you took part in the initial arrest of three, you took part in the arrest of five. Out of the six persons you were involved with the arrest of four at least.

50 A. Yes. I made enquiries from two of them.

Q. Well, for the work you have done do you not consider yourself one of the active members involved in this case?

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- A. Let me explain my work.
Q. I prefer you answer my question.
A. I don't know whether I'm actively involved in this case or not. I only know that I have to do what I should do and should not concern myself with what I should not do.
Q. You took the 5th defendant straight from Sheung Shui to a small room to question him on your own without even consulting the Sergeant or Inspector. 10
A. Yes.
Q. Therefore you were quite confident of yourself, of what you were doing.
A. Yes.
Q. And yet you do not know whether there's a person by the name LI Keung in this case involved?
A. Correct.
Q. Or a person named LI Yuk involved in this case? 20
A. Correct.
Q. Mr. CHEUK, let me put to you that what took place in Sheung Shui is not what you have told the court.
A. I have told the truth.
Q. You never cautioned him or told him the reason for his arrest in Sheung Shui.
A. I did.
Q. In fact, D.5 asked you why you arrested him.
A. No. I told him. 30
Q. What you told him was, "You would know when you get back to the police station." That's all.
A. Not true.
Q. And then at the Mongkok Police Station what took place was not what you have told the court.
A. Not so. I have told the truth.
Q. By the way, Sergeant NG is your superior, isn't he? 40
A. Yes, when we were at Mongkok.
Q. Yes, that's what we're talking about. We are not talking about you were in New York or in London. Mongkok Police Station. For how long have you been working under him?
A. I remember I only went on duty together with him for one day.
Q. When was that day?
A. That was on the occasion when we went up to Kam Tong Mansions. 50
Q. But for how long have you been working under him as his subordinate? He as your Sergeant, you as his Detective Constable?

A. For a short period. Less than a day.
 Q. Less than a day?
 A. Yes.
 Q. Which day?
 A. The day when I arrested the 2nd accused,
 CHEUNG Fai-hung.
 Q. That's the 29th of December 1975.
 A. Yes.
 10 Q. And from then after that day you never were
 under him again?
 A. Correct. The Sergeant was attached to the
 Serious Crimes Squad.
 Q. I don't care what he was attached to, but
 were you subordinate under him for less than
 one day?
 A. Correct.
 Q. Only on the 29th of December 1975.
 A. Correct.
 20 Q. Now concerning this particular case, the
 Sergeant was the Sergeant responsible for
 this case, isn't it? Sergeant NG Sai-kit.
 A. Yes.
 Q. So when you arrested the 5th defendant on
 the 21st of December under whom were you
 working? Which Sergeant?
 A. I was working on my own. I was not with any
 Sergeant.
 Q. As a Detective Constable you have to have a
 Sergeant above you, don't you?
 30 A. I was on special duty on that day.
 Q. Well, no matter what you did, you have a
 Sergeant above you, isn't it?
 A. Not so. I was working on my own. I was
 with D.C.4069.
 Q. So you as a Detective Constable and 4069
 acting strictly on your own without any order
 from your superior.
 A. We were carrying out the order of an officer-
 in-charge.
 40 Q. So on the 31st of December you had no
 Sergeant above you.
 A. No.
 Q. Why.
 A. The fact is that there is no such Sergeant
 because the two of us were working on our
 own.
 Q. Yes, you might not have gone with the
 Sergeant, but nevertheless in your duty you
 were subordinate to the Sergeant.
 50 A. Yes.
 Q. On that day was it Sergeant NG ...
 A. I was under a Sergeant, not Sergeant NG.

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- Q. Who?
A. Sergeant 7225. He had gone out on duty.
Q. Has that Sergeant got anything to do with this case?
A. No.
Q. Why on the 31st they picked you to go and arrest D.5?
A. I don't know why.
Q. You don't know why?
A. I was carrying out an order. 10
Q. Do you always take orders direct from the OC and not from the Sergeant?
A. Not so. In connection with special matters we would be ordered by the officer-in-charge.
Q. Well, Mr. CHEUK, I'm putting it to you that on the 31st of December you were working together with Sergeant NG Sai-kit.
A. No.
Q. After you brought the 5th defendant back to the Mongkok Police Station you handed him over to Sergeant NG. 20
A. Not true.
Q. At the CID office.
A. No.
Q. And there the two of you together questioned the 5th defendant for some half an hour.
A. Not true.
Q. Although most of the questioning was done by the Sergeant at that stage, you were watching. 30
A. Not true.
Q. After half an hour he did not say anything.
A. Not true.
Q. And then Sergeant NG asked the 5th defendant whether he knew LI Yuk and the 1st defendant.
A. Not true.
Q. So only about half an hour then the 5th defendant started to answer. He said yes.
A. Not true.
Q. Then in your presence and hearing the Sergeant showed him picture of LI Keung, D.6, and asked him if he knew him. 40
A. Not true.
Q. But D.5 said, "Yes, but he was not there" - "he" meaning D.6.
A. Not true.
Q. It was to this remark that Sergeant NG said, "Well, since you knew that D.6 was not there then you must have been there."
A. Not true. 50
Q. And it was at this stage that D.5 said that yes, he was there.

10 A. Not true.
 Q. Then the Sergeant continued with his enquiry and to name all the persons that had been there.
 A. Not true.
 Q. Then D.5 said there was D.1, himself, LI Yuk and a few others whom he did not know.
 A. Not true.
 Q. Then Sergeant NG asked him to describe the clothes of those he did not know.
 A. Not true.
 Q. D.5 said one wore blue cotton jacket and one wore a carcoat.
 A. Not true.
 Q. While this conversation was going on you were standing there listening to all the details.
 A. No.
 20 Q. Then the Sergeant asked D.5, "What knife did you hold?"
 A. No.
 Q. D.5 said, "I did not go up with any knife."
 A. Not true.
 Q. Then the sergeant said, "Why did not you carry a knife? You went up there to play?"
 A. Not true.
 Q. Then D.5 said, "We only went up to reason and to ask for compensation."
 A. Not true.
 30 Q. Then in your presence and hearing the Sergeant at that stage got very angry, grabbed his chest and used the following remarks.
 A. No.
 Q. Then the Sergeant shook him, "Fuck your mother. I'm a police for over twenty years. Who the hell you trying to fool?"
 A. Not true.
 Q. Then the Sergeant told you to go and bring the two knives which you found in this Kam Tong Mansions on the 29th.
 40 A. No.
 Q. Have you looked at the two knives?
 A. No.
 Q. So you knew nothing about the two knives?
 A. I have heard about the two knives when I was at Kam Tong Mansions.
 Q. That's all?
 A. I had a casual look at them when I was coming down from the Kam Tong Mansions.
 50 Q. As a Detective you took no active interest in it, have a look at it and examine it and do something of your own? Just casually look at the knife?

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- A. I was not interested.
Q. Not interested. So what were you? You think you're a messenger, not a Detective in this case?
A. I was doing my own job. It was not my duty to handle knives.
Q. Do you know one of the knives is called the "Ma Yan" brand?
A. I don't know.
Q. I am putting it to you that you know about this. 10
A. No.
Q. Because that is how you made up this statement that he was carrying a "Ma Yan" brand knife.
A. I cannot remember whether he wrote it down or not.
Q. You cannot remember anything, right?
A. I can't.

COURT: What do you mean you don't remember. Did you read the statement this morning? 20
A. I did not.

COURT: Don't tell me you seek to put in a statement which you don't know anything about.
A. I only read the notebook when I came to court just now.

COURT: Just now?
A. Yes.

COURT: But how can you now say that you don't know that it's "Ma Yan". 30
A. I did not read it carefully.

COURT: Is this knife going to be produced as exhibit?

MR. HUANG: I don't know.

COURT: Or are you going to ask him for the production of this knife?

MR. HUANG: I don't know whether at this stage I... According to my instruction that was the brand name at the time, because the knife was shown to him, he looked at it and knocked at his head. 40

COURT: Certainly the allegation is that this is one of the two knives found.

MR. HUANG: Yes, found in D.2's bed.

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- 10 Q. Now, Mr. CHEUK, after you fetched the two knives from somewhere in the C.I.D. office, brought it to the sergeant.
A. No.
Q. Then the sergeant took up one of the knives.
A. No.
Q. And used the handle to knock on the 5th defendant's head, "Is this the one?" like that. (Counsel demonstrates)
A. Not true.
Q. And D.5 said, "I have never seen this before."
A. Not true.
Q. Then the sergeant said, "You had been there, isn't it correct? We have now arrested five persons already."
A. Not true.
20 Q. "Do you want us to arrest any more? You do want us to arrest LI Yuk, isn't it?"
A. Not true.
Q. Then at this stage the sergeant was pressing him to admit that he went up with a knife, among one of the two.
A. Not true.
Q. But the 5th defendant insisted that he never went up with a knife. He never saw the two knives shown to him.
A. Not true.
30 Q. Then the sergeant said, "Do you want Ah Yuk to be arrested as well?"
A. Not true.
Q. And D.5 said, "Naturally, I don't want him to be arrested."
A. No.
Q. Then the sergeant said, "Who is Ah Yuk to you?"
A. No.
40 Q. D.5 said, "Ah Yuk had done a lot for me before."
A. No.
Q. Then the sergeant said, "If that's the case, is Ah Yuk your great benefactor?" or words to that effect.
A. No.
Q. Then at this stage he stopped questioning him, and you now went into another room.
A. No.
50 Q. After about ten or fifteen minutes or so ...
A. No.

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- Q. The sergeant was asking you at the door whether you had finished writing.
- A. No.
- Q. I am suggesting to you that it was at this juncture, having witnessed all the lengthy questioning by the sergeant, that you went inside, there and then wrote what is purported to be his statement and perhaps the preamble if you had not written earlier.
- A. Not true. 10
- Q. Then the sergeant was shouting inside the room to you whether you had finishing writing.
- A. No.
- Q. After a short while then you came out with your notebook and a sheet of paper with writing on it.
- A. No.
- Q. Then you put the notebook and the sheet of paper down on the table and then you asked the 5th Defendant to copy it into your notebook. 20
- A. Not true.
- Q. And I put it to you that you never read to him or said anything, what is contained in your so-called preamble. You never did such thing at all.
- A. I did.
- Q. Now as you put down the notebook and the sheet of paper with writing on it and told him to copy into the notebook, as you did so, he picked up the notebook, tried to read what you had written on it, but right away you grabbed it from him and folded it like that, not allow him to read it like this, picked it up and folded it up. (Counsel demonstrates). 30
- A. Not true.
- Q. And you said, "What's the point of looking? You already admitted you were there that night." 40
- A. No.
- Q. Then Sergeant NG, in your presence and hearing, told him to copy it down quickly.
- A. No.
- Q. Then D.5 read what you had written on the sheet of paper composed by you.
- A. No.
- Q. He realised that he was alleged to have held a "Ma Yan" brand knife. 50
- A. No.
- Q. Then D.5 refused to copy it.

- A. Not true.
 Q. Then the sergeant said, "Since you admit to have been there, what difference does it make if you had held a knife or not?"
 A. Not true.
 Q. And then he said, "If you do not want us to arrest Ah Yuk or LI Yuk you had better copy."
 A. No.
 Q. And I am putting it to you that it was under these circumstances that he copied what you yourself had composed on the sheet of paper into your notebook.
 A. No.

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MR. HUANG: Yes, that's all, my Lord.

REXN. BY MR. MARASH:

Re-
 Examined

- Q. Only one question, Detective Constable, did you actively at any stage fail to record any matters that you considered to be important in this notebook?
 A. No.

BY COURT:

- Q. To which station were you attached?
 A. Mongkok Police Station.
 Q. At present?
 A. Also attached to the same station.
 Q. For how long have you been in this case?
 A. For a very short period, for about one day or two.
 Q. Did you start on the 29th?
 A. Yes.
 Q. And when did that duty end?
 A. After I have finished my work on the 29th I did not carry on with this case any more; and then on the 31st I was on special duty. It was on that day that I arrested the 5th accused.
 Q. So after you had taken this statement, after the 5th accused had written this statement, did you read it back to him?
 A. I did.
 Q. Then you must have known about the contents at that time.
 A. Yes, I knew about the contents at that time, but it happened a long time ago and I had many work to attend to.
 Q. You didn't know anything about the knives until when? When did you know about the knives?

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- A. I first knew about the knives when I was at Kam Tong Mansion.
- Q. And you said you had no interest in them at all.
- A. Yes, because I was not responsible for collecting exhibits.
- Q. Anyway you were not interested in them at all.
- A. Correct.
- Q. Did you take part in the arrest of the 2nd defendant? 10
- A. Yes.
- Q. You also said you didn't know where the knives were found.
- A. Correct, I did not know.
- Q. You are certain of that now.
- A. Certain.
- Q. Did you take a statement from the 2nd defendant?
- A. Cannot remember. 20
- Q. What do you mean you can't remember? Do you mean that you dare to tell me this in this court that you don't remember that you took a statement from the 2nd defendant? This only happened yesterday.
- A. Yes, I did take a cautioned statement from him.
- Q. What kind of statement do you think I am referring to?
- A. Well, we had other statement forms. 30
- Q. What do you mean? What do you mean?
- A. I misunderstood your ...
- Q. No, it's not a question of misunderstanding. What do you mean?
- A. Well, I did take a cautioned statement from the accused, but apart from that statement we still had some statement forms to be used.
- Q. What other statement did you take from the accused apart from this?
- A. We have also used statement forms to note down the particulars and backgrounds of the accused. 40
- Q. You call that a statement? Do you call that a statement?
- A. We call them statement forms. The heading is entitled "statement forms".
- Q. You know very well what I mean here when I talk about statement. Don't try to do this here.
- A. Yes, I know. 50

Q. And don't try to play dumb here as well. You said you never took any interest in those knives.

A. Yes.

Q. Now you took, you said, a cautioned statement from the 2nd defendant?

A. Yes.

Q. Well, read that statement, page 53.

A. He said he went home to get a knife.

10 Q. Where was his home?

A. This was what was written by him.

Q. Where was his home?

A. Kam Tong Mansion.

Q. Well, when he mentions here he went home to take a knife, what does it mean?

A. But I did not ask him where he kept the knife.

Q. Look, the knives were found, the two knives were found in Kam Tong Mansion.

20 A. Yes.

Q. Under the pillow of the 2nd accused.

A. Yes.

Q. After reading this do you tell me you've got no interest in the knives?

A. I meant to say that the knives were not my concern.

Q. What do you mean the knives were not your concern? It's written there. Did you read the statement or not?

30 A. No.

Q. You mean to tell me you didn't read this statement? You were supposed to have read it back to the defendant.

A. Yes, I had.

Q. Why did you say no? Well, did you read this statement? If you had read this statement, there's no reason why you were not interested in the knives.

A. Correct.

40 Q. Then why did you say you had no interest in the knives in relation to the 5th accused?

A. It was quite difficult for me to answer the lawyer's question when he asked me whether I was interested. I did not quite understand.

Q. You did not quite understand because your attention was not directed to these statement and the fact that you had gone there to arrest the 2nd defendant, and that the knives were found under the pillow of the 2nd defendant's bunk. Well, I am now directing your attention to this, these

50 matters were already mentioned in the 2nd

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defendant's statement of which you cannot say that you had no knowledge. And I am now asking you why you said you had no interest. What is your job? Again we ask you what is your job? You mean to tell me you close your eyes when you do your job? You don't see what's going on? Is this Kam Tong Mansion a large mansion that you got to run ...

- A. Yes.
- Q. ... from down floor to the top floor to search? 10
How many storeys has it?
- A. Ten odd storeys.
- Q. You mean to tell me you searched all the ten odd storeys?
- A. No, I only searched one of the storeys.
- Q. Is it large?
- A. No.
- Q. How big is it?
- A. 400 odd square feet.
- Q. You can't see all of it at once? 20
- A. There were many cocklofts and bunks.
- Q. Did you leave together with the other people or you just left by yourself after searching?
- A. I left with the others.
- Q. So you knew nothing about it, about the searching, about the finding of these knives.
- A. I knew.
- Q. Well, what is it then? Why did you say you had no interest. And especially when shortly after you returned to the station this statement was made. Well, what is this? What is the allegation regarding this wounding? How were the serious injuries caused? 30
- A. The accused.
- Q. With what? With hands?
- A. With knives.
- Q. Well, do you mean to tell me you had no interest in knives? 40
- A. I was not the one who found the knives.
- Q. Who was saying that you found the knives? Look, the whole case revolves on knives. Was it gun shot or what?
- A. No.
- Q. What?
- A. Knives.
- Q. Then what do you mean that you had no interest in them? 50
- A. How did you make a statement of this?
- A. It was my mistake.

- 10 Q. You were asked again and again, You had no interest in them, particularly this "Ma Yan" knife, and here, if you look at page 53, you see that again. LAM Shing, CHAN Heung-choi, LI Kwong-ye were injured by several Chinese males with triangular files and knives. That is in your preamble.
- A. Yes.
- 10 Q. But you had no interest in knives. How do you know they used knives?
- A. My superior office gave me the information that knives were involved - knives were used.
- Q. When did your superior give you this kind of information, on the 28th?
- A. Yes, on the night when the incident occurred.
- Q. You went there as well.
- A. I did.
- 20 Q. Then you must have known from the very start that knives were used.
- A. Yes.
- Q. In finding knives you were not interested in them, and you didn't understand what Mr. Ming HUANG was saying. You forgot the details. Did you forget the details?
- A. Yes.
- Q. Details like knives were used to wound, yes or no?
- 30 A. Yes.
- Q. Well, think it over. Think it over when you use this preamble. Wounded with what? What were they wounded with?
- A. Knives.
- Q. Well, did you think about it.
- A. Yes.
- Q. But you said you have forgotten. Well, one quick look at that book and you ought to know.

40 COURT: Stand down. Yes.

MR. MARASH: I have Sergeant NG Sai-Kit available, but I understand that my learned friend would prefer to continue with him tomorrow. I have no objection if your Lordship hasn't.

MR. HUANG: Yes.

COURT: Do you prefer to ...

MR. HUANG: He actually made an allegation, D.5,

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that the other one is the sergeant. I have informed my learned friend about it, if he could tender him.

COURT: You want to do it tomorrow?

MR. HUANG: Yes, I would be grateful if ...

COURT: All right, we will adjourn to 10 o'clock tomorrow morning. The defendants be remanded one day's jail custody.

4.10 p.m. Court adjourns.

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10.10 a.m. Court resumes.

All accused present. Appearances as before. JURY ABSENT.

MR. MARASH: I call witness NG Sai-kit, my Lord. I don't wish to ask this witness any questions. I am making him available simply for cross-examination.

COURT: Yes.

Cross-
Examined

NG Sai-kit o.f.a.

20

XXN. BY MR. HUANG:

Q. Now, Sergeant NG, on the 29th of December, 1975 you, Inspector Robson and a few others, did you call at the home of LI Keung?

A. Yes.

Q. When you went there only several children were home, no grown-up people were home, is that correct?

A. Correct.

Q. What you went there for?

A. Because we suspected that LI Keung was connected with the case of Siu Wui Chin Kiu.

Q. But he was not home at the time, is that correct?

A. Correct.

Q. Did you have a look at the pictures of the members of that family?

30

A. Yes.

Q. Did you see one of his? Did you see a picture of his?

A. Yes.

MR. MARASH: Does your Lordship think this has anything to do with the voire dire concerning the 5th accused?

COURT: Well, I don't know what Mr. Ming HUANG has in mind.

10 MR. HUANG: If my learned friend has heard the case I put forward, it is all right there. It is the 5th defendant's case that he was confronted with a picture, LI Keung's picture.

MR. MARASH: I don't believe that has come out at any stage so far, my Lord.

MR. HUANG: That's the case that put to Detective CHEUK. In fact, that was the breakthrough, to make him talk for about half an hour.

20 Q. Did you take a picture of him, LI Keung?
A. No, I did not.

COURT: Not to photograph.

Q. Not to photograph, take a picture, a photograph of him.

A. Yes, I did.

Q. It was stuck under one of the sheets of glass on the table isn't it.

A. Yes.

Q. You took that picture.

A. Yes.

30 Q. You have it with you still, that picture.

A. It seems to me that the photograph is at present at the police station.

Q. Now Sergeant, you are the sergeant in charge of this case. Of course above you you have an inspector.

A. Yes.

Q. And under you there are a number of detectives.

A. Yes.

40 Q. And that is the team that worked on this case.

A. Yes.

Q. So the facts of this case are only known to you and your team, is that correct, like

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- your inspector, you as the sergeant, maybe four or five detectives?
- A. Yes.
- Q. Is it the case normally another team would not have known what you were doing.
- A. Not so, the duty officer would know because when the duty officer dealt with the case people would report to him and he would know.
- Q. Yes. Naturally he would, the duty officer would only know who was arrested back to the police station and for what suspected offence, that's all. 10
- A. Well, by "duty officer" I do not mean the duty officer at the report room. I mean those who are on duty for a particular day and handle people who come to make reports of cases.
- Q. Yes, but that's all ...
- A. We are only attached to the crime squad. 20
- Q. Yes, but that is only at the initial stage. They might get a report through the 999 or something like that; but coming to the investigation, the detail of it, that it is your team that have all the information, correct?
- A. Yes, that's what I meant. They only know the elementary facts.
- Q. Yes. But all the depth of it, the investigation of it, all that belongs to your team. 30
- A. Those police officers on duty for that day would make the initial investigations. When they realise that the case is a serious one, only then would they pass the case over to us.
- Q. Yes. There are other people who handle it, just like getting a report only at the initial stage, but when you come to the depth of it, the investigation of it, all that belongs to your team. Do you agree? 40
- A. Well, even the police officers on special duty have to probe deep into the case, otherwise they would not be able to tell whether it is a serious case or not.
- Q. We are talking about this particular case. Now the investigation, the depth part of it, the more detailed information, apart from the initial part of it, belong to your team, is that correct? 50
- A. The same thing applies.
- Q. All right. This case is a serious one from the beginning. Do you agree?

A. At the initial stage it was only a wounding case.

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COURT: You are not answering the question at all. Is this a serious case from the beginning, is it or is it not? Don't say that it was only a wounding case.

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- 10 A. It is a wounding case, it is a serious case.
Q. Yes. And you were sent to the scene immediately on the night itself, about several hours later, is that correct?
A. Yes.
Q. You went with Inspector Robson.
A. Yes.
Q. Therefore from the beginning you and the inspector had charge of the case already, correct?
A. Yes.
20 Q. So therefore what other duty officer or special duty officer, they know nothing except report, arresting a person, that such thing happened, that's all.
A. Let me explain to you. In a serious case the detective on special duty would go with an inspector who was the duty officer to the scene.
Q. But, Mr. NG, the thing is the case from the beginning is a serious one. They may go to the scene, they may know of the occurrence of such a case but you knew that the case would be passed on to you for investigation.
30 A. Yes.
Q. Well, naturally they may know something about it or there is a report. We agree with that.
A. Yes.
Q. Now how many do you have in your team under you, the men under you? How many worked on this case?
40 A. Four persons.
Q. Yes. Who are they? Can you give their names as well as numbers? Give their names better, if you can.
A. 3796, 6301.
Q. Could you give names instead, because a number doesn't mean much to us.
A. I cannot remember their names. They are not working with my team now.
Q. About CHEUK Wah-ngok now, was he a member of your team in connection with this case?
50 A. He only followed me to work on the 28th for one day.

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- Q. And other than that he had nothing to do with the case, correct?
- A. Not so, apart from that particular day he was not working with me any more and he was on special duty.
- Q. What special duty involved?
- A. He was appointed to work by the O.C. of the police station.
- Q. All right. In other words, he's no longer in your team after the 28th. 10
- A. Correct.
- Q. And he's no longer connected with the case so to speak.
- A. He was connected with the case because he made arrest.
- Q. When?
- A. On the 29th at 0450 hours he went with me.
- Q. Yes. That was the mission that specially - that was the only time he worked with you, is that correct? He only worked under you for half of a day, that is on the mission to the Kam Tong Building. 20
- A. We went there starting from the evening.
- Q. All right, Sergeant, we don't have to come to the time; the mission, that would be including when you started at night and ended somehow to the Kam Tong Building.
- A. Yes.
- Q. And other than that nothing to do with the case any more, is that correct? 30
- A. I don't understand you.
- Q. He no longer worked under you after that day.
- A. Correct.
- Q. And therefore he's no longer a member of the team that investigated this case.
- A. Correct.
- Q. And if there is anything connected with this case, even though an outside member, the logical thing is to pass on the information to your team, logical? 40
- A. Yes.
- Q. Because you and your team are the experts in that particular case.
- A. Yes.
- Q. Now on the 31st of December last year CHEUK Wah-ngok was sent to the New Territories to arrest D.5, correct?
- A. I did not assign him to go.
- Q. But, Sergeant, you knew he was assigned to go and arrest D.5. 50
- A. I did not know. He was detailed to go by the O.C. It was a special duty.

- Q. Yes. But connected with this case, D.5 is one of the suspects in this case.
- A. Yes.
- Q. And you are telling us that you did not know anything about that mission of the arrest of the 5th defendant.
- A. I only knew about it until shortly after 10 p.m. that day.
- 10 Q. Were you in the station that day?
- A. I was at the police station from the morning until 5 p.m. when I went to Pak Tei Street, Hunghom, to work.
- Q. From 5 p.m. on the 31st of December.
- A. Yes, from 5.30 p.m.
- Q. On what mission?
- A. To look for a wanted person.
- Q. What is the name of the wanted person?
- A. LI Keung.
- Q. Connected with this case?
- 20 A. Yes.
- Q. Until what time?
- A. Up to shortly after 9 p.m. when we left for dinner.
- Q. When did you return to the station?
- A. About 10.30 p.m.
- Q. Where did you have dinner?
- A. I cannot remember.
- Q. With anybody?
- A. Yes.
- 30 Q. With whom?
- A. I cannot remember now.
- Q. All right. You returned to the station at half past ten, then what happened? What did you do at the station?
- A. After my arrival at the police station I continued my unfinished work.
- Q. What time did you go off?
- A. Rather late at night but I cannot remember the time.
- 40 Q. You cannot remember. Now, Sergeant, did anybody tell you what evidence you are supposed to give this morning in this court?
- A. No.
- Q. Talk about which aspect of the case, did anybody tell you?
- A. No.
- Q. And without such knowledge you can now tell the court that - we are now in August - you can tell eight months ago on the 31st at what hour you were doing - what hour you left the police station, what hour you were coming in.
- 50

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- A. I have my own records.
- Q. Yes. But you had no knowledge that you were to give evidence on the movement of the 31st of December.
- A. I did not know.
- Q. Where is your record?
- A. At home.
- Q. You mean you read up the record at home about your movement on the 31st of December before you came to court. 10
- A. I use to read over my records before I come to court to help me in remembering.
- Q. Yes, Sergeant, but you say you did not know what you were to talk about, so therefore what record were you looking at? You did not know what you were going to be asked, did you?
- A. I have a statement, I mean my own record. It recorded the incident from beginning to end.
- Q. But these aspects I am asking you now, you did not do anything connected with this case. 20
- A. What time are you talking about.
- Q. The 31st of December, you say you left the station at 5.30.
- A. Yes.
- Q. And you can remember that you were looking for a suspect in Hunghom, and then you went to dinner at half past nine, and returned to the station at half past ten and finished your work. 30
- A. Yes.
- Q. Now if I were to ask you what did you do on the third day of January at half past five, 1976, where were you?
- A. I can remember about what I did in the morning on the third of January.
- Q. Half past five p.m., where were you?
- A. I cannot remember.
- Q. Half past nine p.m. on that day, where were you? 40
- A. Cannot remember.
- Q. Half past ten p.m.
- A. Cannot remember.
- Q. Naturally you cannot remember. Did anybody tell you that it was you who questioned the 5th defendant and not CHEUK Wah-ngok in this case?
- A. No...
- Q. I am suggesting to you that it is because you knew what the allegations against you were that it was sometime between six and nine p.m. on the 31st of December, that it 50

was you at the C.I.D. room that questioned the 5th defendant for a great length of time.

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A. No.

Q. That all the work was done by you and CHEUK Wah-ngok was only put in the notebook as the person who took the statement.

A. Not so.

10

Q. And that is why, I am suggesting to you, that now without any notice you can tell the court that you were conveniently absent from the police station between half past five and half past ten p.m. on that day from the police station.

A. Not so.

Q. Now, Sergeant, apart from you, who else of your team was in the Mongkok Police Station on the 31st between the hours of six and nine p.m.

20

A. I cannot remember clearly.

Q. You cannot tell.

A. Cannot remember.

Q. But you could remember you left the police station at half past five. So when you left the police station at half past five who else belonging to the team was at the police station, like Robson, the men working under you?

A. Inspector Robson was there.

30

Q. He was there, inspector in charge of the case, right?

A. Yes.

Q. And any of the other detectives working under you in this same - concerning this case?

A. Cannot remember.

Q. Now you say CHEUK Wah-ngok on the 28th or 29th simply worked for you for a few hours on the mission to the Kam Tong Building.

A. Yes.

40

Q. Other than that he dropped out of the case, he doesn't know any more about the case, is that correct?

A. I do not agree.

Q. But you are the leader, you are his sergeant, so far as this case is concerned.

A. Yes, only on the 28th.

Q. Other than that you are not his sergeant.

A. But I was not leading the team.

50

Q. Yes, other than that occasion he should not know any more about the case, isn't it, because he's not belonging to the team and not investigating the case. Do you agree with that?

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- A. Correct.
- Q. Now if an O.C. sent him to the N.T. to arrest a suspect connected with this case, your case, this particular case, and when he brought the man back what should he do? You are the sergeant. On special duty.
- A. He should report the matter to the officer-in-charge of this case.
- Q. Yes, that is what he should do.
- A. Yes. 10
- Q. And since he knew that the suspect was concerned with a case under your investigation, should he bring this suspect to the attention of the members of your team, especially the more senior members, like Inspector Robson or you as a sergeant.
- A. He should have informed the inspector.
- Q. The inspector in charge of the case, right?
- A. Yes.
- Q. And in the normal course he should not investigate the case further and just hand over the man and put it back to your team for investigation. 20
- A. Not so.
- Q. What do you mean "not so"?
- A. He arrested the suspect and he should deal with him.
- Q. Yes. But he did not know enough of the background of the case to question him.
- A. No. 30
- Q. What do you mean "no"?
- A. He should know the details concerning the case because ...
- Q. How would he know? He's not a member of the team.
- A. Because he had arrested one of the accused in this case.
- Q. Yes, he arrested an accused. Listen to the question, Sergeant, would you? What I am saying is that he does not know enough of the background of the case, so therefore, he would be handicapped if he was to investigate and question the person. 40
- A. He should know.
- Q. Why he should know?
- A. He should know about the case when he went with us to work.
- Q. Yes, he went with you as one of the persons assisting your team to the Kam Tong Mansion to arrest three persons.
- A. Yes. 50

- Q. And he's only-- and then he dropped out of the picture completely.
- A. But when he was investigating this case he should know about what had happened.
- Q. Sergeant, he may know something but not enough, not as much as you or other members of your team or the inspector in charge, would you agree?
- A. I am not sure whether he knew about the details of the case or not.
- 10 Q. Well, that's precisely what I put to you, that he should not know as much as you because he's not in the investigation team on the 31st of December.
- A. Correct.
- Q. Now according to you he should have-- when he brought D.5 back to the station he should have reported to the O.C. or to you or the inspector in charge of the case, in this case Inspector Robson.
- 20 A. If Inspector Robson was absent he should report to me.
- Q. And you can make contact quite easily through the Apollo, isn't it?
- A. I do not have such an apparatus at any time.
- Q. He did not do any of such thing. What do you think as a sergeant? Assuming he never reported to the O.C., never reported to Inspector Robson, never reported to you as a sergeant, what is your opinion of that?
- 30 A. He was wrong. Perhaps there was no one present at the station, I don't know, because it was night time.
- Q. Well, all right, he can always leave it to the duty officer and put the suspect in the cells, isn't it?
- A. That's what he did.
- Q. Until a member of your team was ready to investigate him.
- 40 A. Yes.
- Q. That would be the normal thing you expect him to do, isn't it?
- A. Yes.
- Q. Sergeant, I am putting it to you that he had done exactly what he should have done in this case. He brought back D.5 and reported to you in the C.I.D. room and handed him over to you.
- A. Not true.
- 50 Q. And in fact apart from arresting him, during the investigation, it is you that did all the work in the C.I.D. office.

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- A. No.
- Q. It was about between five and six when he arrived there, you started to question him at length.
- A. No.
- Q. CHEUK Wah-ngok was simply an on-looker, assisting you, while you were doing all the work, all the questioning.
- A. Not true.
- Q. I am putting it to you that it's there you, in very abusive language, threatened him, raising your voice, and also then questioned him for some half an hour in the first instance. 10
- A. Not true.
- Q. But he remained silent all this time.
- A. Not true.
- Q. And then you brought out a picture of LI Keung, D.6.
- A. No. 20
- Q. And showed it to him.
- A. No.
- Q. And you asked him whether he can recognise that person.
- A. I did not.
- Q. Sergeant, if you did not-- you took the picture from LI Keung's home. You kept it with you in the police office, isn't it?
- A. Yes.
- Q. Well, according to Sergeant CHEUK Wah-ngok, he said he never saw such a picture. 30
- A. I don't know whether he knew or not.
- Q. Sergeant, if you did not in fact showed him that picture, how would he, D.5, would have known that you had a picture of LI Keung.
- A. I don't know.
- Q. Funny, eh?
- A. I don't know.
- Q. And then he told you that yes, he knew that person, LI Keung. 40
- A. Not true.
- Q. He added, saying that but he was not there at the scene.
- A. He did not say so.
- Q. And then you said, "Ah, you knew him. You knew that he was not there, but then you were there at the scene."
- A. I did not say so.
- Q. And then you questioned him at length on all the other details. 50
- A. No.

- 10 Q. Sergeant, have you examined the two knives that you had seized from the Kam Tong Building on the 29th?
- A. Yes, I did.
- Q. Two, isn't it?
- A. Yes, I found them.
- Q. You found them in the building.
- A. Yes.
- Q. You found them and you are an experienced detective, have you examined the knives?
- 10 A. I remember one of the knives was a "Ma Yan" brand and the other one was a home made knife.
- Q. Yes, When you examined it?
- A. At 0450 hours on the 29th when I went to Kam Tong Mansion.
- Q. And afterwards, after you had taken them back to the police station, did you look at them and examine everything?
- 20 A. No.
- Q. Why not? There may be some clues in them. As a detective, did you examine them carefully?
- A. Because the knives were already packed up.
- Q. What's the hurry. You are a detective, you had to study, you had to analyse them, study them yourself. Why did you wrap them up?
- A. I was not the one who parcelled it.
- 30 Q. But wouldn't you officers like to put your heads together and study and analyse the knives carefully, among the detectives, to see if there's any clue in them?
- A. But I did not do so.
- Q. Sergeant, I am putting it to you that while you were questioning him, D.5, you sent CHEUK Wah-ngok to go and bring, fetch the two knives which you seized at the Kam Tong Building.
- A. No.
- 40 Q. And then you held the "Ma Yan" brand knife, and you held the blade and used the handle to knock his head.
- A. I did not.
- Q. And said to him, "Is this the knife you went up with?", that is to the Siu Mui Chin Kiu Music Parlour, "Is this the knife you went up with, the "Ma Yan" brand knife?"
- A. I did not say so.
- 50 Q. You did not say so. And you, when he told you that he never went up there with any knife, and you said-- he said, "I went up only to ask for compensation, but I never had any knife."

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- A. Not true.
- Q. And then you said the following words, you said, "Fuck your mother, I am a policeman for over twenty years. Who the hell are you trying to fool?"
- A. I did not say so.
- Q. And you were forcing him to admit that he was holding that particular knife, and he said, "No, I have never seen that knife before." the "Ma Yan" brand knife you had in the hand. 10
- A. Not true.
- Q. Now have you ever heard of the name LI Yuk?
- A. I have.
- Q. In what connection?
- A. In connection with this case.
- Q. From what source you have heard of that name?
- A. From the statement given by the complainant.
- Q. I see. The complainant said LI Yuk was there.
- A. The 1st accused, after my caution, had also mentioned about this person. I have made a mistake when I said that the source came from the complainant. In fact I now remember this information came from the 1st accused. 20
- Q. Have you read the complainant's statement?
- A. I have read it but I cannot remember the details.
- Q. LI Yuk is known to the people at this music parlour, isn't he? Therefore the complainant gave the name of LI Yuk. 30
- A. No, it was my mistake.
- Q. You are sure it is a mistake.
- A. Yes, my mistake.
- Q. All right, LI Yuk is a person involved in this case.
- A. Yes.
- Q. Now on the 31st had LI Yuk been arrested?
- A. Not yet.
- Q. He was still at large, wasn't he?
- A. Correct.
- Q. Now do you know the connection between LI Yuk and the 5th defendant? 40
- A. I do not.
- Q. You do not. I am putting it to you, Sergeant, that in the course of investigation you discovered from his mouth, 5th defendant's mouth, that LI Yuk was closely connected with him.
- A. No.
- Q. That LI Yuk was a person who had done a lot of favour for him before. 50
- A. I have not heard of it.

Q. You never heard of it.
 A. No.
 Q. Why suddenly you are so emphatic about it?
 A. The truth is that I have not heard of it.
 Q. I am putting it to you that when he refused to copy all that you said, you promised him, that "If you refuse to copy it we would arrest LI Yuk, but if you do what I say now we would not arrest LI Yuk."
 10 A. I did not say so.
 Q. Well, you questioned him over like something an hour or two there, the gist of what I put to you, then you stopped.
 A. Not true.
 Q. While you were doing all this questioning CHEUK Wah-ngok was listening by the side assisting you.
 A. No.
 20 Q. Then after that, while you stopped you signalled to CHEUK Wah-ngok, and he himself went into a small room.
 A. No.
 Q. Meanwhile you were just pacing, walking up and down, watching the 5th defendant.
 A. No.
 Q. About ten or fifteen minutes later you, from the door of the small room where CHEUK Wah-ngok was, you asked him whether he had finished writing.
 30 A. No.
 Q. A few moments later CHEUK Wah-ngok came out from the small room with his notebook and a sheet of paper with the story composed on it.
 A. No.
 Q. And then you together with CHEUK asked him to copy down what CHEUK Wah-ngok had composed on the sheet of paper into his, CHEUK Wah-ngok's own notebook.
 A. I did not do so.
 40 Q. The 5th defendant read the contents of what CHEUK Wah-ngok had composed. He refused to copy it because he did not agree with what was stated there.
 A. Not true.
 Q. He complained especially to you because that statement said that he was holding a knife and he said he was never holding any knife.
 A. No.
 50 Q. And at this juncture you said to him in words to the following effect, you said, "Since you have admitted you were there, what

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difference does it make if you were holding a knife or not?"

- A. I did not say so.
Q. And again you said, "Look, unless you copy now we would arrest LI Yuk; but if you copy we would not arrest LI Yuk."
A. I did not say so.

MR. HUANG: Yes, that's all.

NO REXN. BY MR. MARASH

BY COURT:

10

- Q. Do you say that LI Yuk is a wanted person.
A. Yes.
Q. Would this photograph appear on the posters in the police station?
A. His photograph appeared later.
Q. When?
A. About one week later.
Q. Would copies of this photograph be given to other members of your team?
A. Well, I did not.
Q. It is not you. Would it be given to other members?
A. No, they were not given.
Q. Then how could he become a wanted man?
A. I gave the photograph to Inspector Robson.
Q. When?
A. On the same day.
Q. What is the same day, 28th, 29th or ...
A. 29th.
Q. Did he keep it?
A. Yes.
Q. Did he return it to you at all?
A. After LI Keung was arrested, inspector returned the photograph to me.
Q. When was this?
A. Cannot remember when.
Q. When? What is the date when LI Keung was arrested?
A. LI Keung was not arrested by members of Mongkok Police Station.
Q. I don't care whom he was arrested by. We know the date when he was arrested, because you said it was after he was arrested the photograph was given to you.
A. Yes.

20

30

40

- Q. When was this?
A. Cannot remember the exact date.
Q. How many days after LI Keung was arrested,
or how many hours after he was arrested?
A. At least several days after LI Keung's
arrest.
Q. Why did he give you back this photograph.
A. At that time he handed, among other things,
the photograph back to me.
10 Q. You haven't answered the question. Why did
he return this photograph to you?
A. The person had been arrested, that's why he
returned the photograph to me.
Q. What do you mean anyway? What are you
talking about? We are talking about LI
Yuk's photograph. What does LI Keung have
to do with this?
A. I have not seen LI Yuk's photograph. I
don't know about it.
20 Q. Who was talking about LI Keung?
A. I am sorry. I misheard.
Q. You were the person who talked about LI
Keung. You said then after the arrest of
LI Keung the photograph was returned to you
by Inspector Robson. I have been asking you
about LI Yuk. LI Yuk hasn't been arrested
and I said ...
A. Correct.
30 Q. ... "Do you say that LI Yuk is a wanted
person?" and you said yes. Did you tell me--
if a person is wanted-- he is arrested, how
can he be wanted?
A. Yes, it is my mistake.
Q. Then how can he be LI Keung if he's arrested?
Now what happened to this photograph of LI
Yuk?
A. I have not seen LI Yuk's photograph.
40 Q. Then why did you say it was given to you and
you had given it to Inspector Robson. I
asked you this other question so that there
could be no mistake about this question,
"Could this photograph appear on the posters
in the police station?"
A. I have misunderstood. I thought we were
talking about LI Keung instead of LI Yuk.
Q. But how can it be? If he's arrested how can
his picture be up on the posters in the
police station?
A. Yes, it is my mistake.
50 MR. MARASH: My Lord, it is quite possible that
LI Keung wasn't arrested until much later, some

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four and a half months later, I believe.

- Q. Have a look at this, LI Keung's photograph.
Now what happened to LI Keung's photograph?
A. I don't know.
Q. Well, I thought it was given back to you.
A. Yes, LI Keung's photograph was given to me.
Q. Let us talk about LI Keung now. What
happened to LI Keung's photograph?
A. It's with me, inside a drawer kept at the
police station. 10
Q. Now when was this photograph given to you?
A. Several days after LI Keung was arrested.
Q. Was it in April?
A. About that time.
Q. Now before his arrest where was that
photograph?
A. It was with me.
Q. I have just asked you when it was given to
you, you said several days after his arrest.
A. Yes. 20
Q. Then how could it be with you before he was
arrested?
A. At first the photograph was with me. Later
I gave it to the inspector.
Q. Now when did it first come into your hands?
A. When I found it at LI Keung's house I kept
it myself.
Q. That was the 29th.
A. Yes. 30
Q. When did you give it to the inspector?
A. Either on the 29th or the 30th, I am not
positive about which date.
Q. When was it returned to you?
A. Several days after LI Keung's arrest.
Q. Did this photograph stay in Inspector
Robson's hand from the 30th until around
April?
A. Yes.

COURT: Stand down. Yes.

MR. MARASH: That is the Crown case for this
voir dire, my Lord. 40

MR. HUANG: Yes, would this be a convenient time
to adjourn? Then when the court resumes I will
decide what to do.

COURT: We will adjourn for twenty minutes.

11.27 a.m. Court adjourns.

APPELLANTS EVIDENCE

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12.15 p.m. Court resumes.

All accused present. Appearances as before. Jury absent. Voire dire continues.

COURT: Yes?

MR. HUANG: My Lord, I call the 5th defendant to give evidence.

WONG Kam-ming (5th Accused) - Affirmed in Puntl.

10 XN. BY MR. HUANG

Q. You are the 5th defendant in this case, is that right, Mr. WONG?

A. Yes.

Q. On the 31st of December last year, you were arrested by certain detectives in the New Territories.

A. Yes.

Q. Roughly, what time they approached you?

A. Shortly after 2 p.m.

20 Q. Yes. One of the detectives was the one who was giving evidence whose name is CHEUK Wah-ngok.

A. Yes.

Q. He said that when he arrested you, he cautioned you, that is, he told you that you need not say anything unless you wished to do so or words to that effect. Did he do that?

30 MR. MARASH: Perhaps, my Lord, that could be put in a rather less leading fashion.

MR. HUANG: Well, this is only to clear up, otherwise he would not know.

COURT: Well, 'What did he do when he arrested you?'

Q. What did he do when he arrested you?

COURT: 'Did he say anything to you?'

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- A. He did not say anything to me.
Q. Did he tell you that he was to arrest you?
A. Yes. He said he was arresting me.
Q. Did you say anything or ask him the reason why?
A. Yes, I did. I asked: "Why do you have to arrest me?"
Q. What did he say?
A. He said: "You really don't know?"
Q. What did you say? 10
A. I told him that I really did not know.
Q. Did you say anything more?
A. No. He said: "You would know when you get back".
Q. Is that all?
A. Yes.
Q. And then he took you away from the hut in the New Territories.
A. Before he took me away, he had telephoned to Sheung Shui Police Station. 20
Q. Yes. Is that all that transpired before you were taken to Sheung Shui?
A. Yes.
Q. Is that all the conversation you had with him?
A. Yes.
Q. Well, you have heard his evidence. He said that he had told you at the time he was arresting you in connection with a homicide case occurring at the Siu Lui Chin Kiu Music Parlour and so on. 30
A. Yes. I heard him say so.
Q. But is it true or did you hear all that.
A. No.
Q. And he said he had also cautioned you.
A. He did not caution me. He only revealed his identity to me by saying that he was a detective of Mongkok Police Station and that he wanted to arrest me.
Q. And you have also heard his evidence to the effect that you had told him that you knew the reason for the arrest. Is that true? 40
A. Of course, it is not true.
Q. And subsequently, you were taken back to the Mongkok Police Station, correct?
A. Yes.
Q. Can you remember roughly what time you were taken back to the Mongkok Police Station.
A. Shortly after 5 p.m.
Q. Shortly after 5 p.m. About half past 5? 50
A. Some time after 5.30 p.m.
Q. But before 6 p.m., is that correct?

A. Before 6.
 Q. Yes. All right. Mr. WONG, tell us in your own words what happened as you arrived at the Mongkok Police Station.
 A. After our arrival at Mongkok Police Station, he took me into a small room to see a European inspector.
 Q. Is that the Inspector who has been in and out of the court here?
 10 A. Yes.
 Q. Is that the same Inspector before whom you were charged later?
 A. Yes.
 Q. Have you discovered - is that the person Robson - Inspector Robson?
 A. Yes.
 Q. All right. Detective CHEUK took you to Inspector Robson.
 A. Yes.
 20 Q. Is that the first thing he did.
 A. Yes.
 Q. And did you have any conversation there in Robson's room?
 A. Inside Inspector Robson's room, I also saw Sergeant NG Sai-kit.
 Q. Yes. What happened then?
 A. The Sergeant asked me where I had been on the 27th.
 Q. What did you say?
 30 A. I said I could not remember.
 Q. Go on.
 A. Then he asked me where I was on the 28th. I told him again I did not remember.
 Q. That's Sergeant NG that asked you this question.
 A. Yes.
 Q. Go on.
 A. I told him that I could not remember where I was on the 28th. Then he asked me about the 29th. I said again I could not remember.
 40 Q. Yes. Go on.
 A. The European inspector said something to him which I could not understand and then he took me away.
 Q. 'He' - you mean the Sergeant -- took you away.
 A. I mean the two detectives who arrested me.
 Q. Where they took you to?
 A. They took me into a large room.
 50 Q. Then what happened there?
 A. A police officer took my fingerprints.
 Q. What else?

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- A. After I was fingerprinted, one police constable took away all the contents from my pockets and he made a record of them.
- Q. Yes. Next?
- A. After the fingerprinting, I remained seated in the large office. At this juncture, Sergeant NG came in with two detectives and they took me into a small room.
- Q. Can you identify the two other detectives?
- A. Yes, I can. 10
- Q. Who were they?
- A. One is CHEUK Wah-ngok who has given evidence before.
- Q. And the other one?
- A. The other one, I know his name was LIU Yat-ming.

COURT: I have to adjourn now to 2.30.

12.30 p.m. Court adjourns.

2.40 p.m. Court resumes.

All accused present. Appearances as before. Jury absent. Voire dire continues. 20

WONG Kam-ming (5th Accused) - On former affirmation

XN. BY MR. HUANG (Continuation)

- Q. Now, Mr. WONG, this morning, you have reached the stage where you said Sergeant NG took you to a small room and there were other two detectives.
- A. Yes.
- Q. And one was CHEUK Wah-ngok.
- A. Yes. 30
- Q. And the other one you knew by the surname LIU.
- A. Yes.
- Q. All right. Now, tell us from there what happened in that small room now.
- A. Inside the small room, Sergeant NG said to me: "You really don't remember where you were on the 28th?"
- Q. Did you answer him?
- A. I said I really did not remember. 40
- Q. Yes. Go on.
- A. He said: "You do not look like a stupid boy".
- Q. Go on.

10 A. "If you don't want to put us into difficulties, you had better tell us. It would be easier for us and it would be easier for you.

Q. Yes?

A. I did not answer. I remained silent.

Q. Go on.

A. He said: "It is no use remaining silent. When I talked to you, you did not say anything. Then when you want to tell me something, it would be difficult."

Q. Go on.

A. I asked him what I had to tell him. I said I really did not know what I should say.

Q. Go on.

A. He said: "Brother, for the last time, I am talking to you. You had better be co-operative to me."

Q. Yes?

20 A. I asked him in what way I should co-operate with him.

Q. Yes.

A. He said: "In fact, on the 28th, you went up to the Siu Lui Chin Kiu with Kong Sin and there you had a fight."

Q. Yes?

A. I remained silent.

Q. Yes?

30 A. The Sergeant stood up and looked at me and said to CHEUK Wah-ngok: "This is a piece of iron which has just come out of the oven".

Q. Yes?

A. I still did not say anything. Then the Sergeant stopped questioning me and he asked CHEUK Wah-ngok about the circumstances under which I was arrested.

Q. Go on.

40 A. CHEUK Wah-ngok told him that he had been waiting for me at a wooden hut in the New Territories until my arrival.

Q. Go on.

A. After CHEUK Wah ngok had finished talking to him, the Sergeant did not say anything.

Q. And what happened next?

A. The Sergeant approached me again and he said: "You had better talk now". When I made no reply, he grabbed hold of me by the chest and he jerked me. He said: "In fact, on the 28th, you had gone up to have a fight at the Siu Liu Chin Kiu". I made no reply.

50 Q. Yes?

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- A. He showed me a photograph and asked me if I knew LI Keung.
- Q. Now, up to this stage, for how long had he been questioning you?
- A. For a little over 25 minutes.
- Q. All right. He showed you a picture of LI Keung. Where he got it from?
- A. From his pocket.
- Q. Did he have the picture in the pocket all the time or he went somewhere to fetch it? 10
- A. He took out the picture from his pocket. He had never left the room. I don't know where he had obtained it.
- Q. All right. He showed you a picture of LI Keung. Then what happened?
- A. He asked me whether I knew LI Keung.
- Q. Did you say anything?
- A. I told him that I knew him.
- Q. Yes?
- A. But I said that he had not gone up to the Siu Lui Chin Kiu. 20
- Q. Yes?
- A. Then he said: "You mean you had been there?"
- Q. Yes?
- A. I said: "Yes".
- Q. Now, you had a look at LI Keung's picture that was shown to you?
- A. Yes, I did.
- Q. How big was it?
- A. About this size (indicating). It is in fact a photo copy of a photograph consisting the front and the profile of LI Keung. 30
- Q. What sort of clothes was he wearing as appeared in that picture?
- A. His photograph showing his profile showing him wearing a short-sleeved checkered patterned Hawaiian shirt. The picture showing his front - he was wearing a beige colour T-shirt.
- Q. All right. Then what happened next? 40
- A. The Sergeant said: "You had taken part and had gone up to Siu Lui Chin Kiu. Do you know LI Yuk?"
- Q. What did you tell him?
- A. I told him that I knew him.
- Q. Yes?
- A. He said: "You also know Kong Sin and CHEUNG Kwan-sang".

(Mr. HUANG speaks quietly to Interpreter).

INTERPRETER: "That means you know Kong Sin
CHEUNG Kwan-sang".

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- Q. What did you say?
A. I said: "Yes. Kong Sin was introduced to me by LI Yuk".
Q. Yes?
A. He asked: "For how long have you known Ah Yuk?"
Q. Yes?
10 A. In my reply, I told him that I had known him for a very long time.
Q. Go on.
A. He asked: "What's the relationship between Ah Yuk and yourself?" - meaning that he wanted to know who was LI Yuk to me.
Q. And what did you tell him?
A. I said we were good friends and very often Ah Yuk had taken care of me and he has done me favours.
Q. Yes?
20 A. He said: "Well, you went up to Siu Lui Chin Kiu. Did Kong Sin tell you to go there?"
Q. How did you answer him?
A. I said: "No. It was LI Yuk who told me to go there."
Q. Go on.
A. "How did Ah Yuk tell you to go?"
Q. Yes?
A. I said: "In the morning of the 28th, Ah Yuk telephoned me."
Q. Yes?
30 A. "I answered the phone and he told me Kong Sin had been chopped and injured." I told the Sergeant that at that time I asked him (LI Yuk) whether Kong Sin was chopped and seriously injured. He said: "Not very serious". Then he said: If you are free tonight, you can come out to have tea." I agreed and I asked where I should wait for them. He said: "Go to Man Lin Wah at 10 o'clock tonight."
Q. Yes. Just tell me things that you told the Sergeant and what the Sergeant told you.
A. These are the things that I have told the Sergeant.
Q. At the time, Detective CHEUK Wah-ngok - was he there?
A. Yes, he was there.
Q. What was he doing?
40 A. He was standing next to NG Sai-kit, not doing anything in particular.
50

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- Q. Was he making notes or was he doing nothing?
A. No. He was not writing.
Q. Not writing. All right. What next?
A. As appointed, I went to Man Lin Wah. When I was there, I noticed that all three floors were fully booked for dinner parties and so I went to the ground floor where I saw the 1st accused CHEUNG Kwan-sang. He was waiting for me on the ground floor of Man Lin Wah. He said that since Man Lin Wah was fully booked up, we should go over to Lung Wai. 10
- Q. Yes.
A. When we were at Lung Wai Restaurant, I asked Ah Yuk how long he had been waiting for us. He said: "Not for long". I asked the 1st accused: "You were chopped. Was it serious"? He said: "Not very serious". Only his arm was chopped. 20
- Q. Is that what you told the Sergeant?
A. Yes.
Q. All right. Go on.
A. I asked him whether he could identify his assailants who had chopped and injured his arm and who those persons were. Kong Sin told me that he could recognise those persons. They were the people of Siu Lui Chin Kin who had chopped him. 30
- Q. Go on.
A. After hearing that he had been chopped by people of Siu Lui Chin Kiu, I asked Kong Sin what he wanted to do. He said he wanted to go up there and ask for some compensation from them. Ah Yuk said: "If you are free, you can go there with us." 40
- Q. To whom was Ah Yuk saying these words?
A. To me.
Q. Yes. Go on.
A. At this juncture, Sergeant NG stopped me. He asked: "When you went up to Siu Lui Chin Kiu, what kind of knives were you holding and with whom did you go up there?" 40
- Q. How did you answer him?
A. I said: "We were not holding any knives". Sergeant NG said: "You said you were not holding any knives. I have been a police officer for 20 odd years. Are you trying to deceive me?"
- Q. Yes?
A. "You don't mean you only went up there to play. Then he told CHEUK Wah-ngok to go out and fetch the knives to show me. 50

Q. Did CHEUK Wah-ngok return with any knives?
 A. Yes, he did.
 Q. How many?
 A. Two knives.
 Q. Yes?
 A. When he returned with the knives, he handed the knives to Sergeant NG.
 Q. Were the knives wrapped or naked?
 A. They were not wrapped up.
 10 Q. Yes? What Sergeant NG did with the knives? You say CHEUK Wah-ngok handed the knives to Sergeant NG.
 A. Sergeant NG picked up one of the knives - the one with the wooden handle - and said to me: "Fuck your mother. This is the knife that you held."
 Q. What did you reply?
 A. He was holding the tip of the knife and pointed the handle at me.
 20 Q. Demonstrate what he did to you.
 A. He hit me on my head with the knife.
 Q. What did you tell him after hearing this remark and his demonstrating such action to you?
 A. I said we went up to Siu Lui Chin Kiu to ask for compensation. We did not go there to fight. It was not necessary to carry any knives.
 Q. Yes.
 30 A. He did not pursue with the questioning at that establishment. Then, he said: "You went up there with Kong Sin and Ah Yuk and who else?"
 Q. Did you answer him?
 A. Yes, I did. I said: "I did not know the others".
 Q. Go on.
 A. He asked whether I could remember what clothes they were wearing.
 40 Q. Did you tell him?
 A. I said I could remember two of them. One was wearing a blue cotton-padded jacket. The other one was wearing a car-coat. I could not remember about the other two persons.
 Q. Yes?
 A. Then I saw NG Sai-kit telling CHEUK Wah-ngok to take the knives out.
 Q. Were you shown the knives?
 50 A. Yes. I had seen the knives when the Sergeant was hitting me with the knife.

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- Q. But have you seen those knives before that day?
- A. No, I have not.
- Q. You have not. All right. Then what happened next?
- A. 15 to 20 minutes later, I saw NG Sai-Kit walk to the door, push it open and ask: "Ah Cheuk, have you finished writing"? A short while later, I saw CHEUK Wah-ngok return to the room. 10
- Q. When he shouted to CHEUK 'Have you finished writing?', did you hear any answer from CHEUK?
- A. I did not hear.
- Q. All right. You said a short while later, CHEUK Wah-ngok appeared in the room again.
- A. Yes.
- Q. For how long was CHEUK absent from the big room?
- A. He was absent from the small room where I was. 20
- Q. Oh, I see. Now, for how long was he absent from the room where you were?
- A. For 15 to 20 minutes.
- Q. Yes. Then what happened?
- A. When he returned, he was holding a notebook and a sheet of paper.
- Q. Now, did you observe what was in the sheet of paper?
- A. I did not see at that time. 30
- Q. Subsequently, did you discover what was on it?
- A. Subsequently, I found out that the contents of the sheet of paper concerning me - alleging that I went up to Siu Lui Chin Kiu that night with a knife and chopped and injured some persons.
- Q. All right. Before we go to the contents of the paper - anyway, there were writings on it, is that correct? 40
- A. Yes.
- Q. All right. CHEUK Wah-ngok brought out a notebook and a sheet of paper with writing on it. Then, what did CHEUK Wah-ngok do?
- A. He put the notebook and the sheet of paper in front of me on a table.
- Q. Did he say anything?
- A. He said: "Brother, let's come to a happy ending. You copy it and it's all fixed". 50
- Q. Copy what?
- A. To copy the contents from the sheet of paper into the notebook.

- Q. What about the notebook? Was there any writing in that notebook or was it blank?
- A. There were handwritings on the upper part of the notebook. That's at the part where he indicated that I should sign my name.
- Q. Did you read what he wrote on it?
- A. I tried to read it by picking up the notebook but he did not let me to have a look. He said: "It doesn't matter whether you read it or not. Anyway, you had gone up there."
- Q. All right. Then what did you do?
- A. Then he told me to copy the contents of the sheet of paper into the notebook.
- Q. Did you do so?
- A. I picked up the sheet of paper and read it.
- Q. Did you understand what was written there?
- A. Yes, I understood.
- Q. Then, what did you do?
- A. When I noticed that it's alleged I had gone up there with a knife, chopped and injured those persons, I told him that I would not copy.
- Q. Yes. Did he say anything? Did CHEUK say anything - or the Sergeant.
- A. Sergeant NG said: "You have committed a blunder anyway. Therefore, it doesn't matter whether you had a knife or not."
- Q. Yes?
- A. "We had already arrested five persons. If you don't want us to arrest Ah Yuk as well - because he had taken care of you and done you so many favours - you might as well copy it and treat the whole matter as saving the life of Ah Yuk."
- Q. Yes?
- A. CHEUK Wah-ngok patted me on my shoulder.
- Q. Did you say anything?
- A. He said: "You don't have to worry. The worst is only for manslaughter. You would be all right."
- Q. Yes?
- A. On hearing what he said and after some consideration, I said: "If you are not going to arrest Ah Yuk, then I am going to copy."
- Q. Yes?
- A. After I had finished copying, CHEUK Wah-ngok picked up the notebook and the sheet of paper and he compared the contents of both writings.
- Q. Yes?

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A. Someone ordered a bowl of rice for me. I am not sure whether it was Sergeant NG who did it.

Q. All right. Now, did you copy out everything from that sheet of paper?

A. Yes.

Q. They were all CHEUK's composition or any of them yours?

A. Part of it is my own idea, like the few sentences at the beginning.

Q. Now, you were looking at the notebook. Now, tell us part by part. You recognise your handwriting there?

A. Yes.

Q. Now, which one was your own idea that was not composed by CHEUK Wah-ngok?

A. "It is true LI Yuk had done me favours".

Q. Now, this one was not composed by CHEUK, is that correct?

A. No, but this sentence is also written down on the sheet of paper that he asked me to copy.

Q. All right. Let's start again. Is it correct that what you put down there from the second last line on page 2 to the end of page 3 were copied from the sheet of paper?

10

20

MR. MARASH: My Lord, the way that question should be asked is: "How much did you copy from that sheet of paper?"

COURT: How much was his idea - how much was his idea. He said he copied the whole lot.

30

MR. HUANG: ALL right.

Q. All right. You copied the whole lot. Now, let's go sentence by sentence. Now the first sentence: "It is true LI Yuk has done me favour before". Is that your idea and that's what you had told the detective?

COURT: I think that's leading, Mr. HUANG, especially in this context.

MR. HUANG: I see.

COURT: He has already said: "This is my idea", and he says: "This appears in the paper which I was asked to copy."

40

MR. HUANG: All right.

Q. Now, I want you to read through sentence by sentence and tell us which is true and which is not true - which is your idea and which is not your idea.

MR. MARASH: There is a difference between 'which is his idea' and 'which is true'

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- Q. What you have told him - in fact, what you had not told him.
- A. I said to Sergeant NG about this sentence: "It is true LI Yuk had done me favours."
- Q. Why you told him that?
- A. The sergeant said, "You must be a good friend of LI Yuk."
- 10 Q. All right. Now the second sentence: "(When) Kong Shin, CHEUNG Kwan-sang was assaulted, I vented the grievances of friend(s) unconditionally."
- A. It is true that Kong Shin/CHEUNG Kwan-sang was assaulted by others, but I did not tell him that I was venting the grievances for him.
- Q. Yes. The next sentence: "That day, Kong Shin CHEUNG Kwan-sang, LI Yuk were together with 4 persons whom (I) did not know." Did you tell the sergeant that?
- 20 A. Yes, I did.
- Q. "One wore a blue cotton jacket, one wore a car-coat." Did you tell the sergeant that?
- A. Yes, I did.
- Q. "After gathering together, (we) went up to Siu Nui Chin Kiu Musical Parlour."
- A. I said we together went up to Siu Nui Chin Kiu music parlour, but I did not say that we had gathered together. It is true that we did go up there to have tea.
- 30 Q. "At that time I held a beef knife of 'Ma Yan' brand." Did you tell the sergeant that?
- A. No.
- Q. "On arrival, Kong Shin said that those were all (the people.)"
- A. Yes, I did not say so.
- Q. "We then started chopping them." Did you tell the sergeant that?
- 40 A. No.
- Q. All right, leave it there. Now you notice above what you have written there were some characters from you: "I understand" above.
- A. Yes.
- Q. You say you were trying to read it but Detective CHEUK did not allow you.
- A. Correct.
- Q. Now at the time did he read out what was there to you?
- A. No, he did not.

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- Q. Did he, before you copied, tell you words to the effect that you need not say anything unless you wish to do so or words similar to that?
- A. No.
- Q. While you were copying, were you still handcuffed to the chair)
- A. My left hand was handcuffed to a chair.
- Q. So you only used your right hand to copy?
- A. Yes, while he steadied the book for me. 10
- Q. Who?
- A. CHEUK Wah-ngok.
- Q. How? Demonstrate how he put his hand on the book.
- A. Like this, by putting his hand on the book.
- Q. Did he appear to try to keep the book steady for you to copy or he was blocking your view of the writing on the page which was covered by his palm?

MR. MARASH: Could that question, my Lord, be put in a slightly less leading way? Could it be: "Was he doing anything else other than holding the book?" The question suggests a direct answer. 20

- Q. Demonstrate how he steadied the book for you again.
- A. Like this. (demonstrates)
- Q. Like that.

MR. HUANG: That's all, my Lord

Cross -
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XXN BY MR. MARASH:

- Q. You know the 1st accused in this trial, CHEUNG Kwan-sang. Is that correct? 30
- A. Yes.
- Q. For how long have you known him?
- A. For a little over one month.
- Q. How many times have you met him over the month?
- A. Four to five times.
- Q. This month that you have referred to is the month before you were arrested. 40
- A. Yes.
- Q. And is it correct that he was introduced to you by LI Yuk?
- A. Yes.
- Q. You knew him as Kong Shin, is that correct?
- A. Yes.
- Q. Do you know the 2nd accused?

- 10 A. I do not.
Q. Have you ever seen him before you were arrested?
A. I have.
Q. Whereabouts?
A. At Lung Wai Restaurant.
Q. I suppose he was introduced to you.
A. No.
Q. Nobody said, "This is Mr. CHEUNG"?
A. No, no one said this.
Q. All the time you were sitting at the table talking and drinking nobody introduced you?
A. No.
Q. What about the 3rd accused, LI Ming?
A. I do not know him.
Q. What about the 4th accused, do you know him?
A. I have seen him twice before.
Q. Whereabouts was that?
A. At the mahjong school.
20 Q. And in whose company was he when you saw him?
A. I have seen him twice but on those occasions he was alone.
Q. Do you know him personally?
A. I do not know him personally.
Q. Did you know his name or nickname at that stage?
A. I knew his nickname.
Q. What was that?
A. Tai-chek wah.
30 Q. What about the 6th accused, LI Keung? How well did you know him?
A. I have known him for a long time, many years.
Q. And what's your relationship with him?
A. We are good friends and when we were both working in a restaurant we were colleagues.
Q. What name did you usually call him by?
A. Ah Keung.
Q. What about LI Yuk? What's your relationship with LI Yuk?
40 A. With LI Yuk I consider him as my brother under the relationship of burning the yellow paper.
Q. Is he a fellow triad society member of yours?
A. Sworn brothers.

COURT: Sworn brothers?

A. Yes.

COURT: What is he? He's your younger brother or he's your elder brother?

A. He is my elder brother.

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COURT: He's supposed to be his sworn elder brother or what?

A. He's my sworn elder brother.

Q. About how long has he been your sworn elder brother?

A. For a year.

Q. And how long have you actually known him?

A. For a little over two years.

Q. How often did you see him in a month, for example, prior to your arrest. On an average.

10

A. Ten odd times on average.

Q. Under what sort of circumstances?

A. Not under any special circumstances. He would now and then telephone me asking me to go out to tea with him.

Q. Is that all you ever used to do, just go out for tea with him?

A. Yes, to tea.

Q. Have you every been on holidays with him or anything like that?

20

A. No.

Q. Have you ever been to the pictures with him?

A. Yes.

Q. How often?

A. It varied. Sometimes when we find that there is a particular good picture we would go together.

Q. So apart from going to the pictures and having tea with him, did you do anything else in particular with him on a regular basis?

30

A. No.

Q. Would you tell us how he became your sworn elder brother?

A. We were on good terms and our characters are more or less the same.

Q. Whose suggestion was it that you become his sworn elder brother?

A. It was a mutual feeling between us. We made the suggestion at the same time.

40

Q. Who initiated the idea?

A. He did.

Q. What did being his sworn elder brother actually involve?

A. It does not involve anything, but after we have become sworn brothers we do not have to stand on ceremony any more. We feel more freely when we are meeting together.

Q. How did this swearing come about? Was it just an oath against oath, a pledge against

50

pledge? How did the actually sealing of
this matter come about?

A. We are sworn to each other.

Q. Do you have any other sworn brothers, elder
or younger, as it may be?

A. No.

Q. When the two police constables arrested you,
Mr. CHEUK and Mr. LIU, what did they
actually say to you, the very first thing?

10 A. CHEUK Wah-ngok said, "I'm a policeman."

Q. Were you surprised to find him at that
address?

A. Yes, I was surprised.

Q. Incidentally, what were you doing there?

A. I was returning there from Kowloon.

Q. For what purpose?

A. For no particular purpose. I had just been
to Kowloon to look for my friends to see
if I could find a job.

20 Q. On that day you were unemployed, is that
correct?

A. I was working but I was only a casual
worker.

Q. And you hadn't been to work on the 31st of
December.

A. Not working.

Q. What was your purpose in going to this
address near Sheung Shui?

A. I was living there.

30 Q. How long had you been living there?

A. For about half a year.

Q. When the Detective Constable approached you
and said he was a policeman, did you
expect at that stage that you would
receive a call from the police?

A. This question did not occur to me.

Q. You were at the Siu Nui Chin Kiu and you
know what happened there. Why weren't you
expecting a call from the police?

40 A. It just did not occur to my mind at that time.

Q. Did it occur to your mind after the Siu Nui
incident that you might hear from the
police?

A. Yes.

Q. So when Detective Constable CHEUK told you
that he was arresting you, why did you say,
"Why do you have to arrest me"?

A. I was in the New Territories. I was taken
aback.

50 Q. You knew very well why he had come to
arrest you, didn't you?

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- A. I did not know clearly.
Q. You were at the Siu Nui. You know there was an incident that occurred there.
A. Yes.
Q. Did you know that somebody had been injured?
A. Yes, I knew.
Q. Then you must have had a pretty good idea what Detective Constable CHEUK was doing there arresting you.
A. I did not know.
Q. Had you been involved in any other unusual incidents over the last couple of days before your arrest?

10

MR. HUANG: That question is not called for.

COURT: Well, he's saying he doesn't know. Can you tell me how it is that a person wouldn't know if he went up to this Siu Nui Chin Kiu ...

MR. HUANG: Yes. He said he agrees with that, but ...

COURT: Yes, he went up there, he knows about the injuries. He knows there was a fight there.

20

MR. HUANG: Yes, he admitted that.

COURT: He doesn't know that the police would be after him.

MR. HUANG: No, no, I'm not ... The question is, "Have you been involved in some other incidents?"

COURT: Well, why should the police be there at all?

MR. HUANG: No, the question is, "Were you involved in some other incidents over one or two days?"

30

COURT: Yes, but if he says that he doesn't know why the police were there, knowing very well about this particular incident, then the police must be there for other purposes.

MR. HUANG: No, but the point is he asked for the incidents.

COURT: Well, if he denies now that he knew that the police were there for the purpose of the Siu Nui Chin Kiu business ...

40

MR. HUANG: He admitted all that ...

COURT: ... therefore, therefore Crown counsel is entitled to ask him, "Do you think the police were there for other incidents, in respect of another incident?"

MR. HUANG: All right. I'll leave it there.

(Question repeated in Puntì to witness)

A. No.

10 Q. I suggest to you that you knew very well what Detective Constable CHEUK and his friend were there for and you were playing the fool, playing dumb.

A. Not so. I was really startled and I asked them why they had to arrest me.

Q. I suggest to you that when you did ask, Detective Constable CHEUK told you exactly why: because of the Siu Nui Chin Kiu. He gave you the date and the place of it.

A. He did not tell me.

20 Q. When did you first find out that's what you had been arrested for?

A. When I was taken into Mongkok Police Station and when I was asked where I had been on the 28th.

Q. At this stage you were still playing dumb, weren't you? You denied knowing anything about where you were on the 28th.

A. I told him that I could not remember where I was on the 28th.

30 Q. That was a lie, wasn't it?

A. Correct.

Q. You were playing dumb, weren't you?

A. (witness speaks in Puntì)

COURT: Answer the question. "You were playing dumb."

A. Yes, I was when I was at Mongkok Police Station.

40 Q. And the time that the office has given of your arrest in the hut at Sheung Shui was ten minutes to four in the afternoon. Do you agree with that time?

A. About that time.

Q. I suppose that to get from Sheung Shui to the Sheung Shui Police Station and then to Mongkok took you well over an hour.

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- A. Yes.
- Q. At that stage you were handcuffed.
- A. Yes.
- Q. Were you handcuffed to yourself or to Detective Constable CHEUK or the other officer?
- A. My hands were handcuffed to my back.
- Q. And from Sheung Shui Police Station back to Mongkok you sat in a vehicle together with those two policemen. 10
- A. Yes, there was also a driver.
- Q. Was there any conversation between you and the two policemen?
- A. No.
- Q. Didn't you bother to ask them why you had been arrested?
- A. They had already said that I would know on my arrival at the police station.
- Q. Weren't you curious to know before then? 20
- A. Yes, I was curious to know when I was in the wooden hut.
- Q. You weren't curious to know while you were in the car?
- A. No.
- Q. Now the first person you saw back at the station according to your evidence in-chief was Inspector Robson.
- A. Yes.
- Q. Do you remember your counsel putting your case to Detective Constable CHEUK yesterday? 30
- A. I cannot quite remember now.
- Q. Perhaps I can refresh your memory. He suggested that you were taken straight from the front of the police station to a small room and that officer LIU was the one who made a duty officer's report of your arrest.

MR. HUANG: I did not say that LIU made a report. CHEUK said LIU made the report.

COURT: Who?

MR. HUANG: I did not put to him that it was LIU who made the report. That was read across as CHEUK who said LIU had to make the report. He filled up the form, helped fill out the form. 40

COURT: He let LIU make the report.

MR. HUANG: Yes, but I did not put that as the defence case.

MR. MARASH: At the very least, my Lord, it wasn't challenged that that's what happened.

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Q. Do you recall that the suggestion was that you were taken straight to a small room after a report having been made of your arrest by someone.

A. Yes.

Q. At no stage was there any mention of Inspector Robson seeing you.

10 A. Correct.

Q. Can you account for that?

A. I had seen the Inspector first.

Q. Did you tell your counsel that?

A. No.

Q. Why not?

A. When I was interviewed by my solicitor I did not mention it because I was only brought to see the Inspector for a very short while.

20 Q. When you saw Inspector Robson Sergeant NG was also present, wasn't he?

A. Yes.

Q. While you were sitting there listening to the evidence, hasn't it occurred to you that it might be very material as to whether Sergeant NG was on duty and in the station at the relevant time?

A. I do not quite understand your question.

30 Q. What I'm suggesting is this: that Robson would have been a very important witness as to whether or not Sergeant NG had any contact with you or not on that day.

A. Correct.

Q. You still didn't think to mention it to your counsel?

A. After I was fingerprinted in the large room it was Sergeant NG who brought me into the small room.

40 Q. I suggest to you you didn't see Inspector Robson on that day prior to making your statement.

A. Not true. I did see him.

Q. You were in this small room. You say you were being asked questions.

A. Yes.

Q. And the only times that you were in any way assaulted or touched was being grabbed by Sergeant NG and being tapped on the head with a knife.

50

A. Yes.

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- Q. Did the grabbing on the chest cause you any pain?
A. No, not painful.
Q. Did the hit on the head with the handle of the knife? Was that a soft hit or a hard hit?
A. Not very hard, but I felt a little pain.
Q. Who did that to you, CHEUK or NG?
A. The sergeant.
Q. So it was CHEUK who got the knife but it was NG who hit you on the head with it. 10
A. Yes.
Q. For quite a while through this questioning you say that you were still playing dumb.
A. Yes.
Q. A couple of names were mentioned to you and the first of them was LI Keung.
A. Yes.
Q. The other one was Li Yuk.
A. Yes. 20
Q. You didn't have any desire to protect LI Keung in particular, did you?
A. No.
Q. So when he showed you this photograph of LI Keung that didn't have any particular effect on your mind, did it?
A. No.
Q. That photograph ... you just saw one photo, didn't you? One piece of paper, one photo. 30
A. A photocopy of a photograph showing the face.
Q. Two faces on the photograph.
A. Yes.
Q. Would you agree with me that the ... first of all, it was in black and white, wasn't it?
A. Yes, black and white.
Q. Would you agree with me that what that was was a police mugshot?
A. Yes. 40
Q. It wasn't a photograph that came from LI Keung's home, was it?
A. I do not know whether it is or not.

COURT: You don't here suggest that LI Keung would keep a mugshot of himself at home? A mugshot of himself?

A. Are you talking about the photostat copy?

COURT: We are only talking about one photograph this time. The one that was shown to you.

A. Was it taken from LI Keung's home? 50

COURT: Well, we're asking you. It was not a photograph that was taken from LI Keung's home.

A. I don't know whether it is taken out of LI Keung's home or not.

Q. Would you agree with me it's not the sort of thing you would expect to find LI Keung in possession of in his home underneath a glass pane?

A. No.

10 Q. Up to that point when the photograph was shown to you, you say you hadn't made any admissions. Is that right?

A. I only said I knew him, but he did not take part.

Q. That was the breaking point, so to speak, when you first commenced to say something useful to the police.

A. Yes.

20 Q. Then he asked you about LI Yuk.

A. Yes.

Q. You said that you knew him.

A. Yes.

Q. He asked you about the 1st accused, CHEUNG, and you said that he was introduced to you by LI Yuk.

A. Yes.

Q. And subsequent to all of that you came to write this statement in the manner that you have told us about.

30 A. Yes.

Q. Are you telling us that you didn't want to write that statement?

A. Correct.

Q. Now you told us that before you had written it or copied it, as you allege, the sergeant, Sergeant NG told CHEUK to go out and take the knives away.

A. Yes.

Q. And he went out and didn't come back.

40 A. Correct.

Q. It was a result of being told to take the knives away that CHEUK left the room.

A. The sergeant said, "You go and take the knives away" and he walked with him to the door like seeing him out of the room.

Q. He did not say anything to him as he saw him off, did he?

A. I did not hear because by that time they had reached the entrance.

50 Q. NG didn't leave the room?

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- A. He did not leave the room. Immediately after he went inside.
- Q. He stayed inside the room?
- A. Yes.
- Q. You didn't hear any conversation between them.
- A. No.
- Q. And then some fifteen to twenty minutes later you saw NG walk to the door, push it open and ask CHEUK, "Have you finished writing?" 10
- A. Yes.
- Q. On that version of events, any writing done by CHEUK must have been done on his own initiative, don't you agree?
- A. You mean CHEUK Wah-ngok wrote himself?
- Q. He didn't get any instructions from Sergeant NG to do so. He was told to take some knives away.
- A. Correct. 20
- Q. So if any writing was done while he was away it must have been done on CHEUK's own initiative.
- A. That I don't know because he went out of the entrance of the room together with NG Sai-kit.
- Q. You know very well that he didn't get any instructions from NG Sai-kit, don't you?
- A. Well, I'm not sure.
- Q. And if CHEUK wrote this passage outside without instructions, wouldn't you agree with me he sounds like a man who is taking a lot of initiative into his own hands? 30
- A. If no one had asked him to do it then that would be the case.
- Q. That's what he told us in chief, isn't it? That he's a man who did all this on his own initiative.
- A. Yes.
- Q. Then he came back, you say, with a sheet of paper. 40
- A. Yes.
- Q. At that stage you were fully aware, were you not, that these people were investigating into a murder.
- A. They were investigating into our fighting case, yes.
- Q. Did you think they were investigating a murder or a fighting case?
- A. I only knew about a fight at that time. 50

10 Q. You told us that the word "manslaughter" was mentioned. What did you think "manslaughter" means?

A. Later he told me not to worry and the most would only be a case of manslaughter. I did not know that someone had died.

Q. What do you think manslaughter is?

A. He told me not to be afraid...

Q. I'm asking ...

A. ... The most would only be a case of manslaughter.

Q. Well, don't you know that manslaughter involves somebody dying?

A. Yes, but I did not know that someone had died.

Q. You're not stupid, are you? The man told you according to you that it was manslaughter. The least you would be convicted of was manslaughter. How do you mean you didn't know that somebody had died?

20 A. I only knew after he had told me.

Q. That was before you signed, wasn't it?

A. After I had signed.

Q. I'm sorry, but that's not what you just said in your evidence. You told us before you signed he told you it was manslaughter.

A. Not so. I was talking about the copying of the statement. I was told to sign behind the characters "I understand" when I was first brought into the room.

30 Q. You were told about manslaughter before you signed underneath the passage that you wrote at the end.

A. He told me not to worry saying that the worst would only be a case of manslaughter. He said this when I refused to copy the statement.

Q. Right before that you told us that he said, "You might as well copy it and save the life of Ah Yuk."

40 A. Yes.

Q. What did you think he meant by "save the life of Ah Yuk"?

A. He said, "If you do not copy then I cannot have a case to return to my superior. Then I would have to arrest Ah Yuk as well."

Q. Your words were: "You might as well copy it and save the life of Ah Yuk." That's what you claim that NG said to you.

50 A. Yes.

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- Q. What did you think he meant by save the life of Ah Yuk?
A. He did not say that treat it as saving the life of Ah Yuk, but treat it as saving Ah Yuk.
Q. Rather different, isn't it? So all he said was, "Save Ah Yuk" not his life?
A. Yes.
Q. That's a lot less serious, isn't it?
A. Less serious. 10
Q. And it was that that induced you, according to you, to copy this passage.
A. Yes.
Q. What's more, it induced you to say that you "vented the grievances of friends unconditionally."
A. Yes.
Q. And that you held a beef knife of the Ma Yan brand.
A. He told me to copy this. I did not say this to him. 20
Q. But you did copy it?
A. Yes, I did.
Q. And what's more, you admitted that you were amongst a group of people that started chopping at the Siu Nui Chin Kiu Music Parlour.

MR. HUANG: He has not admitted that. That's misleading to him.

- Q. You copied that. 30
A. Yes, I copied.
Q. At the time you copied it you thought you were confessing to manslaughter.
A. Yes, I admit. It is more or less the same. We went up there to ask for compensation. They being the wrongdoer caused trouble. When I saw him I managed to snatch away his knife and I chopped him and ran away.
Q. So in other words you were holding a beef knife at the time. 40

MR. HUANG: He did not say beef knife. Don't put words in the witness' mouth.

COURT: He's cross-examining him, Mr. HUANG.

MR. HUANG: But he says to the witness, "You held a beef knife."

COURT: Well, it says here in this statement, the copying is this: "I held a beef knife of Ma Yan brand."

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MR. HUANG: Yes, but he did not admit that he was holding a beef knife. Crown counsel put it: "So you admit that you were holding a beef knife then..."

10 COURT: No, no, he didn't say that. He said, "At the time you were holding a beef knife." He can deny whether he was holding a beef knife or not. It's up to him to deny it.

MR. HUANG: Look, the question put to him as if he had already said he was holding the beef knife. That's the question, the way he put it.

MR. MARASH: Read the question back to him.

COURT REPORTER: "What's more, it induced you to say that you "vented the grievances of friends unconditionally.

20 A. Yes.
Q. And that you held a beef knife of the Ma Yan Brand.
A. He told me to copy this. I did not say this to him.
Q. But you did copy it?
A. Yes, I did.
Q. And what's more, you admitted that you were amongst a group of people that started chopping at the Siu Nui Chin Kiu Music Parlour."

30 COURT: He also said that "at the time you copied that you admitted to manslaughter. He said, "I admit. It is more or less the same."

Q. Is it correct that at the time you were at the Siu Nui Chin Kiu you were at some stage holding a beef knife?

A. No.

Q. You just told us that you were.

40 A. I said we went up there to ask for compensation. They being the wrongdoer, they made the allegation against us. Then I saw him going to fetch a knife.

Q. What else did you see?

A. I pushed him away and snatched it away from him.

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- Q. And then you chopped him.
A. Someone punched me from behind. I turned around and chopped and injured him.
Q. Do you know what sort of knife you were holding at the time when you chopped him?
A. I did not know. It was something wrapped in a sheet of newspaper. I thought it was an iron bar.
Q. At the time you chopped, you didn't know what you were chopping with. Is that what you are saying? 10
A. I did not know what it was at that time.
Q. Now when you wrote this down - when you copied it, if you want to have your version - what you thought you were doing is confessing to manslaughter. Isn't that correct?
A. Yes.
Q. Do you know what sort of penalty manslaughter can carry on conviction? 20
A. I don't know, but the police officer said that the sentence would be a light one, only for several years.
Q. Are you aware that manslaughter can carry a very heavy prison sentence?
A. I did not know.
Q. Surely you've read of people being convicted of manslaughter in the newspapers and you're aware that it carries a heavy sentence, it can carry a heavy sentence? 30
A. I seldom read newspapers.
Q. Do you ever watch the television?
A. There is no television at my place of work and also none at home.
Q. I suggest to you you know very well that manslaughter can carry a very heavy penalty.
A. I really did not know.
Q. Would you have been prepared to go to gaol for ten years to save LI Yuk? 40
A. He said, "You have committed a blunder anyway."
Q. You were signing, this, you were confessing to manslaughter to save LI Yuk.
A. He forced me to sign. Secondly he said, "You have blundered and whether you write or not it amounts to the same thing."
Q. Just a minute. The inducing factor, you told us, was to save your friend LI Yuk. That was the straw that broke the camel's back, as they call it. 50

- A. Yes. That was what he said.
- Q. What is LI Yuk to you that you would be prepared to go to gaol for a long time to save him?
- A. At first I did not know until you told me that I would be sent to prison for ten years.
- Q. I'm not saying that you necessarily knew that. I'm simply saying or suggesting to you that you knew manslaughter is a serious crime which can carry a heavy gaol penalty.
- A. I did not know.
- Q. I suggest to you that you did, that you made this statement not to save your friend LI Yuk at all.
- A. I do not agree.

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MR. MARASH: Perhaps this would be an opportune moment, my Lord.

COURT: Yes. I will adjourn to ten o'clock tomorrow.

4.33 p.m. court adjourns
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10.05 a.m. Court resumes

All accused present. Appearances as before.
 JURY ABSENT.

WONG Kam-ming (5th accused) o.f.a.

XXN. BY MR. MARASH: (Continuing)

- Q. What are the Cantonese characters for manslaughter?
- A. Shall I write them out?
- Q. No, "ng sat" is what you say, is it?
- A. Yes.
- Q. Do you agree with me that the "ng" part means accidental or mistaken?
- A. Yes.
- Q. "Sat" means to kill.
- A. Yes.
- Q. Then when the sergeant, according to you, told you that the worst that could happen

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- to you would be a manslaughter conviction, you must have realised that somebody had died.
- A. Yes.
- Q. You say that you made the statement because the police told you they wouldn't arrest LI Yuk. Did you believe them?
- A. Yes, I did.
- Q. Why did you trust them?
- A. First of all I was already arrested. 10
Secondly if I persisted not to write they would continue pressing me and eventually I had to write.
- Q. But you say that they had mistreated you. Why didn't you think that they would mistreat LI Yuk and arrest him?
- A. They did not quite mistreat me. They only wanted me to talk.
- Q. So you were not mistreated.
- A. I am not saying that they did not mistreat me, but not to a serious extent, that is, they did not beat me seriously. 20
- Q. Had these police shown you any sort of treatment that warranted their trust?
- A. He said, "After finish dealing with you we would have the case to hand back to our superior, and we would not do anything more."
- Q. What they are interested in getting out of you, according to your evidence, is an admission from you, isn't that right? 30
- A. Yes.
- Q. What they didn't want was LI Yuk because you say they were going to let him go if you confessed.
- A. That is not the meaning of the thing because at that time they had not yet arrested LI Yuk.
- Q. That's right. What they were after was an admission from you of your involvement, not LI Yuk's involvement. 40
- A. Correct.
- Q. Wouldn't you think that if they weren't going to arrest LI Yuk, they wouldn't want his name to appear in the statement, yours?
- A. Not so, because he said, "I did not know about LI Yuk only from you. I also knew about LI Yuk from Kong Shin."
- Q. Were you surprised when the statement that you say you copied from came back with LI Yuk's name on it? 50

A. I was not surprised.
 Q. Did you object to including LI Yuk's name?
 A. I did, but he remarked, "Silly man, you are not the only man who mentioned this, even Kong Shin also spoke about him."
 Q. How did you think that the name of LI Yuk in your statement would help him?
 A. He said it did not matter.
 Q. You are not completely silly. By naming this man you make the case against him, in the police's eyes anyway, stronger and give them even more reason to arrest him.
 A. No, because he said, "LI Yuk's name is not mentioned only in your statement. It also appeared in Kong Shin's statement."
 Q. You didn't think you would do LI Yuk any harm by naming him?
 A. He said he would not arrest him, therefore no harm would come to him.
 Q. Why is LI Yuk so special to you that you would be prepared to write this statement to save him from being arrested?
 A. We are sworn brothers, he is my sworn elder brother.
 Q. He is not a direct family relative by blood.
 A. No.
 Q. You have only known him for two years.
 A. Yes.
 Q. What is so special about him?
 A. Nothing special about him but he has taken care of me like a younger brother.
 Q. What sort of things has he done for you?
 A. When I was out of work he voluntarily would come to see me, give me some money and tell me not to worry and need not look for a job in a hurry. He took care of me very often and gave me money.
 Q. Were you out of work very often?
 A. No, but we are human, and when I was treated well by him I feel affectionate to him.
 Q. If you weren't out of work very often I suppose he didn't give you very large sums of money
 A. Not very large sum of money.
 Q. Anything else he has done for you, apart from those things you have told us?
 A. Nothing else.
 Q. So simply for that you would be prepared to admit your involvement in this offence
 A. Yes.
 Q. While you were allegedly answering Sergeant NG's questions you say that nothing was written down by Detective Constable CHEUK.

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- A. Correct.
- Q. Then he went out for twenty minutes. He came back with this passage written down.
- A. Yes.
- Q. Were you surprised he didn't have a lot more written down?
- A. What more to write?
- Q. More names, more details.
- A. I was not surprised.
- Q. No mention of the Lung Wai Restaurant which you told him about? 10
- A. No, when I told him that we went up to the Lung Wai and that we were discussing about going up to ask for compensation, Sergeant NG Sai-kit stopped me and told me not to say anything on that line.
- Q. Wouldn't you think that the discussion at the Lung Wai would be a very important matter to put down, showing there was some preconceived plan? 20
- A. That I don't know.
- Q. Which parts exactly of this statement do you say are not true now? They do not represent the real facts as they occurred.
- A. It is not true that we went up there holding knives.
- Q. Is that the only part that you contest? you are welcome to look at the statement if you wish.
- A. I did not use the term "venting grievances". 30
- Q. Before you go on; you were going up there to ask for compensation. What would you describe that act as?

INTERPRETER: That act?

- Q. Yes, how would you describe the act of going to ask for compensation?
- A. I don't know but Ah Yuk at that time had asked me to accompany him to go up there.
- Q. You knew that your friend CHEUNG, the 1st defendant had grievance, he had been chopped. 40
- A. Yes, I knew.
- Q. You went along with him.
- A. Yes.
- Q. Go on, what other parts do you take exception to?
- A. Starting from the sentence "I was holding the 'Ma Yan' brand beef knife ..."

- Q. What part of that ...
 A. "... and on reaching up there Kong Shin said all of them were those persons and then we-- and then I started to chop them." All these are not true.

MR. MARASH: I think that it is "we then started chopping them". Would you just check that please?

INTERPRETER: Yes, "we", should be "we".

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- 10 Q. Taking that one sentence, "At that time I held the beef knife of 'Ma Yan' brand.", you told us yesterday you were holding a knife.
 A. I snatched it away from the person in the music parlour.
 Q. Whether that be true or not, you do agree you were holding a knife.
 A. At one time I was holding a knife.
 Q. Do you know what brand was it?
 20 A. I did not.
 Q. So the only part you take exception to there is of the 'Ma Yan' brand.
 A. The one I got was long and flat, but here it described it as a 'Ma Yan' brand knife which has a broad end.
 Q. You know what a 'Ma Yan' knife looks like.
 A. I saw it when he took it out and showed it to me.
 Q. You mean the sergeant.
 30 A. Yes.
 Q. What sort of blade did the knife that you had in the music parlour have?
 A. Up to the time when I had chopped that person and ran away I did not notice what the blade looked like.
 Q. Would you agree that the description "beef knife" is not inaccurate?
 A. Not correct.
 Q. How long was this knife?
 40 A. This long (Witness indicates)
 Q. What sort of knife would you call it?
 A. It belonged to the melon knife type.
 Q. How do you know that?
 A. Because the shape of the knife was straight which looked like, similar to melon knife.
 Q. What about the next sentence "On arrival Kong Shin said that those were all (the people)", is any part of that true?

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- A. Not true.
- Q. You do agree, don't you, that when you got there certain people were talked to from the music parlour?
- A. The other side spoke first.
- Q. In the room that you entered there was a defiant group of people with whom you were conversing.
- A. Yes.
- Q. What about the last sentence, "We then started chopping"? 10
- A. Not true.
- Q. You told us that you did at least one chopping or hitting, did anybody else?
- A. I did not see.
- Q. Were you taking care of yourself at that time?
- A. Well, I panicked myself.
- Q. Standing here today, are you satisfied with the treatments you got from the police around the time of the taking of this statement up to when you signed it? 20
- A. No, I was not satisfied. How could I be satisfied, because he jerked me.
- Q. Were you angry when you got down into the cells and you stopped to think about it, about your overall treatment?
- A. Yes, I was angry. In fact, from the time when I was taken out of the small room on the way to the cell I was angry. 30
- Q. From that point onwards would you prefer to remain in police custody, or would you prefer to be taken somewhere else and kept?
- A. I wanted to be in the custody of another place.
- Q. Do you recall appearing for the first time in the magistrate's court before Mr. Newell on the 3rd of January?
- A. Yes. 40
- Q. Do you recall the prosecutor asking for a remand of you and your three, four co-accused at that time in police custody.

MR. MARASH: Sorry, my Lord, perhaps I am mistaken. I think that on the 3rd it was an application for remand in jail custody, so I withdraw that question.

- Q. When you saw the doctor, Dr. YIP, who gave evidence, did you make any complaints to

him about your treatment?

A. I did not.

Q. Why didn't you mention anything to him?

A. How should I mention it to him?

COURT: You were asked a question. Don't ask questions. Why did you not make complaint?

A. He was a doctor, and at that time there was no apparent injury on me.

Q. But he was somebody independent, wasn't he?

A. Yes.

Q. At the committal in front of another magistrate, did you at any stage complain that you had been illtreated or your statement was beaten out of you or induced out of you?

A. No.

Q. Why not?

A. I said I reserved by right of speech in the supreme court.

Q. At that stage you hadn't had any legal advice, had you?

A. No.

Q. Is there any special reason why you reserved for the supreme court?

A. If I said it then it would be the same as I say it now.

Q. Why didn't you say then?

A. At that time we were asked whether we had anything to say, and we all said we wanted to reserve our right of speech.

Q. Yes, we know that, but why did you want to reserve your right of speech. Why not place your objection on the record then?

A. At that time we had not yet applied for legal aid.

Q. What is this? You thought you had been mistreated. I appreciate you had no legal advice. He was a magistrate who, I assume you realise, was an independent person.

A. Yes.

Q. When the policemen tried to put your statement in, or the prosecutor, why didn't you say, "I object to that."

A. Well, I do not understand.

Q. You knew what the statement said and you knew that it was very damaging to you by that time, why didn't you say, "I object to that statement. It's not voluntary."?

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- A. I did not know I could object.
Q. You knew enough to say that you reserved your defence on that point.
A. The interpreter told me that we could remain silent and reserve our rights until we were transferred to the supreme court.
Q. That's why you didn't.
A. Yes.
Q. I suggest to you that you were never mistreated by Sergeant NG or by Detective Constable CHEUK. 10
A. Not correct.
Q. I put it to you that this statement that you wrote wasn't copied down into a piece of paper by Detective Constable CHEUK.
A. He did write on a sheet of paper and told me to copy.
Q. You see the first sentence, "It is true that LI Yuk had done me favours before.", do you agree that that looks like an answer to a question? 20
A. Yes.
Q. You heard Detective Constable CHEUK say that he can't remember really whether he asked you any questions or not.
A. Yes.
Q. If a man was trying to write a statement for you, weren't you surprised to see it commenced with what looks like an answer to a question? 30
A. That was what he wrote at the beginning on the sheet of paper.
Q. You told us that that sentence was your idea.
A. Yes, because I had told NG Sai-kit that Ah Yuk had done me favours.
Q. I put it to you that you put that down yourself, probably in answer to a question of some sort. 40
A. Not true.
Q. I further put it to you that Sergeant NG was not present during your questioning after your arrest.
A. He was present.
Q. I also suggest to you that the place in which you were arrested was not your home as you have said. At least it had not been your permanent home for over six months. 50

MR. HUANG: The defendant has said he had lived there for six months.

MR. MARASH: Yes, he said that yesterday, I understand, my Lord.

COURT: He had never been there for six months, is that ...

10 MR. HUANG: Well, the witness has said, as I understand his evidence, he had been living there for six months prior to his arrest, but what my learned friend put to him was that that was not his home, not abode, that he admitted it was not his home for six months, but he has said that it was his home for the last six months.

COURT: For the last six months?

MR. HUANG: For the six months prior to his arrest, he had been living there.

COURT: Well, where is his answer to the question?

MR. HUANG: I think it's at the beginning of cross-examination.

20 COURT: No, he said he was living there for about half a year.

MR. MARASH: I am merely suggesting to him that that isn't true.

COURT: You are suggesting that it is not true.

A. I was living there. I had been living there for half a year.

Q. You were unemployed during some of that time. How did you pay the rent?

30 A. I was working then. I was working as a cloth printer.

Q. I put it to you that you had only been there for a short time and that you knew the reason for your arrest when Detective Constable CHEUK approached you there.

A. I did not know why he had to arrest me.

Q. Lastly I put it to you that you made this statement voluntarily.

A. No.

40 Q. Because you had been caught having been at the scene.

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- A. Yes, I had been at the scene. In the statement it starts with the word "it is true", in Chinese it's "mo chor". I asked him what was the first character.
- Q. I suggest to you that you knew that your friends or some of them who were involved with you had been arrested at the time that you made this statement.
- A. Yes, I knew.
- Q. That was the reason you made the statement. You didn't think you had any hope at that stage of escaping the consequences of what you had done. 10
- A. Not so, but because I was arrested there was nothing else I could do.

MR. MARASH: No further questions.

Re-
Examination

NO REXN. BY MR. HUANG

BY COURT:

- Q. You said you were shown a picture of LI Keung. 20
- A. Yes.
- Q. Two profiles-- one is the profile and one is the front of the face.
- A. Yes.
- Q. One showing that he was wearing a chequered Hawaiian shirt.
- A. Yes.
- Q. And this picture is supposed to be a black and white picture, or rather it is a printed copy, a sort of print. 30
- A. Yes.
- Q. Can you tell me how you were able to say that he was wearing a beige T-shirt from a black and white picture?
- A. The photograph was white but there was a certain part which appeared beige or creamy white.
- Q. Can you tell me how you can differentiate colours from a black and white picture, especially when it is a Xerox copy of a photograph. 40
- A. The photograph is white but the part of his dress appeared a little yellowish.
- Q. I still have to see that. I can't-- I have no idea how this black and white picture can produce colours.
- A. Yes, it can be shown to you.

Q. Well, where is it?
 A. I don't know where they have kept it.
 Q. You know beige is a particular colour.
 A. It was very light in colour, almost white.
 Q. Well, certainly you can't tell colour from a black and white photograph.
 A. Correct.
 Q. Well, tell me how you saw this colour in a black and white photograph.
 10 A. It was slightly yellowish.
 Q. Like this. (Court indicates)
 A. No.
 Q. What, brown?
 A. Similar to the colour of my trousers but not so dark.
 Q. What trousers?
 A. Much lighter. (Witness indicates)
 Q. So that only appeared on the T-shirt.
 20 A. I could see only half of his body from the picture.
 Q. Yes, that is the T-shirt.
 A. Yes.
 Q. Well, if the photograph was that colour, if his T-shirt was that colour, his face would have been that colour as well. Do you mean to tell me he has got a beige coloured face?
 A. No, but similar.
 30 Q. His face was similar, now you say it's similar.
 A. Yes.
 Q. And the other one was different colour, the one with the chequered Hawaiian shirt. It's black and white. Is it black and white?
 A. It is black and white.
 Q. Not beige colour.
 A. I did not see clearly because it only shows his profile.
 40 Q. You told us quite clearly yesterday that he was wearing a chequered Hawaiian shirt.
 A. Yes.
 Q. In fact I don't know how you can say that he was wearing a Hawaiian shirt when you only see his, only a half-bodied picture.
 A. I can distinguish it from the collar.
 Q. There are certain collars which are similar but not Hawaiian shirt. You said that quite clearly yesterday.
 A. Yes.
 50 Q. It's a black and white picture.
 A. Yes.

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- Q. So one side is black and white and the other side is beige coloured picture, all of them from the same print.
- A. The whole picture was in a light colour tone, including his face and his clothes.
- Q. Do you want me to read these again? "The picture of LI Keung, he was wearing a short-sleeved check-patterned Hawaiian shirt, and the front one, that is the one showing his front, showed that he was wearing a beige coloured T-shirt", and that is from a black and white re-production of the photograph. 10
- A. Yes.
- Q. You can see all those colours.
- A. I could tell that it was not white because it looked like the colour of this paper. These are two different colours.
- Q. This is exactly what I want to know. How is it that you were able to differentiate colour in a reproduction of a black and white picture) 20
- A. If we can have the picture then we can differentiate the colours.
- Q. Look, in a black and white picture there are only different shades of black or white, different shades, different shades of colours.
- A. Yes.
- Q. You agree to that? And you are in the cloth printing business. 30
- A. Yes.
- Q. You know shading.
- A. Yes.
- Q. No matter what shade you get, you can't get beige colour from black and white.
- A. I cannot explain but I noticed that there were different colours in the picture and the darker shade appeared to be in beige colour. 40
- Q. Darker shade, now the beige colour is the darker shade.
- A. Yes.
- Q. So did you live with LI Yuk or not?
- A. For a period.
- Q. When?
- A. In August when we were in the New Territories.
- Q. What do you mean "in August", which year? 50
- A. 1975.
- Q. How long?

A. For a little over one month and then he left.
 Q. Did you go and see a doctor prior to seeing Dr. YIP, prior to your arrest anyway?
 A. No.
 Q. Never see any doctor before in your life?
 A. I have.
 Q. You have.
 A. Yes.
 10 Q. Do you mean to tell me when you go and see a doctor, the doctor takes a look at you and says what you are suffering from? He knows exactly what you are suffering from?
 A. No, are you referring to the time when we saw Dr. YIP?
 Q. I am not referring to the time when you saw Dr. YIP. I am referring to the time when you go and see a doctor yourself, either ill or whatever injuries you suffer. Do
 20 you mean to tell me you go and see a doctor, and then without saying a word, the doctor takes a look at you and says that you are suffering from this and that?
 A. Not so, the doctor will ask whether I suffer from a headache or sore throat or stomach-ache.
 Q. But you would tell him first what you are suffering from, would you?
 A. Yes.
 30 Q. How would Dr. YIP know what you were suffering from unless you told him?
 A. Dr. YIP asked me whether I had any chop wound, any injuries. I had my clothes removed and let him examine.
 Q. Did you tell him?
 A. I told him that I did not have any injuries.
 Q. What else did you tell him?
 A. No.
 40 Q. Well, why didn't you?
 A. He asked me whether I was injured. I told him that I was not.
 Q. Well, and the doctor would ask you whether you have got a headache or not, you say no then you would tell him something else, otherwise why do you go and see a doctor?
 A. When I saw that doctor he asked me whether I was injured, whether I had been chopped and sustained any injuries.
 50 Q. So would you say that you were feeling well that day when you saw Dr. YIP?

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(cont'd)

A. Yes.

COURT: Stand down.

MR. HUANG: That is the case for the 5th
defendant.

No. 2(c)

COUNSELS SPEECHES
ON VOIRE DIRE

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MR. MARASH: In regard to the law concerning this
voire dire I simply wish, my Lord, to adopt what
I said in relation to the voire dire of the 2nd
accused. The question, of course, is
voluntariness.

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Detective Constable CHEUK told us that he
arrested the 5th accused in a New Territories
hut, that he told him the reason he was
arresting him, as one would expect he should do,
and then eventually took him back to the Mongkok
Police Station. We have heard the accused's
version of not being told, he says, why he was
arrested. In my submission that is not worthy
of belief. He admits he was not telling the
truth. There was still a question of knowing
the reason for his arrest. I suggest that the
detective constable's version of the arrest is
the credible one. Back at the Police Station of
Mongkok we were told that the accused was taken
to a small room in the C.I.D. office after a duty
officer's report having been made. It is not
particularly material, in my submission, whether
or not that was made by CHEUK or whether it was
made by the other D.C., YIP. Detective
Constable CHEUK then said, how he took the
accused to the small room, that the accused,
before anything had been said of any
consequence, made a statement that he was-- "It
is unfortunate for me that I was involved
because of my friends." He then, for reasons
of his own which he told us, decided that he
was going to caution this man, which once again
he should well do, and he says that he wrote out
the whole of the passage which is produced
down to where the accused signed "I understand"
and placed the signature. Then he read it back
to the accused.

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10 The point which he frankly admits his
evidence is inadequate is that he can't remember
then whether or not he asked any question. Now
it would appear from the statement that he did
ask some sort of question because the first
thing written down here appears to be an answer
to a question. So I am not, on behalf of the
15 Crown, saying that he didn't ask questions, and
I suppose that this being a voire dire where the
test of proof is voluntariness beyond reasonable
doubt, the issue should be resolved in favour of
the accused as to whether or not questions were
asked. At least there is a clear doubt of
whether or not that happened. So assuming that
questions were asked by CHEUK, the question of
course is did this overcome the accused's desire
to remain silent? According to CHEUK he never
had any desire to remain silent. He immediately
20 said he was involved in it because of his
friends. It was unfortunate for him. That was
before the caution was delivered. He then told
us how the accused came to write this statement
and signed it. In my submission there is
nothing on the detective constable's evidence
that would indicate this was an involuntary
statement, though it does appear that there was a
breach of the judges' rule which says that after
caution questions shouldn't be asked. That is
30 in the old rules. Once again that is not the
clear statement in Rule 3 of the old rules but it
is the spirit of the rule. Of course, the new
rules are somewhat different.

40 We have heard the accused's evidence. He
does admit that he said some of this, in
particular, the first line. Then he admits that
a large part of what is written down there is
true. He takes exception to certain parts. He
takes exception to what appears to be venting of
grievances unconditionally, although he admits
that he was going up there about some sort of
grievance or compensation. He admits that he
went up there with CHEUNG and LI Yuk, "4 persons
whom I didn't know", but he disputes the
passage about gathering together. Of course, in
order to go there they must gather together. He
takes exception to that passage but it doesn't
seem he has got any reason as to why.

He admits that he held a knife, but he
disputes that it was a beef knife, and he

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disputes and says he doesn't know whether it was "Ma Yan" brand or not, but he certainly says it was different to some knife that he alleges was shown to him. He disputes the next line but he admits that he was with a defiant group of people in the music parlour. Well, as to the last part "we then started chopping them", he says "I was the only one that I can definitely say chopped. I was taking care of myself, I don't know what the others did". My Lord, that is remarkably similar to the passage which appears here. In my submission, there is a very clear indication that this man wrote this down himself. What is more, it was his own idea. There is no pressure, which is apparent on the face of this, for extra names. According to the sort of evidence we have heard from the defence in general in this trial, one would expect the officer to be pressing for more names, but nothing of that sort appears.

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We have heard the whole of his evidence about being shown a photograph. Your Lordship has questioned him on that. In my submission, his story is not worthy of belief and that the Crown is satisfied beyond reasonable doubt this was a voluntary statement. This man, of course, made no complaints to anybody, despite some opportunities, to the doctor or the magistrates. I am fully aware that a man without legal advice may well choose to keep silent in a magistrate's court. This man has kept silent throughout until he came before this court, the first time he has made these allegations, and in my submission that is an indication this man has now invented a story for the purposes of having the statement removed from evidence, now realising that this is a damaging admission against him.

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So I do submit that this should be admitted into evidence, and as to matters of law I adopt what I have said in regard to the 2nd accused's voire dire.

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MR. HUANG: My Lord, there is an authority I wish to check up. I've just sent my clerk down to the library. Would this be a convenient time for the mid-morning adjournment? Meanwhile I'll check up something and then I ...

COURT: We will adjourn for fifteen minutes.

11.10 a.m. Court adjourns.

11.40 a.m. Court resumes.

All accused present. Appearances as before.
Jury absent. Voire dire continues.

MR. HUANG: May it please you, my Lord. I would like to make the following points.

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The first point is that from the evidence of Detective Constable CHEUK himself, that statement is far from being a complete record. Since that is so, the court cannot admit it. Now, that's my first proposition and I illustrate it from the evidence.

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The first is that Detective CHEUK admit that when he was there and he cautioned him that he need no say anything etc. - according to him as he had written down in that preamble -- in the same wordings -- he said that the defendant said: "I knew the reason for my arrest." The proper manner is that should have been recorded.

Again, back in the Mongkok Police Station, the 5th defendant said: "It is most unfortunate that I was involved in this because of friends." This would have been very material because it was after the caution that anything he said he would record it.

Thirdly, Detective CHEUK himself admits "You don't have to worry" - that was not recorded.

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Fourthly; "I told him to write down or to write down in a book".

Now, as far as he admit, at least, these many things were never recorded. Now, that being the case, it would be very misleading how this statement came about without all this to the jury.

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Then, my second proposition is that the statement is not voluntary because Detective CHEUK had induced him to talk. To use the prosecution's own evidence, he said after the caution and before he wrote anything: "I told

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him not to worry". Constable Cheuk admitted that 'When I used these remarks, my intention was to calm him down...' - I quote the evidence as he said it - "... so that he would be more willing to answer me. I toned down the importance of the incident so that it makes it easier for him to answer my questions. It was my intention to question him into all aspects of this case." Now, this is the admitted evidence. My Lord, this is a clear inducement - that you tell him not to worry - make it easier for you.

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In this particular aspect of the evidence now, I would like to repeat the quotation I quote from Attorney-General v. Henry M'Cabe - that passage. This evidence clearly comes within the second category of answers to questions, that is, the constable was chopping him to talk.

Now, it is one of the basic principles that the prosecution - the police must be fair to him, he must not induce him; but he has stated in clear words the intention was to induce him to talk - the intention was to chop him to talk. Now, it is one of the basic rule that it must be fair and there must not be any inducement or threat. It is my respectful submission: take the evidence as it is on its face value, he had induced him.

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In this aspect - I am sorry, my Lord, I did not bring the case. There is a case of Joyce⁽¹⁾ decided by Mr. Justice Slade. I think it is 1954 1 Weekly Law Reports. I cannot remember which volume. Roughly around there. Either '54, '55 or '56. There, in that case the judge was Mr. Justice Slade. In that case, the facts were briefly these. A certain man was about to go to bed. He just changed into his pyjamas. Policemen knocked on his door and asked him to go to the police station. "We need to take a statement from you". Then he changed his clothes into ordinary clothes, walked with the policemen to the police station and there he gave a statement. At the time, he was not told what the charge against him was or what - etc., but the complaint on the police record was that there had been an assault. It was held by the judge in that case that for a man at bedtime to change his clothes because the police say 'we need to take a statement from you', it is an inducement; but it was held that because at the time there

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(1) (1958) 1 W.L.R. p.140

were no specific charges mentioned against him therefore the inducement was not enough.

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10 By analogy, here in this particular case, the preamble had made it quite clear that he was investigating into a murder case and two wounding cases and he was suspected to be connected with it and therefore all the ingredients were there. He was at this stage in a very precarious position. From the evidence, he was in a police station under arrest and one hand was handcuffed to a straight-back chair. It was in this sort of circumstances this inducement was administered to him. So, if - according to Joyce's case when the policeman say: "We need to take a statement from you, he was not under arrest. Nevertheless, he changed his clothes. It was held by Mr. Justice Slade because he felt he had no alternative but to change his clothes and follow the policemen to the police station -

20 it was an inducement all right; but, in that case, because no charges were laid against him, it was not sufficient inducement in that sense. In this case, you have all these ingredients. So, this is an inducement.

30 My third proposition is that the Crown has not furnished all the positive evidence to the court while admittedly such evidence should have been forthcoming readily. Now, I illustrate that from the evidence - I am using the Crown's own evidence at the moment.

40 Now, when my learned friend addressed you, he said - the first sentence in this case: "It is true that LI Yuk had done me favours before". When he started the statement like that, my learned friend admitted that undoubtedly that was an answer to some question. What the question was, Constable CHEUK did not remember. Well, the point is: the court must know all the facts within a reasonable expectation. Since admittedly there was a question or questions put to him and no evidence is forthcoming as to what those questions were, how can your Lordship decide whether it was voluntary or not - the statement, that is. Questions that may lead to this answer can range from very very harmless to extremely oppressive questions or threatening questions. Now, the court must know and decide whether they were oppressive or threatening or absolutely

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harmless. Now, since admittedly there was or were such questions and evidence is absent as to their nature, there is no evidence for your Lordship to decide on that otherwise. For the same reason, the prosecution has not proved its case beyond reasonable doubt.

In support of this, I would like to quote a passage from the leading authority of The Crown against LI Kar-wah (Li Kar-wah against the Queen ?)⁽¹⁾. I am sorry. This is the only copy we have in the court. I read it and then hand it back to you. The passage is - I quote it -- it is a Full Court decision.

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" In conclusion, we would only say this. The Courts of this Colony rely, and very properly rely, to a great extent on the testimony of police officers in relation to criminal cases. It is a matter of paramount importance in the proper administration of justice that the courts should be able to rely on the complete integrity and veracity of police officers when they give evidence in the Courts. If there are grounds - sufficient grounds - for thinking that the evidence of police officers is not to be believed then the whole fabric of the administration of justice in these courts is very seriously strained. In the present instance there was at least strong reason to suspect that the statements made by the accused persons were the result of questioning and interrogation, if not also collaboration between the police officers concerned. If the police officer had frankly admitted that the statements were the result of questioning it would have been open to the trial magistrate, despite the fact that there may have been some breach of the Judges' Rules in questioning an accused person in custody, to exercise his discretion and allow the statements to be admitted, always assuming that he was satisfied that the necessary condition precedent that the statements were in fact voluntary had been proved beyond reasonable doubt. The regrettable, but by no means infrequent, practice under which

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(1) (1970) H.K.L.R. p. 572 at p.580.

police officers are, from time to time, disposed to be less than frank with the courts on matters often of no great importance is to be deprecated.

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To adopt words recently used by the Lord Chief Justice of England:-

"There are cases, of which this is one, in which the principles involved are more important than the case itself." "

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Now, I think this description is quite right in describing the police officer concerning this case in giving the evidence here. If admittedly there were questions to the first answer, then the court have to know those questions. There is no excuse why those questions were not recorded since it was the detective's own business there at that juncture to record everything. He not only not record it; he said he can't even remember what the questions were.

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Now, moreover, in this particular aspect, not only did Detective Constable CHEUK say he could not remember what questions were put, there were a lot of things he simply said he could not remember which a man of his standing should be able to recollect a fair amount. He simply said: "There were other questions I asked but I cannot remember. I cannot remember. There were other answers given. I cannot remember." He even tried to play down to the extent that he cannot even remember taking a statement from D.2. It is quite obvious that he was not sincere and frank to the court. It is understandable that we could not remember a lot of details or remember them in a wrong order because the human memory is not a tape-recording. At least, they are expected to be sincere and frank to the court.

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For your Lordship to decide on the evidence, I should say this police constable was deliberately refraining from answering questions - not being frank with the court. If that is the case, how can your Lordship decide.

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The other side of the story ...

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COURT: ... How can I decide on what? To accept the statement or not to accept the statement?

MR. HUANG: Yes. I mean your findings in this particular case having ...

COURT: ... I have to decide one way or the other.

MR. HUANG: Well, decide in the sense that to act on their evidence - on their proposition -- on the Crown's proposition --- what the Crown urge you to decide, that is, to admit the statement.

10

On the same point, my Lord, I say that the other side of the story is that before your Lordship decide in favour or admit the statement, you must have positive evidence from the prosecution witnesses and you accept and believe them. Now, if that is the state that Constable CHEUK gives his evidence, that means the evidence is not positive. He must say: "I did not ask him any further question. He did not give me any more answer than what is recorded there." - then, that is positive. If your Lordship accept that and believe him - but what he is saying now is: "I cannot remember. There could have been some. I don't know. I cannot remember now." Well, if that is the state of affairs - if the witness himself is not sure - therefore, the court cannot be sure either, and it is not evidence for the court to act upon it.

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Now, there is the evidence now of Sergeant NG Sai-kit. It is the Crown's case - I have comment on his evidence -- on the very important aspect of his evidence. It is the Crown's case that it was Constable CHEUK himself alone recorded this statement from D.5; but, it was put to Constable CHEUK that he was merely assisting Sergeant NG in this transaction - it was Sergeant NG that did all the questioning and threatening and Constable CHEUK was simply an onlooker and eventually he went in and wrote out a statement for D.5. to copy. The time alleged to be taking place was some time after 5 p.m. on the 31st December, lasting for about some two hours or so. That would be any time between 5.30 to 7.30. Somewhere around there that this affair took place.

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Now, you will recall, my Lord, the next day, the Crown tendered Sergeant NG Sai-kit. Admittedly, he said he did not know what he was giving evidence - what kind of evidence he should give in this case. He was simply tendered. It is true that he is connected with this case in other aspects. I would understand that a witness would refresh his memory on for what evidence he was to give. He is meant to be prepared for that. Admittedly, he came to this box mentally unprepared what kind of question was to be put to him. My Lord, he got a perfect explanation. In this sort of circumstance, he can give a perfect account of his movement in that particular afternoon - for those three or four hours. He said he left the police station at 5.30, exactly the time the alleged statement took place. He went on outside mission (Hungom) until 9.30. Even - he gave such details - 9.30. Then, from 9.30 to 10.30, he had dinner somewhere in some restaurant. He returned to the police station 10.30 to carry out some other work of his.

Now, my Lord, this was 31st of December, 1975 - eight months ago. For example, I asked him what his movement on the 3rd January this year were, he had not got the vaguest idea. That's understandable. My Lord, if suddenly, without any mental preparation, anyone of us were to be asked what one of us was doing, say, eight days ago, only a month ago or two weeks ago or four weeks ago, except that one can calculate from the usual routine of one's work, we haven't got the vaguest idea. That's natural and human. Unless our routine is so fixed or I can calculate from my schedule (I should have been at home or I should have been at my place of work), otherwise, one cannot tell. Now, how was he able to give such a perfect account for exactly the period, that is, from 5.30 and 9.30 he was absent from the police station in order to avoid the allegation put forth by the 5th defendant. This is quite mysterious. Was he telling the truth or was that a deliberate attempt to destroy the defence case - I leave that to your Lordship to decide.

Now, there is another aspect of the case, that is, why Constable CHEUK, after arresting the 5th defendant, immediately, according to him, just five minutes upon arrival at the police

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station, he took it upon himself to record a statement from him without even first reporting to any of his superior officers except the Duty Officer at the door - even that was not done by himself personally but by a colleague of his. Now, that practice of his is completely repugnant to police procedure as well as common sense.

Now, to illustrate, Constable CHEUK was only an ad hoc member of Sergeant NG's team. He only worked for Sergeant NG on the 28th.- went to the Kam Tong Building to arrest. He did not belong to that team at all. According to him, he had nothing more to do with the case or the investigation of the case except that on the 31st he was on the Special Duty Squad and the O.C. sent him to N.T. to fetch this man. That may be understandable. For lack of manpower - for one reason or another - send two other detectives. All right, even if that is so, when he got the man and came back to the police station - according to Sergeant NG, he should report to the team involved - that is, Inspector Robson in charge of the case - to Sergeant NG as the superior officer of the rank and file. That's the logical thing. If there is any statement, any enquiry, leave it to the team to do. Your mission is accomplished. Once you fetch the man back to the police station, report to the Duty Officer, put the man in the cell and report what you have found to the inspector in charge, that's the end of the matter. Why should he - this is a murder case and he himself knew it was a murder case - take upon himself to investigate. "I am making enquiry into this case of murder and two wounding". Was he making enquiries?

Now, not only he never report to the superior officers, he said he never did any such thing before the recording of the statement and he went about and recorded a statement. How did he know what his superior officers were doing - would handle the case. He doesn't belong to the team. Besides the 31st, the only time he took part was the 28th. That was three days later. How would he know how the case has developed during the three days since he accompanied them to the arrest at the Kam Tong Building. He had no idea.

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Now, the defendant's case is different. When he was taken back to Mongkok Police Station, Detective CHEUK took him to Inspector Robson's room. Then the Sergeant (Detective ?) was calling Sergeant NG. Robson asked him a few questions. Then Robson sent the Sergeant - sent them all out, presumably, asking Sergeant NG to make further enquiries. It was then that Sergeant NG, together with Detective CHEUK and another detective, took him to a small room where this incident took place. That sound more like the procedure as Inspector NG admitted that should have been the case.

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Well, if that is the case, then Constable CHEUK's evidence was nothing more but a pack of lies. Would one expect in any normal circumstances for him to act with such haste: arriving at the station 8.45 - 18.45; and then 18.50 hours he started recording the caution. Just five minutes - five minutes' difference, according to his evidence. (A pause). That's right. "We arrived at the Mongkok Police station 18.45 hours." Then, according to the statement, it was 18.50 hours. Exactly five minutes.

My Lord, if one were to make a trip to N.T. and then arrest a person back to Mongkok Police Station, then, any normal man would take a rest and make all the reporting first. What's the urgency in rightaway taking him to record - "Sit down" -- right there now to record a caution. Now, unless he can give a reason for the urgency, it doesn't seem normal. Especially at that stage, there is no hurry. He was handcuffed. Put him in the cell first. Consult the superior first, make a report until you get direction from some superior what to do with him. Even though he was to do all that, it would take a matter of 10 minutes or half an hour.

So, having regard to the common-sense aspect of the case, Detective CHEUK does not seem to have told the court the truth. They recorded the time - so bare -- just five minutes after arrival so as to prove how eager they were to tell the - how perfectly it fit into the time; but, that, unfortunately does not fit in with common sense.

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Now, as my learned friend has made a lot of remarks about the contents of the statement - now, my Lord, what I have addressed your Lordship is on the prosecution's own evidence -- on their own evidence. There are strong evidence for your Lordship to exercise a discretion and exercise the discretion only one way - to exclude the statement.

Now, the 5th defendant has given evidence. In spite of all the virorous cross-examination of him, I think he maintained his position quite well. He has been honest. He was at the scene. It is not a complete denial of presence. What he is saying is that what is in that statement was partly using information he had told the police but partly fabricated by Detective CHEUK. If he were to lie through his teeth about the matter, well, he could lie much better - he was never there at the scene. If he were to lie against the policemen, he could have said 'I was in N.T. all the time'. That's not his case. He did admit certain involvement but no as the police had made out.

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Now, as for this 'Ma Yan' brand of knife - all this is the facts inside there - how easy it was for Constable CHEUK to make up a story. According to Sergeant NG, one of the knives seized from the Kam Tong Building was a 'Ma Yan' brand. One was a home-made knife. Because they seized two knives, it is quite convenient to put down one had a brand name so as to connect him with the knife found in that building. Sergeant NG brought the knife out to show him, wanting him to admit that he was holding one of those knives, but D.5 says he never saw them before.

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Now, the next curious thing is - so, therefore, this 'Ma Yan' brand now - Constable CHEUK knew about the knife. He could simply put it in order to connect him with it, to fabricate - so as to put those two knives in -- "Look, this is one of the knives, 'Ma Yan' brand" - even named the brand. That's all the ingenuity of Detective CHEUK.

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The next question is D.5 was found in N.T. He never lived in that building - the Kam Tong Building. Of course, not impossible that he could have lived there before and the next day he went to N.T. That's not impossible. Were

these attempts on the part of the detective so as to make out a case - to make it sound logical and fairly logical connecting one aspect of the case with another - all these simple-minded detectives without a sense of justice. Where the truth lies, I leave that to your Lordship.

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10 Well, as for the picture, my Lord, I must confess that we did not have detailed instructions. He was simply shown a picture of LI Keung. From my separate instructions from LI Keung's side, a picture of LI Keung was taken from his home. That was admitted by Sergeant NG. So, that's all about the picture. A picture was removed from a glass case but I would not know what kind of picture he was shown, my Lord. It was simply a picture. Of course, the police could have those double picture. I do not know about that. It was simply a picture of LI Keung he was confronted with.

20 Now, there is another aspect of the case. That depend upon whether your Lordship would - it's a matter of the evidence. That's concerning LI Yuk. Now, according to the 5th defendant, he said that they discovered that he had a very affectionate relationship with LI Yuk - the 5th defendant has explained that, that they are sworn brothers and LI Yuk has been very kind to him, that in the last stage when he was asked to copy the statement into the notebook he refused
30 and that it was through a lot of persuasion and inducement on the part of the Sergeant to copy - or, to promise, that is: "If you copy, we won't bother to arrest LI Yuk" - if that evidence is accepted, it is a promise - it is a condition, and that explained his relationship with LI Yuk.

40 In support of his - the defendant's version, there is in his statement, the first sentence: "It is true that LI Yuk has done me favours before". My Lord, if there was not such conversation, how come that sentence came to be on the very first sentence of the statement. It doesn't - it came out from the blue sky. It has no connection with what was following - the contents. If it is connected with something below, it is a different matter. It has no connection. If it has no connection with the story following that, then it must be connected with the same story prior to that. What was the

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story prior to that (above) or what's not
written before this, then we do not know.

Now, nothing is forthcoming from the
prosecution witnesses, but there's the
explanation - the evidence of the 5th defendant.
I think his story has this corroboration: the
bargain of LI Yuk, because, short of the 5th
defendant's explanation, that sentence would
have absolutely no meaning there in that context.
So, that lend support to the 5th defendant's
version of the story.

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That's all I wish to say.

(Discussion between Court and Counsel as to when
jury should be asked to come back. Counsel to
let the Court know their views in the afternoon.)

COURT: We will adjourn to 2.30 p.m.

12.40 p.m. Court adjourns.

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2.35 p.m. Court resumes

All accused present. Appearances as before.
JURY ABSENT.

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MR. HUANG: My Lord, this morning I was quoting
a case of Joyce.(i) I did not have the authority
then, I have it now. With your Lordship's leave
I ...

COURT: No, I don't think it is necessary to read
any further.

MR. HUANG: Well, I have the book in case you -
I've made a photostatic copy as well in case
your Lordship wants it.

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COURT: Well, I think I can get the authority at
once.

MR. HUANG: May I have your Lordship's leave so
I could now quote more in detail like - it's the
continuation of my submission just now because at
the time I was talking off the cuff. It will be
your Lordship's copy. Sorry for marking it.
It's my own book, I always mark my own books.

(i) (1958) W.L.R.

These copies are very bad - the next page, turn over, my Lord. I cannot read that number from my photostatic copy.

COURT: Page 143.

MR. HUANG: Yes, it's the part that I have some pencil marks there.

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10 " The question I have to ask myself is
whether that is a sufficient inducement in
law to exclude any admission thereafter
alleged to have been made by the accused.
That it is an inducement of some kind, is,
of course, manifest. You would not
normally leave your house to go to the
police station about midnight if you had
not been asked to do so in such terms that
you thought you had no choice in the matter;
and that must, of course, mean that there
was an inducement operating on your mind to
make you go. If you make a statement after
20 being told: "I need to take a statement from
you," then obviously some inducement, in
the colloquial sense, is held out to you to
make it; but an inducement of that nature
is not a sufficient inducement in law to
render inadmissible a statement resulting
from it. To render a confession or admission
admissible the prosecution must prove
affirmatively that no inducement relating
to the charge or accusation was held out to the
30 accused to make it. A confession or
admission must be excluded if it is made
(i) in consequence of (ii) any inducement
(iii) of a temporal character (iv) connected
with the accusation or relating to the
charge (v) held out to the accused by a
person having some authority over the
subject-matter of the charge or accusation."

40 Now the principle in that case - the statement
was admitted because it was not sufficient
inducement. The accused was simply told, "Go to
the police station," and the remark by the police
officer was simply, "We need to take a statement
from you," but at the time there was no accusation
against him as concerning here. Here now it is
written out quite clearly in no uncertain terms
that he was suspectedly connected with all these
charges, and then what Inspector CHEUK did in this

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case. The evidence is there, all there for one and all to see. So the principle as stated by Mr. Justice Slade is applicable there. It is an inducement - "Write it down", and the intent - we don't even have to infer. He made it quite clear, "I told him not to worry only intending that it would make it easier for him to answer all my questions." From the evidence he has given in D.2's case, he had made it quite clear that he was very determined to question him even to the length of one or two hours after the caution. So in our cases now the rule of inducement as laid down by Justice Slade there is applicable because in each case an accusation or charge was already made quite plain to each of them.

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I have found another passage from our jurisprudence. I think it's quite helpful in this particular aspect. As your Lordship will remember, on the first five points I argued my propositions on the basis of the Crown's own evidence on their own face value, and not at the time disregarding the defence evidence for the time being. I quote, there's a passage again from LI Kar-wah's case.(i) This is LI Kar-wah's case at page 578, the last paragraph. I think it is very helpful in this respect in support of my argument.

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"The onus was upon the prosecution affirmatively to establish that the various statements were freely and voluntarily made. It was not necessary for the accused to prove, as was alleged, that they were forced to copy statements already written by someone else on separate pieces of paper into the police constables' notebooks. We think the onus of proof necessarily involved the prosecution satisfying the magistrate that the statements were made in the manner in which the police officers positively affirmed that they were made, because if the police officers' evidence as to that was not believed that was sufficient to raise doubts as to the voluntary nature of the statements even though the magistrate did not go to the full extent of accepting that the statements were obtained in the manner in which the accused themselves

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(i) (1970)H.K.L.R.

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said they were obtained. Unless a judge or magistrate is satisfied that he has been told the truth as to the method employed in taking a statement how can he be certain that the method which was employed did not involve a measure of inducement?"

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COURT: Certainly that's a question of evidence.

MR. HUANG: Yes.

10 COURT: There is no evidence of that particular matter. It certainly can't be used as a general proposition.

MR. HUANG: Yes, but it seems to fit into this case quite well, my Lord, that according to D.5's admission the first sentence in his statement: "It is true that LI Yuk had done me favours before" - it is obviously an answer to some questions and it is obvious questions were put to him by the Detective CHEUK but Detective CHEUK cannot remember now what were the questions.
20 Now if the prosecution's own witness cannot remember, then how can the court be certain that that question or questions put to the 5th defendant did not involve a measure of inducement?

COURT: But how can we say that here: that it involves a measure of inducement? There must be evidence of inducement before you can say that.

MR. HUANG: Pardon?

30 COURT: In this particular passage which you have read there must be some kind of evidence to indicate that there was some measure of inducement but you can't just conjure inducement out of nothing.

MR. HUANG: Yes, but it ...

COURT: In fact, I can't apply what I think to a particular piece of evidence.

MR. HUANG: My Lord, remember that earlier in another aspect of the evidence, he said: "I've told him not to worry with the intent that it would make it easier for him to answer me."
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COURT: This is quite different from what you are quoting from here.

MR. HUANG: The passage I have just read or just somewhere else?

COURT: No, this passage you read.

MR. HUANG: Yes, that's the last sentence I am now ...

COURT: And it depends very much on whether the evidence of the Detective Constable is or is not believable.

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MR. HUANG: Yes, but there is at least certain aspect of it.

COURT: Well, certainly I think it must follow, but if I don't believe his evidence at all, how can I say that his evidence in his statement is voluntary?

MR. HUANG: What I'm saying is that even take his own evidence at its own face value, a great element was left unsaid - that the whole truth had not been told because there are questions which he could not remember and obviously there were questions, so that means if a judge or magistrate is satisfied that the truth has not been told, the - the whole truth has not been told - then he cannot be certain that what was left out was not improper, that everything must be affirmative - for the Crown to prove, for them to prove the case in the affirmative manner so that's all I wish to add, my Lord.

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voire dire
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No. 2(d)

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JUDGES RULING ON VOIRE DIRE

The 5th accused was arrested by D.C. CHEUK Wah-ngok and another D.C., 4069, on the 31st of December, 1975 at 3.15 (3.50?) p.m. in Fanling and taken to a small room at Mongkok Police Station at 6.50 p.m. the same day. The detective constable says that he cautioned the accused verbally at the time of the latter's arrest and at 6.50 p.m. made a post recording of

10 the caution in his notebook; and his evidence is that after the accused signed his name in the D.C.'s notebook, the accused started to write a statement which is now objected to. The statement was completed at 7.35 p.m. The production of that statement in evidence is objected to on the grounds: first, that no caution was administered to the accused; secondly, the statement was obtained as a result of a lengthy questioning; thirdly, the accused was grabbed by the chest and shaken by the detective constable; fourthly, an inducement was held out to the accused to make the statement, that is unless he made the statement, the accused's friend LI Yuk would be arrested; and fifthly, the statement which appears in the detective constable's notebook was copied from a version prepared by the constable.

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20 Summarising his own evidence, D.C. CHEUK Wah-ngok says firstly, that he and the accused both sat down in the small room of the C.I.D. office in Mongkok Police Station. Secondly, the D.C. asked the accused whether he was involved and in reply the accused was heard to say, "It's unfortunate for me. I got involved into this incident because of my friends." Thirdly, the detective constable said to the accused, "You don't have to worry." Fourthly, the detective constable cautioned the accused, writing down the caution in his notebook, and then the accused signed on his notebook that he understood.
30 Following this, the detective constable said:

"After he signed, he started to write a passage in my notebook. I told him to write. He indicated he was willing to write and said, 'Good, I shall write.' I gave him my notebook and he started writing."

40 It is obvious from this passage, save to have been written voluntarily by the accused, that part of the statement was made in answer to certain questions put by the detective constable and not only is the statement not a good summary of what must have been extracted from the accused by means of questions, despite the fact that the accused was in custody and under arrest at that time, but there is little or no connection between the first sentence and the second sentence of the statement. The statement,

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"It is unfortunate for me. I got involved into this incident because of my friends" is not recorded in any part of the D.C.'s notebook, nor of course any other questions he must have put to the accused. The Crown concedes that at least part of the statement reflects answers to questions put to the accused by the detective constable. And after the evidence of the accused and taking the foregoing circumstances into consideration, the court is left in much doubt as to the truth of the detective constable's evidence regarding the statement obtained from the accused and the whole picture is therefore not being revealed. I therefore rule that the statement made by the 5th accused is not admissible in evidence.

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No. 3

PROSECUTION OPENING

MR. MARASH: May it please your Lordship, members of the jury, as you have heard in this trial I shall be appearing for the prosecution and my friend, Mr. Huang, is appearing for all five accused. The five defendants in this trial are charged that together with a person known as LI Yuk who is not in custody they did murder Chinese male LAM Shing on 28th December last year at 689 Nathan Road, Mongkok, in the premises of the Siu Nui Chin Kiu Music Parlour. All five defendants also face two further counts of wounding with intent that on the same day at about the same time, same place they did unlawfully and maliciously wound LI Kwong-ye with intent to do grievous bodily harm to persons and also unlawfully and maliciously wounded CHAN Heung-choi with intent to do grievous bodily harm to persons. I will say more to you about the wording of this: "to do grievous bodily harm to persons" later on when I mention certain matters of law.

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Members of the jury, in this case you are the judges of the facts. You are in fact the judges of the facts between you and it is for you to decide on the evidence, what you hear in this case, what really happened in this case which resulted in the innocent killing of a man named LAM Shing who the Crown says was going about his own business on the night of the 28th

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December last year; at the same time two others were also wounded. In deciding the facts you will hear and you will see evidence which will come to you in three main ways. It will come to you from the witness box, that is the witness box there, where the witnesses will go and will take an oath or an affirmation and present to you their evidence. They will give their evidence verbally. They may produce items in this case, such as knives, clothing, and they may produce documents. In the case of documents and items you will be entitled to study these and you will have them before you when you retire to deliberate on your verdicts. You must consider the evidence and decide what really happened in these events. In doing so you are entitled to use your common sense, your knowledge of everyday affairs, personalities, and in deciding what the real facts are, the true facts, you may choose to believe a witness entirely and accept the whole of his evidence, you may accept part of his evidence and reject the other part, and you may accept none of the witness's evidence at all because you don't believe anything that he said. You must keep to the evidence, members of the jury, and you must not subplant your own opinion in place of the evidence that you hear and see. Having decided what the true facts are you are entitled to draw inferences from those facts, and at the end of this trial I will invite you from the facts that you hear to draw inferences that all of the five accused in the dock are guilty of the charge, in fact the three charges which have been laid against them. Regarding the facts, at the end I will invite you to take a particular view of them. My friend, Mr. Huang, will no doubt invite you to take a different view and his Lordship may agree with one of us, in whole or in parts, or not agree with us at all, he may take a totally different view. But in the end it is for you to decide, and you alone, what the real facts and the true facts are. You have to decide what weight you place on those facts and what inferences you choose to draw from them.

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As regards the law in this trial, you will hear myself and my friend in our final addresses discuss matters of law and I will hope that you will pay attention to us both. But in the final analysis you must take the law as is given to

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you by his Lordship. He is the sole decider of the law in this trial and you must accept it as he gives it to you. If you happen in your history to study any law or learn any law from television shows or anything else, forget it. The law in this trial will be given to you by his Lordship, and you must so apply.

Members of the jury, in a criminal trial the burden of proof is always on the Crown to prove the case to you beyond a reasonable doubt. That is a matter which I do not wish to go into at length at this stage except to say that on behalf of the Crown I acknowledge that burden and by the evidence which you will hear in this trial I hope to discharge it.

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I come to the facts which you will be concerned with in this trial. Situated at 689 Nathan Road in Mongkok there are two establishments owned by Mr. CHIU Lung. These are called the Sun Sze Suk Lui Massage Parlour situated, I think, on the first floor and the Siu Nui Chin Kiu Music Parlour situated on the mezzanine floor below. You have in your possession at present a number of photographs and you will notice that the first four of those photos represent various scenes inside the Sun Sze Suk Lui Music Parlour. There is an overlap of staff between these two establishments. Being owned by the same proprietor some of the employees occasionally worked upstairs in the Sun Sze Suk Lui and sometimes they worked downstairs in the Siu Nui Chin Kiu. On the 27th December last year the 1st accused CHEUNG Kwan-sang, as you see, sitting on the right in the front row, arrived at the Sun Sze Suk Lui Massage Parlour, that is the premises upstairs, where he was a known customer. On entering the premises he asked for a hostess whom he had known in the past, a girl named Jenny. He asked her to massage him. He was shown duly to a cubicle and this girl Jenny came in. She recognised immediately the 1st accused as an old customer. When she started to massage the 1st accused he refused to let her do so and he began to interfere with her, putting his arm around her neck and pulling her hair. She told him to stop and he threatened to beat her up. She again started to massage him and he did the same thing to her again. She tried to leave the cubicle in which they were situated but the 1st accused

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10 became enraged and he punched her about the face
and about the waist with clenched fists, I think,
while resulting in her suffering black eyes. She
shouted for help and some of the employees of this
establishment broke the door down and took the
girl Jenny out. At this stage the 1st accused
rushed out of his cubicle holding a hair dryer in
his hand. He attempted to strike this girl with
the hair dryer. By this time some of the
employees had come from downstairs in the Siu Nui
Chin Kiu Music Parlour. As I have said, there is
an overlap between these employees and they had
obviously heard this commotion. They got hold of
the 1st accused who was still struggling and
fighting. They forced the victim into the
premises. In the premises they gave him what you
may, after you have heard this evidence, decide
to be a thoroughly deserved beating. He was
thrown out forcibly from the premises. This girl
20 Jenny sought medical treatment and no report
covering that because her injuries were not all
that serious. After leaving the premises the 1st
accused is not heard of again until shortly after
mid-night on that very same evening when he
turned up to Queen Elizabeth Hospital for
treatment. All these big hospitals in Hongkong
the Police invariably have a police constable or
a woman police constable situated in the Casualty
Department for the purpose of enquiring into any
30 people coming for a treatment with suspicious
wounds. On this particular night somebody noticed
that the 1st accused had chop wounds on various
parts of his body which requires suturing, and it
appears that a phone call was made back to
Yaumati Police Station and a woman detective
constable YUEN Kwai-ping was instructed by the
duty officer of Yaumati to proceed to the Queen
Elizabeth Hospital to investigate a reported
wounding case. She interviewed the 1st accused
40 and she took a statement from him, and she will
tell you about this statement which will be
produced before you. The statement was taken
down by her at the 1st accused's dictation and at
the end of it he was requested to sign it. It
was taken down in Chinese characters and the 1st
accused signed at the base. The substance of
what he said concerning how he came by his
injuries is as follows:

50 "Tonight after work, I arranged with my
fellow-worker C/M NG Wai-hung to meet

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(with each other) at Yaumati Theatre,
after taken (our) meals, (and then) to
take a walk in the streets.

At about 22.50 hours I saw NG Wai-hung,
bringing two men to the pre-arranged
location, so the three of us walked to
Temple Street to see something. Later
(we) walked to a cooked-food stall in the
vicinity of Woosung Street near Sai Kung
Street. After taking the night snack, we
walked to Temple Street near Pak Hoi Street.
Suddenly three strangers who were holding
knives in (their) hands chopped at the
four of us. I then warded it off with
hand (and) so (I) was chopped and injured
at the left upper arm. Those three men
then left speedily. Afterwards I saw NG
Wai-hung was also injured (but I) did not
see (whether it was so with) the other two.
Afterwards I and NG Wai-hung took (a) taxi
to Q.E.H. to see the doctor."

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The woman detective constable then asked
the 1st accused some questions about this attack.
She asked him, "Do you know those three
assailants?" His answer was "I don't know." She
then asked him, "Do you have grudge over quarrel
with (anyone)?" The answer was "No. It may be
that (I) was wrongly identified." The next
question: "Do you know the two friends whom NG
Wai-hung had brought (with him)?" Answer: "I
don't know." She then recorded:

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"Those three assailants descriptions are:"

- which she apparently got these from the 1st
accused -

"(1) C/M, about 22-23 years old, about
5'3" (tall), short hair, wearing cowboy
suit, held an about 10" beef knife in hand,
others unknown."

That is the other particulars.

"(2) to (3) C/M(s) aged about 24-25 years,
about 5'4" - 5" (tall), wearing dark
coloured suit, each was holding a knife in
hand, others unknown."

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And the 1st accused signed that statement. So in effect he had said at this stage he didn't know who attacked him. I should say at this stage it is not part of the Crown's case that any of the employees from the music parlour or the massage parlour attached this accused with knives. The Crown is at this stage not saying that the 1st accused didn't think they may have been connected with those establishments. You will hear the evidence and it will be for you to decide. The 1st accused was then discharged later that morning from the Queen Elizabeth Hospital, that is, on the morning of the 29th December.

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The next time the 1st accused surfaced was that same evening at the Siu Nui Chin Kiu Music Parlour at approximately 11.40 p.m. when the witnesses will tell you six to seven Chinese males entered the Siu Nui Chin Kiu Music Parlour through the front door. You have a plan in front of you which I shall not go into in depth now, but that shows you the music parlour. The plan on the left is that of the mezzanine floor, the Siu Nui, and the plan on the right hand side is that of the general position of the building in that block. These men came into the reception hall, that is what you see in photographs B and C, or (2) and (3), whichever way you wish to call them, and the front door which I refer to you can see, I think, in photograph No. (1) or A. Present in this reception hall at the time were a number of people. Firstly, they were CHAN Heung-choi and LI Kwong-yea who were two of the employees of these two businesses. They are the victims of the two wounding charges. Also present was an usher, Mr. YIP Tin-sung, the deceased LAM Shing, and there was also a hostess called TANG Yuk-kuen. LAM Shing, you will hear evidence, was a driver employed by the Japan Tailoring Company. He had legitimate business in that music parlour and that was that he was there to collect debts owed by the girls for clothings provided to them by his firm. He was a driver of that firm and it was part of his duty to collect various debts owed by different places where people would pay him for the clothes. That was the reason he had been there at the reception hall. His wife will tell you that he was a 39 year-old family man, a man who was a good husband and had not been in any trouble and had no

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previous conviction of any sort. When these men came in, it appears that first of all three came in, and the second group followed shortly after them. Thinking that they were customers, potential customers, YIP Tinsung and LI Kwong-yeo went forward to greet them. The man at the front of this group said at that stage that he was from the Criminal Investigation Department of the Mongkok Police. He said, I think, he was a C.I.D. man and he ordered all of these people in front in the reception hall not to move and Yip at that stage thinking and believing that they were police officers turned on the lights because he thought they had come to carry out a check on the licence of the premises. Suddenly all the men drew out knives and triangular files - beef knives, I think you will hear the witnesses describe them as - and CHAN Heung-choi who was standing nearest to them was chopped across the right elbow and the knuckles of the left hand by the very first man who had come in. Chan ran towards what is known as the rest-room which you will see marked in the floor plan in the bottom left hand corner, labelled "resting room". He ran towards YIP Tin-sung, the usher, who was standing near there. In the meantime LAM Shing was chopped and he fell to the ground. Whilst he was on the ground defenceless two of these men rushed forward and hit him once more. YIP Tin-sung and CHAN Heung-choi fled into this resting room and they pushed their bodies against the door to prevent anybody coming in afterwards. They in fact will tell you that they heard someone or some people trying to force this door open. At the same time while they were in there they heard LAM Shing shouting for help. LI Kwong-yeo who, you will recall, went forward to greet these men also had a knife placed at his neck by one of the assailants. He was told not to move. After CHAN Heung-choi had been attacked this assailant chopped Li on the head with a knife of some description. Li ran from the room into a toilet, that is, in another direction. I don't think you will see the toilet actually marked on this plan. Perhaps we can hear more about that from the person who made it when he gives evidence. He ran into the toilet and out through a window onto a verandah at the back. The hostess who was also in the reception hall, Miss TANG Yuk-kuen was dragged aside by one of these assailants when they first entered through the front door and she

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watched some of the proceedings, from where she was standing. After the attack the assailants fled from the music parlour. About five minutes after the attack had begun the usher YIP Tin-sung came out from the resting room and he saw LAM Shing lying on the floor near to the main door. I think if you look at the fourth photograph you will see approximately the position in which he was. Those items which you see there on the floor were put there by the various employees to make him more comfortable. This man Yip then telephoned the police for help. Meanwhile out on the verandah LI Kwong-yeo peeped through a ventilator and saw all the staff were back in this reception room and he came back into the room. The police had arrived and the first officer at the scene of this crime was Detective Sergeant WONG Lung-piu. He found LAM Shing lying on the floor covered with a quilt, that is where the staff had put him. An ambulance was summoned by the police. LAM Shing was sent to the Kwong Wah Hospital together with Chan and Li. The deceased Mr. Lam reached the Kwong Wah Hospital in the early hours of the 29th December. On admission to the hospital he was treated by a doctor NG Sheung-yeo. He found his condition was poor and he was in a state of shock. Emergency operation was carried out on him immediately and he was found to be suffering from four different wounds. The first of those wounds was on the right lower rib. You will see the last three photographs which you have before you. I am afraid, members of the jury, you have to look at these although not pleasant. These photographs were taken some time later and you should not form the impression that the lengthy wounds that you see there and the stitches shown on the body are directly as a result of the attack. Those have come about through the treatment that the deceased received from the doctors who treated him and, of course, these photographs were taken after all that was over and after he had died. Consequently the wounds are in fact not quite what you see here at all. But the positions of the wounds are indicated. The first of these, as I say, is on the right lower rib region and it came from the right side penetrating the right kidney. If you look at the first of those photographs where the deceased is shown his face you will see these wounds at the bottom there. The second wound that he suffered was on the left

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hand side of the stomach close to the belly button, that is the wound you see in the same photo in the middle. Of course it is exaggerated because of the operation stitches. That perforated the stomach wall on the front. If you look at the last photo it is somewhat deceptive. Although it may appear to be an arm it's in fact the torso of the deceased and he is faced down in that photograph. The next wound is the wound you see to the right buttock at the bottom left of the picture. That was an 8 c.m. long wound. When it was first seen it was muscle deep. The deceased also suffered a superficial wound over the upper left side, that is the small wound that you see in the last photograph, just a small wound towards the top right hand side of the picture. The doctor removed part of the deceased's kidney and he treated each of these other individual wounds. Unfortunately at 4.50 p.m. on the next day on the 30th December the deceased suddenly died. On the 2nd January the deceased's body was examined by a Dr. David YIP Chi-pang and he determined that the cause of death was the stab wound to the right kidney, that is the wound which I have told you about in the bottom right hand corner of that second last photograph. Meanwhile on the 29th December CHAN Heung-choi and LI Kwong-ye were treated at the Kwong Wah Hospital for the wounds and they were later transferred to the Queen Elizabeth Hospital for further treatment. Li was detained there for two days, but Chan was discharged the same evening.

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Meanwhile back at the Siu Nui Chin Kiu Music Parlour further police had arrived at the scene and a search was carried out. This was of course immediately after the injured people had been taken away. Detective Constable 8954 WONG Shu-kwong was given the task of collecting exhibits and he found a triangular file near the cashier's counter as you will see in the fifth photograph before you. A better view perhaps of the full position of this triangular file will be seen in the second photograph on the floor near the counter beside the stool. He seized that triangular file and he also seized the jacket of the deceased and took some blood samples from the area. Prior to that he had actually been to the Kwong Wah Hospital and he had taken the clothing of the deceased from him for

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analysis. He will produce all of these items that he seized for you to examine.

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10 The police then commenced full investigations into the events that had occurred. Acting on information they proceeded—that is a party of police officers from Mongkok C.I.D. proceeded under Inspector Robson to Block A, Kam Tong Mansion, 10th floor, in Waterloo Road where they found the 1st, 2nd and the 3rd accused. It appeared that they all resided in these premises. A search was conducted and two knives - two beef knives were found underneath a pillow of the 2nd accused - that was in the cockloft of the premises. The three men were arrested and they were taken back to the Mongkok Police Station where they were interviewed. The 1st accused was interviewed by a detective sergeant, NG Sai-kit, at 6 a.m. in the morning, that is the morning of the 29th December. He told him that he was
20 investigating into a serious wounding case which had occurred at 11.40 p.m. on the 28th December at 689 Nathan Road, Mongkok in which Chan, Lam and Li were injured with sharp weapons and the 1st accused was cautioned. That is a police term, of course, which perhaps you are familiar with. But it means that he was told that he was not obliged to say anything unless he wished to do so, and whatever he said would be taken down in writing and may be given in evidence in court.
30 The 1st accused was asked if he understood the caution and he said that he did - in fact he signed on the sergeant's notebook that he understood - and then he went on to write a statement about what had occurred. I will read to you what he wrote some six hours approximately - six to seven hours after the events in the Siu Nui Chin Kiu Music Parlour:

40 "At 11 p.m. on the 27th day of this month, at Sun Sze Suk Lui, I sent for Chun Nei to massage (me). She did not offer good service. I hit her with (my) fists, and so I was assaulted by them. When going down to the ground floor, I was again chopped by some people in the vicinity of Tai Ho Choi Mahjong School. I wanted to get my own back. At 11 o'clock the same night, (I) arranged to assemble with LI Yuk, LI Keung, CHEUNG Fai-hung, LI Ming and two others whom I did not know, at Lung Wai Restaurant. Together

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(we) brought the knives up to Siu Nui Chin Kiu, Nathan Road. I pointed out the appearances (and) they chopped. I have the telephone (number) of LI Yuk. I can bring you to find him. What I said is all true."

And he signed that statement. That statement will be produced before you and you will be able to examine it. At about the same time the 2nd accused was being interviewed in another room. He was being interviewed by Detective Constable 6182 CHEUK Wah-ngok. He told him what he was investigating in similar terms to what NG Sai-kit had said to the 1st accused and he cautioned him in a similar manner telling him he was not obliged to say anything but whatever he did say would be taken down in writing and they may be given in evidence. The 2nd accused then went on also to make a statement as to his involvement in these affairs. I shall read to you what the 2nd accused said. He signed that he understood the caution and then he said,

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"I understand. Now I tell you the truth. At about 9.30 p.m. to-night, at Kam Tong Mansion, Block A, 10th floor, CHEUNG Kwan-sang told me to drink tea at Lung Wai Restaurant. At that time I asked 'you' (that is him) what the matter was. He said (he) would tell me when (we) arrived at the restaurant. At that time I promised him. At about 10.10 o'clock on arrival at Lung Wai Restaurant, I saw about 8 people at CHEUNG Kwan-sang's table, drinking tea. After I sat down (I) asked him what had happened. He (that is CHEUNG Kwan-sang) said (he was) going to fight. I again asked CHEUNG Kwan-sang. CHEUNG Kwan-sang told me (that they would) go to Siu Nui Chin Kiu Musical Parlour. I asked CHEUNG Kwan-sang why (they) would go to fight. He said, 'I have been assaulted by the people of Siu Nui Chin Kiu and so (I shall) go up to assault them.' At that time CHEUNG Kwan-sang told me to return home to get knife (Knives). I said I had no knife. Then he said that (he) had already put the knife (knives) on my bed. At that time I could only return home and brought the people to take the knife (knives) from the

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bed and to bring it (them) to CHEUNG Kwan-sang at the Lung Wai Restaurant. At that time CHEUNG Kwan-sang, at Lung Wai Restaurant, told me to (go with them) to Siu Nui Chin Kiu Musical Parlour to fight but I did not promise CHEUNG Kwan-sang. Then I returned home by myself. I know nothing about their fight."

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10 And the 2nd accused signed that statement.
He was then asked a question by the detective
constable as to what he was referring to when he
mentioned "to-night at the Kam Tong Mansion" and he
said "the 28th December, 1975". He signed that
passage too. Of course it is the Crown's case that
this man did not resist at that particular stage
and he did go to the Siu Nui Chin Kiu Music Parlour
to take part in the revenge. Acting on further
information, after these three men had been
20 detained in the cells, the Mongkok police kept
watch on a stone hut at Pat Fook Village in the
New Territories and on the 30th December last year
Detective Constable LAM Yee-cheong actually raided
that hut and he found the 4th accused CHO Shu-wah
asleep in the premises. The detective constable
identified himself as a police officer and told
him what the 4th accused had been sought in
relation to, that is these affairs at the Siu Nui,
and he arrested him and took him back to the
Mongkok Police Station. On the 31st the next day
30 they continued to keep watch and after some six
hours' observation the 5th accused WONG Kam-ming
turned up at the same hut. He was duly arrested
by Detective Constable Cheuk and he was taken back
to Mongkok Police Station also.

40 While all this was going on in relation to
the 4th and 5th accused, the police arranged a
number of identification parades. The first of
these parades took place on the 30th December last
year at 2.30 in the afternoon. These parades were
usually conducted by a senior officer, an officer
unconnected with the case for the purpose of
fairness, and that is exactly what was done in this
particular case. A senior officer, Superintendent
Brian Webster took charge of this parade. The
parade concerned the events on the night of the
27th, that is the night on which the Crown alleges
the 1st accused assaulted this girl Jenny and the
persons who viewed that parade were Jenny - her
name is CHEUNG Wan-ying - and SO Hung and another

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person who is not going to give evidence. It was for the purpose, as I say, of identifying the events on the night of the 27th. You will hear legal evidence from Supt. Webster about this parade. But at this stage it is sufficient for me to tell you that the girl Jenny identified the 1st accused as the man who assaulted her. Of course there were eight persons on this parade, all of a similar height, age and appearance as the 1st accused, and similar clothing, so that he is not designed to stand out from any of the others. The second parade was conducted by Supt. Webster at 3.30 that afternoon, and that parade was in connection with the events that happened on the 28th when these people were chopped and injured. The 1st, 2nd and 3rd accused all took part in that particular parade. You will hear detailed evidence about this also. This parade was viewed by CHAN Heung-choi, one of the victims, YIP Tin-sung, the usher, and TANG Yuk-kuen, the hostess who was in the reception room. At this stage LI Kwong-yea was still in hospital and unable to view the parade. There were eighteen participants in the second parade other than the three suspects, the 1st, 2nd and 3rd accused. Once again all of these men were of similar heights, ages, appearances and clothings so that none of these three men would stand out from the group. You may have seen, members of the jury, on television about picking through windows an accused which you see in American television shows; it doesn't happen here in Hongkong; they have formal line-ups. The prisoners prior to the parade had an opportunity to object to any of the other people on the parade and they chose not to do so. The prisoners chose the positions in the line-up that they wanted and each witness came in and viewed the parade separately. At this particular parade CHAN Heung-choi identified the 1st accused as being one of the assailants; YIP Tin-sung also identified the 1st accused; and TAN Yuk-kuen, the hostess, was unable to identify anybody. A third parade was held on the 2nd January. This was a parade conducted by a different superintendent, Woman Superintendent CHU Ying-nee, and it concerned the 4th and 5th accused. Once again a group of people, on this occasion twelve others other than the two accused, took part. All of these people once again were of similar heights, ages, appearances and anything

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10 else so that the accused would not stand out. The
parade was viewed by CHAN Heung-choi, the victim,
YIP Tin-sung, the usher, TANG Yuk-kuen, the
hostess, and LI Ywong-ye, the other victim who
by this time had come out of hospital. At this
parade CHAN Heung-choi identified the 4th
accused, CHO Shu-wah, as being one of the
assailants; TANG Yuk-kuen identified also the
4th accused as one of the assailants; and LI
Kwong-ye identified the 5th accused as one of
the assailants. Now that LI Kwong-ye was now
well enough to carry out this sort of procedure
another parade was held later that afternoon, once
again with the same woman superintendent in
charge; and this one was for the 1st, 2nd and
3rd accused because LI Kwong-ye had not yet had
an opportunity to view a parade with them in it.
Apart from the three accused there were eighteen
others on the parade. On this particular parade
20 LI Kwong-ye identified the 1st, 2nd and the 3rd
accused as being the assailants at the Siu Nui
Chin Kiu Music Parlour.

30 Also on the 2nd of January this year in the
morning, Dr. David YIP Chi-pang, the Government
Forensic Pathologist, examined the five accused.
In relation to the 1st accused, he found that he
had an almost healed superficial half inch long
cut on the right upper back near his shoulder.
And he found another similar wound on his lower left
arm. He also found a sutured cut wound on the
back of his lower left arm which appeared to be
healing well. The 2nd, 3rd, 4th and 5th accused
were found to have no injuries whatsoever.
Members of the jury, they are the facts which you
will hear evidence about in this trial.

40 I now wish to mention to you certain matters
of law pertaining to the charge of murder and the
charges of wounding with intent. Firstly,
concerning murder. Over the years, the law in
relation to murder has not become as clear as one
would like. I am not going to go, at this stage,
into all the possibilities that can arise when
considering the charge of murder. But, first of
all, you should remember that it is not necessary
for a man to be convicted of a charge of murder
for the Crown to prove he was the one who actually
pulled the trigger or put in the knife that killed
the deceased, that is by his own hand. There are
various degrees of participation in a killing

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which will render the persons who had participated in it guilty of murder. The first possibility is this, that if a man does kill somebody and he intends to do so, actually intends to kill him, then that man may be liable to be found guilty of murder. It doesn't mean that he has to go away and think about it for three weeks to premeditate it - three weeks, a day, an hour. If at the time that he puts the knife in or pulls the trigger, he intends to kill that person, he may be found guilty of murder. Of course, a person must die. The second possibility is if a man by his own hand kills somebody and at the time that he does so he intends to cause that person really serious injury - lawyers call it grievous bodily harm - if he does the act with that intent and a person dies, he is similarly guilty of murder. There are, of course, circumstances in both of those cases which may reduce the charge of murder to one of manslaughter but I will not go into those matters at this stage.

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There is a third situation and I venture to say that this may be the one that will most concern you in this particular trial. Where a group of men make a plan to go out to kill or to cause really serious injury to a person or a group of persons, all those who take part in the concerted plan by going to the scene of the killing and participating to the extent of watching for their companions in order to prevent surprise, remaining at a convenient distance in order to favour their escape, if necessary, or putting themselves in such a situation as to be readily able to come to their assistance, the knowledge of which was calculated to give additional confidence to their companions; all of these people who participate to that extent in a concerted desire to kill or to cause really serious injury are guilty of murder even if they themselves don't actually plunge in the knife or pull the trigger.

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The case for the Crown here in this trial is that these five defendants and two other men, one of whom is this man LI Yuk, who is not in custody, gathered together in the Lung Wai Restaurant on the night of the 28th of December last year prior to going to the Siu Nui Chin Kiu Music Parlour, that they brought knives and

triangular files to the restaurant and they agreed between them to go up to the Siu Niu Chin Kiu Music Parlour or the Sun Sze Suk Lui Massage Parlour to attack the employees of those establishments in revenge for CHEUNG Kwan-sang having been thrown out and mishandled on the previous evening. It is the Crown's contention that these men carried out their intention, their common plan, to use these knives for the purpose of killing those people or at least causing them really serious injury, that is grievous bodily harm.

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LAM Shing, an innocent bystander, was killed by mistake. That these men got the wrong man does not in law enable them to stand here before you today and say "We didn't intend to kill that particular man or seriously injure him and therefore we are not guilty of murder", because the law recognise what is known as "transferred malice". If you intend to kill or seriously injure A and by mistake you get B, that is your bad luck as well as the deceased's. The law recognise the malice when applied to the wrong person. That is so in the case of murder.

In the case of the other two counts, that is the wounding with intent counts, you will recall these men, as I told you, are charged firstly that together with a person known as LI Yuk, they unlawfully and maliciously wounded LI Kwong-yeo with intent to do grievous bodily harm to persons and they similarly wounded CHAN Heung-choi with the same intent. The persons that are referred to by this phrase "grievous bodily harm to persons" are the employees of the Siu Niu Chin Kiu Music Parlour or the Sun Sze Suk Liu Massage Parlour, the same intent in fact as was indicated by the Crown in the first charge.

So, members of the jury, you have to listen to the evidence in this case, decide if there was a common plan, what it was, whether the defendants, which ones of them, were party to it, whether all of them were party to it and which of them participated in carrying out the plan. As I told you, you are the sole judges of the facts in this trial. The trial is estimated to last some three weeks. No one can remember all the evidence that they will hear in that time but, of course, you are welcome if you

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wish to take notes of any evidence you hear in
this court. I'll now call the evidence before
you. Thank you.

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RESPONDENTS EVIDENCE

11.05.a.m. Court resumes.

Accused present. Appearances as before. Jury
present.

MR. MARASH: My Lord, I have TANG Yuk-kuen here,
so I shall call her now. I call TANG Yuk-kuen.

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P.W. 4 - TANG Yuk-kuen Sworn in Puntì.

WITNESS: I don't want my address to be announced
in court.

COURT: You don't have to announce it in court.
You can write it down.

XN. BY MR. MARASH:

- Q. Is your full name TANG Yuk-kuen?
A. Yes.
Q. Do you work under the name of TANG Siu Ling?
A. I only use the name Siu Ling, not TANG Siu
Ling. 20
Q. Would you please write down and produce to
court your present residential address on
this piece of paper?
A. (Complies.)
Q. Are you married or single?
A. Single.
Q. Do you live at home with your parents?
A. Yes.
Q. How old are you now? 30
A. 23.
Q. Is it correct that you have in the past
worked in an establishment known as the Siu
Nui Chin Kiu Music Parlour?
A. Yes.

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- Q. Which is situated at 689 Nathan Road on the mezzanine floor?
- A. Correct.
- Q. When did you first commence to work there?
- A. About one year prior to the occurrence of this incident.
- Q. So you started to work there some time around the beginning of 1975?
- A. Yes.
- 10 Q. What was your occupation in that music parlour?
- A. As a waitress.
- Q. On the 28th December, last year, did you go to work at the Siu Nui Chin Kiu premises?
- A. Yes.
- Q. Do you recall what time you started work?
- A. Shortly after 8 p.m.
- Q. Do you recall the incident that occurred that evening at about 11.30 to 11.40 p.m.?
- 20 A. Yes, I do.
- Q. In which room were you when you first became aware that something unusual happened?
- A. I was not inside a room, I was standing outside. I was at the cashier's office.
- Q. What you call the room in which the cashier's office is situated?
- A. I was standing in fact behind the counter talking with the cashier.
- 30 Q. Would you please look at this photograph, photograph D.
- A. I was standing further to the right of the photograph behind this counter where there was someone marking down the service hours on the tickets.
- Q. Would you look please at photograph C and tell us the position where you were standing?
- 40 A. Before the incident occurred I was standing inside here behind the counter.
- Q. Do you recall who else was in that room with you at the time before the incident occurred?
- A. Which room are you referring to?
- Q. You have told us that you were standing behind the counter as shown in photograph C?
- A. Yes.
- 50 Q. The counter appears to be in a large room, I think that room is called the reception room, is that right?

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- A. I was chatting with the cashier behind the counter.
- Q. Is that room known as the reception room?
- A. Yes.
- Q. What was the cashier's name?
- A. LI Kai.
- Q. Do you remember if anybody else of the staff of the Siu Nui Chin Kiu was in that room at the time?
- A. There was no one near the place where I was standing, but on the opposite of the room there was a general worker. His name is LI Kwong-ye. He was at the sofa. 10
- Q. Would you look please at photograph B. Is that the sofa to which you are referring?
- A. This is the sofa.
- Q. What was he doing on the sofa at the time before the incident occurred?
- A. Sitting there.
- Q. Do you recall if anybody else was in the room? 20
- A. No, the other persons were inside the rest room watching television.
- Q. The resting room is a room which adjoins this reception hall, is that correct?
- A. Yes.
- Q. Would you tell us please what was the first thing that came to your attention concerning this incident?
- A. There were about 7 to 8 persons who came into the premises. As soon as they had entered they announced that they were members of the C.I.D. and told us not to move. 30
- Q. Did they enter through the front door or some other door of the premises?
- A. Through the front door.
- Q. When you first noticed these people coming in how many did you see?
- A. In the confusion I saw about 7 to 8 of them. I am positive that there were 7. 40
- Q. Which of them said that they were C.I.D. - the first, the second, or the third that came in - which one?
- A. It seems to me that it was either the first or the second one who said this. As you know, I did not anticipate anything would happen.
- Q. What was it that drew your attention to them, was it when they came in through the door or was it that somebody said they were C.I.D.? 50

A. They attracted my attention when the whole group of them came in.

Q. After one of them said that they were C.I.D. what happened then?

A. At that time I did not see any weapon yet. They said, "All come out. Don't move." At that stage I thought they only came to examine the licence of the establishment.

10 Q. Did anybody come out?

A. I walked out of the counter. One or two of the floor managers also came out and other employees who had been watching television also rushed out on hearing the noise.

Q. Do you know which of the employees came out?

A. Those witnesses, that includes Hak Chai and YIP Bun.

Q. Do you know the full name of Hak Chai and YIP Bun?

20 A. Hak Chai in fact is YIP Bun. LI Kwong-yeek stood up from the sofa. He thought those persons were customers and he attended to them.

Q. When you say he attended to them did he walk towards them?

A. Yes, at the beginning they thought they were either customers or they came to examine the licence. So he approached them and greeted them. At this stage the deceased also came out.

30 Q. Where had the deceased been prior to this?

A. He had been watching television inside the resting room and he also rushed out from inside.

Q. Do you know what he was doing on the premises that night?

A. The deceased was employed as a driver at the Japan Fashion Shop and very often he came to the premises to collect payments from the hostesses who had purchased clothes from the shop.

40 Q. Is that the reason he came on that evening?

A. Even when he was not collecting payments he would go to this establishment just to sit there.

Q. Am I correct that he was not an employee of the Siu Nui Chin Kiu Music Parlour?

A. No, he was not, but the Japan Fashion Shop is also owned by the same boss as the music parlour.

50 Q. Other than the deceased LAM Shing and YIP

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- Bun can you remember if anybody else came out into the reception room?
- A. There is another person, we call him Fei Chai. He is also one of the floor managers.
- Q. Do you know his full name?
- A. Let me think it over... I can't remember.
- Q. Is that all you remember coming out into the reception room?
- A. There was another person whose hand later was chopped and injured. 10
- Q. Do you know his name?
- A. Originally he was working upstairs and he had just been transferred to that floor for a short while.
- Q. You don't know his name?
- A. Everybody calls him Ah Hung. There was another general worker called Ah Lun who was working upstairs on the floor above.
- Q. And he also came into the reception hall, did he? 20
- A. Yes.
- Q. When all these people came in where were the 7 men who came in; were they at the door, near the counter, whereabouts?
- A. They stayed in the middle of the reception room.
- Q. What happened then?
- A. Later he drew out a weapon.
- Q. Who do you mean by "he"? 30
- A. Those group of persons.
- Q. How many did you see draw out weapons?
- A. Every one of them had weapons.
- Q. Where did they draw them out from?
- A. Some of them drew the weapon out of the waist and others produced weapons from their pockets. They were wearing cotton-padded jackets.
- Q. What sort of weapons did you see them draw out? 40
- A. From what I saw I could see clearly they were knives about this long. (Witness indicates with hands.)
- Q. About what - 12 inches?
- A. Beef knives, this length.
- COURT: About 12 inches?
- A. Yes, those were beef knives.
- Q. Did you notice if there were any other types of weapons other than beef knives?
- A. In the confusion I did not see clearly 50

but after the incident I saw a
triangular file lying on the floor.

Q. When these men drew out the knives where
were you at that time standing?

A. One of them grabbed hold of me and dragged
me to one side telling me not to move.
Can I see the photograph? I can point him
out to you.

10 Q. Yes, would you look at photographs C and D
and tell us if you can show us in those
photographs where you were dragged to?

A. I was dragged to the side of this counter
here together with another casual worker
who had been working there only for two days
and who was short in build.

Q. Do you know his name?

A. I don't know his name. He only worked
there for two days and he didn't return to
the company since.

20 Q. What happened then?

A. After the floor managers had stood there
together those group of persons shouted out
"Don't move". They drew out their weapons
and started to chop them.

Q. From where you were standing were you able
to see exactly what happened?

A. The place was dark. I was aware that a
great deal of chopping was going on.

30 Q. What sort of lighting was there in that
reception hall at the time?

A. Very dim. It is a music parlour.

Q. Do you recall if during the course of these
events the lighting changed at any time?

MR. HUANG: That is leading, my Lord.

Q. How far away were you from the nearest of
these 7 men at the time the chopping began?

A. There were several of them. When they were
chopping persons they were running about and
they ran past me.

40 Q. How many of them ran past you?

A. Two or three of them ran past me. The one
who was closest to me grabbed hold of me by
my dress, pulled me to one side and told me
not to move.

Q. For what purpose did they run past you?

A. They were chasing after people in order to
chop them. Those being chased were
running away and there was a great confusion.

50 Q. How many people did you actually see
chopped?

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- A. I saw LI Kwong-yeo being chopped and he ran into the toilet. I dared not look. I only had a glance of them. There were others.
- Q. He is the only one you actually saw chopped?
- A. I was aware that he was being attacked. The attack was aimed at him.
- Q. Did you actually see the blow land on him?
- A. The attack was towards him. I was not sure whether he was chopped or not. I was very frightened. 10
- Q. Do you recall where he was standing when this man actually attacked him?
- A. Which one are you referring to?
- Q. LI Kwong-yeo.
- A. He had been sitting on the sofa and when he stood up he was being attacked in that position.
- Q. Do you remember which of them attacked him; was it the first, the second, the third or the fourth one - which of these men that came in was it that attacked him? 20
- A. I cannot recognise him because there was a great confusion.
- Q. Did any of the employees of the music parlour take any active steps to fight back against these men?
- A. No, because none of them was prepared.
- Q. You have told us that you saw LI Kwong-yeo running into the toilet. Did you see where the others ran? 30
- A. I also saw Ah Hung and YIP Bun being attacked. When Ah Hung was chopped he raised his hand to ward off the blow and his hand was injured. and then he immediately ran into the resting room.
- Q. What about YIP Bun, did you see where he ran?
- A. Ah Hung also pushed YIP Bun into the same resting room. 40
- Q. Did you see what happened to LAM Shing?
- A. Yes, I saw.
- Q. What happened to him?
- A. For instance if this is the entrance of the resting room, LAM Shing was standing over here.
- Q. Did you see if he was attacked?
- A. Yes.
- Q. Did you see anybody actually deliver a blow onto him? 50

A. I saw someone stab something into this part of his body.

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COURT: Which part?

A. His waist - I don't know whether it was the left or the right side.

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Q. What happened to him when that was stabbed into him?

A. He shouted out once and staggered forward near the entrance and fell onto the floor.

10

Q. Do you remember what he shouted out?

A. He shouted out once in pain and then following that he called out the name "Ah Ling, Ah Ling".

Q. Who was he referring to by "Ah Ling"?

A. I don't know whether he was referring to his wife or not.

Q. After he had been stabbed for this first time and fell to the floor did you see anything else happen to him?

20

A. The other attackers having failed to catch up with the others who had run away chopped LAM Shing several times and I heard someone say, "He is one of us." I don't know who said it because I had my back towards the speaker and they were about to leave.

Q. How far away were you from LAM Shing when he was attacked?

A. I was standing near the telephone all the time. It was near the place where the

30

deceased fell on the floor.
Q. Perhaps you can indicate in terms of distance in this court how far away were you from him.

A. Very near, from here to this gentleman who is sitting.

Q. The person who delivered the first blow to LAM Shing, do you remember whether he was the first one to enter the music parlour, the second or the third - which one?

40

A. I cannot remember because all of them were dressed in black, the place was dark and they had their backs towards me.

Q. Have I got the order correct: the first person attacked was LI Kwong-yee?

A. It was not like that. They had called all those persons to come out first. They had weapons. At first we thought they had come to commit a robbery. It was after all the employees had gathered there that the attack started.

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- Q. Were all these three people who were injured attacked at about the same time or was there some interval between the attacks?
- A. Some of the attackers chopped some persons while the others attacked other persons.
- Q. So this was all happening more or less at the same time, is that right? 10
- A. In fact it happened at the same time.
- Q. For how long would you say these seven men, the attackers, were actually in the premises?
- A. They stayed there for a total of a little over five minutes.
- Q. After YIP Bun and this person Ah Hung had fled into the resting room did you see if the men by any attempt chased after them?
- A. The attackers gave chase for a few paces forward and they stopped, and they turned to attack LAM Shing. Soon after that they fled. 20
- Q. Did you overhear anything that these attackers said while they were in the premises?
- A. When the chopping was going on I heard people shout "Go to hell", and then one of them said, "He is one of us, don't be afraid, and let's go."
- Q. Can you remember anything else that the deceased LAM Shing shouted out while these men were in the premises? 30
- A. At first he shouted out "Ah Yah" in pain and then he shouted out the name "Ah Ling". He said, "Ah Ling, come to save my life" after the attackers had gone.
- Q. Which entrance did the attackers leave through?
- A. Through the main entrance.
- Q. Would you look at this photograph No. A please. Do you recognise the door shown in that photograph? 40
- A. Yes, I do, that is the door where they came in and where they left.
- Q. What happened after these men left?
- A. The deceased repeatedly shouted out "Save life". Some of the employees came out and some of them went upstairs to inform other colleagues that something had happened downstairs. 50
- Q. When these men left LAM Shing was still lying?

A. He was still lying.
 Q. Other than "save life" can you remember anything else he said while he was lying there?
 A. He also put his hand to cover the part of his body where he had been attacked.
 Q. At this stage was the lighting still the same as it was at the time of the attack?
 A. The lighting was the same. The lights were not switched on until the arrival of the police.
 Q. Would you please tell us about the lighting in the premises; what sort of lights are they in this reception room?
 A. They were bulbs, built in the ceiling.
 Q. How many lights were there in the ceiling in the reception room?
 A. There were about four to five lights lined up in the reception hall.
 Q. Were they single bulbs or were they neon lights?
 A. They were bulbs put inside cylinders.
 Q. When you say that do you mean that was something like that above us?
 A. No, the bulbs were fitted in the ceiling hanging down.
 Q. So these were lights covered around the bulbs, were they?
 A. Yes.
 Q. Were those lights on at the time of the attack?
 A. Yes, those lights were on all the time.
 Q. When you say that lights were turned on afterwards, what sort of lights were they?
 A. Some of the bulbs that I referred to were tinted, but later the other lights that were switched on, they were very bright and not covered. They were switched on when people came to examine the licence of the establishment.
 Q. Exactly what time you say they were switched on when people came to examine the licence; was that when these seven men came in or when the police came in; at which stage were these lights turned on?
 A. Those brighter lights were switched on when the police arrived.
 Q. The lights that were on at the time of the attack you say these bulbs were tinted, what colour?
 A. In various colours: green, orange and red.
 Q. You say at least five of those?

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- A. In the reception room.
- Q. Where were the lights situated - were they in one particular area or were they in different parts of the room?
- A. They were fitted in one line by a distance of this much apart.
- Q. Did they go right across the room or just in the centre of the room - whereabouts?
- A. They were in one line fitted on the ceiling. 10
- Q. Fitted on the ceiling where - the centre of the room, the side of the room?
- A. In the centre.
- Q. Was there any lighting near the cashier?
- A. The lighting near the cashier was brighter and the cashier had a small neon light for himself.
- Q. Where was that light: over his head or on his desk - whereabouts?
- A. Can I show it from the photograph? 20
- Q. Yes, please. Perhaps you look at photograph D.
- A. The cashier's small neon light would be below the counter, not visible from the picture, and there were other lights above the counter, but they were rather dim.
- Q. What sort of lights were they above the counter?
- A. Small bulbs, also tinted.
- Q. What colour were they tinted? 30
- A. Various colours: orange.
- Q. Now the neon light near the cashier's counter, did that shed any light over this counter into the general room?
- A. No, it would not because it is a very small one.
- Q. Was there any window opened to the street in that reception hall?
- A. There is no window at all.
- Q. So the lighting in the room consisted of coloured lights on the roof in the middle, the lighting over the back of the counter - that we see here in photograph C - and the light near the cashier's counter? 40
- A. Yes, that's all.
- Q. When these men came out of the resting room, that is the employees, do you recall if any light was on in the resting room which had any effect on the lighting in this room? 50
- A. It would not affect the lighting of the reception room.

Q. How long was it for the police to arrive?
 A. About ten minutes later.
 Q. Do you know who contacted the police?
 A. Fei Chai.
 Q. Did he do that by telephone?
 A. By telephone from the scene.
 Q. Did you or anybody else try to help LAM Shing?
 A. After the attackers had gone some floor managers approached LAM Shing and held up his head.
 Q. Did they move him from where he was lying?
 A. No, he was not moved.
 Q. Would you look please at photograph B and tell us if you recognise anything shown in that photograph?
 A. After the assailants had left, some of us took this thing and placed it on the floor to support the deceased.

20 COURT: A cushion, is it?
 A. It was taken from the sofa.

Q. Do you see the thing at the bottom left hand side of the picture which appears to be a coat?
 A. Yes.
 Q. Do you know who that belonged to?
 A. The deceased's coat.
 Q. Did somebody take that off the deceased after the attackers had left?
 A. No, this coat was removed from the deceased by the ambulance men.
 Q. During this time the deceased was lying there waiting for the police to come and the ambulance men, do you recall if he said anything?
 A. They restrained the blood of the deceased. He was shouting out in pain all the time and he told SO Hung saying that he knew his end was near and he asked him to take revenge for him.

40 Q. Did he make any comment about his attackers?
 A. No, he did not. He grabbed hold of SO Hung's hand and said he was wrongfully attacked and that he knew he was going to die.
 Q. Do you know LAM Shing very well?
 A. I only came to know him while working up there.
 Q. During the time that he was in the premises had he himself ever been involved in any other sort of fighting or attack like this?

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- A. No.
- Q. Did you notice whether anything was left behind by any of these attackers?
- A. They left a triangular file behind at the bar.
- Q. About how long was that triangular file to the best of your recollection?
- A. Rather short, like a screw-driver, about this size.
- Q. Would you look please at this triangular file and tell us if that appears to be similar to the one you saw? 10
- A. Yes, it looks similar, but the one I saw looked a bit newer.
- Q. Was it the same type as that type?
- A. Yes.
- Q. Do you recall whereabouts it was left?
- A. Shall I point out to you from the photograph?
- Q. Yes, would you please. 20
- A. Here, the position shown in the photograph is correct.

COURT: 2C and 2D?

- A. Yes.
- Q. Can you tell us something more about the beef knives that you saw these men holding; do you recall whether they had handles?
- A. They should have handles because they were grabbing hold of them. 30
- Q. Did you actually see whether they had handles?
- A. When they were holding them the hands would be covering up that part of the knife
- Q. Were all roughly of the same length or did they vary in size?
- A. I could see clearly two of them when they were facing me. They were glittering and both of them were the same size.
- Q. You saw these two beef knives clearly, did you? 40
- A. Yes.
- Q. At what distance away from them were you when you saw these knives?
- A. We were in the same vicinity, not far away.
- Q. Perhaps you could inciate in terms of distance here?
- A. They were standing in the middle and I was in the same position all the time.
- Q. When you saw these knives? 50

COURT: The distance.

A. About two bodies' width away, just a short distance away from where I am and the interpreter.

Q. So they were very close to you?

A. Yes.

Q. From what you saw could you say whether these knives appeared to be professionally made knives or home-made knives?

10 A. I cannot distinguish.

Q. Are you saying you could not distinguish the difference between the two or you could not distinguish which type?

A. When I went to the market to purchase beef I saw beef knives and those knives were the same as the ones at the scene.

Q. When you say a beef knife could you describe the blade? What do you mean by a beef knife?

20 A. The tip of the blade goes slightly upwards, what people generally call a beef knife.

Q. Was that a knife with a big flat blade or a long narrow blade?

A. The blade is flat and about 2 or 3 inches wide with the tip tilting upwards.

Q. Would you look please at these two knives and tell us how they compare with the knives that you saw on that evening?

30 A. About the same length. I did not see clearly, but I knew that they were very new because I could see them reflecting the light.

Q. What you saw then, are you saying, is a flash of the knife coming off the blade?

A. Yes.

Q. Would you look please at that knife? What can you say about that knife in relation to the knife that you saw that evening?

40 A. All I can say is that the length is the same and the width is the same but I am not sure of the shape itself.

Q. You told us there were seven men who entered the music parlour that night, how many of the seven did you actually see striking at somebody?

A. All of them moved their hands, there was a great confusion.

Q. Can you say whether each and every one of them struck a blow or not?

MR. HUANG: That is leading, my Lord.

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- Q. Can you say how many of them actually struck a blow?
- A. I saw the movements of their hands, they were chasing after persons, but I am not sure whether they did chop anyone.
- Q. Did you notice if during this attack any of them were not actively taking part?
- A. It is difficult to say. It was dark, I was frightened, I only saw hands were raised trying to attack other persons but at times they failed to attack anyone. 10
- Q. A few days after this incident, do you recall going to the Mongkok Police Station for the purpose of attending an identification parade?
- A. Yes, I do remember.
- Q. Do you remember the exact date?
- A. No, I cannot recall because it was so long ago.
- Q. Do you remember viewing a parade early in January at about twenty minutes past mid-day at Mongkok Police Station? 20
- A. Yes, I remember.
- Q. Prior to viewing the parade, did you talk with a European inspector?
- A. Correct. He explained the procedure of the identification parade. He told me not to be afraid and if I saw anyone that I could recognise just point that person out.
- Q. When he said if you saw someone you recognise, recognise him in relation to what? 30
- A. I only identified the one who had dragged me to one side and told me not to move. I recognised him only from the outline of his features because he was against the light.
- Q. Would you look around the court please and tell us if you can see the man that you identified at that parade in court today? 40
- A. The hair is different now.
- Q. Well, which one do you think it was that you identified at the parade?
- A. The man wearing the floral pattern shirt. (Witness points.)
- COURT: He is D.4.
- A. Yes.
- Q. How is his hair different to when you saw him then?

A. At that time his hair was slightly curly and it was disarranged when I saw him in the dark.

Q. When you saw him on the parade, did you have any trouble identifying him?

A. Let me tell you honestly. At that time, I was afraid when he dragged me to one side and he was against the light.

10 Q. Did you get a good look at him that night when he was against the light?

A. But I can only recognise him by the outline of his features, I am not positive about his face.

Q. For how long was he holding you in the music parlour on the night of the attack?

A. When I came out of the room, he pulled me by my dress saying "Don't move. Step to one side." that was all.

20 Q. Did he remain with you throughout the attack?

A. No.

Q. For how long was he actually with you when he was dragging you aside?

A. Right after he had dragged me to one side, he released his hold from my dress. He stayed there for a brief moment.

Q. Did you see him again during the course of the events in the music parlour-

30 A. I only identified that person by the outline of his features, I cannot say for sure whether this person did take part or not.

Q. On that parade, is it correct that he was the only one you identified?

A. Yes.

Q. Is your identification based on this look at him when you saw him dragging you aside or did you see him again in the music parlour?

40 MR. HUANG: That is leading, my Lord. Surely I think my learned friend has asked enough. He is leading her into all aspects.

COURT: Yes.

Q. How many times did you actually see him in the music parlour?

A. Only once. That's the time when he pulled me to one side.

Q. When you identified him at the parade, do you recall what you said to the officer-in-charge?

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A. He said "When you recognise anyone, you just point at his number".

Q. What did you do?

COURT: What did you say?

A. He asked me which one, I pointed at that person and told him the number, and he said something else.

Q. Do you remember what he said?

A. Well, after I had pointed out this accused to a woman police constable, then I told her that I recognised him only by his features which were similar and the woman constable asked me "Was he the one?"

10

Q. What did you say ...

MR. HUANG: No, she hasn't finished yet. I think she really said something more.

COURT: She asked her if he is the one.

MR. HUANG: But she said "I was not positive, only by his features".

COURT: But from what I have got in my record "I told her that I have recognised him only by his features which were similar and the woman police constable asked me if he is the one". She has not finished yet.

20

Q. When the woman police constable asked you if he was the one, what did you say?

A. The constable said "You said he looks similar by his features, is he the one?" I said "I dare not say whether he is the one or not. I recognise him by his features. It was dark at that time and I was frightened."

30

Q. What features were you relying on when you did make this identification?

A. When he dragged me to one side, I had a glance of him. He told me not to move, I dared not move. I was frightened. I was afraid that he would do something adverse to me.

Q. Certainly. But what particular features were you relying on - was it his hands, his body, his hair - what features did you rely on in making your identification?

40

A. I had a casual glance of him and I had an impression of the outline of his face, that's how he looked.

- Q. I know that you didn't identify anybody else in this attack but can you say what age group the other attackers belong to?
- A. All of them were under 30 years of age.
- Q. Would the category be a group of men, youngish men, under 30 years of age?
- A. Yes.
- Q. No further questions.

COURT: We'll adjourn to 2.30 this afternoon.

10 12.30 p.m. Court adjourns

2.35 p.m. Court resumes

All accused present. Appearances as before JURY PRESENT.

COURT: I would like to remind counsel that court sits at 2.30 sharp and also 10 o'clock sharp in the morning. I am going to come into this court at exactly those times. If you are not here, we will deal with the matter as best as appears to this court.

20 MR. MARASH: I am sorry.

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XXN. BY MR. HUANG:

- Q. Miss TANG, just now you gave evidence this morning that you referred to the place as was dark and very dim, correct?
- A. Yes.
- Q. Now you described that there were a certain number of bulbs.
- A. Yes.
- 30 Q. But they were all tinted?
- A. Correct.
- Q. Now is it correct, Miss, that in addition to the tinted of the bulbs, there were other objects placed along the bulbs so as to minimise the light?
- A. That is correct as far as the bulbs above the bar were concerned. But the bulbs fitted to the centre of the reception room were only tinted and not covered in any way.
- 40 Q. All right. Now is it correct that the lighting was only sufficient to enable you to see the outline of a person's face?
- A. Correct.

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- Q. Now is it correct, Miss, that in addition to the tinted of the bulbs, there were other objects placed along the bulbs so as to minimise the light?
- A. That is correct as far as the bulbs above the bar were concerned. But the bulbs fitted to the centre of the reception room were only tinted and not covered in any way.
- Q. All right. Now is it correct that the lighting was only sufficient to enable you to see the outline of a person's face? 10
- A. Correct.
- Q. And that is if the person stands very close to you that you can make out the outline?
- A. If that person is standing quite close to me then I would be able to see him clearly.
- Q. And if it is far, say, 6, 7, 8, 10 feet away, you can more or less only see a shadow, would you agree?
- MR. MARASH: Perhaps if, my Lord, we can have the distance a little bit more accurate than 6, 7 or 10; a specific figure can be quoted to her. 20
- Q. All right. Now suppose, Miss, that a person was standing, say, 10 feet away, would you say that you can only recognise a shadow?
- A. I would be able to see that person as well as his height.
- Q. Yes. But it would be only just a shape of that person but not any particular characteristics, would you agree? 30
- A. I would not be able to see his face, how he looks.
- Q. And the bright light was put on only after the police had arrived at the place?
- A. Yes.
- Q. You are positive of that?
- A. Yes.
- Q. Now, when the bright lights were put on, would you say that was as bright as we are now here in this courtroom? 40
- A. Slightly dimmer but about as bright as here.
- Q. All right. Now you say on an occasion you attended an identification parade, remember that?
- A. Yes.
- Q. Was that parade conducted by a woman police officer?
- A. There was a woman police constable sitting 50

at a table but it was the inspector who accompanied me to walk up and down the line of persons.

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Q. Was it this inspector?

A. Yes.

Q. Now, who explained to you what to identify?

A. When I was in the C.I.D. office, there was a detective, he was in plain-clothes. He told me not to be afraid and he explained the procedure of identification.

10

Q. Was it a man or a woman, the C.I.D.?

A. A man.

Q. Is he in court now?

A. No.

Q. Well, in addition to what you have told us, did he tell you anything else?

A. Nothing else.

Q. Only not to be afraid and just point out the person you think is connected with the case?

20

A. "If you identify a person, you just say it".

Q. And then you were taken into a room where there was a parade, is that correct?

A. Yes.

Q. And there you saw a woman police officer sitting at a desk?

A. Yes.

Q. Did she speak to you?

A. She told me to follow Inspector Robson to walk up and down the line several times. If I could recognise anyone, I need only say out his number.

30

Q. And did you walk up and down the line?

A. I did.

Q. And you called out a number?

A. Yes.

Q. Now, according to you, Miss, then you spoke to the woman police officer?

A. She asked me what number, I pointed to that person. The woman constable told me to call out his number.

40

Q. Yes. Now after you called out the number, you spoke to the woman constable, is that correct?

A. Yes.

Q. All right. Now, just now, Miss, we understood that that woman police officer is not a constable, she is a superintendent.

A. I don't know.

50

Q. I see, But anyway you refer to her as a woman police officer.

A. Yes.

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- Q. All right. Then what did she ask you after you called out the number?
A. I told this woman police officer that I could only recognise him by his features but I was not sure whether he was the one.

MR. HUANG: My Lord, I wonder if the interpreter would like to think it over whether the term 'feature' ...

INTERPRETER: The outline of his feature.

MR. HUANG: You change feature to outline? 10

INTERPRETER: The outline of his feature.

Q. So you can only recognise that person by his outline?

A. Yes.

Q. But you were in no way positive about that?

A. That is right.

Q. Now, Miss, you remember you attended another parade before this one?

A. Yes. I had attended an earlier identification parade but I did not recognise anyone. 20

Q. There were quite a number of people on that parade, is that correct?

A. Yes.

Q. And you told a superintendent that you could not identify anyone?

A. On the first occasion, I did not identify anyone.

Q. Do you remember telling him you could only recognise a short, curly hair one? 30

A. When I saw that person at the scene, his hair was messed up and disarranged.

Q. Yes. But did you use the term 'curly'?

A. It was dark at that place, I cannot say for sure whether his hair was curly or not.

Q. No. What I am asking you is did you tell the superintendent in the first parade that you can only recognise the one with curly hair?

A. No, I did not. 40

Q. You did not?

A. No.

Q. Do you remember this morning you also said that the one you had in your mind was the one who has got curly hair?

A. I meant to say that his hair was not as

straight as is now and it seems to me that the hair was slightly curly, but I do not say for sure because it was dark.

Q. But, Miss, they are two things. We are not concerned what - the first picture is did you say this morning that the one you had in mind was with curly hair?

A. I did say that it seems to me that that person had slightly curly hair.

10 Q. Now look at the person you just pointed out. Do you consider that hair as curly?

A. No.

Q. Now, Miss, you say that when this man came in you were standing next to the cashier?

A. Yes.

Q. And you were - that is behind the counter, is that correct?

A. Correct.

20 Q. You were chatting with the cashier?

A. Yes.

Q. And according to you his name is LI Kai?

A. Yes.

Q. And at the time you say LI Kwong-ye was sitting on a sofa?

A. Yes.

Q. Is that quite a distance from you?

A. He was sitting at the sofa directly opposite the bar. The distance is about the same as where I am to you.

30 Q. Well, let's look at picture 'E' or 'C' - 'C'. Now when you say behind the counter - you see the counter in picture 'C'?

A. Yes.

Q. You were behind this counter as we look at the picture from here - from the front-

A. Inside the counter.

Q. Yes. Now, where is the sofa so far as this picture 'C' is concerned?

40 A. The sofa is right by the side of this picture and the photograph shows the place where the deceased had been.

Q. Yes. Now, Miss, let's explain it from that picture. Now, do you notice a little stool there or something like a stool?

A. Yes.

Q. Now, is the sofa behind that stool on the right?

A. Right behind it.

50 Q. Behind it. So he was quite a distance from you that is across the hall, the reception area?

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- A. No. The sofa is also situated inside the reception area.
- Q. Yes, we know in the reception area, but you were behind the counter.
- A. He was directly opposite me.
- Q. Yes. But the distance is pretty far judging from the picture.
- A. Quite far away, we were facing each other.
- Q. But were you chatting with him? 10
- A. No.
- Q. You are sure of that?
- A. I am sure. I did not chat with him.
- Q. Yes. But you were chatting with the cashier LI Kai?
- A. Yes.
- Q. I take it that the cashier was sitting at the cashier desk at the time?
- A. Yes.
- Q. And you were standing next to him? 20
- A. Yes.
- Q. That was the stage when the strangers came into the room, is that correct?
- A. Yes.
- Q. You are positive about that?
- A. Yes.
- Q. Now, Miss, you remember making a statement to the police?
- A. Yes.
- Q. That is you had then told them what you knew about this case and that is all your evidence? 30
- A. Yes.
- Q. And who recorded that statement from you?
- A. I cannot remember. There were two of them and they had recorded statement from me on two occasions. In fact, there were three of them.
- Q. On two occasions?
- A. There were three occasions. On one of the occasions, they said they had left out something and that's why they had to record the statement again. 40
- Q. Is it the case that on each occasion you gave a statement and you were asked to sign it?
- A. Yes.
- Q. Now, when was the first one you gave to the police?
- A. The statement was given at the scene.
- Q. You gave one at the scene? 50
- A. Yes.

Q. Did you tell them exactly the same thing as you have told the court now, in those statements?

A. Yes.

Q. You are sure of that?

A. Yes.

MR. HUANG: My Lord, I have just been given this first statement given at the scene, so I would like to have a few second to read it.

10 COURT: Yes. (Pause)

MR. HUANG: I have just been given another one, my Lord. This is very helpful to the defence. I am much obliged to my learned friend.

Q. Now you say you used another name TANG Siu-ling, is that correct?

A. My surname is TANG but when I was working up there I used the name 'Siu Ling'.

Q. Yes. So in other words, TANG Siu-ling and TANG Yuk-kuen is the same and one person and that is you?

20

A. TANG Yuk-kuen is my true name. I never used the whole name TANG Siu-ling when I was working there.

Q. You are sure of that?

A. Yes. TANG Yuk-kuen is my true name.

Q. Now I have a document here. (To interpreter) Just show her the signature. Is that your signature - TANG Siu-ling?

30

A. When they asked me to sign, they asked "Is your surname TANG"? And they also asked whether my name was Siu Ling and I said yes and they told me to sign the whole name as TANG Siu-ling.

Q. No. The question is: that is your signature, right?

A. Yes.

Q. Now the first statement you gave to the police was on the - about 2 o'clock early in the morning on the 29th, that is just one or two hours after this incident you described about, is that correct?

40

A. It was the same night but I cannot recall at what time.

Q. All right. Now you have described to the court that it was while you were standing next to the cashier LI Kai, chatting with him that these seven or eight men came in?

A. Yes.

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- Q. And according to you they say they are C.I.D. men?
- A. Yes.
- Q. And then - tell us again then what happened next after they said they were C.I.D. men?
- A. They said "We are C.I.D. Come out. Come out."
- Q. Yes. Then who came out?
- A. I came out first. I thought they only came to examine the licence. 10
- Q. Yes. And then you came out. Then who else came out?
- A. YIP Bun and LI Kwong-yeo stood up.
- Q. Yes?
- A. They came out and at first they did not know what was happening.
- Q. And then what happened next?
- A. At first, we thought they came to check the licence. Later they produced weapons. 20
- Q. When they produced weapon, how many were standing there?
- A. You mean our side or the other side?
- Q. Your side.
- A. Yip Bun, the deceased, LI Kwong-yeo, Ah Hung and Ah Lun.
- Q. Yes. And were they all standing there or were they doing anything?
- A. They were standing there. They thought those persons came to check the licence and they were about to greet them. 30
- Q. After they called them to come out, they still talked to them as if they were customers?
- A. Yes. But after they produced weapons, the employees all stood there and did not know what to do. At that time those strangers did not act right away, they only stood there.
- Q. Yes. They stood there and then what next? 40
- A. They told us not to move. I thought they were robbers. After standing for a while and had observed that all the persons had come out then they started to act and there was a great confusion.
- Q. How did they act?
- A. Some used knives to chop people, there was a great confusion, I did not see clearly.
- Q. You did not see clearly. Would you say that some did not use knives to chop? 50
- A. Some of them did not have knives.

Q. Yes. And in the confusion you cannot tell whether some had done anything or not, would you agree?

A. I dare not say.

Q. You cannot tell?

A. I was frightened. My attention was mainly on the knives because they were big objects.

Q. Yes. You saw a few knives, is that correct?

A. Yes.

10 Q. And when did LAM Shing say "Save life" or "Eh, Ah Ling" or words to that effect?

A. After he had fallen onto the floor at the scene where he died later.

Q. Did you see LAM Shing fall onto the floor?

A. Yes, I did.

Q. Did you also see somebody stab him?

A. When he was being stabbed, I saw someone stabbing him and later he was chopped. He was chopped shortly before those attackers left the premises.

20 Q. I see. You are quite positive that you saw all these things?

A. Yes.

Q. And you say you were also - in the first instance somebody grabbed you and pushed you to one side?

A. Yes.

Q. You are very sure that you noticed - you saw all these things?

30 A. Yes.

Q. Now when you were - now we come back to the statement, Miss. You say that at the scene, sometime about 2 a.m. on the 29th of December, you gave the police a statement?

A. Yes.

Q. When the police started to ask you, that was about an hour or two after the incident, is that correct?

A. Yes, thereabout, about a little over one hour.

40 Q. Now would you say that at that time your impression and memory of the incident is better than now?

A. The same, as clear as I am now.

Q. Just as clear as you are now. And did you tell the police exactly the same thing what you are telling the jury now?

A. They asked me what had happened, I told him exactly what I saw but perhaps the way they questioned me is different from

50 what you are doing now to me.

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- Q. Yes. We are not interested in the questions that were put to you but you gave the police the same answers as you are now telling the jury now?
- A. Yes. When I was asked a question I gave a straight answer.
- Q. Are the answers the same as you are answering me or what you are telling the jury now?
- A. Yes. 10
- Q. The same thing, positive?
- A. Positive.
- Q. Right. And after you have given that statement, did the policeman read over what you said to him?
- A. Yes.
- Q. It was a detective, wasn't it, who recorded the statement from you?
- A. Yes, in plain-clothes.
- Q. All right. When he read it over to you, did he ask you whether you want to make any alteration? 20
- A. After he had finished writing, he read it over to me and he discovered that something was left out and he copied another statement.
- Q. That was before you signed it?
- A. Yes.
- Q. All right. Now before you came to sign the copy, he read it all over and you said it was all correct, is that true? 30
- A. Yes.
- Q. And then you signed it?
- A. Yes.
- Q. Now would you look at this document, front and back, and tell us the signatures - that whether you can affirm that they are yours?
- A. Yes, these are my signatures.
- Q. Was that the statement that you have given to the police in the early hours of the 29th of December? There's a date put on top there - 29th of December. 40
- A. Yes.
- Q. That is it?
- A. Yes.
- Q. Now would you mind reading it out, that statement, now there is a translation at the back.

COURT: You want her to read the whole lot?

MR. HUANG: Let me see. From paragraph 3 onwards. 50

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10 A. "At about 10.50 p.m. this evening, the 28th of December, 1975, whilst taking a rest inside the rest-room, the usher Ah Kay came to call me to attend room B14. When I arrived at the room I found one male sitting inside the room. After I introduced myself, the male told me that he was surnamed WONG." It seems to me that this is not the statement that I was being questioned at that time.

Q. Well, Miss, you say you had signed this statement and you recognise your signature there.

A. These are my signatures but at the time when I was asked to sign these questions were not put to me. But at the time when I attended the identification parade I was given another statement to sign.

20 Q. But, Miss, you say you had signed a few statements?

A. Yes.

Q. Including this one?

A. It is true that I signed this statement but at that time he asked me whether the contents were correct. He only told me the gist of the contents and said that "Did you see all these things?" I said "Yes".

30 Q. Now you say that was the statement you signed, that it was read over to you and you said it was true and correct, remember saying that?

A. Yes.

Q. And you produced that?

A. Yes.

MR. HUANG: May that be marked, my Lord, the original in Chinese?

COURT: P.3

40 MR. HUANG: My Lord, there is a translation - I only produce the translation at the moment. Would your Lordship instruct the necessary staff to help to certify it, that is only a police translation.

MR. MARASH: I think, my Lord, before it is produced by her she should go through the statement to say whether or not everything recorded in that statement was what she said. She has only acknowledged the signature at this stage and a portion of the contents.

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MR. HUANG: She has said it was read over to her and was correct and she had signed it. Well, she can deny anything if she wants afterwards.

COURT: Well, what she says now is she has only heard the gist of what was put there and she put her name.

Q. Now you read paragraph 3 now regardless what it is you read it out first and then you can give whatever comment you like. Read out from paragraph 3 onwards.

10

INTERPRETER: Just continue or from the start again?

Q. Onwards. Paragraph 3 - you read it over first, then you can comment afterwards. Read from paragraph 3 onwards right to the end of the statement. (To interpreter) Tell her to read it out now so that the jury would know what she is reading.

A. "At about 10.50 p.m. in the evening of the 28th December, 1975, I was sitting inside the rest-room. The usher Ah Kei came to call me to attend room B14. There was a male sitting inside the room. After I had introduced myself, the male told me that he was sur-named WONG. I stayed inside the room chatting with the male sur-named WONG until about 11.40 p.m. When I was sitting inside the room, I suddenly heard fighting noise coming out from the counter. Then I heard a male voice shouting out loudly "Save life". I thus at once ran out of the room to the counter and I saw Ah Shing, a driver of our company, lying on the floor. The driver was bleeding from his waist. Ah Shing repeatedly asked us to telephone the police. Cashier Ah Kai said that someone had telephoned the police. A short while later, the ambulance arrived and so did the police, they came to make enquiries. Later the ambulance-men took Ah Shing, Ah Kwong and Ah Choi to hospital for treatment." Do I have to read the questions?

20

30

40

Q. Yes.

A. "After they were conveyed to hospital, later

a detective took a statement from me. When I was questioned, I said I did not see."

Q. Read out the contents in full exactly as it is recorded there.

A. "Q. Do you know why Ah Shing, Ah Kwong and Ah Choi were chopped by the others?

A. I don't know.

10

Q. Did any quarrel or fight take place inside the company prior to this chopping incident?

A. I haven't heard any.

Q. Do you know the three injured persons?

A. I came to know them whilst working in the company. Ah Shing was the driver, Ah Kwong is a general worker, Ah Choi is an usher.

20

Q. Do you have any information which might assist police in making inquiries into this wounding case?

A. No."

MR. HUANG: Now, my Lord, this now becomes a court exhibit, could you order the necessary translation certified?

COURT: I have said so.

MR. HUANG: You have said so, yes.

30

Q. Now, Miss, is that all true? What you have just read out from your statement now, is that true?

A. At the time when I signed, there was no writing at all at the back.

Q. Why no writing at all? Was there writing in the front?

A. He questioned me and he recorded something and at the police station he read it over to me. There were writings in front.

40

Q. Yes. Did the policeman read to you, "That the above statement is all true and correct and does not require alteration" or words to that effect?

A. No.

Q. But did he say...

A. He asked me whether I would agree, if so, sign.

Q. All right. Did you say you agreed?

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A. Perhaps at that time I was frightened; and he said, "Let me alter this part for you. It does not matter."

Q. Alter which part?

A. Regarding this statement, it was not written at the time when he questioned me. When he gave it for me to sign, the writings were already there.

Q. Yes. But I asked you-- you say you gave it to the policeman and this policeman recorded there. He was a plain clothes man. He read it over before you signed.

10

A. Yes.

Q. All right. Now according to that statement, you see, you see, "About 11.40 while sitting inside the room with the customer..." - about the middle. All right, I'll-- Now, is it correct that, "At 10.50 p.m. this evening (28.12.75) whilst taking rest inside the rest room, the usher, Ah Kei came to tell me to attend Room B.14." - is that correct?

20

A. I have something to say. But there is a mistake. In fact this is not my statement, even the address is not mine.

(Statement passed to counsel for the defence from witness.)

Q. But is the name on the top yours?

(Witness shown statement.)

A. I am TANG Yuk-kuen.

30

Q. But you also say you used the name "Siu Ling".

A. I now remember there is another girl also surnamed TANG working there and she had discussed with me. She said that she was a friend and she said she had better use a false name.

Q. Yes, but you say you signed this one. The top is TANG Siu-ling and the signatures are all TANG Siu-ling, you say "Siu Ling" is also your other name.

40

A. I remember there is another girl using the same name and the signature in front is my signature, but the one at the back does not seem to be my handwriting.

(Statement passed to counsel for the defence from witness.)

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- Q. You see, it seems that the two look identical, Miss.
- A. The statement given to me to sign perhaps is another one. This girl who had signed this ~~was~~ sitting inside attending a customer. She had no knowledge of the incident. There is a mistake.
- Q. But you see you had signed this, right?
- 10 A. Let me look at the handwritings again.
(Witness given the statement.)
Not my signature. I am positive it is not my signature.
- Q. Miss, just now I showed you the document to look at carefully...
- A. You see, it can be a wrong document.
- Q. No, Miss. Didn't I give you the document to examine and ask you whether that's your signature - you said yes?
- MR. HUANG: May the jury look at the ...
- 20 A. My handwriting is about the same from a distance but now after looking at it carefully, I say that it is not in my handwriting.
- Q. Well, Miss, I have given you all the opportunity to examine it, on the front page and the back page, and you said yes, they were your signatures; and you say that your name is "Siu Ling" at the music parlour.
- 30 A. Yes, I did use the name "Siu Ling".
- Q. Yes. I showed you that document-- whether that was the document you had signed during the early hours of the 29th of December and you say yes.
- A. Well, I did sign a statement but I have also told the court that I was not put those questions.
- Q. But didn't you say just now that the policeman had read it over and you say that it was true and correct?
- 40 A. Yes, but not this statement.
- Q. Well, I showed you the one in front of you.
- A. Well, I have told the court that at the beginning I was not questioned in this manner. That's why I said that I was not sure whether there was an alteration of the contents or not.
- Q. Why should the policeman alter your statement, alter the content of your statement?

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- A. This is a statement made by another girl also named TANG. Perhaps they had given me the wrong statement.
- Q. Well, you say he read it over to you and it was true and correct before you signed.
- A. Yes, but it was not this statement.
- Q. All right. If he read this one and then you signed this one, it must be this one, Miss.

COURT: Well, let us find out, first of all, whether she did sign this statement. (To Witness): Did you in fact sign this statement?

- A. Well, perhaps I have made a mistake but after looking at the signatures carefully I now say that they are not mine.

(Jury shown the statement.)

COURT: Both of them?

- A. Both of them are not my signatures. I usually sign my name as "TANG Yuk-kuen".

MR. HUANG: My Lord, I have no more question to ask this witness.

Re-
Examination.

REXN. BY MR. MARASH:

- Q. You have told us that you made more than one statement, is that correct?
- A. More than one statement. I signed a statement using my name TANG Yuk-kuen.

MR. MARASH: My Lord, I want to deal with the matter now. My Lord, I think perhaps I should ask the jury to retire for just a short moment.

COURT: Have you finished with the witness?

MR. MARASH: No, I haven't. It concerns the further questions which I wish to put to her.

MR. HUANG: Well, my Lord, the document was handed to me by the prosecution as one of her earlier statements. She has said she made three. I think I have laid the foundation clear enough. She may have made more than one, but she has said she had made three anyway. She admitted that this is one of the three, that is in fact among the earliest ones. The time recorded in that statement I think is 02.05 hours on the 29th and she admitted that at about that hour she gave a statement to the police.

COURT: Have you finished cross-examining her?

MR. HUANG: Well, in the light of-- Yes, I think I have. And that document, my Lord, was handed to me by my learned friend as one of the early statements made by her.

COURT: Will it take very long?

MR. MARASH: Not long, about five minutes, my Lord.

COURT: Jury, please leave the court for five minutes.

3.45 p.m. Jury leaves court.

COURT: Yes?

MR. MARASH: My Lord, I handed my friend two statements and not one. You have heard this girl's evidence about denying her signature to the statement. I have in my possession another statement made at 03.00 hours on the same morning, the 29th of December. The heading reads: "TANG Yuk-kuen alias Siu Ling". Her address, as given, is a totally different address to the statement which she has just looked at and denied has her signature. The address on the later statement is, I think, the address that she has given to the court this morning. Perhaps I could have a look. (Counsel given the statement.) Yes, that is more or less exactly the same address. The statement that I have says that this girl TANG Yuk-kuen is twenty-two years of age; sex: female; her identity card number is E519825. The statement which she denies as hers says her address is an unnumbered wooden hut at Tai Kiu Village, Yuen Long, New Territories; the girl's age is eighteen; and gives the girl's telephone number. Her nationality and dialect on the statement which is denied by this witness is "Po On" and on the statement headed "TANG Yuk;kuen", she is a native of "Shun Tak". This girl was obviously, in my submission, telling the truth about the statement and I now wish to go through it and put to her this other statement to ask her if it is hers.

COURT: Well, I don't see why the statement of yours should be corrected in this manner.

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MR. MARASH: Well, it's a question of previous consistent statements. There is a case called the Nominal Defendants v. Clements which is reported in 104, Commonwealth...

COURT: Yes, it shouldn't have been-- Shouldn't more care have been taken to produce the correct statement?

MR. MARASH: Well, I did not produce it. My Lord, I handed both statements to my friend and he chose to question on one and not the other, and I am saying that...

10

COURT: Were you given both statements?

MR. HUANG: Yes.

COURT: Well, you should have read the other one as well.

MR. HUANG: Well, I-- He handed...

COURT: Both statements are given to you and these two are entirely different, from two different makers, you shouldn't take the one then.

MR. HUANG: Well, my Lord, I didn't have time to read through. I found the first one. It's so difficult to read them both, so I made use of this one.

20

COURT: What about the other one?

MR. HUANG: My Lord, I haven't read...

COURT: If you want to make use of one, you have to make use of the other as well.

MR. HUANG: Well, I haven't read the other one yet.

COURT: Well, you can't just sit there and say, "Look, this is the course that I want to take." You have two statements there. After all, this is a genuine mistake to me, now that the headings have been read out.

30

MR. HUANG: Well, my Lord, if I made use of whatever material...

COURT: Well, this girl can't be made to look like a liar if she is not.

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MR. HUANG: Through no fault of mine, my Lord. I was handed those documents.

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COURT: Well, but you were given another statement. Is the other statement not to be compared to see that this is the proper statement?

MR. HUANG: Well, she said she had given three. I have one on deposition, this is the two...

10 COURT: Of course anybody standing in the witness-box can make genuine mistakes when shown things like this. Could I have a look at those statements?

MR. MARASH: The second statement is in accordance with her evidence, my Lord.

(Court shown statements.)

20 COURT: You see, the manner of signing these statements is entirely different altogether. As I notice, even in the depositions, the signature is quite different from the statement which you put to her.

MR. HUANG: Well, my Lord, I only asked...

COURT: Look at the way in which the character "TANG" is written in both these statements. (Defence counsel shown the statements.) It's entirely different.

30 MR. HUANG: Yes. May I read the other one, my Lord? I haven't read the other one. (A pause.) Yes, my Lord, well, I don't know how the mistake occurred.

COURT: Well, I think the mistake first occurred because Mr. Marash handed you two statements - the proper statement should have been handed to Mr. Ming HUANG. After all it's quite clear there that these two statements are made by two different persons. One is TANG Yuk-kuen, alias Siu Ling, and the other one is made by TANG Siu-ling. Is there a witness called TANG Siu-ling coming to give evidence?

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MR. MARASH: No, there is not, my Lord.

COURT: Or is there such a person who gave evidence to the police-- who gave a statement to the police?

MR. MARASH: Yes, it appears certain, my Lord. That is how the confusion arose through the name at the top of the statements.

COURT: Well, the police ought to have advised you properly regarding this particular matter.

MR. MARASH: I was simply given all the statements. When this girl said she made another, I took out the statement that appeared to be relevant to her. 10

COURT: Well, apparently the whole mistake started with the police.

MR. MARASH: I think in the circumstances, my Lord, what could be done is I would not object to my friend now continuing his cross-examination, putting the second statement to her and going right through it and clarifying that matter before the jury, then I'll... 20

COURT: Well, that is the only course to take.

MR. MARASH: Yes.

COURT: Would you like to take that course, or...

MR. HUANG: You mean to put in the other document?

COURT: Yes.

MR. HUANG: Well, my learned friend can do that in the re-examination.

COURT: All right.

MR. HUANG: I think, with more propriety, if my learned friend wants to clarify, he is quite entitled to do that. 30

COURT: Well, in view of these statements, yes.

MR. HUANG: So...

10 MR. MARASH: My Lord, I do not want to prejudice any of these defendants' cases, but if it is done that way, it will be done by me on the basis of this Clements' case, which I have recently cited, that is this woman has been attacked on the basis of a reconstruction of a false story. That will leave my friend in a position where he has not challenged her evidence on any other basis other than that she wasn't present at the relevant time. That will be highly prejudicial to the accused. That is why I am suggesting that this matter be gone through with the witness by defence counsel and then I'll take up any matters which come out in the re-examination. I think it may be prejudicial to the accused if it's not done in any other way.

COURT: Well, do you want to consider that matter now?

(Counsel confer.)

20 MR. HUANG: If this witness is obviously different-- I mean all those signatures-- I have put it to her.

COURT: As I say, she made a mistake there. How can it be a signature when you sign it differently in the deposition and in the other statement?

30 MR. HUANG: Yes. I mean that's why she misled us all. I would be quite happy if she said, "That's not my signature" and then at that time we could have sorted it out. She admitted that's her signature, she signed it. Well, what should I do now my Lord?

COURT: Do you want to cross-examine her further?

MR. HUANG: Further? Well, yes, in the light of...

COURT: And put the other statement to her?

(Counsel confer.)

MR. HUANG: Now, as for the other statement, should I leave it to my learned friend in the re-examination?

COURT: Well, you see, there is a possibility of prejudice to your clients.

40 MR. HUANG: Well, then, I will continue to cross-examine her in other ways.

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COURT: Yes.

MR. HUANG: And I will put the defence case to her.

COURT (To Clerk): Well, you can ask the jury to come back.

MR. HUANG: All right, I'll leave it to what I want my friend to clarify in the re-examination and I'll leave the matter here at the time.

3.59 p.m. Jury comes back to court.

MR. HUANG: My Lord, this is the original of the deposition. There is some mistake. I marked "P3" here, I thought I was writing on my copy. Please ignore it. I've already drawn my friend's attention to it because I was thinking of writing on my own copy. I realise that it's the original I have messed with. So please disregard this.

10

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FURTHER XXN. BY MR. HUANG:

Q. All right, Miss TANG, you say you have made three statements.

A. Yes, there were several statements, two or three statements.

20

Q. All right, let me recount the evidence once more. Now you say that at the time when these men came in, you were standing behind the counter.

A. Yes.

Q. And you were talking to the cashier LI Kai.

A. Yes.

Q. And at the time LI Kwong-yeo was sitting across the reception area on a sofa.

30

A. Yes.

Q. And you were not talking to him at the time.

A. No.

Q. And you are positive of that?

A. Yes.

Q. Now, would you please look at this statement - see if it is your own.

COURT: Now look at it carefully.

Q. Do you recognize your signature.

A. This is my signature.

40

Q. You are positive about that?

A. I am positive.

Q. Now did you make that statement?
A. Let me read it over first.
Q. Well, before you read it over, Miss, now before you read it, did you sign this?
A. Yes.
Q. All right. Let me read a paragraph out from there, from that statement. There is no date on that statement, that is why, therefore, i can't...

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10 MR. MARASH: My Lord, before my friend goes on, I should make it clear this is the girl's deposition, not the other matter we were discussing.

MR. HUANG: Yes. I'll continue on my cross-examination.

Q. Now in paragraph 2:

" On the 28.12.75 I worked from 1600 hours. At about 2330 hours that day business was quiet and I was standing in the reception area talking to the cashier Li Kwong Yee. I saw seven men come into the parlour."

20

Now is the first sentence-- (To Interpreter):
Read up to "talking to the cashier Li Kwong Yee". (Interpreter complies.)

(To Witness): You made that statement?
A. I did make this statement, but I said I was chatting with LI Kai at the cashier's office. Perhaps he'd made a mistake in putting down the other name who is also surnamed "LI".

30

Q. Well, LI Kai and LI Kwong-ye are quite different, aren't they? This is a statement you signed to put in as your evidence among the deposition.

A. When I was asked to sign he read over the English version to me. He explained to me that the contents recorded what I saw. He did not read the Chinese version to me.

Q. Who is that person who read it over to you?

40

A. Another person who is working with Inspector Robson. I do not know his name. I think he came the other day to court.

MR. HUANG: My Lord, there is no name put there, who's the interpreter or who took it, except Inspector Robson's. We know Inspector Robson's Chinese isn't that good.

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Q. But, now, Miss...

COURT: Well, I think some people might well laugh or might well smile at these things. To me, it's most inefficient. That being done too. I can't understand how the names LI Kwong-yeo and LI Kai could have been mistaken.

A. Perhaps the person who wrote the statement thought that LI Kwong-yeo was also present and, due to a slip of his memory or a mistake on his part, he put down LI Kwong-yeo.

10

Q. But, Miss, did that police officer read out the content to you and ask you whether it was all true and correct before you signed?

A. He showed me the English version, not the Chinese version.

Q. Yes, but he did tell you sentence by sentence by translating the English version?

A. Yes, but what he translated to me was that I was chatting with the cashier and the name was not specified at that time.

20

MR. HUANG: My Lord, I think the best course is for you to draw the jury's attention. Let them make up their minds. That's what the statement on the deposition-- what it is - as a document properly signed by her as her evidence.

COURT: Well the statement is there, the heading is there. Now what it says here: taken by so-and-so in English language and her nationality and dialect is Shun Tak and Punti. Where is the interpreter's name here?

30

MR. HUANG: Yes. Well, in the circumstances...

COURT: Did you speak English to the inspector?

A. No, no.

Q. You gave the inspector...

COURT: Do you blame her if she doesn't know what these things are.

Q. Did the inspector himself ask you questions through an interpreter or what?

A. It was not the inspector. It was another person who had come to court to listen to these proceedings yesterday. He explained the contents to me.

40

- 10 Q. So this inspector never asked you questions and you gave him answers. This inspector sitting here is Inspector Robson.
- A. Well, he spoke to the other gentleman who explained the contents of this statement to me.
- Q. Yes, Miss, answer me the question. Did you ever appear before this inspector, Inspector Robson, and tell him what you knew about this case? Did you ever do so?
- A. I did.
- Q. Did he ask you questions and you give him answers?
- A. The statement was not questioned by him.
- Q. I see. He never questioned you and you never gave him answers.
- A. No, it was the others who questioned me about the statement.
- 20 Q. Well, some other police officer asked you questions.
- A. Yes.
- Q. But not this Inspector Robson.
- A. No.
- Q. You are sure of that?
- A. Sure. The inspector told the other gentleman to translate the contents of this statement to me.
- Q. But you presumed that.
- 30 A. That gentleman said, "The inspector is now asking you whether the contents are correct."
- Q. And what did you say?
- A. He explained everything to me and I said it was correct and he said, "Are you sure?"
- Q. And you said sure.
- A. Yes. He asked, "Do you agree?" I said, "Yes." And he told me to sign.

MR. HUANG: Well, my Lord, I think the only solution is to put it in as evidence and let the jury see it.

- 40 Q. That is your signature? That is the copy you signed? You say that he translated it to you and you say you are sure that the content was true.
- A. Yes.

Exh. P4 CLERK: P4.

- Q. Do you now produce that?
- A. Yes.
- Q. Now if your evidence earlier, Miss, is true, then this statement is not true. Would you agree?
- 50

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- A. It is the same. Let me have a look at it.
Q. Well, don't look at it, just talk from your-- Why do you say "the same"?

COURT: Well, it depends on what evidence she was talking about. If it is the evidence regarding the other statement...

MR. HUANG: Well, in regard to the passage, I said...

COURT: ... but the evidence which she gave earlier is quite different from P3. [Exh. P3]

10

MR. HUANG: Yes, that's right.

COURT: It is the same as P4. [Exh. P4]

MR. HUANG: No, what I meant is what evidence she had given earlier in the box, that if that evidence is true, then this statement is not true, that is she was chatting with LI Kwong-yea and not with LI Kai.

COURT: Well, you have to specify it.

MR. MARASH: I don't think that could be produced, my Lord, unless the whole thing is gone through with her line by line.

20

COURT: Yes.

- Q. Now, Miss, you said earlier you were positive you were only chatting with the cashier LI Kai behind the counter?
A. Yes.
Q. And LI Kwong-Yee was sitting opposite on the other side of the sofa.
A. Yes.
Q. According to the statement here, you were standing in the reception area talking to the cashier LI Kwong-yea.
A. That is not true. At the time when the statement was read over to me, he did not mention the name and I am not sure whether he had made a mistake in reading.
Q. All right. Now I come to another aspect, Miss. When the men came in, how did your colleague, that is the male staff, greet them?
A. He asked, "What is the matter?"; and they said, "Don't move."

30

40

Q. But according to your evidence in chief, Miss, you say that YIP Bun and LI Kwong-yeo stood up, thinking that they were customers.

A. Well, they thought they were either customers or persons who had come to check the licence.

Q. And according to you, LI Kwong-yeo attended to them and greeted them.

A. He intended to assist in attending to them because usually he would do so.

10 Q. Yes. When you see people coming in as customer, is that the normal way for him to talk, "What's the matter?"

A. It was after they had announced that they were C.I.D.; that's why LI asked.

Q. The normal way an usher would greet is "How many?", isn't it, when you see a group of men coming in?

A. Yes.

Q. Did you hear that this time?

20 A. No, I did not hear because those men immediately said they were C.I.D. and so we thought they came to check the licence.

Q. Is there one called CHAN Heung-choi among the male staff?

A. Yes.

Q. But you never mentioned him-- although my learned friend asked you to try to remember all the names of the male staff there.

30 A. I did mention the name Ah Choi. I said that I could not recall his surname. I referred to him as the one whose hand was chopped.

Q. Now would you agree that from the beginning it was a great confusion?

A. When the chopping started, there was a great confusion.

Q. Now did you know if anything had happened to that music parlour-- or the Sun Sze Shuk Nui Massage Parlour upstairs the previous night?

40 A. Yes, I have heard of something that had happened the previous night prior to the incident.

Q. What have you heard?

A. I heard that a massage girl called Jenny was assaulted by a customer.

Q. Yes? And what else did you hear?

A. Some of the employees from upstairs came down to inform the employees of our establishment saying that there was a fight and our staff went upstairs.

50 Q. Yes. And what did they do after-- What did you hear then?

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- A. It was alleged that the customer had assaulted the massage girl and later the floor managers beat up the customer and questioned him where he belonged to.
- Q. Now who do you refer to as the floor managers?
- A. YIP Bun, Fai Chai and the odd job man LI Kwong yee, also CHAN Heung-choi.
- Q. Yes. Now both establishments, the Sun Sze Shuk Nui on the first floor and the Siu Nui Chin Kiu Music Parlour are both owned by the same owner, correct? 10
- A. Yes.
- Q. And the male staff work in both, isn't that correct?
- A. No, they did not work for both companies, but as you know because they were under the same boss, when something happened upstairs, they naturally would go up.
- Q. Yes. And there is a signal system, isn't it? If anything happened in one floor, they can press the switch and the other would rush up, is that correct? 20
- A. Well, I don't know whether someone pressed the switch or someone came down to inform the others, but I heard about this after the incident.
- Q. All right. You referred to the persons you named just now, CHAN Heung-choi, LI Kwong-ye, YIP Bun, as floor managers. 30
- A. Yes.
- Q. Could you refer to them, all the male staff in the two establishments, as-- by that term "floor managers"?
- A. Some of them were called "floor managers", some were ushers".
- Q. Yes, but when you use the term, do you refer to all the male staff in the two establishments?
- A. Yes. 40
- Q. All right. So you heard that the floor managers beat up the customer the previous night.
- A. Yes.
- Q. And did you find out specifically which of the floor managers beat up-- did the beating?
- A. I don't know. I heard them say amongst themselves that each of them had given that man a punch. 50
- Q. They all say so?

- 10 A. YIP Bun did not take part in the assault,
but Fai Chai did.
Q. Well, do you know Fai Chai by any other
name?
A. I believe he is called AU King-hang or AU
King-wan, that I am not sure. Well, one
thing I am positive: he is surnamed "AU".
Q. Did CHAN Heung-choi say he took part in the
beating as well?
10 A. Well, I heard them talking amongst
themselves. I heard Fai Chai said, "When I
saw the others beat him, I punched him
once."
Q. Yes. Did they tell you more - I mean where
they beat him and how they beat that
customer?
A. Fai Chai said that he had punched that man
twice upstairs.
Q. Did he say he did it alone or others did it
also?
20 A. I heard him say, "Even myself had punched
him twice."
Q. Did you ask him or did he tell you
whereabout upstairs they beat up this
customer the previous night?
A. No.
Q. Now did you hear SO Hung say that he beat
that customer?
A. No, I did not because SO Hung was upstairs.
30 He seldom came down.
Q. I see. Now AU is the man who worked
downstairs and who had said that he had
taken part in the beating of the customer
the previous night apart from Fai Chai.
A. Some of them said, "I also would like to
beat him up but when I heard that he was
one of us I did not do so." CHAN Heung-
choi said he did not beat him. He said he
wanted to beat him.
40 Q. CHAN Heung-choi said that?
A. Yes.
Q. Now how did he say "I wanted to beat him
but I didn't do so because he is one of us"?
A. Fai Chai was working on the floor below but
the others who were upstairs had also beaten
up the customer.
Q. Yes, but I want to know what you-- You
heard CHAN Heung-choi say, "Well, I wanted
to beat him also but I didn't because he is
50 one of us."

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- A. I am not very sure but I heard him say something which-- I think he was questioning him in regard to triad society. It seems to me that he belonged to the same society as SO Hung.
- Q. Well, but CHAN Heung-choi said, "He is one of us."
- A. CHAN Heung-choi said this using a jargon which means that also he did not know him but he thought he belonged to the same gang; that's why he did not take part in beating him up. 10
- Q. The same gang as CHAN Heung-choi, did you get that impression?
- A. I heard them say that the customer belonged to the same society, for instance if they belonged to Shing Wo, then after questioning the customer they found out that he belonged to the same.
- Q. But they told you that they beat up that customer the previous night. 20
- A. Yes.
- Q. And a lot of them claimed to have given him one or two punches.
- A. Yes.
- Q. What else did you hear about the incident the previous night?
- A. After the incident, they were chatting that the customer might take revenge and they were having a discussion in that line. 30
- Q. Yes. Who discussed? Who discussed in that sort of line?
- A. The floor managers, those I have mentioned.
- Q. Yes?
- A. They were employees.
- Q. Now they were talking. Can you help us, Miss, how did they discuss - some of the details?
- A. Well, some of them said, "Perhaps he made made a mistake. The other night we told him that we would give him a chance and it just happened that later he was chopped and he thought we did it." 40
- Q. When did they discuss that? Is it on the-- On what night did you hear this discussion?
- A. The same night after the incident.
- Q. The same night after the incident. Did they discuss that after the first incident upstairs when the floor managers beat up the customer? 50

10 A. The discussion took place the same evening after the chopping incident.
 Q. The chopping incident. Now, Miss, please help us. After they told you about the beating up of the customer on the 27th, the night before...
 A. Yes.
 Q. Now can you tell us what discussion did you hear after the beating of the customer, the punches?
 A. Well, the whole group of them rushed upstairs and I did not know what had happened, but later when they came down they said that they had rendered assistance because a girl was beaten up.
 Q. Who went from there, downstairs from the music parlour went upstairs, to assist?
 A. YIP Bun, LI Kwong-ye, Fai Chai.
 Q. CHAN Heung-choi?
 20 A. CHAN Heung-choi, the few of them.
 Q. Yes. And you heard them afterwards that they went up. By "assist", they went up and beat up that customer.
 A. Yes.
 Q. You get the impression that they all did so.
 A. Well, their main purpose of going upstairs was to watch what was going on. Fai Chai took part in the beating but not the others.
 Q. Or you didn't hear the others say, only Fai Chai said he did.
 30 A. Of the employees on our floor, Fai Chai took part in the beating. Although there were other employees who were upstairs and they had beaten up the customer, I did not know who they were.
 Q. All right. Now, Miss, you say you have been working in a music parlour for over a year.
 A. Yes.
 Q. You are still at work?
 40 A. No, it's closed down.
 Q. All right. Now in your experience as a waitress in a music parlour, does such thing occur very often - that is difficult customers who give you trouble in one way or the next and then your floor managers give him a good beating?
 A. Well, I have not had such experience in our establishment, although occasionally there would be minor quarrels.
 50 Q. But no beating up.
 A. Seldom; and in fact very few customers would beat up a hostess.

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- Q. Yes. But there might be some others who like to have the services of these establishments without paying for example. Would the floor managers beat him up?
- A. No, they would not.
- Q. They would not. Now, Miss, did you hear anything from all the floor managers, either in the music parlour or in the massage parlour upstairs, that they would beat up the customer again or attack that customer again, the one that they beat up the previous night, that is on the 27th?
- A. No.
- Q. You didn't hear that?
- A. I don't hear at all.

10

MR. HUANG: May this be a convenient time, my Lord?

COURT: Do you want to carry on?

MR. HUANG: I would like to do some checking now. I have been on my leg all afternoon.

20

COURT (To Witness): Well, I am afraid you have to come back again on Monday.

A. I have to go to work.

COURT: Where are you working?

A. Kwun Tong.

COURT: During the day?

A. Yes.

COURT: What time do you start work?

A. I'm supposed to be at work at 9 a.m. but I am working on my own, therefore, I usually would go to work sometime after 9 to 10 a.m.

30

COURT (To Counsel): Would she be finished in the morning?

MR. HUANG: Yes, I presume so. Anyway she would be getting compensation. She will be getting an allowance.

COURT: Do you have to get leave to come here?

A. Well, I do some packing work in the section. If we are in a rush to deliver goods, then I have to get a substitute worker to replace me.

40

COURT: Well, you have to come here in the morning anyway. Come back at eleven o'clock on the 13th.

A. Will that be the last time?

COURT: Well, I certainly hope so for you-- that you would be completed on Monday morning.

We'll adjourn to eleven o'clock on the 13th. The defendants be remanded three days' gaol custody.

4.43 p.m. Court adjourns.
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FURTHER XXN. BY MR. HUANG:

Q. Now, Miss TANG, did you see the gentleman who just walked out of the court who has just given evidence here?

A. Yes, I did.

Q. What is his name?

A. SO Hung.

Q. Now, you knew him well?

A. Not well.

Q. Well, how do you get to know him?

A. All I know about him is that he was an employee working up-stairs and very often he would come down-stairs, everybody called him SO Hung, that's how I come to know him.

Q. Yes. Well, by up-stairs you mean the Sun Sze Suk Liu Massage Parlour?

A. Yes.

Q. Was he the manager up-stairs?

A. I know that he was not an usher, his capacity therein is more or less like a person in charge.

Q. If the real boss was not there, he would be the person responsible and gave order, is that correct?

A. Yes.

Q. And you are definite that he is not an usher?

A. Correct.

Q. That's a lower job?

A. Yes.

Q. As far as you know, do you know whether he had to clean the floor or make up the beds in the rooms, tidy up the rooms?

A. No, no need.

Q. Now, you have known him for some time, is that correct?

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- A. Yes.
- Q. But you worked in the music parlour down-stairs, in the mezzanine floor?
- A. Yes.
- Q. Have you worked up-stairs in the massage parlour before?
- A. No, I have not.
- Q. Now you say that SO Hung often came down to the music parlour on the mezzanine floor. 10
- A. Occasionally he would come there to chat.
- Q. To chat with whom?
- A. With persons like the floor managers.
- Q. Now as far as you know, does he know all the floor managers down in the music parlour?
- A. Yes.
- Q. And the floor manager in your music parlour is CHAN Heung-choi, is that correct? 20
- A. Yes.
- Q. And one is called LI Kwong-ye?
- A. He is not a floor manager, he is only a general worker.
- Q. Now, are you positive, Miss TANG, that SO Hung knew these two persons?
- A. Yes.
- Q. Is it correct, Miss TANG, that the floor managers of the two floors are - they all mix up, they would work in either one of them inter-changeably, is that correct, because both establishments are owned by the same boss? 30
- A. No, they were not mixed, they were separated.
- Q. But they would go from one place to the next very often, the same group?
- A. No. The boss would specify who would work in which floor.
- Q. Yes. But they do visit each other very often? 40
- A. Sometimes they did. In most cases, SO Hung would visit the persons of the other floor but the other floor managers were comparatively less often in visiting the other establishment.
- Q. All right. Now is there another manager for your music parlour in the same capacity as SO Hung for upstairs?
- A. Amongst those persons YIP Bun comparatively had more say in the company but he was not as authoritative as SO Hung. 50

Q. Now would you say that SO Hung acts as a manager for both establishments?

A. For matters of our establishment, we would consult YIP Bun. Our floor was not under the control of SO Hung.

Q. But SO Hung would visit the music parlour very often and talk to your, say, "Tai Pan", like YIP Bun and the other floor managers.

A. Yes, just normal chats.

10 Q. Normal chats. Now, Miss, you were referring to a person Fai Chai on the last occasion.

A. Yes.

Q. Now is his real name CHAN Heung-choi?

A. No, CHAN Heung-choi is another person.

Q. Has CHAN Heung-choi got any nickname?

A. We called him Ah Choi.

Q. Now do you know the real name of Fai Chai?

A. I think his real name is AU King-hang.

20 Q. Do you have a colleague by the name of YIP Tin-sung?

A. Yes YIP Tin-sung is the same as YIP Bun.

Q. Well, he is the same as YIP Bun.

A. Yes.

Q. And he also has got a nickname "Hak Chai", is that correct?

A. Yes.

Q. All right. So as far as you were concerned, YIP Tin-sung is the most authoritative, the person responsible for the music parlour in which you were working.

30 A. Well, at first there was a person called Ah Tong who was in charge of the music parlour but later when the fashion shop was established, he transferred to work there.

Q. All right. Say in December 1975, YIP Tin-sung was the person acting as a manager.

A. Well, at that time it seemed to me that there was no person in particular who was in charge; but whenever we had to make a decision, we would consult YIP Bun.

40 Q. Yes, and the other girls would do the same thing, the other employee would do the same thing concerning YIP Bun, is that correct?

A. Yes.

Q. So, anyway, among the male and female staff working in the music parlour, he seemed to be the man who had the most say.

50 A. Are you referring to the persons who came to seek a job?

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- Q. Well, anything that was going on in the music parlour, like you now - anything happened, you say you would have to consult him.
- A. Usually I would.
- Q. Yes. And other employee would do the same?
- A. Yes.
- Q. Now remember on the previous occasion you said that when the group of men came in you were talking to the cashier LI Kai. 10
- A. Yes.
- Q. And LI Kwong-yeo was sitting on the sofa across the reception area.
- A. Yes.
- Q. Now that is all, only the three of you in the reception room, either outside or inside the counter when these men came in.
- A. Yes.
- Q. And you are positive of that, Miss? 20
- A. Yes, positive.
- Q. All right. And when did the other-- You say there were other people watching T.V. in the rest room.
- A. Yes.
- Q. Now when these men came in, first came in, the rest was still watching T.V. inside, is that correct?
- A. Some of them had started to come out of the resting room. 30
- Q. Well, what attracted them then?
- A. Being floor managers, they could not stay in the resting room for too long; they had to come out occasionally to see what was going on.
- Q. Well, what interval of time that this group of men came in before your floor manager came out from the rest room?
- A. When the group of persons came in, it just happened by chance that the floor managers were coming out of the rest room. 40
- Q. Is it correct that when the group of men, strangers, came in your floor managers, apart from the three you have described, were still inside the rest room?
- A. Later when the commotion started the deceased and Ah Lun also came out to have a look.
- Q. Who is Ah Lun?
- A. Ah Lun was a general worker of the establishment upstairs. It just happened that on that day he came down to watch television. 50

Q. How do you know he's only a general worker upstairs?

A. Yes, because when people wanted to buy things they always asked him to do it.

Q. You mean he is the one that you would send out to go and fetch things, is that correct?

A. Yes, sometimes when people wanted to get some change of money, they would send him to our floor to get the change.

10 Q. Now, Miss, I'll change the subject a little. I now go to the identification parade. Now you had attended three or four identification parades, is that correct?

A. It seems to me that I had attended two or three identification parades, out of which I identified one person.

Q. Yes, but on one or two occasions you could identify no one, is that correct?

A. Correct.

20 Q. Now you told us that on the occasion when you purported to have identified someone, you say, you spoke to the police woman officer afterwards.

A. Yes.

Q. Now did you tell her that-- you have said that you told her that you could only make out the outline and you could not be positive.

A. Correct.

30 Q. But did she tell you anything?

A. Perhaps at that time I was frightened since it was the first occasion that I have made any identification and this woman police officer said to me in a loud voice, "Is he the one? Don't say it seems."

Q. All right. You have told her only, "That person seems to be the one."

A. I said, "From the outline of his features, he seems to be the one but whether he actually was that person I am not sure."

40 Q. What else did she tell you?

A. The woman police officer said, "You said from his outline he was the one. Are you sure he is the one?" At that time I was feeling sorry for the deceased and I said that he was the one.

Q. But in fact you were not sure.

A. I was not positive. Well, I was very

50 frightened at that time and it was dark therefore I told the police officer that I could only see the outline of that person.

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- Q. Did the woman police officer tell you anything else?
- A. No.
- Q. Did she tell you that he was picked up from the New Territories?
- A. No.
- Q. And did she also say, "He has no parents so you have not got to worry about it. The person has no parents."
- A. This woman police officer did not tell me but the detectives who asked me to attend the identification parade had told me. 10
- Q. How did they tell you? How did the detective tell you?
- A. I said to the detectives, "I am afraid I would make a wrong identification and they would take revenge on me." The detective said, "Silly girl, they would not do so because this man has no parents and he is living in the New Territories." 20
- Q. Is that before you went into the identification parade?
- A. Yes.
- Q. Did they tell you how that person looked like?
- A. No.
- Q. But how did they come to tell you that the person has no parents, was only picked up from the New Territories? How did it start at this time? We want to know. 30
- A. I asked the detectives, "What'd happen if I had identified someone? Would he take revenge on me?" The detective said he would not because he had no parents and he was picked up from the New Territories.
- Q. Do you remember which detective tell you all that?
- A. I do not know them.
- Q. Can you even recall the surname?
- A. I don't know. 40
- Q. Now before you went into the other identification parade, did the detective talk to you?
- A. Nothing else was said except those I had related to court.
- Q. Now Miss TANG, after this incident on the 28th of December last year, did you discuss what you saw with your colleagues?
- A. We only talked about what had happened at the scene. 50
- Q. Yes.
- A. Yes, we did.

Q. With whom?

A. I talked with the other girls of the music parlour and also the floor managers. We discussed about what had happened at the scene.

Q. Now yesterday you mentioned about this Fai Chai who said to you that on the 27th, the night of the 27th December, he had run up and given some punches to the customer upstairs.

10 A. Yes.

Q. As far as you know whether he had given police a statement and come to act as a witness?

A. No, he has not given any statement to the police.

Q. Now apart from Fai Chai-- You say Fai Chai's real name is AU King-hang.

A. Yes.

20 Q. All right. Apart from Fai Chai did anyone else tell you or indicate that they had taken part in the assault?

A. No one else told me that he had taken part. I do not know the persons upstairs and as far as our floor is concerned only Fai Chai took part.

Q. But only Fai Chai took part in the assault. Did other floor managers from your floor go upstairs on the 27th?

30 A. Yes, they did. They went up there just to look.

Q. Well, who went up?

A. YIP Bun. LI Kwong yee later also went there to have a look.

Q. Yes?

A. So did CHAN Heung-choi.

Q. And so did Fai Chai, at least four of them went up.

A. Well, Fai Chai rushed upstairs first.

40 Q. I see. He was the first one to rush up. Well, he rushed up as a result of a signal from upstairs or what?

A. I don't know how he knew.

Q. Now did anyone else go up?

A. No.

Q. Now you say that you heard some conversation, "They are our people" or words to that effect.

A. Yes.

50 Q. Now who made such a remark - I mean in what context?

A. At the time when the chopping was going on I heard someone say, "He is one of us."

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- Q. Well, yes in the chopping; I am talking about-- I am referring to your floor manager talking about the incident upstairs on the 27th when they were, according to Fai Chai he had given the fellow a few punches.
- A. Well, they talked about questioning that man and found out that he also belonged to Shing Wo. As a result they let him go and gave him a chance. 10
- Q. When they discussed this thing? The night of the 27th?
- A. Yes, the same night, CHAN Heung-choi said this.
- Q. CHAN Heung-choi said that. You are sure of that? You heard this conversation?
- A. Yes, I heard him say. CHAN Heung-choi said, "I also wanted to beat him up but he claimed to be one of us."
- Q. And so? Because "he is one of us", so what happened? Did he complete the sentence? 20
- A. He said, "I also wanted to beat him up because he had assaulted the girl, but when he was being questioned he said he also belonged to Shing Wo and so I did not assault him. I let him go."
- Q. Did they tell you how they assaulted him, assaulted that customer, from their conversation?
- A. I heard Fai Chai said he had punched him two times. 30
- Q. Did you get the impression that there were many of the floor managers who had taken part in the assault, who beat that customer?
- A. Well, I did not go up to look, I only heard what they said; and from our floor only Fai Chai said he had assaulted the customer. I did not know about the employees of the upper floor. 40
- Q. Yes. Now, Miss, when these strangers first came into the music parlour on the 28th, did you hear one of the floor managers greet them at the door by saying, "How many?" thinking that they were customers?
- A. They were not asked such because as soon as they came in they said they were members of the C.I.D., therefore, they were not customers.
- Q. But didn't you say that you thought they were customers when you first saw their appearance? 50

- A. We thought they were customers at first but as soon as they announced that they were C.I.D., no one asked how many they were.
- Q. Now, Miss, you say you were standing by the telephone when all this occurred.
- A. When the incident occurred, he dragged me to one side near the telephone.
- Q. Now is that the telephone now shown in...
- Exh. P2(D) COURT: 2(D)?
- 10 MR. HUANG: I am sorry, my set-- this set is not numbered.
- Q. ... in picture (D).
- A. Yes, I was standing right near the flower pot.
- Q. Now is it the telephone right in the middle of that picture (D)?
- A. Yes.
- Q. So you were behind that telephone, is that correct?
- 20 A. Yes, in front of the flower pot.
- Q. Now I asked you whether it's behind the telephone, you say in front of the flower pot. Well, if you were talking, say, near the telephone, let's refer to the telephone. Is it the telephone in the middle and you were standing behind the counter, behind the telephone?
- A. I was standing outside the counter.
- 30 Q. Outside. But I think you were inside the counter chatting with the cashier.
- A. Yes, when they said, "Come out. Come out", so I came out from the counter.
- Q. So you were right in the middle of the reception area?
- A. Right after I had come out of the counter, he dragged me to one side.
- Q. Dragged to which side?
- A. To a place in front of the flower pot.
- 40 Q. Now show the jury where. Is it that curve?
- A. I was leaning against the counter at this part (Witness indicates).
- Q. All right. How were you facing?
- A. Facing the sitting-room.
- Q. You say it was a great confusion.
- A. Yes.
- Q. You say you were very frightened.
- A. Yes.
- Q. And according to you at that time the person who dragged you there had left you there.
- 50 A. Yes.

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- Q. So, therefore, you were there standing unattended, with no one watching you.
- A. The one who had dragged me there let go his hold and no one paid attention to me.
- Q. Yes, as if you were left alone.
- A. Yes.
- Q. And, you know, in all these excitement and chopping, running, chasing - chasing, according to you, some men chased some into the rest room - you stood in that position from the beginning to the end without moving? 10
- A. Yes.
- Q. You were able to say when they stepped into the main door and when they left the main door.
- A. Well, I know that they came in through the main door and they left through the main door, but I am not positive about the time when they did so. 20
- Q. I am not talking about the time. You seemed to be able to tell the story from the time they entered and up to the time they left in spite of the excitement that went on in between.
- A. Yes.
- Q. So you made no attempt to run away yourself or to hide yourself in scare or made any such attempt.
- A. Because that man has told me not to move. I was afraid that if I made the move or resisted he would do harm to me. 30
- Q. Well, you could dash right behind the counter or into the room, the rest room nearby, like the others who ran into the rest room.
- A. Well, I dared not disobey that man lest he would do harm to me.
- Q. But they also told the others not to move, according to you. 40
- A. The man who had grabbed hold of my dress told me not to move. He also ordered the others not to move.
- Q. In spite of that the others were all running, but you stood still.
- A. Well, at that time the chopping had not started and the people did not run. They only started running when the chopping started.
- Q. And when the chopping started, you did not run at all. 50

A. I did not run because I was afraid that I might be chopped.

Q. Miss, I am suggesting to you that you did not see as much as you have attempted to tell the court.

A. Not so, I really saw all this.

Q. Now is there a drawer behind the counter?

A. There was one empty shelf behind the counter for storing things.

10 Q. Isn't there a drawer that you could pull out?

A. No, it was empty.

Q. Now I put it to you that there is one like that.

A. Further behind, at the bar, there was a drawer.

Q. Or many drawers.

A. There were several cupboards.

Q. Yes, and all the cupboards have drawers.

A. They had doors.

20 Q. They had doors. Now have you ever used those cupboards?

A. Yes, I have, because when we were having our meals, I took bowls from those cupboards.

Q. Apart from bowls there were other things there, isn't it?

A. Sundry articles were also stored there, like paper and drinking straws.

Q. Knives?

A. Some of the drawers we have not opened them. I am not sure whether any such things were stored there.

30 Q. Only the floor manager used those drawers, is that correct?

A. They did not use them. The drawers were only used to store things.

Q. Yes. If you stored things, somebody'd got to open it to store things there.

A. Yes.

40 Q. So you say you do not use it, then I asked you is it correct that the floor managers may make use of them?

A. The floor managers would use the other drawers. We only used the first two drawers for keeping bowls and chopsticks.

Q. All right. Now I change the subject a little, Miss. Now please refer your memory back to the incident where you say you listened to Fai Chai, CHAN Heung-choi when they were talking about what they witnessed upstairs on the 27th of December.

50 A. Yes.

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- Q. Now from their conversation, did it appear to you that they knew the customer involved?
- A. They did not know him but they knew that it was that person who had assaulted the girl.
- Q. Now on the 28th now, Miss, on the 28th, the night of the incident you were telling us about now, did you hear some of your colleagues, either CHAN Heung-choi or LI Kwong-ye, on seeing some of the men coming in, make a remark like this - I'd better put the whole - that is after one of the floor managers first greeted them by asking the customers how many...
- A. No one asked. Usually such person would be asked, but after they said that they were C.I.D., it wasn't asked.
- Q. After the floor managers said how many, did you hear one of the persons who entered say, "We are only looking for somebody"?
- A. I did not hear.
- Q. Following that, when CHAN Heung-choi recognised one of the persons who came in there, then CHAN Heung-choi said, "Your fucking face again. What are you doing here?" Did you hear that?
- A. Well, after the incident when I heard them chatting, they said that when the strangers came in, they said, "That was he", meaning the strangers were pointing at Fai Chai.
- Q. But did you hear the floor manager say anything, words to that effect - what I have just put to you?
- A. I did not hear. When they shouted out that all of us to come out, I did not hear anything else yet.
- Q. Well, let me put to you that that was what happened. One of the men said, "We are only looking for somebody." Then CHAN Heung-choi, on recognizing one of the persons said, "Your fucking face again. What do you come here for?"
- A. I did not hear.
- Q. And then one of the strangers said, "Let us talk first. Don't be so fierce".
- A. No.
- Q. And that stranger continued, "Even though you have beaten him, you don't have to chase him to Yau Ma Tei to chop him."
- A. No, in fact nothing much was said. They first announced that they were C.I.D. and then they told us not to move.

Q. They were referring to the person that was beaten and chopped at, that is the customer at the Siu Nui Chin Kiu the previous night.

A. Yes.

Q. Then CHAN Heung-choi said, "So what? It has been done."

A. No, I personally did not hear such being said before the chopping occurred.

10 Q. And then one of the strangers said, "You have to pay compensation."

A. No.

Q. At this juncture one of the floor managers said, "There would be no compensation, but you can get knives."

A. I don't know. I did not hear because very soon afterwards they started to act. There was not much time for them to talk.

20 Q. Yes. I put it to you that after these words were said, one of the floor managers ran behind the counter and attempted to pick up a knife from the drawer.

A. No.

Q. Then...

A. But after the incident, after the strangers had left, Fai Chai leaned forward at the bar and took out some weapons and he said if they had gone a minute later, he would beat them to death.

30 Q. Where was this weapon you talk about? Where? Where did Fai Chai get it out?

A. I don't know. It was after the strangers had left that I saw Fai Chai come out holding something which looked like a hammer or a pole.

Q. Yes. But tell us more about that. Where did he get it from?

A. I don't know.

Q. Were there knives in that parcel, triangular files?

40 A. No such thing.

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MR. HUANG: She said Fai Chai brought out a parcel.

INTERPRETER: She never said "a parcel".

COURT: There was no such thing - a parcel.

MR. HUANG: No such thing?

MR. MARASH: She said he got some weapons.

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MR. HUANG: Oh, he got out some weapons. I am sorry, my Lord. I have written "a parcel".

COURT: Fai Chai leant forward at the bar and then took out some weapons.

- Q. Now, Miss, from which part of the bar Fai Chai found some weapons, brought out some weapons?
- A. I heard Fai Chai say, "I was holding the weapons and waiting. If they had rushed in, I would put up a fight with them."
- Q. Yes, and what kind of weapons? I believe he 10
was holding the weapons for self defence.
- A. I cannot remember for sure but I do remember he had a hammer.
- Q. How many pieces did he bring out?
- A. Two weapons, one in each hand.
- Q. Now, but that is immediately after the incident, is that correct?
- A. Yes, after the incident. When we saw him we asked where he had been. He said he had been hiding there and he was holding 20
the weapons.
- Q. When you said "there", where?
- A. He was hiding behind the counter where I said there was a telephone.
- Q. I see. Is it the case that during the fighting he was hiding behind the counter with the weapon he held in hand?
- A. According to what he said, when the strangers told the people not to move, he had run behind the counter and grabbed hold of the 30
weapons.
- Q. I see. As soon as they just said not to move, he ran behind the counter to get the weapons.
- A. He said, "I was smart. I knew it was in connection with that matter. When they told us not to move, I immediately ran behind and took the weapons."
- Q. Yes. And did you see a stranger follow him? 40
- A. No.
- Q. Now apart from Fai Chai who ran behind the counter to fetch weapons?
- A. No, LI Kai never came out of the counter. He just hid himself underneath the desk.
- Q. No, what I meant is: did any other floor managers who dashed in from the reception area, run behind the counter to fetch weapons?
- A. No, no one did.

Q. Well, Miss, I am putting it to you that there was such a person.
 A. No, to the best of my knowledge, no one did.
 Q. Of course, you were not looking in that direction.
 A. Perhaps so.
 Q. Your back was facing behind the counter.
 A. Yes.
 Q. So if anybody dashed in there and fetched a weapon, you could not have seen.
 10 A. Perhaps so, yes.
 Q. Perhaps so. All right. Then, Miss, I am putting it to you that as the conversation had reached there - that is the case I put to you - when one of the floor managers said, "There would be no compensation but you can get knives", immediately after that, one of your floor managers dashed behind the counter to fetch a weapon from one of the drawers and another one then dashed below the sofa to pull out a parcel of weapons.
 20 A. No.
 Q. And then one of the strangers kicked the hand of the person, the floor manager who went to fetch that parcel of weapons.
 A. No.
 Q. And then there was a confusion, a struggle started.
 A. Not like this.
 30 Q. Now, Miss, apart from Fai Chai, who had said he was holding some weapons behind the counter waiting that night? Did anyone else talk about weapons? When I say "anyone", your floor managers.
 A. No, none at all.
 Q. Did you hear anything from any of the floor managers about a chopping incident the previous night, the 27th, that they went out and chopped someone or words to that effect?
 40 A. I did not hear.
 Q. You did not hear. Do you know who is the boss of your premises, the real boss?
 A. I do not. Well, I know there is a proprietress. I forgot how we address her - as a Mrs. something.
 Q. Yes?
 A. She is surnamed "LAM".
 Q. Surnamed "LAM". Do you know a gentleman there called CHIU Lun?
 50 A. That is Ah Lun that I have referred to.

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- Q. How do you know he is CHIU Lun?
A. A general worker upstairs.
Q. How do you know his surname is "CHIU"?
A. Now that you have mentioned his name I recall that he is Ah Lun, although usually I seldom hear people call him CHIU Lun.
Q. I mean you cannot say it's the same name we are talking about. You know a person called Ah Lun?
A. When we were at the police station, the police officers asked who was Ah Lun. SO Hung said, "I think he is surnamed 'CHIU'."
Q. Yes. So SO Hung said, "CHIU Lun is the boss", is that correct?
A. No, CHIU Lun is not the boss.
Q. Well, from the story you told, the police asked him, "Who is Ah Lun?" He said, "He is CHIU and he is the boss." You say SO Hung told the police that.
A. At the police station when we were asked who was Ah Lun, we looked at each other. SO Hung said he was surnamed "CHIU"; and usually when people came to check the licence, the real boss would not appear and would ask a general worker to claim as the boss.
Q. I see. You know that as a fact.
A. Yes.

10

20

MR. HUANG: That's all, my Lord.

Re-
Examination

FURTHER REXN. BY MR. MARASH:

- Q. You told us earlier on that when these men first entered, LI Kwong-yea was sitting on the sofa near the door.
A. Yes.
Q. How did you know he was sitting there?
A. When I was chatting, I saw that he was sitting there.
Q. Do you agree with me that from where you were standing behind the counter over to where he was sitting is at least some twelve to fifteen feet?
A. About that distance.
Q. It's about as far as you are from me.
A. Yes.
Q. From that distance you could see that that was LI Kwong-yea?
A. Yes.
Q. Now you told us that after the incident, you saw Fai Chai, who is AU King-hang.

30

40

A. Yes.

Q. You heard him say, "I was holding the weapons and waiting. If they rushed in, I would put up a fight with them."

A. Fai Chai said this after the incident. He said he was waiting there with the weapons. If those men rushed in he would put up a struggle with them, but they did not come in so he did not do so.

10 Q. Now were they the words that he actually used, "If they had rushed in"?

A. Yes.

Q. "I would put up a fight."

A. Well, he meant that if he was being chased, he would run behind the counter.

Q. When was the first time you saw Fai Chai in all this incident? Did you see him before the men had left?

A. When I saw Fai Chai the strangers had gone and he made those remarks when I saw him.

20 Q. That was the first time you had seen him.

A. When I first saw him he did not have any weapons.

Q. Tell me this: his words were "If they had rushed in, I would put up a fight", did he ever mention that "in" meant "behind the counter"?

A. When the strangers first came in, Fai Chai had not gone behind the counter.

30 Q. Could he have meant by "in", "into the resting room"?

A. When the strangers first came in, Fai Chai had not gone behind the counter. He said if they had chased him behind the bar, he would put up a fight.

Q. You never saw him in front of the bar at any stage before the strangers left, did you?

A. I did not.

40 Q. So you agree with me that what he could have meant by "rushed in" was "rushed into the resting room".

A. No, he meant if they followed him to behind the bar.

Q. Where was Fai Chai before these men came in?

A. Because Fai Chai had beaten up that man, therefore, when he saw the strangers he recognized them and he immediately went behind the bar.

50 Q. So you did see Fai Chai before the chopping started.

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- A. I had a glance of him but I did not see him again.
- Q. And you were standing in front of this flower pot in photograph (D).
- A. Yes.
- Q. To get out from behind the bar, would you get out from the left-hand side of the photograph or from the right-hand side of the photograph?
- A. One can come out from the left side of the photograph (Witness indicates), passing the entrance of the rest room. 10
- Q. You were standing there throughout the whole of this incident?
- A. Yes.
- Q. Did you ever see him come out?
- A. Well, later after the incident I saw him come out of the counter. He also said so himself.
- Q. That was the first time you ever saw him come out. 20
- A. When I came out of the counter myself I saw Fai Chai somewhere here (Witness indicates) and then I did not seem him again.
- Q. The next time you saw him he was coming out from behind the counter after the strangers had left.
- A. Yes.
- Q. What Fai Chai said was that, "If they had rushed in, I would have put up a fight". 30
- A. Yes, he had been squatting behind the bar.
- Q. You yourself never saw Fai Chai put up a fight himself.
- A. He did not take part in the fight.
- Q. Did you see any of your fellow employees, any of the floor managers or general workers, in any way resist these men?
- A. CHAN Heung-choi in his bid to ward off a blow, he was chopped in the hand. After he was injured he pushed YIP Bun into the resting room. 40
- Q. So you didn't see any of your fellow employees in any way assaulting these men that had come in.
- A. No, they did not. They did not have any weapons. They could not resist.
- Q. Now I want to ask you about the identification parade in which you identified the 4th accused. At that parade, did any police officer or anybody about the police station ever say to you, "He is the man you have to pick out on the parade"? 50

A. Well, he said, "Of those persons that we have arrested, can you identify any of those?"

Q. Perhaps you misunderstand me. Did anybody every directly say to you, "You have to pick out such and such. He is dressed in a particular way" or give you any assistance to help you to pick out anybody?

A. No.

10 Q. So all these men you saw on that parade, the 4th accused was the only man that had any resemblance to you at all.

A. Yes.

Q. And you picked him out because of the outline of his features.

A. Yes.

Q. You mentioned to us that at the scene his hair was more curly.

A. Yes.

20 Q. What about at the parade? Did his hair at that stage appear to be curly or straight like he is now?

A. His hair was straight as he is now.

Q. Apart from that difference, was there any other of his features that appeared different to you at the parade as distinct from the time you saw him in the music parlour?

A. When I was in the music parlour, he grabbed hold of my dress. I dared not look him square in the face. I only had a glance of the outline of his features.

30 Q. That's right. You have told us that. But you did manage to pick him out at the parade. You have told us that one thing was different about him, that is his hair wasn't as curly as it was on the night.

A. Yes.

Q. That is quite a specific statement which you have made. Was there anything else that was different on the parade to how he appeared on the night?

40 A. It was impossible for me to see his face clearly because he was against the light, therefore, I could only see the outline of his features.

Q. From the outline of his features, was there anything different from the man you saw on the night to the man you picked out at the parade, apart from his hair?

50 A. Well, I did not pay particular attention to him because he only gave me a pull and I was frightened.

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- Q. I appreciate that. Please answer my question. Was there anything different at the parade other than his hair from how he looked on the night when he grabbed hold of you?
- A. When he was at the scene he was wearing black clothes. He was wearing a cotton padded jacket.
- Q. You noticed all that, at the scene he had black clothes and a cotton padded jacket. 10
- A. Yes.
- Q. Now what about the features that you saw on his face? Was there any different feature at the parade - different from what you saw on the night?
- A. I have told you I did not see his face. I only saw the outline of his features. I cannot tell his face.
- Q. Was there anything different about the outline of his features? 20
- A. I dared not look him squarely in the face. I only stole a glance at him and I could roughly see the outline of his features.
- Q. You looked him squarely in the face at the identification parade and you picked him out.
- A. I have told the woman officer that by the outline of his features he looked like that person.
- Q. Let me put to you this way. It's correct to say that there was nothing in the outline of his features, other than his hair that looked different on the parade to what he looked on that night. 30
- A. His clothes were different.
- Q. And that's all.
- A. He was wearing black clothes.
- Q. And that is the only difference.
- A. The man at the scene appeared to be taller than the person whom I had identified. 40
The one that I had picked out at the parade was shorter, slightly shorter.
- Q. Why did you pick him out?
- A. I did not say he was the one. I told the woman officer that the outline of the features of the man at the parade looked similar.
- Q. All right. Now on the night of the event you made a statement to the police.
- A. Yes. 50
- Q. And my friend showed you a statement which you say is not your statement, is that correct?

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- A. Correct.
- Q. Perhaps you could look at it again. That is the statement you say is not yours, is that correct?
- A. This is not my statement.
- Q. Just look briefly at it please. The name of the informant shown there is "TANG Siu-ling" is that right?
- 10 A. Yes.
- Q. And the person who made the statement gave her age as eighteen years and sex as female.
- A. Yes.
- Q. The address given of this person TANG Siu-ling is an unnumbered wooden hut at Tai Kiu Village, Yuen Long, New Territories.
- A. Yes.
- Q. And then there is a telephone number - Kowloon-926484.
- A. It is the company's telephone number.
- 20 Q. Then there is a "Nationality and Dialect", which says "Po On".
- A. Yes.
- Q. Do any of those particulars apply to you, that is the nationality and dialect, the residence and the age?
- A. None of them are applicable to me.
- Q. Now would you look please at this statement...

30 MR. HUANG: My Lord, I want to put in the record. The document I cross-examined her on, that's a document supplied by my learned friend. It's not out of my resources to contradict her. She said she had made three statements and my learned friend handed this statement to me and I take a glance at it, you will recall, and I made use of it, so, therefore, it's not my fault if the witness-- and the witness admits it's her own statement and all these things. Now I understand my learned friend-- Well, he can now ask-- re-

40 examine her I made a mistake, I was wrong, whatever it may be, but now it seems that my learned friend has indicated to me he intends to produce another statement made by her. Well,...

COURT: Well, two statements were produced here. One statement was made at the committal proceedings.

MR. HUANG: Yes.

COURT: Is this the statement you will produce?

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MR. MARASH: This is the statement which the Crown alleges the girl made on the night, my Lord...

COURT: Well, you are not supposed to do that.

MR. MARASH: Well, I am not producing it, my Lord. I am going to ask her to identify whether this is the statement that she made, not could have made.

MR. HUANG: Well, then you refer to the statement. Well, then you refer to all the statements that she made, because whatever such statement, if I, my Lord, were to contradict her credit on-- from sources of my own, and then I will-- the witness may be shown a statement to show her inconsistency like her first report to the police about the case to repeal her credit, but I didn't do that. The Crown supplied me with the copy of her earlier statement. I looked at it, then I cross-examined her on it. That's all. Well, if she made a mistake, well, let her say so, let my learned friend in re-examination say so, but not that as an excuse to put in other statements that are made by her.

10

20

MR. MARASH: I have no intention to put it in, my Lord. I'm simply asking her if this is in fact the statement that she did make, confirming the other one is not hers.

COURT: What is the use of that?

MR. HUANG: What is the use of that?

COURT: She has also said she didn't make the other statement.

30

MR. MARASH: I am not sure of it. As I understood it, my learned friend didn't accept that...

COURT: It's not up to him to accept it or not. This is a statement made by her in which either the jurors will accept it... Whether he accepts it or not does not matter at all. He has already questioned her in that aspect.

MR. MARASH: I would have a submission to make about this in the absence of the jury.

40

COURT: Now she has said, "This is not my statement." in another statement of what she says the particulars don't apply to her. So I don't see what the relevance is.

MR. MARASH: Well, I simply wish her to identify that she did make another statement.

COURT: Well, you can ask her whether she made it or not. You don't have to identify it.

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- 10 Q. Did you make another statement other than
the one which you now say is not yours?
A. Yes, I have. In fact I made several
statements. This is one of those.
Q. On the night of the incident, did you only
make one statement to the police?
A. Well, I made two statements the same
evening. I was asked by different police
officers.
Q. Did you, after the identification parade,
also make a statement to a police officer?
20 A. No, the police officer asked me, "You have
identified the number of one of those
persons." I said, "Yes."
Q. And didn't you make any written statement
after the parade saying who you have
identified or anything like that?
A. The officer asked me what was the number of
that person and I told him and he wrote
the record.
Q. That was at the time of the parade, was it?
30 A. I was told to go to court in future to be a
witness.
Q. When was it that you told the officer about
this identification by the outline of the
features? Was that during the actual parade
or after the parade?
A. At the time of the identification parade I
told her.

MR. MARASH: No further questions, my Lord.

BY COURT:

- 40 Exh. P2(C)
Q. Do you see this Christmas tree in 2(C)?
A. Yes.
Q. Were there any lights on that tree?
A. Yes, small bulbs.
Q. Was there lighting on the 28th?

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- A. Yes, with blinking light bulbs.
Exh.P2(D).
- Q. Do you see also a lamp almost directly above the telephone in 2(D)?
- A. Yes, I have told the court before there was a line of lightings which were covered up and they were tinted bulbs.
- Q. Those are the lamps that you mean?
- A. Yes.
- Q. That is the ones that appeared to be covered... 10
- A. To be fitted inside a cover. They were tinted.
- Q. That is a lamp-shade. The one tinted was the lamp-shade.
- A. They were lamp-shades. They were covered up and one has to insert a hand inside in order to put in the bulb.
- Q. Yes, but the light comes through that shade and doesn't only shine downwards, it shines outwards as well. 20
- A. It was very dim. The light would only shine downwards and would not go in other directions.
- Q. Were you dragged all along here? (Court indicates.) All along this sofa?
- A. I came out of the counter first.
- Q. Yes, outside the counter, not inside the counter. How could he push you inside the counter? Outside the counter I mean. Was it all along here, not across the room, or... 30
- A. I was dragged along the counter.
- Q. And the lights were along the counter?
- A. Yes, there were four lights in one line.
- Q. And did all the action of this incident take place in that reception area?
- A. Yes.
- Q. None of the strangers went into any room at all? 40
- A. No.
- Q. And do you know whether this man called LI Kwong-yee is also known as "Tai Jat Kwong"?
- A. Somebody called him by this name but he seldom used it.
- Q. You have heard he's called by this name?
- A. Yes.
- Q. Yes, all right.

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Accused present. Appearances as before. Jury present.

MR. MARASH: I call LI Kwong-ye.

P.W. 6 - LI Kwong yee Affirmed in Punti

XN. BY MR. MARASH:

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- 10 Q. Is your full name LI Kwong-ye?
A. Yes.
Q. Are you also on occasion known as Tai Chak Kwong?
A. Yes.
Q. How old are you?
A. 29.
Q. Whereabouts do you live?
A. I live at my former working place, that is, at 689 Nathan Road, Mezzanine floor, Kowloon.
- 20 Q. Whom do you work for?
A. You mean at present?
Q. Yes.
A. With the Japan Fashion Shop as an odd job worker.
Q. On the 27th December last year who were you working for?
A. With Siu Nui Chin Kiu, also as an odd job worker.
Q. What type of work did you do when you say odd job worker?
- 30 A. Sweeping the floor, picking up litter papers, cleaning the toilet and bowls and dishes, serving meals, various jobs.
Q. On the 27th December last year, that is the day before the incident in the Siu Nui Chin Kiu, are you aware that there was an incident upstairs in the Sun Sze Suk Lui Massage Parlour?
A. Yes.
- 40 Q. How did you first become aware that something was happening in those premises?
A. I heard some of the girls say that there was a fight upstairs.
Q. About what time did you receive that information?
A. I am not sure now, but I believe it was at about 7 or 8 p.m.
Q. So it was in the night time of the 27th that incident happened?

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- A. Yes.
- Q. What did you do when you found there had been an incident upstairs?
- A. On hearing that there was an incident happening upstairs I also went upstairs to have a look.
- Q. Did you go by yourself or with someone else?
- A. I went by myself. I went after all the rest had gone up.
- Q. Somebody else from your music parlour had gone up before you, is that correct? 10
- A. Yes.
- Q. Do you know who?
- A. I am not sure.
- Q. What happened when you got upstairs into the massage parlour?
- A. I saw a girl inside a room and someone was applying medicated ointment to her.
- Q. Who was that someone - a male or a female?
- A. They were all girls. I could not enter the room. 20
- Q. Do you know the number or the name of that room?
- A. I don't know the number of the room. I hardly went up there, not even once in a year.
- Q. What else did you see other than this girl having ointment applied on her?
- A. It seems to me that her face was bruised and swollen. 30
- Q. Did you talk to this girl at all?
- A. I did not. I did not know her.
- Q. Did you see anybody else other than the staff upstairs?
- A. I did not notice any other person there. In fact I cannot remember.
- Q. Having seen this girl there being treated as you described, did you make any enquiries as to what happened?
- A. I did not. 40
- Q. What did you do?
- A. After looking for a while I left.
- Q. Did you speak to any of the employees of the Sun Sze Suk Lui?
- A. No.
- Q. Where did you go?
- A. I stayed there for less than 2 minutes, or perhaps less than a minute, and then I went downstairs.
- Q. Did you go back to your music parlour? 50
- A. Yes.

10 Q. What about the rest of the evening, did you stay on work or did you go somewhere, what did you do?
 A. I continued working in the company.
 Q. Did you go to work again the next day, the 28th?
 A. Yes, I did. I don't have any leave in the whole year.
 Q. On the 28th do you recall an incident that happened shortly after 11 p.m.?
 A. YIP Bun and myself were in the sitting room. YIP Bun at that time was at the cashier's office writing some tickets.
 Q. Whereabouts were you?
 A. I was sitting in a sofa.
 Q. Would you look please at this photograph No. B, is that the sofa that you are referring to?
 20 A. Is this the sofa of Siu Nui Chin Kiu or is it the Sun Sze Suk Lui?
 Q. Do you recognise the scene in that photograph?
 A. It seems to be the one. It seems to be the sofa.
 Q. Do you recall if anybody else was in the room other than you and YIP Bun?
 A. It seems to me that there was a girl.
 Q. Do you know the girl's name?
 30 A. I know her name as Siu Ling. I don't know her true name.
 Q. Did you see this girl when you were here on Monday?
 A. Yes.
 Q. What were you doing sitting on the sofa?
 A. Just sitting there.
 Q. What happened then?
 A. Then three persons came in. There was no one to greet them, so I approached them.
 40 Q. Did these people come through the main or front entrance of the premises?
 A. Yes.
 Q. Is it correct that from where you were on the sofa that main door was on your left?
 A. The main door was on my right.
 Q. Did these people come from that door on your right hand side?
 A. They came in by the main door.
 Q. You say that you greeted them, how did you do that?
 50 A. I said, "Come inside and sit there", and at that stage YIP Bun also came up to them and greeted them.

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- Q. Do you know what YIP Bun said to them, if anything?
- A. YIP Bun also said, "Come and sit inside."
- Q. What happened then?
- A. After YIP Bun had accosted those persons there were several other persons coming up from behind.
- Q. How many men did you see coming to the parlour?
- A. I estimate there were 5 to 6, or 7 of them. 10
- Q. What happened when all of these men had got in?
- A. One of these men plunged at me. I was on the right side of the door and he said, "Don't make any noise."
- Q. Yes, go on.
- A. So at that stage a man was standing in front of me while another man suddenly rushed around me and stayed behind me.
- Q. Did these men say anything at that stage? 20
- A. He said, "We are policemen."
- COURT: They said.
- A. They said they were policemen, "Don't move".
- Q. Yes, go on.
- A. One of the men put a knife against my neck.
- Q. Did he do that from in front of you or behind you, or at the side?
- A. From in front.
- Q. Yes, go on.
- A. Then he told me to sit down. 30
- Q. Did you sit down?
- A. Yes, I sat down. I dared not disobey.
- Q. What about this man, did he accompany you to the sofa?
- A. He remained standing.
- COURT: Where did you sit?
- A. I sat on the sofa.
- Q. Where did he remain standing?
- A. He was standing close to the pillar. I was sitting on the sofa leaning against the pillar. 40
- Q. Would you look again please at this photograph B?
- A. This is the pillar I refer to.
- Q. What was he doing standing there?
- A. He still had the knife against my neck watching me.
- Q. Could you describe this knife. Perhaps you could indicate how long it was.

10 A. About this long.
 Q. What sort of a knife would you describe that as?
 A. Perhaps it was a melon knife.
 Q. Did you notice if it had a handle of any description?
 A. No, I am not sure.
 Q. What happened after that?
 A. And then I saw someone run into the resting room and there was a banging noise. At that stage the man chopped at me.
 Q. Do you know who ran into the resting room?
 A. I don't know.
 Q. Did this man say anything further before you were chopped?
 A. When they first entered they said, "Don't make any noise. Don't move."
 Q. After that before he chopped you was anything said by that man or any other man that you could hear?
 20 A. When they first came in they announced that they were policemen. Only one sentence was said.
 Q. Whereabouts did this man chop you?
 A. This part of my head.
 Q. Did the chop break the skin of your head?
 A. There was a wound of this length.
 Q. Was that wound bleeding at the time?
 A. Yes, I was bleeding profusely.
 30 Q. Whilst you were sitting on this sofa were you able to see what was happening in the other parts of this reception room?
 A. I was not sure about what was going on.
 Q. Were you able to look in the direction past the pillar to see what was happening?
 A. At the time when the man was pointing a knife against my neck I was facing the main door.
 Q. Were you able to see the other part of the reception room from that position?
 40 A. I did not quite see the other parts. In fact I dared not look.
 Q. Why did you dare not look?
 A. There was a knife across my neck. If I made any move I would be cut.
 Q. Do you know where this girl who was in the reception room was during all of this incident?
 A. I think she was inside the main entrance. But I am not positive. I don't know. I cannot say for sure where she was.
 50 Q. After this man chopped you on the head what did you do?

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- A. I took the chance and ran into the toilet.
Q. Perhaps you look at photographs C and D.
Do you recognise the scene shown in those
two photographs?
A. It is difficult for me to recognise the place.
I don't know how to read a photograph.
Q. From where you were sitting on the sofa was
the entrance to the toilet to your right,
to your left, or straight ahead of you?
A. The toilet is situated on the right side of 10
the main entrance as one enters.
Q. Did you manage to get to this toilet without
any further attack?
A. I closed the gate after I went inside the
toilet and outside the toilet there was a
passageway.
Q. What did you do?
A. I did not make any noise. I grabbed hold of
a piece of cloth, or perhaps a garment and 20
covered my wound with it.
Q. Did any of these persons in the room try to
gain access to this toilet?

MR. HUANG: That is a leading question, my Lord.

COURT: Did anything happen whilst you were there?

- A. I don't know about what was going on outside.
Q. Did you remain in the toilet or in the
passageway?
A. In the passageway.
Q. How long did you stay there?
A. For at least a little over half an hour. 30
Q. Was there any particular reason that you
came out from that passageway?
A. After staying inside for a long time and
having looked and I did not see anyone
until finally I saw a member of the staff,
then I came out.
Q. You say you looked, what were you looking
through, what at?
A. Through a ventilation window, about this 40
size.
Q. What were you able to see through the
ventilation window?
A. I saw a person called Ah Kay.
Q. What was he doing?
A. He is a floor manager.
Q. When you saw him what was he doing?
A. He was not doing anything. I saw him
walking out and I saw him walking past.
Q. In which room was he when you saw him 50
through this window?

A. I saw him come out of the resting room.
 Q. Into which room?
 A. I don't know. I just saw him.
 Q. You thought it was safe to come out at that stage, did you?
 A. Yes.
 Q. What did you see?
 A. I saw the lights were on.
 Q. Had the police arrived at that stage?
 10 A. Yes, they had arrived.
 Q. What else did you see?
 A. In the condition I was in I did not pay particular attention.
 Q. Did you see the deceased LAM Shing at any stage?
 A. No, I did not. After I came out I did not see him and did not hear about him at all until now.
 Q. Had you seen LAM Shing earlier on that night before the incident?
 20 A. I did not see him. I did not notice.
 Q. Did you know LAM Shing?
 A. Yes, I did.
 Q. Had you known him to come to the music parlour on previous occasions?
 A. Yes.
 Q. Do you know what sort of work he did?
 A. Driver.
 Q. Do you know whom he drove for?
 30 A. For the boss.
 Q. Did he work for the music parlour, massage parlour or somewhere else?
 A. I don't know. All I know is that he worked with the boss.
 Q. To your knowledge did he ever work in the Siu Nui Chin Kiu in any capacity?
 A. I am not sure.
 Q. As far as you know is he one of the floor staff there or anything like that?
 40 A. No, he was not working there.
 Q. On the night of the 27th when you went upstairs to this incident did you see him there that night?
 A. I did not.
 Q. After you came out into the reception room did you see the police?
 A. Yes.
 Q. Where did you go then?
 A. Later the police escorted me to Queen Elizabeth Hospital.
 50 Q. Were you treated there?
 A. Yes.

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- Q. Did you go first to the Kwong Wah before going to the Queen Elizabeth?
- A. I believe so. I was not fully conscious.
- Q. Were you admitted into the Queen Elizabeth?
- A. I was detained for two days.
- Q. For how many wounds were you treated?
- A. I received 7 stitches, only one wound.
- Q. Going back to the attack that you described, you mentioned that the man had pulled you aside to the sofa with a knife; you say he was carrying a melon knife, was that the only knife you saw or did you see others? 10
- A. He said "Don't move" and he put the knife across my neck. When I was in this condition it seems to me that I had a glance of other knives.
- Q. Do you know how many?
- A. Can't say for sure.
- Q. That man that grabbed hold of you was he the first, the second or the third of these men to come in - which one? 20
- A. I am not very sure.
- Q. During this attack did you or any of the other staff manage to put up a resistance to these assailants?
- A. Under those circumstances no one resisted. In fact I don't know.
- Q. What period of time elapsed from when all these men had entered to when you were chopped? 30
- A. About a little over one minute, about one minute or less than a minute.
- Q. Is it possible for you to be more specific - from the time when the last man entered to when you were chopped?
- A. Less than a minute.
- Q. Do you recall attending some identification parades after you were released from hospital early in January this year?
- A. Yes. 40
- Q. Do you remember on what day that was?
- A. Can't remember the date.
- Q. When you arrived at the first of these parades did you speak with a police officer prior to viewing the parade?
- A. He said this is an identification parade.
- Q. Did he tell you what was the parade in respect of?
- A. He said, "Some persons have been arrested. You go and see if you can recognise any of them who are in connection with the incident at Siu Nui Chin Kiu." 50

Q. Did you subsequently go and view the parade?
 A. Yes.
 Q. At the first parade that you attended do you recall whether you were able to identify somebody?
 A. I recognised one of them, but I was not positive; I recognised him by his demeanour, but I was not very sure.
 Q. His demeanour - which time?
 10 A. He looked a little like one of the men at the scene.
 Q. Would you look around the court-room please and tell us if you can recognise that man here today?
 A. I cannot recognise many of them now. In fact I cannot recognise any of them.
 Q. Do you recall attending a second parade on the same day?
 A. Yes.
 20 Q. Do you recall if you were able to pick out anybody on that occasion?
 A. There were three men the outline of their features looked a little similar, but I was not positive.
 Q. Do you remember how many men altogether there were in the line-up that you viewed that day?
 A. I did not pay attention and I did not count the number.
 Q. There were a few men or a large number?
 30 A. A little over ten persons - ten odd to twenty persons.
 Q. And you were successful in picking out three?
 A. Yes.
 Q. What was it about the three that enabled you to pick them out?
 A. By their demeanour.
 Q. What do you mean exactly by demeanour?
 A. Their features looked a little similar.
 Q. Which of their features - their face, their arms, their hands?
 40 A. By their persons, by their heights.
 Q. Surely there was something more than that other than their heights that enabled you to pick them out?
 A. The features of their faces looked a little similar.
 Q. What did you actually identify these three men as to the officers?
 50 A. I said, "It seems to me that these persons were connected with the Siu Nui Chin Kiu incident, but I was not positive".

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Q. Do you remember going to the magistrate's court earlier this year?

MR. HUANG: My Lord, I hope my learned friend would not cross-examine his witness.

MR. MARASH: No, I don't intend to, my Lord.

Q. Do you remember going to the magistrate earlier this year?

A. Yes.

Q. Do you remember on that occasion you were able to pick out anybody which you thought was involved in the Siu Nui? 10

A. I said they looked similar. In fact that was what I was saying all the time.

Q. But do you remember if you were able to point out any person in the court and say that he was one of the persons?

MR. HUANG: My Lord, I object to that question.

COURT: You are going very close to cross-examining this witness.

MR. MARASH: I simply wish to ask him whether he was able to identify any person on that occasion in the magistrate's court. 20

COURT: Did you identify any person on that occasion?

A. I also said that person looked comparatively similar.

COURT: Please answer the question. Did you identify any person on that occasion?

A. There were four in number. I said that I was not positive. 30

Q. Apart from saying you were not positive were you able in the magistrate's court to identify anybody at that time?

A. I said I identified a person whose face looked familiar to me.

Q. Would you please look around the court and tell us if you recognise that person here today?

A. It is difficult for me to identify him now.

Q. Would you please have a look around and see if you can? 40

A. It is difficult. The one who looked very familiar to me at that time had curly hair.

- Q. Do you see that person here today?
 A. I now cannot say for sure who is the man with curly hair. I cannot see clearly.
 Q. Amongst the persons that you see in the dock here today did you know any of these persons prior to the 28th December last year?
 A. I cannot recognise any of them.
 Q. The man who took the knife out and put it at your throat did you see where he took the knife from?
 A. I don't know where he took out the knife. He was standing at this distance away from me and he said "Don't move, don't move" and all of a sudden the knife was across my throat.

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MR. MARASH: No further question.

XXN. BY MR. HUANG:

Cross -
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- Q. Mr. Li, how long have you been working at this music parlour?
 A. In answer to an advertisement I obtained the job on the 16th June, 1974.
 Q. And according to you you are still working there, is that correct?
 A. No, I am not.
 Q. But you gave your address ..

20

COURT: He said he was working at a fashion shop, the Japan Fashion Shop. That is not the same as the music parlour.

- Q. The address you gave is 689 Nathan Road, Mezzanine floor?
 A. At that time I was living there.
 Q. Now are you living there now?
 A. At present I am staying at the Japan Fashion Shop. I am living there.
 Q. Since when did you move to the Japan Fashion Shop?
 A. In about April this year.
 Q. Now is it correct that your former boss of the music parlour and the Japan Fashion Shop is the same?
 A. Yes.
 Q. What is his name?
 A. LAM something Huen, I am not sure.
 Q. His surname is Lam?
 A. Yes.
 Q. You cannot recognise any other - any nickname?

30

40

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- A. I don't know.
- Q. You don't know him by any other name except the surname Lam?
- A. Lam something Huen, or Lam something Him - perhaps it was Siu Him.
- Q. That is the best you can remember?
- A. It is either He or Him. My Puntis is not very correct.
- Q. In the last two years did you see him very often? 10
- A. I have never seen him.
- Q. You have never seen him?
- A. No.
- Q. Who hired you?
- A. You said have I seen him in the past two years, I don't know which two years you are referring to. Before I started working there I had not seen him.
- Q. Naturally you had not seen him before you worked there. I am talking about the time 1974, since the time you worked there. 20
- A. I had in fact very often. He is my boss.
- Q. Now on the night of the 28th when the incident happened was your boss there?
- A. I don't know.
- Q. Now among your workers do you know a person called Chiu Lun?
- A. I have heard of this name Chiu Lun. It seems that he was working upstairs. But I did not see him that night. 30
- Q. What do you know about this Chiu Lun upstairs? Had you seen him before?
- A. Before the incident occurred when I was still working there sometimes I had seen him when I was going back to work.
- Q. What sort of work does he do upstairs?
- A. Not sure.
- Q. But you know he is an employee upstairs, is that correct?
- A. Yes. 40
- Q. Now do you know anything about the massage parlour upstairs on the first floor?
- A. No, I don't, I hardly went up there.
- Q. Do you know if there is any connection between the massage parlour upstairs and the music parlour where you worked at the time?
- A. I don't know whether there was any connection or not because my capacity there is just a very minor one.
- Q. No matter your position is minor or not you have been there for two years. Do you know whether they have any connection? 50

A. I don't know.
 Q. If you didn't know on the 27th why did you go up there?
 A. Being in the same building but on different floors sometimes people from upstairs would come down and people on our floor would go up sometimes to chat and to have some aerated drink to support each other.
 Q. Now do you consider the massage parlour upstairs as your rivals in the trade?
 10 A. I cannot judge.
 Q. Now I take it from you that the people from your establishment are very friendly with the people upstairs and vice versa?
 A. What do you mean by friendly? When I did not have a 10\$ would anyone lend me a 10\$?
 Q. Is that the best answer you can give?
 A. Yes, when I tried to borrow some money no one would lend it to me.
 20 Q. So is it your opinion that if other people lend you money you consider him friendly?
 A. I don't have any connection with any of the employees both in my establishment or in the establishment upstairs, none of them was good.
 Q. Now tell us who is the cashier in your music parlour?
 A. LI Kai.
 Q. You knew him quite well, did you?
 30 A. I don't know him well, I only know him by his name, LI Kai.
 Q. How long has he been working there?
 A. I don't know.
 Q. Was LI Kai present on the 28th at work?
 A. Yes.
 Q. Where was he at the time these men entered?
 A. It is possible that he was in the resting room watching television.
 Q. But when the strangers entered is it your evidence that LI Kai was not in the
 40 reception area?
 A. I am not very sure.
 Q. Well, you said perhaps he was in the resting room?
 A. This is only my estimation.
 Q. Yes, you say that at the time that there was YIP Bun by the cashier's desk writing some tickets?
 A. There is a difference between inside the cashier's office and outside. YIP Bun was sitting outside.
 50 Q. Outside the counter, is that correct?
 A. Yes.

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- Q. Now look at C, picture C with the Christmas tree. Now do you see the counter right across there?
- A. Yes.
- Q. Now YIP Bun was outside, is that correct, by the stool?
- A. I don't understand the photograph. Anyway, for instance, if this is the cashier's office, YIP Bun was standing here facing the cashier's office. 10
- Q. We don't know what you consider as an office. The counter is either this side of the counter or the other side of the counter, isn't that simple enough? Don't you know how to look at the picture?
- A. YIP Bun was on this side, meaning the outside.
- Q. All right, he was outside the counter. But is that what you consider as a cashier's office? 20
- A. The cashier's office is close to the Christmas tree. YIP Bun at that time was near the first stool.
- Q. And that is the part you call the cashier's office?
- A. The cashier's office was inside. There was a man sitting there.
- Q. You said earlier in chief, you said "YIP Bun was in the cashier's office writing tickets and I was sitting on a sofa"? 30
- A. You listen to me. Let me give you a map. This is the place where LI Kai was sitting. YIP Bun was sitting here. This is the counter.
- Q. Yes, so there were only YIP Bun, yourself and possibly a girl in the whole reception area, either behind the counter or outside the counter in the reception area, is that correct?
- A. Yes. 40
- Q. You did not see LI Kai at all there?
- A. No.
- Q. And therefore you cannot tell where he was at the time?
- A. Although I saw him that night when he came to work.
- Q. Yes, we are not concerned with that. At the time when these men entered LI Kai was not at his cashier's desk?
- A. I don't know and I am not sure. 50
- Q. Just now you said he was not there and you don't know where he was?

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A. I have told you what I saw. I said according to my estimation it was possible that he was in the resting room.

Q. Now there are two things - of course if you did not see him there you could not tell where he was?

A. Yes, I don't know.

Q. I am not saying that you knew, but since you did not see him there that means he definitely was not at the cashier's desk, but where else he was you did not know, do you agree with that?

10

MR. MARASH: My Lord, he did not see him it does not mean that he was not there.

COURT: Go on with that question.

A. Correct. But earlier you asked me whether he did return to work or not on that day.

Q. Yes, I was not asking you that. Now who are the other workers in your premises that you could name among the men? You have named YIP Bun?

20

A. I know someone called Fei Chai.

Q. What does he do?

A. Floor manager.

Q. He is a floor manager?

A. Yes.

Q. Now do you know his real name?

A. No, I don't. I know he is surnamed AU.

Q. All right, and what about YIP Bun, what is his job?

30

A. Also a floor manager.

Q. And do you know a person called Ah Sun?

A. He was not there.

Q. Where?

A. I think he was upstairs.

Q. Now, what about CHAN Heung-choi?

A. Yes, I know him.

Q. Where does he work?

A. At our establishment.

40

Q. What is his job?

A. Floor manager.

Q. Has YIP Bun got any other name that you knew?

A. He is also called 'Hak Chai'.

Q. Is he also called YIP Tin-sung?

A. I do not know this next name YIP Tin-Sung.

Q. You never heard of that name?

A. That is correct. I did not know that he has this other name.

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- Q. You did not know. What do you consider yourself at the music parlour?
A. Sweeping the floor, washing the bowls.
Q. Do you also consider yourself as one of the floor managers?
A. No, I am not.
Q. So you are just a cleaner?
A. Yes, cleaner.
Q. Do you greet customers?
A. I tried to win more customers. I did all sorts of jobs whenever people told me to do. 10
Q. So you ushered customers as well?
A. I just said "Come and sit inside", the other matters were not my concern.
Q. Well, do you usher customers - you see customer and usher him into the rooms?
A. Seldom.
Q. So you can do it if you want to?
A. I have been working there for a little over one year and I have never got any raise in my salary, I only received two hundred odd dollars per month, why the hell should I bother? 20
Q. Two hundred dollars?
A. Five hundred dollars, one or two years.
Q. Now on the 27th, on that night - please put your memory back on that night - now you say that some girls told you there was a fight upstairs.
A. Yes. 30
Q. And then you say you went up alone after all had gone up.
A. I did not know whether all of them had gone up or not, I just thought about myself, I believe I was the last one to go up.
Q. The last one from your establishment?
A. At the time when I went up, there was no one going up with me, I was by myself.
Q. Yes. But you say you were the last from your establishment to go up? 40
A. That is so, I wasn't sure whether anyone had gone up or not. But at the time when I went up myself, there was no one else in the sitting room.
Q. But when you went up there, did you see your colleagues upstairs?
A. I did not see, I did not pay attention.
Q. So why you went up there for?
A. I just had a look and I left. If I stayed any longer, I would be dismissed. 50
Q. To look what?

10 A. Just a look to see what they were doing. I have said I stayed there for less than a minute.

Q. And you went up there, you did not speak to anybody about what happened, is that correct?

A. No.

Q. You did not ask anyone whatsoever what had happened here or question to that effect?

A. Well, earlier they said there was a fight so I knew there was a fight.

Q. So therefore you were fully satisfied, you did not want to know anything more?

A. That is correct. I did not want to know anything else.

Q. You are sure of that?

A. Yes.

Q. And then you walked back down?

A. Yes.

20 Q. When you walked back down to the music parlour, who was there?

A. I don't know, I did not pay attention.

Q. Now you said when you went up to the massage parlour you saw a girl in a room.

A. Yes.

Q. Is it one of the rooms that you used for customers with the girls or which room?

A. The room was situated right next to the main entrance and I saw a group of people had gathered outside the entrance of the room, someone was applying medicated oil to the girl.

30 Q. Now I am not asking you where was it, I am asking you - there was the main hall, there was a rest room, there was customers rooms, I want to know what type of room she was in, that's all.

A. All the rooms look alike, I do not know what room it was.

Q. So the reception room was the same as the customer's room and the rest room and the toilet, is that correct?

40 A. Those were customer rooms.

Q. Where the girl was was a customer room, is that correct?

A. Yes. It was a customer room similar to those we have on our floor.

Q. Yes. Now and the massage parlour there also has a reception room, a big reception room and a sofa, is that correct?

50 A. Yes.

Q. Did anyone sit on the sofa at the time as you went up?

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- A. I don't know.
- Q. Now there were four or five girls attending to a girl in one of the customer rooms, is that correct?
- A. Yes. When I went there to have a look, I was pushed away by the others.
- Q. So you couldn't go in, is that correct?
- A. I was pushed away. I was about to be beaten up even when I tried to have a look. 10
- Q. So you did try to enter the room and they pushed you away?
- A. I tried to peep through the gap between persons but someone gave me a push.
- Q. So you never managed to enter?
- A. Why should I go inside, it was such a small room? I was not concerned with the matter, I only wished to have a look.
- Q. Yes. Please answer the question. You did not succeed in going in, is that correct?
- A. I did not want to enter the room, I merely wanted to have a look. 20
- Q. And you did not succeed in having a look, do you agree?
- A. I did, I succeeded.
- Q. What did you see, a lot of people inside?
- A. I saw people rubbing medicated oil on her. I also saw the face of the girl.
- Q. The place was dark, wasn't it?
- A. I don't know what you consider as dark. The lighting was much the same as usual so I cannot say whether it was dark or not. 30
- Q. Usual for the music parlour or usual as this courtroom?
- A. The usual lighting was not as bright as here.
- Q. But is it usual for a massage parlour?
- A. The lighting was the same as when the music parlour was open for business.
- Q. And is it dark, dim?
- A. I don't know whether it was dark or not, you know there were many these parlours, you know about them. 40

MR. HUANG: Would this be a convenient time for the mid-morning adjournment?

COURT: (To Clerk) Would you try and switch off some lights? (Lights switched off) Was it as bright as this?

- A. The lights had various colours, some of them were red and others were white, you had better go there to see.

- Q. But would you say darker than it is now?
 A. The front and the back were similar in lighting, more or less in this condition.
 Q. In the customer room, is it as bright as here now?
 A. It is possible that it was a little bit brighter than now.

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MR. HUANG: My Lord, may I have a short adjournment because I want to do some checking?

10 COURT: All right. We'll adjourn for 15 minutes.

11.30 a.m. Court adjourns

11.55 a.m. Court resumes

All accused present. Appearances as before. JURY PRESENT.

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XXN. BY MR. HUANG: (continues)

- 20 Q. Mr. LI, have you heard of the name SO Hung?
 A. Yes, I have.
 Q. Well, in what connection?
 A. He was working upstairs.
 Q. You knew him well?
 A. No, not well.
 Q. What does he do upstairs?
 A. I don't know.
 Q. Has he ever come down to your music parlour?
 A. Yes, just to walk about in our parlour.
 Q. How often does he come down?
 A. That I don't know. Sometimes he came to our floor to chat about betting on horses and
 30 greyhounds.
 Q. Chat with whom mostly?
 A. I don't know.
 Q. He came down to chat and you don't know whom he chatted with?
 A. I cannot remember with whom he had chatted but he had chatted with me before.
 Q. How does he call you?
 A. I was working down-stairs, he was working up-stairs, sometimes when we met he just greeted me by saying "Hi" and nothing else.
 40 Q. Does he know your name is LI Kwong-ye?
 A. I don't know whether he knew or not.
 Q. Well, has he ever referred to you by name?

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- A. He had greeted me as 'Ah Kwong' and 'Tai Cheuk Kwong'.
- Q. Now do you know that the massage parlour up-stairs is owned by the owner as the music parlour?
- A. I don't know.
- Q. Do you know if there is a special communication system between the two establishments? 10
- A. I don't know.
- Q. That there is a special button or special bell that if you press from one floor the other one would know?
- A. I have been working there for so long but I have no knowledge about this system.
- Q. Now in your floor - in your establishment, who is the most responsible person?
- A. When I was working there, Hak Chai was the person responsible
- Q. Yes. He is more or less - you looked on him as the manager of the premises, is that correct? 20
- A. I don't know, but he had the authority to tell me what to do.
- Q. Now we come to LAM Shing. Now on the 27th that evening, did you see him?
- A. I did not see him, I did not notice.
- Q. Either in your music parlour or in the massage parlour up-stairs that evening?
- A. No, I did not see him. 30
- Q. Now on the 28th, the evening, did you see him at all?
- A. I did not see him.
- Q. You did not see him at all?
- A. Correct.
- Q. Either before the incident or after the incident?
- A. No.
- Q. You are positive of that?
- A. Yes. 40
- Q. Did you hear about him on the 28th?
- A. I don't know.
- Q. Well, what do you mean you don't know? You did not hear of anything about him, is that correct?
- A. When I say I don't know that means I did not hear anyone talk about him.
- Q. No one mentioned him on the whole of the 28th of December, 1975 - about LAM Shing?
- A. I did not hear. 50
- Q. You are positive?

10 A. Yes. I personally did not hear.
 Q. Now after the incident you have described, for how long did you continue to remain in the music parlour?
 A. I was hiding inside the passageway for half an hour and then I came out and I went to the police station, I do not know about anything else.
 Q. Did you return there to sleep after you went to the police station?
 A. I did.
 Q. So the whole day you did not hear anyone talk about LAM Shing?
 A. It was after I was discharged from hospital and returned to this establishment that I heard people say that LAM Shing had died.
 Q. That's all?
 A. That's all.
 20 Q. Now, you say you know CHAN Heung-choi?
 A. Yes.
 Q. For how long has he been working there?
 A. For about several months.
 Q. Counting from the incident, is that correct?
 A. Perhaps it was only a little over one month, I am not sure. I am not sure exactly how long he had been working there but I believe he was there for a little over one month to two months before the incident.
 30 Q. Now on the 27th of December last year, you say that when you left the music parlour no one was there when you went up?
 A. That I don't know. In fact I did not look. Upon hearing others say that there was an incident up-stairs, so I went up.
 Q. Mr. LI, this is the third version you have given about this now. The first that you say that you went up alone after all had gone up.
 A. Yes. But I did not know whether there was anyone still in the sitting room.
 40 Q. The second version you have given is that you presume that they have all gone up before you because when you left the music parlour was empty.
 A. I don't know whether there was anyone else there, I did not pay attention. It was not my concern.
 Q. And now you are saying that you simply went up, you did not know anything else, whether there was people or not, whether anybody had gone up or not. Why? Can you explain?
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- A. I did not pay attention to any of these matters, that's why I don't know. It was not my responsibility to mind so I don't care.
- Q. Or you do not want to tell the court the truth - what you knew? Which way?
- A. Even if I tell the court, why should I be afraid? This is my character. I just don't want to mind other people's business.
- Q. I see. You have no fear, have you? 10
- A. I have not offended anyone, why should I be afraid?
- Q. Now you are feeling quite free to give evidence, is it, without any fear in you?
- A. I have told you the truth. There is no need for me to be - there is nothing for me to fear.
- Q. Nothing to be afraid of. Now on the 27th, Mr. LI, after you had returned from the massage parlour up-stairs, did you see Fat Chai and CHAN Heung-choi? 20
- A. As soon as I returned to the music parlour, I went to tidy up the rooms, I did not pay attention to see whether they were there or not.
- Q. But how do you remember so clearly that immediately after you returned to the music parlour you went to clean up the rooms?
- A. If I did not tidy up the rooms, I would be scolded or even dismissed. 30
- Q. Did you hear a conversation from Hak Chai how he beat up a man up-stairs on the 27th?
- A. I did not.
- Q. You are sure of that?
- A. Sure.
- Q. Were you not interested in your colleague's adventures and listened to how he beat up a man?
- A. Although I had been working there for several years, there was no one who cared about me, therefore I did not pay attention to anything. 40
- Q. Now Mr. LI, I am putting it to you that there is a special communication system between the two floors and you knew well about that.
- A. I do not know at all.
- Q. I am suggesting it to you that perhaps because due to somebody had operated that system, you and together with the others rushed up to the massage parlour up-stairs immediately upon hearing that summon. 50

A. It was not my business, I did not do so at all. I did not take part in anything.

Q. You were told about that a dispute had arisen between a customer and a girl and you were, on the night of the 27th, one of the three or four men went into that room - broke open that room.

A. I did not go into the room. I just went to have a look.

10 Q. And you were the very one who locked the neck of that customer and together with the others, he was lifted up bodily to another room.

A. None of my business, not my concern at all. In fact, in my mind, I was hoping that the customer would give a few more punches to the girl.

Q. The others were CHAN Heung-choi and SO Hung and one other staff who lifted the customer to another room.

20 A. I don't know, I did not see it.

Q. Well, I am putting it to you that all of you gave him a good and serious beating and kicking.

A. I don't know. I did not beat or kick anyone.

Q. And in your presence and hearing, CHAN Heung-choi told him that he must not report to the police otherwise he would be chopped to death.

30 A. I don't know, I don't know. Well, I was not on good terms with CHAN Heung-choi. I was bossed about very often by CHAN Heung-choi, we were not on speaking terms.

Q. And on that evening, the same evening, did you hear of information from your colleagues who went out and followed him to chop him in Yaumati after that customer had left?

A. I don't know. I have not heard of it.

40 Q. Now on the 28th, did you discuss among your colleagues to prepare for any revenge attack?

A. I did not.

Q. Because you had beaten up that customer.

A. Sometimes when I tried to ask people about something, I was scolded. Therefore it is never my habit to enquire about anything.

Q. Now Mr. LI, I would like you to answer my questions squarely, either yes or no. I don't want to hear all this side talk.

50 A. I am not an intellectual.

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- Q. Now put your mind back to the 28th, Mr. LI. Now you say at first when you were sitting on the sofa and YIP Bun was writing some tickets at the cashier office, at that juncture ...
- A. He was outside the cashier's office.
- Q. You say that three persons came in.
- A. Yes.
- Q. And you went forward to greet them.
- A. Yes. 10
- Q. Now since a number of persons had come in, is it your usual greeting by asking them how many customers?
- A. I don't know what the other say. I am not familiar with this trade in fact but usually they would say "Come and sit inside".
- Q. You have been working there for two years and you say you are not familiar with the trade? 20
- A. But I have never ushered customers to girls.
- Q. Well, you have heard what the other floor managers say?
- A. Although I have heard, I did not have such practical experience then I would not know.
- Q. I just ask you if you have heard the usual attitude of an usher would be, if more than one came in, you would enquire "Well, how many, gentlemen?"
- A. But I had not asked "How many are you", I was stupid, I just said "Come and sit inside". 30
- Q. So you said so to them?
- A. Yes.
- Q. And then YIP Bun came forward?
- A. Yes.
- Q. And I take it that YIP Bun walked forward to them, is that correct?
- A. Yes.
- Q. And YIP Bun also (said) "Come inside. Come in and sit inside". 40
- A. Well, I did not actually hear so many words being said but in his capacity he was ushering those persons to come in.
- Q. Well, Mr. LI, you only said so this morning - an hour ago. You say YIP Bun also said "Come in and sit inside".
- A. It goes without saying that in his capacity that's what he did.
- Q. I am not trying to speculate what he did, I am putting the actual words you have used an hour ago. 50

A. Yes. That is what I usually hear him say.

Q. And then what happened?

A. Those men then said "We came from the police station. Don't move".

Q. How many did you see?

A. At first, there were three men and then more came in continuously, there were five.

Q. Now Mr. LI, let me put it to you that you have not been telling the court the truth.

10

A. Due to my poor standard, I cannot express myself but that was what I have told you.

Q. I am putting it to you that when these men came in it was CHAN Heung-choi who was the first one to greet them.

A. The fact is I was the one who greeted them. Well, the others were trying to gain all the credit before the boss so they said it was he who had greeted them and I was just taking a nap there. If I did not accost those

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Q. Mr. LI, please listen to my question and answer it at your best and we don't want to hear any side talk.

A. I do not understand a word of English so I cannot understand what you are saying.

Q. Well, the interpreter is repeating my words.

A. Yes.

COURT: Do you understand what he was saying to you just now? You had better answer the questions. We do not want to have any side-tracking.

30

A. Yes.

Q. Now I am putting it to you that CHAN Heung-choi was the first man at the door as these men came in and CHAN Heung-choi greeted them by saying "How many?" to the customers - to the people who entered.

A. I have said I was the one who greeted them.

40

Q. And one of the visitors said "We are only looking for somebody".

A. I did not hear.

Q. Then as the men were coming in, CHAN Heung-choi recognised one of them and that is the one you and he had beaten up the previous night.

A. I have never acted together with CHAN Heung-choi.

Q. And that then CHAN Heung-choi, on recognising that person, said this in your presence and hearing to that person "Your fucking face

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- again. I have told you. You have come here again".
- A. I have never said this to CHAN Heung-choi.
Q. We allege CHAN Heung-choi said that to that person in your presence and hearing.
A. I have never heard him say this.
Q. (To D.1) Stand up. Now Mr. LI, look at that person straight in the eye.
A. I have never heard it. 10
Q. Have you seen that person before?
A. I had a glimpse of him when I went up to the Sun Sze Suk Lui that night. Well, he looks very familiar but I am not sure whether he is the one.
Q. You are not sure of what?
A. I am not definite whether he was the man but I have seen him.
Q. Mr. LI, I am putting it to you that you knew each other very well.
A. No, I don't know him. I don't have a single friend in Hong Kong. 20
Q. Because he was a regular customer at the massage parlour and he met you there very often.
A. I have not seen him. If I have, I would be able to recognise him here. Why should I be afraid?
Q. You are not afraid?
A. That is correct. I do not recognise him. I have not done anything wrong and I did not beat him up. 30
Q. And that is the person you beat up, you locked the neck.
A. All right, I tell you. It was Hack Chai, CHAN Heung-choi and Fai Chai, three of them who beat up a person. When the three of them beat up that man punch by punch, I felt uneasy at heart.
Q. When was that, the 27th?
A. Yes. When I went there later, I saw it happen. I am telling you the truth. 40
Q. Yes. Where was that?
A. Inside the room, they beat him up.
Q. Is that one of the customer rooms, is that correct?
A. Yes. It was CHAN Heung-choi who locked the neck of that man and told him not to move and they punched him.
Q. Who did the punching?
A. Fai Chai, Hack Chai and CHAN Heung-choi, three of them. 50

Q. How did they beat him?
 A. With fists.
 Q. What about SO Hung, did he take part also?
 A. I did not see him. When I knew that the three of them had gone up, I also went up later just to look.
 Q. And when you went up you saw the three of them beat him?
 A. Yes. Well, they appeared to be very arrogant.
 Q. You mean CHAN Heung-choi, Fai Chai and Hack Chai?
 A. Yes.
 Q. These three were very arrogant?
 A. Yes. I have never touched anyone. In fact, I wanted the customer to give a few more punches to the girl because the girl was very naughty.
 Q. All right, let's take one thing at a time. Now, when you say they were very arrogant, can we have some of the words they said?
 A. The man said "Fuck your mother, try to cause trouble in our joint?"
 Q. What else again?
 A. That's all I heard during that time.
 Q. Is it the case that any customer tried to give them trouble that these men would give him a good beating the usual practice?
 A. There has never been any beating incident in our place. That was the first time I heard of this.
 Q. Did you hear one of the three men said - either CHAN Heung-choi or Hack Chai or Fai Chai - told him that he must not report to the police otherwise he would be chopped to death?
 A. I did not hear.
 Q. Now what about the girl? You say you wish the customer had beaten her more because she is very naughty.
 A. When I was working down-stairs, I was often bullied by the girls.
 Q. But why your hatred - what made your hatred so strong that you wish somebody would punch them more - punch that one more?
 A. They were teddy girls and teddy boys, they were not good girls.
 Q. In what sense they are not good?
 A. In such a profession, how can you say they were good girls?

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- Q. Well, now in respect of the particular girl, do you know anything about her? Have you any special hatred against her - the one that was, you say, was injured?
- A. Well, I do not hate her in particular but I had been bullied by the girls in general.
- Q. Well, how did they bully you - they told false story on you or lied about you or what or they assaulted you?
- A. In the place where I was working, sometimes when I was late in cleaning the rooms, I was scolded. 10
- Q. Any other thing, any other reason that would make you hate them?
- A. I was isolated by the others, I was being slighted at.
- Q. Now did you say that when the customer was beaten so badly that you say it pains you or it hurts you or something like that?
- A. I did not know what the customer had done but it was not right for them to beat him up like this. 20
- Q. Well, can you give us some detailed description, did you find the customer was very painful?
- A. I did not know whether the customer was in pain or not but I was trying to put myself in his place and was being beaten up.
- Q. If you were in his place, how would you feel - suppose you were the customer being beaten in the same manner as you saw it?
- A. If I were a customer and if I was right and she was wrong, then I would beat her up as well - I would have beaten up the girl. 30
- Q. Is it very often that the girls ill-treated customers?
- A. That I don't know but this is my personal opinion.
- Q. Is it your personal opinion that the girls often take advantage of customers or ill-treat them or do not do the service they should do?
- A. Well, I do not know what they were doing inside but usually the girls were foul-mouthed in their speech.
- Q. When they were talking to the customers?
- A. I do not know how they treated the customers but that was the way they treated me. This is my own opinion.
- Q. They used very abusive language, is it, foul language? 50

A. Usually they did. Sometimes they scolded me due to my low position.

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MR. HUANG: May this be a convenient time, my Lord?

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COURT: We'll adjourn to 2.30 this afternoon.

12.45 p.m. Court adjourns

2.35 p.m. Court resumes

Accused present. Appearances as before JURY
PRESENT.

10 P.W. 6 LI Kwong-ye o.f.a.

XXN. BY MR. WONG (Continues) :

Q. Mr. LI, I'd like to come back on the 27th. Now you said that in fact it was CHAN Heung-choi who locked the neck of the customer at the Sun Sze Suk Nui Massage Parlour.

A. It seems to be so. It was one of the three.

Q. Now where did they hold him there? Is it in one of the customers rooms?

20 A. Yes.

Q. Yes.

A. I did not know what had happened earlier but by the time when I reached upstairs that was what I saw.

Q. And did they beat him up in the same room or they move him to another room?

A. I did not know where the incident originally arose and I did not know where later it happened.

30 Q. But you were positive that he was beaten by the three in one of the customers rooms.

A. Yes, I think it was in the first room on the left as one enters the entrance.

Q. Yes. And after the beating, then what happened?

A. I just had a look and I left, I don't know.

Q. As you were leaving, did you see anybody in the reception room?

40 A. There were persons there, many of them. Can't remember who were there. Not sure whether there were anyone.

Q. After you went downstairs to the Siu Nui Chin Kiu Music Parlour, now did you see CHAN Heung-choi, Fai Chai and Hak Chai come down?

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- A. I did not.
- Q. Now after such an unusual incident, did you hear the three of them talk about it the same night?
- A. I did not hear.
- Q. According to you that was the first time that your staff did such a thing to a customer.
- A. Yes, the first time. During the whole period when I was there that was the first occasion. 10
- Q. Yes, naturally we talk about things from your experience. Now Mr. LI, you are saying that Hak Chai, CHAN Heung-choi and Fai Chai were all floor managers of the music parlour in which you worked.
- A. Yes.
- Q. And you had also told us that you do not know of any connection between the music parlour in which you worked and the massage parlour upstairs. 20
- A. That's correct.
- Q. Now do you know why the three floor managers from your music parlour went upstairs to beat up a customer who was a patron of the massage parlour upstairs at the time?
- A. The girls from upstairs came down and they talked about it and they went upstairs. I also went there to have a look.
- Q. Yes. I am asking you whether-- Well, like, say for example, something unusual happened, you would go and have a look. Do you know the reason why these three men went up there and took an active part and beat up this customer? 30
- A. How do I know? I don't know.
- Q. You don't know. All right. Now in the normal course of things, Mr. LI, would you agree that the three would have to expect some consequences for their action? 40
- A. I don't know about the consequences. It's nothing of my concern.
- Q. Did you hear Hak Chai, Fai Chai say that because of the incident on the 27th, they expected some people to take revenge attack on them or words to that effect?
- A. I did not hear.
- Q. Or words to the effect that they have to take some precaution or preparations?
- A. I did not hear. If I had heard, then I would run away myself and I would not be chopped and injured. 50

Q. Well, Mr. LI, if you were in that reception area on the 28th on that night, I continue to put to you that as the men entered - I have put to you the first part already, that is they said they were only looking for someone to CHAN Heung-choi - then after CHAN Heung-choi had used the abusive remark at someone, that is "Your fucking face again. What do you come here for?", this remark...

10 A. That I don't know.

Q. ... then I am putting to you that one of the persons said, "Let us talk first. Don't be so fierce." That person said, "Even though you had beaten him, you don't have to chase him to Yaumatei to chop him." Did you hear words to that effect from these strangers?

A. No, I did not hear.

Q. Did you hear any of your colleagues mention the fact that after he was beaten some of the people from the music parlour went to Yaumatei and chopped him?

20 A. No.

Q. You never heard that?

A. No, not at all.

Q. Well, I am putting it to you that after one of the visitors said these words, then CHAN Heung-choi said, "So what? It has been done" or words to that effect?

A. I did not hear.

30 Q. And then one of the visitors said, "You have to pay compensation."

A. No.

Q. And then one of the staff in the music parlour said, "There will be no compensation but you can get knives."

A. I did not hear.

Q. Then at that juncture one of your colleagues ran behind the bar to grab a knife from a drawer.

40 A. I did not see.

Q. But one of the strangers, one of the visitors, followed that person and grabbed the knife instead. Did you see that?

A. I don't know. I don't know. I did not see such.

Q. Yes?

A. Right after I was chopped, I ran away. I don't know.

50 Q. Then I am putting to you that another colleague of yours then dashed to the lower part of the sofa and pulled out a parcel of weapons.

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- A. I don't know.
Q. Then one of the visitors then kicked that person's hand off and kicked loose all the weapons.
A. I did not see.
Q. And then there was a struggle between the two groups with those weapons.
A. I don't know.
Q. And I am putting it to you that the visitors, when they came in, they were all empty-handed. 10
A. Perhaps true.
Q. Perhaps true?
A. It's possible.
Q. Well, you were there. You saw them come in empty-handed, isn't it?
A. If I had tucked a weapon behind me here, would you know? I did not know until later. If I knew I would not have plunged forward.
Q. All right. Is it your case then, Mr. LI, 20 when you first saw them, they had no weapon in their hands, these strangers?
A. I did not notice their hands.
Q. You did not. Well, if they came in and if they were holding knives, according to where you indicated, I don't think one could miss that, isn't it, unless you don't look at that person?

MR. MARASH: He indicated, my Lord, how they were holding it, did he? 30

MR. HUANG: Well, he said he saw a knife against his neck. He indicated, well, something like one foot or twelve inches or fourteen inches.

COURT: Yes?

MR. HUANG: Yes, so I say-- Well, he said he did not see. I said, "If you were to see a person, if...

COURT: Well, you were talking about their entrance.

MR. HUANG: At the time they entered. So I don't think a person would fail to notice that. 40

COURT: He was not in the sofa yet. You were asking him: did he see where at first the knife came from.

- Q. Now you say that a person was holding a water melon knife to you.
A. Yes, after they had entered.
Q. But did you see where he came from?

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INTERPRETER: "Where he came from"?

- Q. The knife. Where the knife came from.
A. I don't know where he got the knife. There was a pillar obstructing my view and the place was dim.
10 Q. Yes. Isn't it the case, Mr. LI, when you first saw them, they were empty-handed?
A. When they came in they were like this. I did not know whether they had any weapons or not. Later when the knife was put across my throat, then I could see that the weapons were produced from something which looked like a bag.
Q. And the bag was on the floor, is that correct?
A. No, they were carrying it when then entered.
20 Q. You never said so, Mr. LI. I asked you what they came in with, you said you cannot remember. I asked you whether they came in empty-handed.
A. I said there were several knives.
Q. When did you say there were several knives?
A. I have just told you. I said after they had entered, someone put a knife across my throat and in such a position I saw several knives.
30 Q. Yes. At that juncture, yes. Was the bag lying on the floor at the time when you saw it?
A. No, it seems to me that someone was carrying it - carried by one of those persons who came in later.
Q. You never saw that, did you?
A. Well, several of them entered later on this side (Witness indicates) and I saw something being swung open. It seems like a bag.
40 Q. Yes. The first time you saw the bag, was it on the floor and they were getting the weapons from it?
A. On the first occasion I did not see the bag.
Q. You did not see the bag. But when a knife was on your throat, you were looking, as you indicated, then you saw a bag with weapons.
A. I only saw the bag with weapons at that time. I saw the weapons at the time when they were being taken out.
50 Q. Yes. Well, precisely, Mr. LI, that bag of weapons came from under the sofa.
A. Which sofa? After a knife was placed across my throat, then another group of them entered and they announced that they were policemen and they separated.

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- Q. I am putting it to you, Mr. LI, that you and your colleagues placed all those weapons either under the sofa or behind the counter in preparation for an attack.
- A. I have never seen a single weapon during my whole two years there.
- Q. Not a single one in the music parlour?
- A. I have not seen any.
- Q. Do you know...
- A. Except there was a hammer, a metal hammer. 10
- Q. Where?
- A. It was placed next to the cupboard where chopsticks and bowls were stored. The hammer was for the purpose of fixing nails.
- Q. Yes. Is that inside the rest room?
- A. No, outside. It is known to everyone.
- Q. And I am putting it to you that all these visitors who came in were simply to have a talk. They came in all empty-handed.
- A. No such thing. Soon after they had entered, the chopping started. 20
- Q. That after the group had entered, then you and your colleagues tried to attack them with the weapon you and your colleagues had hidden as I have described it.
- A. I have never seen any weapon.
- Q. But it just happened that they happened to stop you and your colleague from attacking them. They were faster than you and your colleagues. 30
- A. I did not see anything of that sort under that circumstances. Right after they had entered, in less than a minute, the chopping took place.
- Q. Now Crown counsel asked you "During the attack you say no one resisted." You added, "In fact I do not know."
- A. It's correct I did not know whether anyone had put up any resistance. The knife was against my neck. After I was chopped, I ran away. 40
- Q. So your colleague could have fought back, isn't it?
- A. Even if they had retaliated, I would not know.

MR. HUANG: That is all, my Lord.

COURT: Re-examination?

REXN. BY MR. MARASH:

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- 10 Q. When you came out of this room, Mr. LI, and
back into the reception room, that is when
you came from the passage back into the
reception room, did you see any weapons at
that stage on the ground or anywhere else?
A. After I had come out, due to my condition,
I did not pay much attention. I was lying
there and covering the wound on my head with
my hand and soon afterwards a police officer
escorted me to the hospital.
- Q. Is it correct that you went straight from
the music parlour to the hospital?
A. Yes.
Q. You didn't go to the police station that
night?
A. No.
Q. Now when these men first came in, did you
concentrate your attention on the first
20 group or the second group?
A. When they came in I thought they were
customers and I greeted them as such. I did
not pay particular attention.
Q. When you asked them to come in, were you
talking to the group of the first three, or
was it the second group?
A. The only thing I said was, "Come in and sit
inside" and then I handed them over to the
other men.
- 30 Q. What were you doing at that stage? Were you
walking away or what?
A. I was unable to run away because right after
they had entered they said, "Don't move" and
there was a pillar behind me so I could not
run away.
Q. So as soon as you handed them over to YIP,
that was when they said, "Don't move".
A. YIP said, "Come and sit inside." Perhaps at
that stage YIP identified them or they could
40 recognize YIP.
Q. Was that when they said, "Don't move"?
A. Yes. Well, they said, "Don't move." The
others started to run and I was chopped.
Q. Now at which stage did you first see the
knives?
A. After they had entered and someone said,
"Don't move. Don't move." At this stage a
knife was held across my throat.
Q. That was the first knife you saw.
50 A. Yes.

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- Q. When did you see the other knives first?
A. At the same time.
Q. As soon as his knife was put to your throat, you saw the men with the other knives.
A. Yes. Right after that I saw the others produce knives.
Q. Prior to all these men entering, when you were on the sofa, were you sitting there, were you sleeping there - what were you doing?
A. Sitting. I was dozing in the sofa.
Q. Now what was it that woke you up?
A. Well, I was not sleeping all the time. At the moments when I was awake, I realized what was going on.
Q. Well, what was it that woke you up?
A. I was not asleep with my eyes closed. I was just sitting there. I felt sleepy.
Q. Now would you look please at the photograph (C). If you were sitting on the sofa and a person of about 5'6" was sitting behind the counter at the cashier's desk working, with his head down, would you be able to see him from where you were sitting?
A. If that man was sitting outside the counter, I would be able to see him, otherwise I would not. If he was inside, I would not be able to see him.

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MR. MARASH: No further questions.

BY COURT:

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- Q. You know the sofa very well? The sofa where you sat.
A. Everyone knows where the sofa is. It is for everybody to sit. If you have been there once, you would know.
Q. How long is that sofa?
A. About four times the width of one of these chairs (Witness indicates) plus the frame.
Q. You say you sweep the floor. Look, listen to the question and answer properly. Did you sweep the floor?
A. At night time I had to clean up the whole place whenever the customer...
Q. I am asking you a very simple question. Did you sweep the floor of that establishment?
A. Yes.
Q. Did you sweep under the sofa?
A. Yes.

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Q. Did you sweep it that day, on the 28th?
 A. No. In fact I only swept the floor once after several weeks.
 Q. Does the sofa go straight down to the ground or is there a space in between the seat and the ground?
 A. There is a space about this much (Witness indicates) - about this high.
 Q. Now what kind of bag did you see that night?
 A. I have not seen one.
 Q. You told us you saw a bag.
 A. I first saw the bag when people had come in and the chopping started, not underneath the sofa.
 Q. That is the bag I am referring to. What kind of bag is it?
 A. Well, I could not see what kind of a bag it was.
 Q. Is it a big bag, a small bag?
 A. From its size it was not a big one.
 Q. Is it a carrier bag?
 A. It looks similar to a carrier bag.
 Q. Is it made of plastic, canvas?
 A. I don't know what kind of plastic it was, I just had a look of its shape.
 Q. What shape was it?
 A. It looked like a bag.
 Q. Yes, lots of bags.
 A. I did not quite see it clearly.
 Q. Was it a long bag, a wide bag?
 A. Perhaps slightly long.
 Q. All right.

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No. 5
 COUNSELS SUBMISSION RE
 ADMISSIBILITY AND ADMISSION

20th September, 1976.

9.50 a.m. Court resumes.

Accused present. Appearances as before. JURY
 ABSENT.

COURT: Yes.

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MR. MARASH: My Lord, this is an application on behalf of the Crown to lead before the jury later in this trial certain statements which the Crown alleges constitute admissions by the 5th accused, to lead these before the jury.

I preface my remarks by saying that the reason we are here in this trial is because a man was killed in a vicious assault and two other people were seriously wounded. The task of this court is that of trying to find the authors of this man's death. We must decide, once the authors are found, whether his or their state of mind at the time was such as to render those persons guilty of the crime of murder or some other crime.

10

The 5th defendant has, my Lord, in the voire dire and in circumstances where there is no question of involuntariness, admitted he was present and involved in the incident with which we are concerned. I read to you the passages of his evidence which I have been very kindly supplied by the respective shorthand writers who were present in court at the time. The first passage —

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COURT: I don't think it is necessary to read it out now. It has been read in chambers. Have you read this, Mr. Ming Huang?

MR. MING HUANG: No, my Lord. It is not necessary now. I have not read it; I only heard it when it was read in chambers.

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MR. MARASH: The reason I wish to read it to your Lordship is there are going to be certain arguments on the substance of it.

COURT: I am not going to listen to all this this morning. I said we were to start at 9.30, we should have started at 9.30. I don't think we could finish this argument this morning anyway.

MR. MARASH: The prisoners were not here at 9.30, my Lord, that is the reason for the late start.

It will make it very difficult for my submission without going through the relevant passage.

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COURT: What is the general substance of the application?

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MR. MARASH: The general substance of the application, my Lord, is that the statements made on two separate --

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COURT: There is still a discretion on the court whether to accept these or not.

10 MR. MARASH: I quite agree, there is a discretion. Well, the first authority which I wish to put before your Lordship is the case of R. v. Wright. This is reported in the 1969 South Australian State Reports at page 256. It is a decision of the Full Court in the Supreme Court of South Australia consisting of three judges. I have made a photo-stat copy for your Lordship.

20 The facts of this case - I wish to go into it in some detail - are that the defendant was tried for attempted murder, objection was taken to the admissibility of his alleged confession and a voire dire was held and the defendant gave evidence on the voire dire. It was in cross-examination that he was asked the following questions and he gave the following answers - that is shown at page 257 in the last paragraph :-

"Q. Was what you told the police true?

A. Yes.

Q. That is that you intended to kill Raylene Eggers when you hit her on the head and stabbed her with a knife?

30 A. Then but not now.

Q. At the time you did it, you intended to kill her?

A. Yes.

Q. Would you have told the police the truth irrespective of what your father said to you?

A. Yes."

40 COURT: Look at the main point. The main point of this case is that the trial judge has a discretion to disallow that evidence completely.

MR. MARASH: I quite agree.

COURT: And any question of fairness is also a question of fairness in a trial, whether such kind of evidence ought to be led before the jury.

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MR. MARASH: Is your Lordship familiar with this decision?

COURT: As far as I understand it, from this case, this is the main point of this decision. Even if the evidence can go to the jury, it is still up to the trial judge whether to allow that evidence to go to the jury, and the whole thing revolves around the question of fairness in a criminal trial. Is it fair to allow this evidence to go to the jury? Is this the only evidence that is available to go to the jury?

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MR. MARASH: In my submission, a man's evidence on oath is the best evidence that one can have. This is only a question of whether the voire dire evidence is available before the jury and if so, it is for the Defence, according to this judgment, to show reasons why it should not go before the jury, why it is unfair. In this particular trial the passage which I wish to put in contains the man's defence as well as the man's admissions. There is nothing unfair in the passage which I wish to put in; it doesn't give a one-sided version of the story but gives both sides. In fact it contains the whole of his defence which is in conflict with the evidence of the Crown witnesses, and it is ludicrous, in my submission, for a man to go into the box to make an admission and then have it excluded from the jury, having walked out a free man, when he has admitted on oath his involvement which may amount to him being guilty of the crime of murder.

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COURT: It is not your duty to see whether a person goes free or not, if he goes free, that is a question for the jury.

MR. MARASH: I quite agree, but the jury, I think, should hear the evidence; and this is what is said in Monks case, 1955 unreported in Tasmania.

COURT: In Monks case the whole of the proceedings in the voire dire was produced.

MR. MARASH: I have not been able to obtain the full report. The only reference I have been able to obtain, other than that of Wright, is reported in the Australian Law Journal, Vol. 34, page 110. It refers to what the judge said in that particular case, at page 112, he said:-

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10 "At the conclusion of the evidence on the
voire dire, the learned Chief Justice
prefaced his decision upon the question
whether the allegations by the accused were
true or not., by stating that in his view it
would be a 'public scandal' if, after a full
confession upon oath, in open court, the
accused should thereafter be acquitted.
His Honour then went on to hold that the
confession had been voluntarily made and was
admissible."

20 Wright's case clearly states that that
evidence is prima facie admissible and the judge
has a discretion, as your Lordship said, to exclude
it. Why in this particular case should be it
excluded? It contains the defence. It is not, in
my submission, by leading before the jury the
passages which I wish to lead, it is not to show to
the jury that the man has confessed to the police.
The jury need never know that. It is prejudicial
to the accused, but your Lordship is, of course,
familiar with the 1973 Full Court decision of LI
Ming-kwan, Hong Kong, it is a question of whether
it is more prejudicial than probative. If it is
made on oath freely, it is highly probative.
Perhaps if I could refer to one passage of LI
Ming-kwan, this is at page 283:-

30 "'Prejudice' arises where evidence may appear
to a jury to be probative although in fact
it is not. Perhaps the commonest example
is evidence of a previous conviction where
that conviction is not an ingredient of
the offence charged."

40 We are not in that situation, my Lord. We
have a man giving evidence on oath, he said he
chopped somebody. It has nothing to do in this
particular case with the treatment which the police
may or may not have given the 5th accused. If the
policy were to beat up a man and he makes a
confession as a result of which the police find
stolen property, of course the Crown can lead
evidence about the finding of the stolen property
and the identification, but here we have a man who
comes into the witness box --

COURT: That is another matter altogether, if the
property is found. If the property is not found
then it cannot be led at all.

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MR. MARASH: Certainly, I agree, but here a man comes into the box and makes a statement on oath. I cannot see why if the statement contains both his defence --

COURT: Who is the person he chopped?

MR. MARASH: That is for us to find out. He says that he chopped somebody in the party who punched him.

COURT: Is it not putting the same analogy wherein property is found as a result of an inadmissible confession?

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MR. MARASH: I think not, not according to Wright's case. Wright's case says this evidence may be led. In fact, looking at Judge Chamberlain's judgment he virtually says that anything the accused says in the voire dire can be led. He goes further than the other judges, there does not have to be an admission necessarily. If the man were asked "Did you do it? Is your statement true? Did you do it?" and he refused to answer, according to Judge Chamberlain, then the defendant's denial could be put before the jury.

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COURT: Is there any case in the United Kingdom?

MR. MARASH: No, I have not been able to find any.

COURT: Is there no case?

MR. MARASH: I am not saying definitely there is none but I have not found any.

COURT: There is no case as far as I have been able to find.

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MR. MARASH: It should not prevent one from making new law where there is authority for it in Hong Kong despite the fact no English law has been decided upon. If one looks at Mr. Justice Huggins' decision in LI Ming-kwan's case he says, at page 281 -

"Even so, one must not lose sight of the reason underlying the rule, namely that a statement which is not proved to be voluntary may be involuntary and an

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involuntary statement may not be true. If a statement is admitted to be true then despite the fact that what was an exercise of discretion has now become in effect a rule of law, it would be absurd to reject it as inadmissible and we do not think the law requires a judge to do anything so absurd."

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10 My Lord, here a man has gone into the box and said it. If one looks at Wright's case, Chief Justice Bray felt that the question as to whether the statement is true in all cases went to credit. He felt that the credit sort of cases were ones in which there was an allegation of inducement rather than beating, and dealing with the discretion he says that the judge in a criminal trial has a general discretion at large in the interests of justice to disallow evidence if the strict rules of admissibility would operate unfairly against the defendant. In my submission there is nothing
20 unfair to the defendant in putting his defence before the jury as well as his statements about it. The Chief Justice felt in exercising his discretion he should pay some attention to the police treatment given to the accused but the other two Justices were not of that view and thought this was an entirely separate matter, it was nothing to do with the treatment by the police on the accused. Chief Justice Bray excluded the evidence in this
30 particular case simply because it was a matter of credit and felt the question should never have been asked in the first place. The facts were very different in that case. As I said, Chamberlain went further in great detail and he discussed these matters at pages 270 and 271 regarding the exercise of the discretion. Perhaps if your Lordship would allow me to read the passage in the middle of 270 over to 271, actually starting from the last paragraph -

40 "The only question which seems to me to be open to debate is whether the evidence should be excluded in the exercise of the trial Judge's discretion. Mr. Wells does not dispute that if there were any ground for holding that it would be unfair to put before the jury the admissions obtained on the voire dire it would be proper to exclude them. The judge may think, for instance, that the defendant had assented, under pressure of cross-examination, to something

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that he did not understand or mean to assent to. But in the present case no such suggestion has been made. The discretion has been appealed to on purely general grounds. The argument in favour of rejection appears to be that to permit the Crown to ask a defendant on the *voire dire* if he committed the crime in fact, would tend to deter him from entering the witness box to prove impropriety or unfairness on the part of the police. As the argument was presented, I am not clear whether this provides a reason for dis-allowing the cross-examination on the *voire dire*, or the use of an admission so obtained at the trial. In either case I think it is equally without substance. It is said that a defendant who is both guilty and honest would be allowed to dispute an improperly obtained confession only at the expense of making another confession to which no objection can be made. On the other side it would seem odd that a court should be asked to exercise its discretion in favour of a defendant for the very reason that he is guilty and prepared to admit that he is guilty of the crime charged. These facts would equally prejudice his chances of acquittal by preventing his entering the witness box or making a statement on his trial before the jury, but he could still say nothing and rely on the onus of proof. He could do the same on the trial on the *voire dire*. The purpose of a criminal trial is to try the guilt or otherwise of the defendant, not to investigate the conduct of the police, except of course in so far as it affects the admissibility of evidence. It is not, in my view, correct to say that the policy of this branch of the law of evidence is designed to repress improper police practices; that is a matter for those in control of the police force. The policy is to protect suspects from the effects or possible effects of improper police practices. If the mere danger that the admission of the evidence in question would place the accused at a disadvantage is to be treated as basis for rejecting it, then, as Mr. Wells suggested, the argument proves too much. On this basis no

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police evidence should ever be admitted, because, I suppose, besides the danger that the police will obtain confessions improperly, there is the danger that they will invent them.

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10 A passage from an article by Mr. Neasey, now Neasey J., in the Australian Law Journal, vol. 34 (1960), was relied on in argument to the effect that it would be absurd to suppose that in the very process of establishing that one confession is inadmissible a further confession may be obtained which is 'absolutely watertight; and not susceptible of any attack before the jury'. If the further confession is watertight - then *cadit quaestio*, it is admissible. All that has happened is that a guilty person has deprived himself of a chance of escaping conviction. He is in the same position as
20 one who in the course of proving that the prosecution were wrong about the method of committing the crime, proves that he committed it by a different method.

30 The article in fact lends no support to the view that the evidence would not be admissible, or that it should be rejected in the trial judge's discretion. What the learned author really complains of is the law which requires it to be admitted. I see no justification even for this complaint."

Then he goes on -

40 "It is not questioned that if there is any basis in the circumstances of the case for thinking that it would be unfair to admit the answers given on the *voire dire*, then the evidence may be excluded. The judicial discretion as at present understood extends to protect the accused from unfair treatment, and that is a sufficient safeguard, but it is for the accused to point to the circumstances warranting the exclusion, by this process, of admissible evidence. It is not enough to talk about theoretical possibilities or dangers, or the difficulties that may confront a defendant who desires to dispute his guilt. There must be facts from which the inference of unfairness can properly be drawn.

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I should add an observation as to the suggestion pressed on Mr. Wells in the course of his argument that if it was unfair to admit the confession to the police it would, as I understood the argument, be equally unfair to admit the repetition of that confession made on cross-examination on the voire dire enquiry. The answer to this seems to me to be clearly that the effect of any unfairness there may have been in the obtaining of the original confession has been removed."

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He then refers to the case of R. v. Smith, an Australian High Court case in 1959, a very strong judgment, my Lord, in favour of admitting this sort of evidence unless the defendant can give some circumstances why it ought to be excluded. Chamberlain J. said similar things in his judgment; he went even further. Mr. Justice Zelling felt that statements of any description could be led including denials, that is refusals to answer questions and things like that.

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An article in the Australian Law Journal supports the right to lead it although it does argue against this right on the basis that the voire dire is something sacrosanct. The voire dire, my Lord, has been shown not to be sacrosanct. The case of R. v. Mazarall No. 1 (1946) 86 Canadian Criminal Cases, at page 137 - I haven't got the full judgment with me, my Lord, but it does set out that a man gave evidence on oath in the Royal Commission. This was a matter which was held prior to the trial and he was charged as a result of the Royal Commission. This case establishes the Crown's right to lead anything said in the Royal Commission in the trial of this person at a later time, anything said on oath by that man. In my submission, there is no distinction between the voire dire and the Royal Commission as such. There is no magic about the voire dire and these matters can be led.

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My learned friend has drawn my attention to a local decision, R. v. LI Kim-hung, it appears in the 1969 Hong Kong Law Reports at page 84. My friend argues that this weighs against the Crown's right to lead such evidence, and in my submission this case is completely distinguishable involving a judge sitting alone where a voire

dire was held. There was no jury at all in this trial. Page 87, first paragraph, states -

"The evidence given on the voire dire is not available for or against the accused on the general issue of the weight to be given to the alleged confession."

10 That is what this case decides concerning weight, concerning a confession, where a judge specifically did not ask counsel to incorporate the voire dire evidence into the general issue by consent, he then went ahead and relied on the voire dire evidence. The Full Court allowed his appeal, the defendant's appeal, on the basis that the judge looked at evidence that was not in the case. In my submission, this decision goes no further than that. That is an old principle which has been applied in Hong Kong although not in other places.

20 The principle here is whether his evidence can be led. The answer on the authorities is clearly yes. The next question is: is it unfair to the accused in the circumstances, should your Lordship exclude? In my submission the answer is NO. I rely very heavily on Mr. Justice Chamberlain's argument in Wright's case; furthermore, on the judgment of Monks case in Tasmania. It is necessary, of course, for your Lordship to look at the passage in order to appreciate that it does contain a man's defence. There is no necessity for the jury to be told that he confessed to the police.

30 COURT: Is there a copy?

MR. MARASH: Yes, there is a copy.

COURT: Has Mr. Ming Huang a copy?

MR. MING HUANG: No, my Lord.

40 MR. MARASH: I am not seeking to put in the whole of the evidence, just certain passages of it which I have marked. This case of Wright's clearly says that the Crown is entitled to edit, subject to your Lordship's discretion, and choose the parts but with an overall ruling that it should not be done in an unfair manner. It would be wrong to extract the confession and leave the rest of it. That is not what the Crown is trying to do in this

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particular case. I have nothing further to say unless your Lordship wishes me to mention any other matter.

COURT: Thank you. Would you like to reply now or later on, Mr. Ming Huang?

MR. MING HUANG: I can reply now, my Lord. My Lord, my learned friend relies upon the case of R. v. Wright. My Lord, this case is not strictly a common law case; in fact it was decided with reference to a number of Australian legislation which we do not have. Now to illustrate, could your Lordship kindly look at page 259, just to illustrate, the middle paragraph -

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"My own view is that such a question is always, except perhaps in circumstances which I cannot at the moment envisage, relevant to the credit of the accused. The protection which s. 18vi of the Evidence Act 1939-1968 gives to an accused person called as a witness in pursuance of the Act only extends to questions tending to show that he committed an offence other than the offence charged. With regard to that offence, and subject to any question arising out of s.18v relating to the privilege against incrimination, to which I refer later, the accused in the witness box presumably stands in the same position as any other witness, and can therefore always be asked if he has committed the offence charged. The matter, however, cannot be left to stand there because ss. 23 and 24 of the Evidence Act dealing with cross-examination as to credit impose a duty on the court to decide whether a witness is obliged to answer questions going to credit only, having regard to certain considerations mentioned in s.23. Therefore a special situation exists outside the range of any general judicial discretion to disallow questions on a criminal trial."

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Now just to illustrate the point that when the judges were deciding this particular question it was with reference to their Evidence Act, to a number of sections which we do not know whether the same exists here or not. Now the question is since it is not a common law decision we cannot

pay any attention to it at all because we do not know what the municipal law is. Now another passage at page 267, I quote the second last paragraph -

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10 "... as far as I can ascertain it has never been suggested in England that there is still a right in the accused to refuse to answer questions tending to criminate him of the offence charged and that the subsection merely authorises the asking of the question."

20 Now there it shows the law in Australia and in England is different because in that Evidence Act - in the Australian Evidence Act, the Evidence Act authorised the prosecution to ask incriminating questions and they are bound to answer, but in the English Law one cannot do so. So therefore we don't know to what extent the Australian legislation is the same as in Hong Kong. Some may be similar, some may be identical, but we don't know that all the sections are identical to ours. Therefore in adopting their decision we cannot rely on that.

30 Now there is another point I wish to make, my Lord. I have so far failed to discover any authority in English law among the English cases. I have consulted a number of books of evidence, I could not find any. The closest I got to was the Hammond's case (1941) 2 All England Law Reports. In fact in that case it was the putting of incriminating questions to a witness, that is all, not on this point, and in fact that is what prompted the Australian writer, Neasey, to write an article in Australia about the unfair practice of a prosecutor to ask incriminating questions. In Hammond's case that decision is most unpopular among legal circles, but in Australia the law authorises the asking of such questions, so it is there, how different is the law.

40 Now I am sure that this is a very common question. Voire dire is conducted every day in any criminal court practically. Why did England, out of so many centuries, there is not a single case of a similar nature? That shows that the English practice is that the evidence in the voire dire is sacrosanct and is not available for the general issue unless this statement is admitted and repeated, that is a different matter.

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Then my learned friend says that there is nothing sacrosanct about the voire dire evidence. Well, with great respect, even as clearly illustrated by R. V. Wright, it is sacrosanct. To illustrate it, my Lord, please look at page 266, R. v. Wright, the Chief Justice said in the last paragraph - last two paragraphs -

"On the view I take it is not possible to answer the first two questions submitted to us with a bare affirmative or negative. I think the answers should be -

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1. The Crown can on the trial of the said Allan Wright lead as part of its case such part of the said admissions as does not disclose to the jury that the accused made a confession to the police held to be inadmissible by the judge, subject always, however, to the discretion of the judge to disallow such evidence and in the circumstances of this case the discretion should be so exercised."

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The Chief Justice was also the judge who tried the case, and then it was referred to the Full Court and he also presided in the Full Court. Now he was the trial judge himself and he in the circumstances exercised the discretion.

Now the point is the jury must not - it must not be disclosed to the jury that the accused made a confession to the police held to be inadmissible by the judge. In other words voire dire evidence is sacrosanct, the jury should not know about that at all. So when my learned friend says there is nothing sacrosanct about it, well, according to R. v. Wright, there is, and that has always been the state of the English law.

30

Now to fortify this principle, even if you adopt - you follow the principle as laid down here, it is admissible provided it is not disclosed to the jury that the accused made a confession to the police. Now how is one to do that? In English law we have a number of authorities where a prisoner's evidence in another trial may be used as part of the Crown's case against him but never in the same case and also during the voire dire. Now where there

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10 have been cases where the prisoner's own evidence is used as part of the Crown's case against him it is a very strong rule of the law that the whole of that statement must be admitted and not part be selected. That principle is expounded in R. v. McGregore (1967) 2 All England Law Reports, page 267. My Lord, the general principle is stated in Cross on Evidence and supported by this authority. Perhaps we look at Cross on Evidence and then see the details in this authority. Cross on Evidence page 489, paragraph 6 - "Whole statement must be received". You see the headnote there -

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20 "If the prosecution relies on a confession, the whole statement becomes admissible and the accused may rely upon such self-serving portions of the statement as there may be, although they may not be accorded as much weight as the inculpatory parts.

'What a prisoner says is not evidence unless the prosecutor chooses to make it so, by using it as part of his case against the prisoner; however if the prosecutor makes the prisoner's declaration evidence, it then becomes evidence for the prisoner as well as against him.'

30 This passage came from McGregor. This McGregor case, the relevant part is at page 269, this is the judgment of Lord Parker, Chief Justice, page 269, at about letter C, quoting a passage from R. v. Jones, quotation in margin C -

"There is no doubt that if a prosecutor uses the declaration of a prisoner, he must take the whole of it together, and cannot select one part and leave another...'

So far that seems quite correct. But he then goes on (2):

40 '.. and if there be either no other evidence in the case, or no other evidence incompatible with it, the declaration so adduced in evidence must be taken as true.'

But that does not concern us. It is the first part that concerns us. Then he illustrated that the court itself adopted that is the true statement, what is expounded in the first part, that the whole statement may be put in and not select any part of it. The court then went on to

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say that is the correct exposition. Now in the present case, my Lord, how is my learned friend going to lead that as evidence, that is the entire evidence given by D5 in the witness box without disclosing to the jury that he had made an inadmissible confession to the police? How is that to be reconciled now with R. v. Wright? The English law on this point is quite clear and there is no exception to it as is incorporated in Cross on Evidence, and the judgment is here expounded quite recently in 1967 by the Chief Justice himself.

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Now there is another contradicting principle in the case - in a case in Hong Kong, that is the closest case we can get to in Hong Kong, in this LI Kim Hung that my learned friend referred to already. Briefly the facts of that case were that in a district court during the trial, there was no jury, a voire dire was held, there were two statements intended to be produced, one was a police notebook, one was an answer to the charge. After the voire dire hearing the trial judge rejected the statement, the confession contained in the notebook, but admitted the statement made in answer to the charge. In the course of his judgment - he convicted the appellants there - but in the course of his judgment he referred to some other evidence said by the accused during the voire dire and this went on appeal on this strict ground, and of course the Full Court in Hong Kong said the judge had a right to do so and rejected on that ground, but the Full Court gave - I know it is not exactly on the point, but I think the principle is quite well stated for our assistance at page 87 -

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"However, where the procedure of voire dire is adopted it seems clear that, for the reasons elaborated in the Chitambala case, the evidence given on the voire dire is not available for or against the accused on the general issue of the weight to be given to the alleged confession. This approach rests on the contention that otherwise the accused would be deprived of his right to remain silent in the face of the prosecution evidence. That right would be impaired, it is said, if the prosecution was free, on the general issue, to rely on

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evidence which had been given by the accused or his witnesses or indeed the prosecution witnesses on the purely preliminary issue as to the admissibility or otherwise of his statement."

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10 I think this statement - this exposition
from the Bench is quite clear, that it is not
available. If the Crown were to make such use of
it, then it would be a threat, impair the
defendant's right. He may decide to remain silent
on the general issue but he would like to
challenge the *voire dire* and give evidence on the
voire dire, especially when on the *voire dire*
issue in fact the only issue was voluntariness,
not the truth. There the judge was not concerned
whether there was any truth. Whether it was
voluntary, that was the only issue. If it were to
decide - the decision was the truth, then for that
20 matter the Crown can call evidence from all
defence witnesses to prove that what is said is
true, but of course the Crown cannot do that.
The Crown can only lead evidence and the only
relevant issue was whether the statement when made
was voluntary. Therefore the issue there is very
different. This very point is criticized by Chief
Justice Bray, that if that is the practice then
prosecuting counsel would always tend to there and
then during the *voire dire* extract evidence which
he could use later on. Now, in fact there is a
30 very nice passage, nicely put, by the Chief
Justice there, at page 262, my Lord, *R. v. Wright*,
the middle paragraph -

40 "I might add that if the accused can be
cross-examined in this way on the *voire dire*
because the truth of the confession is
relevant to the questions of voluntariness
and discretion it is difficult to see why
the Crown could not with the object of showing
the truth of the confession call independent
evidence on the *voire dire* about the
commission of the crime as well as asking
the accused about it. Then the trial within
the trial would assume formidable
proportions and duplicate the actual trial
before the jury. Though this consideration
cannot, I think, be decisive of the
admissibility of the cross-examination, it is
an excellent reason for confining such
admissibility to the narrowest grounds
50 consistent with legal principle."

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In fact in another case at page 260, about the middle of the page there, here the Lord Chief Justice showed that if that principle is carried to the extreme the prosecuting counsel would do so with the object only of quoting evidence later on rather than during the voire dire even at the expense of destroying the evidence, of losing the voire dire, but using that evidence solely for the general issue, and that would be most undesirable. About the middle of page 260 -

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"It would be too Gilbertian to suppose that the prosecution could cross-examine to get evidence to destroy its own case on the voire dire with the object of using that evidence to destroy the accused's case before the jury later on. In my view, therefore, such a cross-examination as is in question here is admissible on the voire dire otherwise than as to credit when the alleged inducement is an inducement to make a confession of some sort, irrespective of its truth or falsity..."

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So now in that process the only relevant issue is voluntariness and not truth of the issue. Now this would tend to operate most unfairly on an accused because at that stage any prosecuting counsel can take advantage of it by asking a number of questions only with the object that he would be quoted later on for the general trial, in other words investigation of the truth and not investigation of the voluntariness. No wonder in this case my learned friend persisted "Did you hold a knife?" "Yes" "Did you chop at one stage?" "Yes". He only selected the most important, without reference to the whole context, how he held the knife, how he chopped. Apparently my learned friend had that in mind already at that time because that is not relevant to the issue - the issue of voluntariness of the statement.

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Now another point I wish to criticise is - I think your Lordship got it correct from the very beginning, the question of fairness. In R. v. Wright Chief Justice Bray elaborated on that point at page 264, the middle paragraph, my Lord -

"Though the question has mainly arisen with regard to cross-examination as to

character and previous convictions or evidence as to similar facts, there is no doubt in my view that the modern law is that the judge on a criminal trial has a general discretion at large in the interests of justice to 'disallow evidence if the strict rules of admissibility would operate unfairly against the accused' (Kuruma v. The Queen) ..."

10 That is a Privy Council decision -

"See also Callis v. Gunn..."

Then he quoted a number of authorities in England, although not on the question of *voire dire*, in other respects of admissibility, and he quoted a number of principles of highest authority.

20 So now in the present case, my Lord, the Crown now is in a position with absolutely no evidence whatsoever against D5. He successfully challenged the *voire dire* and your Lordship has ruled in his favour. Is it fair now then to quote whatever he said for the trial of the jury again? But mind you, what he said in the witness box is not a confession of guilt. My learned friend kept referring to what he said in the box as a confession of guilt. What he has said in the box is a declaration of innocence, because mind you, my Lord, there even in *R. v. Wright*, the man clearly - what he said there in the box was a
30 confession of guilt "I intended to kill her, I did chop her, I did so and so". Now that is a confession of guilt, but in our case, my Lord, D5 said quite clearly they went inside there, they asked for compensation, they asked to have a talk together, one of the floor managers said there would be no compensation but there will be knives. Immediately one person at that time dashed behind the bar and fetched a knife - something like a
40 knife, he said, but D5 follows him, he managed to grab the knife from the man - he managed to grab the knife from the man instead, at this juncture somebody punched him in the back. My learned friend seems to think that a knife is not in proportion to the punch but, my Lord, this person who punched him in the back is in conspiracy with the one who went to fetch the knife, it is not a question of the knife in proportion to the punch.

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At that stage he knew the knife was used by his rivals. Why should he not chop back in self-defence? As is clearly stated in Palmer by the Privy Council, whether there was imminent danger to the life of the defendant. The question is a subjective one, that is from the circumstances what did the defendant think at the time? Did he think at that time that he was in imminent danger? Well, quite clearly from D5's position, the man had declared "No compensation but you get knife", a man ran behind and got a knife, he managed to get the knife instead, at this juncture somebody punched him in the back, he lashed back with the knife. So that was his state of mind? Quite clearly he was being attacked and a knife was likely to be used. In fact he already sees one of them. It is a subjective question. So now is that a confession of guilt? He agreed there was a confusion, and then what is more, according to D1, at that juncture some manager pulled out a weapon from under the sofa and it so happens that one of the others managed to kick the hand of the person who pulled out the weapon. So they acted fast. So therefore what D5 had said in that evidence? He admitted that much involvement. He never said he went there with knives. The knife was grabbed from his assailant at the time. If a man were to chop me and I go and chop him back, am I a murderer? Now that, in my respectful submission, is not a confession of guilt. Now what the prosecution wants is for the whole thing to be retried again. Your Lordship has decided that his statement is not admissible and there is absolutely no evidence otherwise. Is it fair on the part of the prosecution that his evidence should now be put in on the general issue? Where there is absolutely no evidence, the man is forced to incriminate himself. It is the most basic - what we are arguing is this principle rule, the most basic principle is against self incrimination which is the underlying principle of all these cases that have been referred to. In fact since it is such an unprecedented case where there is absolutely no evidence whatsoever, but nevertheless the Crown try to - somehow try to get the evidence through the back door, I think it is against the spirit of a fair trial in an English court. Therefore my submission is that for the number of reasons I have given in the first instance R. v. Wright is not applicable to our court. Secondly even though your Lordship

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10 decides that R. v. Wright is applicable to our
court, it is in conflict with the basic English
rules of evidence, that is the voire dire must not
be disclosed to the jury and if one were to quote
a statement of a prisoner, the whole of it must be
quoted and not part selected. If the whole were
to be quoted then the jury would be aware of the
voire dire and the fact that he had made a
statement to the police would also be disclosed to
the jury, which is the very issue your Lordship
has already ruled to be inadmissible, and bearing
in mind the case of McGregor, Lord Chief Justice
Parker said the whole specifically and not any
part must be admitted, the whole must be admitted
for and against him; and finally because it is
such an extraordinary issue before our court
without any precedent, the authority of R. v.
Wright is doubtful. Even though your Lordship may
20 feel that it is applicable and such evidence
admissible, I do urge your Lordship to exercise
your discretion to disallow it on the ground of
unfairness on the part of the prosecution.

30 The defendant is faced with three most
serious charges and at this stage up to now the
prosecution has absolutely no evidence whatsoever,
but what he intends to do is try to convict the
person with his own tongue, what he himself says.
My Lord, this is most repugnant to the English
principles of self incrimination which the law
respects most highly and that is well recognised
in any trial as declared by the Privy Council and
the D.P.P. v. Christy, 1940 House of Lords,
fairness of the trial is very basic in our
institution, and I consider this is one of the very
best examples for the exercise of your Lordship's
discretion.

40 I think that is all I wish to say. About LI
Ming-kwan, it is not relevant to our case because
there what Mr. Justice Huggins decided is if the
witness admits it is true it is absurd to reject
it even though the statement was involuntary.
That is all that was decided, which is commonsense,
but it is a different thing if that statement is
ruled inadmissible but the evidence he had given
in the witness box would be quoted as evidence
against him, that is quite different altogether,
and having regard to the decision of the Full
Court I have referred to already, the only
50 authority we have here, the Chief Justice quite
clearly stated such evidence is not available

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for the general issue, and if it is, it
impairs the man's basic rights. That is all I
wish to say.

COURT: I don't think I want an answer now. You
can do it at the end of the day. Get the jury
back now. Could you have copies of the
statements prepared?

MR. MARASH: Yes. I have marked the passages the
Crown seek to produce.

COURT: I think Mr. Ming Huang will want a copy
as well.

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11.02 a.m. JURY RETURN TO COURT.

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No. 6

PROSECUTIONS REPLY

4.40 p.m. Court resumes

6 Accused Present. Appearances as before.
Jury absent.

COURT: Yes, Mr. Marash?

MR. MARASH: My Lord, in reply to my friend's
argument. Firstly, he suggested that the
decision in the Crown against Wright was one
confined to the various sections referred to in
the case that is, Sections 18, 23 and 24 of the
Evidence Ordinance. Firstly, Section 18 is, of
course, exactly the same as our Ordinance and the
Criminal Procedure Ordinance at Section 54. (1)
(f), so nothing turns on that particular question.
In reference to this matter of Sections 23 and
24 they deal only with the question of whether or
not the witness on a voire dire - in fact the
section goes wider - whether a witness may be
compelled to answer questions as to credit. In
this particular case when these sections are
referred to it is in deciding that - I think the
first question that was sent up for the Full
Court to consider, that is, whether on the voir
dire the accused can be asked whether his

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statement is true. My Lord, there is a well settled principle now that that question is permissible and whether the Sections 23 and 24 affect or otherwise, the position in South Australia is identical to the position here, their common law. As I say, it is confined strictly to the question of whether you can ask that question and not whether the matter can be proved later on. My Lord, my submission is that the case is not confined to any statutes of South Australia.

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My friend referred to the question of whether or when there is no English authority therefore you can not do it. I would venture to say that judges would be horrified to hear that just because there is no authority on the point in England therefore there is law that such-and-such can not be done: Lord Denning makes new law every day in his decisions, that is how the law moves, from time to time and day to day, it progresses and nothing turns on the fact that there is no English decision. The best authority available is this authority in Australia, and unless there is some compelling reason to the opposite it ought to be followed.

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My friend suggested that the voir dire is a matter which is sacrosanct and referred to Chief Justice Bray's judgment in supporting that proposition. My Lord, if one looks at page 262, the paragraph after my friend quoted, the Chief Justice says: "The remaining questions can, I hope, be dealt with more shortly. The case of R. v. Silley, quoted to me at the trial, would appear to be an authority for the proposition that nothing said by the accused on the voire dire in the absence of the jury can be given in evidence subsequently in their presence. This may be justified by some provision of the Queensland legislation but with the greatest respect I cannot accept it as a universal proposition of the law of evidence. It has not been so accepted in Queensland itself (R. v. Gray). If what the accused says on the voir dire is inadmissible before the jury I cannot see why what other witnesses say on the voir dire is not equally inadmissible: and the defence might be seriously hampered if a detective, for example, could not be asked in cross-examination whether he made statements on the voir dire inconsistent with his testimony before the jury. I cannot therefore hold that evidence of what the

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accused said in cross-examination on the voir dire is inadmissible before the jury on the simple ground that it was said on the voir dire." Of course my friend has, on a number of occasions, asked questions here of witnesses, comparing what they said on the voir dire with what they said now in the witness box before the jury. Your Lordship now has before you the passage which I would seek to put before the jury, my friend submits you cannot edit in that manner, but the Wright case, in fact all the judges in the Wright case say that you can. One should not mistake the principle in this case with the general principle concerning written confessions, the Crown can not pick and choose parts out of a written confession that must be in conflict with this principle and ought to be confined to written statements.

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COURT: Which is the part you are referring me to?

MR. MARASH: My Lord, the passage which I would seek to tender is on the 25th August, 1976:

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Q. Is it correct that at the time you were at the Siu Nui Chin Kiu you were at some stage holding a beef knife?

A. No.

Q. You just told us that you were.

A. I said we went up there to ask for compensation. They being the wrongdoer, they made the allegation against us. Then I saw him going to fetch a knife.

30

Q. What else did you see?

A. I pushed him away and snatched it away from him.

Q. And then you chopped him?

A. Someone punched me from behind. I turned around and chopped and injured him.

Q. Do you know what sort of knife you were holding at the time when you chopped him?

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A. I did not know. It was something wrapped in a sheet of newspaper. I thought it was an iron bar.

Q. At the time you chopped, you didn't know what you were chopping with. Is that what you are saying?

A. I did not know what it was at that time.

My Lord, I readily concede that anything after that would not be put before the jury, if you follow Bray's judgment, on the basis that it would reveal that his statement was made to the police. But the following day I attempted to clarify this matter while still asking him whether his statement was true, and you will see marked on the passage dated the 26th August about five or six questions from the base of the page, I asked:-

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- 10 Q. What sort of blade did the knife that you had in the music parlour have?
A. Up to the time when I had chopped that person and ran away I did not notice what the blade looked like.
Q. Would you agree that the description "beef knife" is not inaccurate?
A. Not correct.
Q. How long was this knife?
A. This long. (Witness indicates).
20 Q. What sort of knife would you call it?
A. It belonged to the melon knife type.
Q. How do you know that?
A. Because the shape of the knife was straight which looked like, similar to melon knife.

30 It is my submission, my Lord, that in choosing those passages the Crown would have, in no way, be letting the jury know the accused made a confession to the police. The Crown has not edited in any manner which is unfair to the accused because the passage contains the accused's defence as well as what the Crown alleges are his admissions. It is the Crown's submission that this ought to go before the jury relying heavily on what was said in Monks case, it would be manifestly ridiculous for a man to go free when he has given his version of the story which is capable of a number of interpretations, perhaps both in innocence or guilt, but in my submission
40 strongly suggesting guilt of some description, and that this is not put before the jury. If a man on oath says it, it can obviously only be voluntary as has been said in the witness box on the voir dire. This case says, Wright's case, that: "Questions asked in evidence given by the prisoner in the witness box is regarded as voluntary notwithstanding that it is given under cross-examination. There is no reason that I can see why this principle should not apply to an

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answer in cross-examination which amounts to a confession." That is the Chief Justice again at page 262 to 263.

My Lord, in my submission this ought to go before the jury, the Crown ought to be allowed to prove it unless there is some compelling reason of unfairness to the accused, those sort of reasons set out in that case of Wright where he appears to say something, he doesn't understand the question by counsel or something like that, where the man is freely talking voluntarily is not mistaken, that should go before the jury.

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No. 7

JUDGES RULING

COURT: I must confess that when this question was first broached I was of the same opinion as Mr. Ming Huang, that if the Crown sought to have these passages introduced as part of its case to the jury then the whole of the proceedings on the voir dire regarding the 5th defendant ought to go to the jury as well. My view regarding that has changed since I have been referred to this case R. v. Wright in the 1969 State Reports (South Australia) and after reading the decisions which have been made in that case I have come to the conclusion that the Crown has a right to lead his evidence, which is now sought, which it seeks to lead.

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I refer also to Section 59 of the Criminal Procedure Ordinance, CAP.221 where it says: "If on a trial by jury of a person accused of an offence, a statement alleged to have been made by such accused person is admitted in evidence, all evidence relating to the circumstances in which the alleged statement was made shall be admissible for the purpose of enabling the jury to decide upon the weight (if any) to be given to the statement; and, if any such evidence has been taken in the absence of the jury before the admission of the statement, the Crown and such accused person shall have the right to have any such evidence retaken in the presence of the jury." That is a positive statement where a statement has been

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admitted for introduction as evidence to the jury. There is no prohibition in this Ordinance that a statement made by an accused person on voir dire proceedings shall not be led as evidence before the jury. There is one provision where it says that on the admission of a statement for the jury the Crown and the accused can lead evidence but there is no negative, there is no prohibition against the reception of evidence where a statement has not been admitted in evidence.

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As I said, I have come to the conclusion that this case R. v. Wright is good law, and the only point which arises now is whether I should exercise, or whether there is any discretion which I should exercise to exclude this evidence from the jury. The passages which are sought to be produced in evidence do not, in my view, give any indication whatsoever to the jury that the accused had, at some stage, made a confession and that such confession was not admitted in evidence. These are statements which were made by him under oath. These are statements made in cross-examination, and in none of the questions asked was it necessary to give the accused a warning that he was answering a question which would produce an incriminating answer, so that no warning was necessary. I think there is authority to say also that there is no necessity where a person is represented by counsel or a prisoner who is represented by counsel would require a warning from the trial judge that he need not answer a particular question. It is for his own counsel to bring this matter up.

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I can not see any reason why I should exercise the discretion in favour of the accused and, accordingly, these two passages or these two series of questions which are sought to be produced in evidence are now to be admitted in evidence and to be led in evidence before the jury. I think it is necessary to reproduce these two on another sheet of paper, either this can be cut out and pasted on another sheet or...

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MR. MARASH: ... I shall, of course, call the court reporter, my Lord. Whatever she wrote down will be in shorthand she can give evidence that this is the written transcript transcribed from her shorthand notes.

COURT: Well this particular portion of the transcript will have to be put on a sheet of paper

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without the other bits. I would like to add this too, that recently the case almost on the same lines as R. v. Wright has been decided in Canada, and also accepting the proposition that the Crown can lead evidence of admissions made in the voir dire, the case I think is R. v. Gauthier, I have not got the reference. We will adjourn until 10 o'clock tomorrow.

5.00 p.m. Court adjourns

In the
High Court

No. 8
Respondents
Evidence
P.W.22
Adrienne
Frances
Ozorio
(Court
Reporter)
22nd
September
1976.

No. 8

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RESPONDENTS EVIDENCE

22nd September, 1976.

10.15 a.m. Court resumes.

Accused present. Appearances as before. JURY
PRESENT.

MR. MARASH: My Lord, thank you for the moment's
indulgence; I call Adrienne Frances OZORIO.

P.W. 22 - Adrienne Frances OZORIO Sworn

MR. MING HUANG: My Lord, my learned friend has
indicated to me the nature of the evidence this
witness is about to give. I wish to register my
objection formally.

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COURT: What objection?

MR. MARASH: I do not wish to make any reply
except that I think the evidence is admissible.

COURT: What objection are you making, Mr. Ming
Huang?

MR. MING HUANG: The objection is that I understand
that only a small portion will be produced. As
your Lordship is aware, I have...

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COURT: I have already ruled on this particular
point the other day, that this is going to be the
portion admitted.

MR. MING HUANG: I appreciate that, my Lord. Not that I am protesting your ruling, my Lord. I simply register my formal protest in court so if your Lordship overrules me formally again - once more - I am quite happy with it.

COURT: I don't know what your objection is now. I have already given my ruling.

MR. MING HUANG: Yes, my Lord, I appreciate that.

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COURT: My ruling takes into account R. v. McGregor.

MR. MING HUANG: Yes, my Lord, I appreciate that. That was not before the jury. I simply register it formally, my objection, and your Lordship can overrule me once more for the record.

COURT: Well, all I can say is I have already made my ruling and this evidence will be admitted.

MR. MING HUANG: I am obliged.

XN. BY MR. MARASH:-

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Q. Miss Ozorio, where do you reside?

A. 30 Lancashire Road, Top Floor, Kowloon.

Q. Are you by occupation a court reporter?

A. Yes, I am.

Q. Are you trained and do you regularly apply the practice of taking shorthand?

A. Yes, I do.

Q. Were you a court reporter - the court reporter present in this court on the 25th August this year in the afternoon?

A. Yes, I was.

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Q. Did you in your capacity as a court reporter record down what was said by the witnesses whilst you were in court that afternoon?

A. I did.

Q. Were you present when the 5th accused in this trial, WONG Kam-ming, gave evidence on that afternoon?

A. Yes.

40

Q. Do you have with you your shorthand notes as to the evidence you recorded that day?

A. I do.

Q. Would you please refer to your notes, to a passage on that afternoon which commences

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- where I asked a question to the 5th accused, "Is it correct that at the time you were at the Siu Nui Chin Kiu you were at some stage holding a beef knife?"
- A. Yes.
- Q. Do you have that passage in the shorthand as well?
- A. Yes, I do.
- Q. What was the reply that the 5th accused made? 10
- A. The answer was "No."
- Q. Did you then record that I asked a question, "You just told us that you were"?
- A. Yes.
- Q. What reply did the 5th accused make?
- A. The reply was "I said we went up there to ask for compensation. They being the wrongdoer, they made the allegation against us. Then I saw him going to fetch a knife."
- Q. Did I then ask a question "What else did you see?"? 20
- A. Yes.
- Q. What reply did the accused make?
- A. "I pushed him away and snatched it away from him."
- Q. Did I then ask "And then you chopped him"?
- A. Yes.
- Q. What was the accused's reply to that?
- A. The reply was "Someone punched me from behind. I turned around and chopped and injured him." 30
- Q. So I then asked "Do you know what sort of knife you were holding at the time when you chopped him?"
- A. Yes.
- Q. What was his reply?
- A. His reply was "I did not know. It was something wrapped in a sheet of newspaper. I thought it was an iron bar."
- Q. And I then asked him "At the time you chopped, you didn't know what you were chopping with. Is that what you are saying?" 40
- A. Yes.
- Q. And what did he reply?
- A. His reply was "I did not know what it was at that time."
- Q. Miss Ozorio, did you from your shorthand notes prepare an English typed copy of what you recorded? 50
- A. Yes.

Q. Is that the copy that you have in your hand now?

A. Yes, that is the copy.

MR. MARASH: I understand, my Lord, my friend has no objection to the written English copy being produced for the benefit of the jury.

MR. MING HUANG: That is correct.

Q. Would you please formally produce that copy?

A. Yes, I now formally produce this copy.

10 MR. MARASH: No further questions. I have copies for the jury, my Lord, but I have connected this evidence with the next witness's evidence. I don't know if my friend objects to the jury having a copy at this stage or not.

MR. MING HUANG: No objection.

NO XXN. BY MR. MING HUANG.

MR. MARASH: I call Mary MUI Mei-lei.

P.W.23 - Mary MUI Mei-lei Sworn in English

XN. BY MR. MARASH:-

20 Q. Miss Mui, where do you live, please?

A. Flat 1809 Ming Yuen Mansion, No. 9 Peacock Road, North Point, Hong Kong.

Q. Are you by occupation also a court reporter?

A. Yes, I am.

Q. Are you trained and do you regularly use the process of recording the English language in shorthand writing?

A. Yes, I do.

30 Q. Were you in court on the 26th August this year in the morning?

A. Yes, I was.

Q. Were you here in your capacity as a court reporter at that time?

A. Yes.

Q. And did you on that morning record down in shorthand the evidence given by the witnesses?

A. Yes, I did.

50 Q. Were you present on that morning when the 5th accused, WONG Kam-ming, gave evidence?

A. Yes, I was.

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- Q. Would you refer please to your shorthand notes? Do you have recorded there a passage where I asked a question "What sort of blade did the knife that you had in the music parlour have?"?
- A. Yes.
- Q. What answer, please, did the 5th accused give?
- A. The answer was "Up to the time when I had chopped that person and ran away I did not notice what the blade looked like." 10
- Q. Did I then ask the 5th accused "Would you agree that the description 'beef knife' is not inaccurate?"?
- A. The answer was "Not correct".
- Q. Did I next ask "How long was this knife?"?
- A. The answer was "This long. (Witness indicates)".
- Q. Did you record how long he indicated?
- A. I did not. 20
- Q. I then asked "What sort of knife would you call it?"
- A. The answer was "It belonged to the melon knife type."
- Q. Did I then ask "How do you know that?"?
- A. The answer was "Because the shape of the knife was straight which looked like, similar to melon knife."
- Q. Did you cause from your shorthand transcript a typed English copy of this passage to be made? 30
- A. Yes.
- Q. Is that the English passage you have in front of you now?
- A. Yes, this one.

MR. MARASH: I understand my friend has no objection to this going in in written form either.

- Q. Would you please produce that English version? 40
- A. Yes.

NO XXN. BY MR. MING HUANG.

COURT: Do you have a record there to whom were these questions directed?

- A. These questions were directed to the 5th accused.

COURT: By Mr. Marash?

A. Yes.

MR. MING HUANG: My Lord, I would like simply to ask one or two questions.

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XXN. BY MR. MING HUANG:-

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Q. Now Miss Mui, did the witness, WONG Kam Ming, give more evidence than what you have just recorded - what you have just indicated?

A. Yes. That was only part of the evidence on that day.

Q. What you have said was just part of what he had said on that day.

A. Yes.

Q. That is all.

NO REXN. BY MR. MARASH.

Re-
Examination

MR. MARASH: I call Miss CHU Ying-nee, Superintendent.

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Superintendent
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P.W. 25 - CHU Ying-nee Sworn in English

XN. BY MR. MARASH:-

Q. Is it correct that you are a woman Superintendent of Police?

A. That is right.

Q. And where are you presently attached in the police force?

A. At present I am attached to the Police Training School.

Q. On the 2nd of January this year were you the person in charge of an identification parade held at about 11.50 a.m. at the Mongkok Police Station?

A. Yes.

Q. What did that parade concern?

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- A. It was concerned with a case of murder.
Q. Did you make notes in the usual Identification Parade Book?
A. Yes, I did.
Q. Is that the book that you have in front of you now?
A. That is correct.
Q. Do you wish to refer to the notes you made at the time to assist you with your evidence today? 10
A. Yes, I wish to refer to it from time to time, if I may.
Q. What was that parade held in respect of exactly, did you make a note?
A. The purpose you mean of the parade?
Q. Yes.
A. I did not put it down. I was only informed that it was in connection with a case of murder, that is all.
Q. Do you know when and where the murder occurred? 20
A. I was not aware of that.
Q. Prior to the parade commencing did you speak with the witnesses who were about to view it?
A. Speak to the witnesses about - you mean explain to them the procedure of the parade?
Q. Yes.
A. Yes, I did.
Q. What did you tell them? 30
A. I told them that it is a case in connection with murder and I told them to try to identify the persons who they recognise, if they were able to recognise, just point them to me. That is all.
Q. Who were the prisoners who took part in this parade?
A. There were two prisoners, one is Mr. CHO Shu-wing, the other one is Mr. WONG Kam-ming. 40
Q. Would you just check that. Could that be CHO Shu-wah?
A. Yes, that is right, CHO Shu-wah, I beg your pardon.
Q. Did these prisoners come from the cells on that occasion?
A. Yes, that is right, I took them from the cell.
Q. Was there any chance for any of the witnesses to see the prisoners prior to the parade? 50

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- A. No, no chance at all.
- Q. Would you please tell us how the parade was conducted, but confine your evidence, please, to the witnesses TANG Yuk-kuen and LI Kwong-ye, they were the last two witnesses on the parade.
- A. Yes. The third witness was a lady Miss TANG Yuk-kuen. When she entered into the room...
- 10 Q. Prior to telling us about that, could you give us the details of the number of persons on the parade and how they were situated and so on?
- A. There were about, I think, twelve people on the parade excluding the prisoners.
- Q. What can you say as to the descriptions of the other twelve as compared to the prisoners?
- A. What did I say?
- 20 Q. How did the other twelve compare to the prisoners?
- A. They were of - all of similar age, they all dressed the same.
- Q. When you say "the same" do you mean identical or in similar type?
- A. Let me check. I cannot recall what exactly they were dressed in. I think they were dressed similarly and they were about the same height.
- 30 Q. Did you explain to the prisoners, prior to the parade, that they had a right to adopt any position they wished to in the line-up?
- A. Yes, I did.
- Q. Did you ask the prisoners if they had any objection to taking part in the parade?
- A. Yes, I also did that.
- Q. Did they have any objection?
- A. No, they had no objection.
- 40 Q. Is it correct that prior to the entry of each individual witness on the parade the prisoners were told that they had a choice of changing their positions if they wished?
- A. Yes, they were also told about this.
- Q. Prior to the entry of this witness, Miss TANG Yuk-kuen, which positions did the prisoners elect to stand at?
- A. Prior to Tang Yuk-kuen, you mean immediately before Tang Yuk-kuen entered the room?
- Q. Yes.
- 50 A. There were two prisoners. Mr. CHO, he was standing at No. 7, and Mr. WONG, he was standing at No. 3.

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- Q. Had they changed their positions from the witness prior to Miss Tang?
A. Yes, they did.
Q. Both of them?
A. No, no problem.
Q. Both of them?
A. Only one changed position; only CHO changed position.
Q. Would you tell us what happened when Miss TANG came in? 10
A. When Miss TANG entered the room, I then explained to her about the purpose and procedure of the parade.
Q. What exactly did you say to her, do you recall?
A. I told her this is a case in connection with a case of murder and try to identify the persons whom she would be able to recognise and then point them out to me.
Q. Did she then view the parade? 20
A. Following that Miss Tang viewed the parade.
Q. Would you tell us what she did?
A. She viewed the parade, when she reached to No. 7 position then she pointed out to the man and said "He is the one". After that she left the room.
Q. Now did this woman walk straight to No. 7 or up and down?
A. No, she did not walk straight. She walked up and down from left to right. 30
Q. How many times did she do that?
A. She did it twice, from left to right and then from right to left, and then she identified the suspect.
Q. So she went from left to right, from right to left, and then back to No. 7.
A. This is right.
Q. How did she identify him?
A. When she reached to the No. 7 position she returned to me and said that the No. 7 and pointed at the suspect. 40
Q. Where were you standing or sitting at that time?
A. I was sitting right in front of the people attending the parade and also in front of Miss Tang.
Q. How far away from the actual line-up were you?
A. It is not far, it is about from here to there. 50
Q. From here to this box.

A. That is right.

MR. MARASH: About five yards, my Lord.

Q. After she left the parade, that is the room in which the parade was held, did any of the suspects on the parade say anything to you?

A. Yes. The suspect CHO tried to talk to me and said "Miss, can I ask you something?"

Q. So what did you do?

A. But at that time the witness was on the way leaving the room, I told him to keep quiet.

Q. Yes, what happened then?

A. And thereafter I called the suspects towards my table. I then asked both of them do they have any objection to the parade that was held, they both said they had no objection, but CHO also said that there was no reason that she -meaning the witness - was able to identify him.

Q. Did he say why there was no reason?

A. Yes, he mentioned that he was not present during the incident.

Q. Yes, what happened then?

A. Then I asked them whether they had - of course I have recorded this in the Identification Parade Book - I asked whether they had any objection to continuing the parade.

Q. Did they have any objection?

A. They both replied that they had no objection.

Q. Is it your practice, Miss Chu, to write down anything that a suspect or witness says during these parades in your parade book?

A. Yes, I always do. If anything happens during the parade I always write it down.

Q. Were the prisoners then told, prior to the entry of the next witness, that they could change their positions?

A. Yes, again I explained to them that they could change positions.

Q. Did they choose to do so?

A. But they did not change; they preferred to remain at the previous positions.

Q. So Mr. WONG, the 5th accused, was...

A. ... standing at No. 3, and Mr. CHO was standing at No. 7.

Q. Is it correct at 1228 a Mr. LI Kwong-yeo entered the parade room?

A. That is right.

Q. Did you inform him of the purpose of - the purpose and procedure of the parade?

A. That is right.

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- Q. Do you recall what you told him?
A. Yes.
Q. What did you tell him?
A. I just told him that it is a case in connection with a case of murder, the same thing I had told the other witnesses. I asked him to try to identify the suspect and if he is able to identify the suspect he can just point at him and come to tell me. 10
- Q. Did LI Kwong-ye then view this parade?
A. Yes, Mr. LI did view the parade from left to right and then from right to left. Following that then he stopped, facing the parade between the position of No. 6 and No. 7, he stopped there for a little while and then following that he walked to the left, then he returned to me and said "That No. 3". Following this he left the parade. 20
- Q. No. 3 was Mr. WONG Kam-ming?
A. This is right.
Q. What happened after he had left?
A. After he left the parade I again called the two suspects towards to my table. I then told them the result of the parade and they were again asked whether they had any objection to the parade which was held.
- Q. Did either of them have any objection?
A. No, but one of them said, that is Mr. WONG, he said "It is very difficult to say. It was very possible I was the only one wearing the slippers and all the other people that took part were young people." 30
- Q. So he said "it was very possible that I was the only one wearing slippers."
A. Yes, that is what he said.
Q. "and all the other people who took part were young people."
A. Yes. 40
- Q. Was he the only one wearing slippers?
A. Pardon?
Q. Was he the only one wearing slippers?
A. I cannot recall now.
Q. Was he wearing anything that would make him stand out from the others, to your recollection?
A. No, they were all dressed similarly, about the same age and same height.
- Q. Did the suspect CHO have any objection?
A. He had no objection. 50

- Q. Is it correct that this parade concluded at 1238 hours?
A. That is correct.
Q. During this parade do you recall if Inspector Robson was present?
A. Yes, he was.
Q. What was he doing at the time?
A. He was just sitting next to me and he did not do anything.
10 Q. Did anybody in the parade room endeavour to assist any of the witnesses to identify anybody?
A. No, not at all. I was the one in charge of the parade.
Q. Were these other persons on the parade members of the general public, that is apart from the suspects?
A. Yes, they were.
20 Q. And why were these persons chosen in particular in relation to the defendants?
A. These people were chosen because we needed people of similar age, similar height, and we tried to mix them up to let the witnesses see whether they really are able to identify the suspect or not.
Q. Did you conduct then another parade on the same day, 2nd of January, at ten minutes past one in the afternoon?
A. Yes, I did.
30 Q. Who were the suspects on that parade?
A. There were three suspects.
Q. Who were they?
A. MR. CHEUNG Kwan-sang, Mr. CHEUNG Fai-hung and Mr. LI Ming.
Q. Were these persons returned to the cell after the first parade and brought out again or were they kept in the parade room?
A. Of course the first group of people returned to the cell.
40 Q. I am sorry, my mistake, they are different suspects.
A. Yes.
Q. Is it correct that the only witness to this parade was Mr. LI Kwong-yeek?
A. That is correct.

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No. 9

COUNSEL FOR APPELLANTS SUBMISSION
OF NO CASE AND REPLY

All Accused present. Appearances as before.
Jury absent.

MR. HUANG: Is there any other point your
Lordship wishes me to address on in respect of
D.2? If not, I will go on to D.5.

My Lord, the only evidence is the portion of
the evidence he had given during the voire dire,
and if there is any other thing, it is again
so called LI Kwong-ye's identification. Now, as
for LI Kwong-ye's evidence, I have referred to
it already, but it is not important, whatever LI
Kwong-ye says, because his presence is admitted
in this case, so that does not become an issue.
Now, what is in issue now is, having regard to
what he said in the box which is now admitted to
this court, and having regard to the two passages
as produced this morning, can the Crown be said
to have proved a prima facie case against him? My
respectful submission is that the Crown has not.
The evidence is worth repeating.

10

20

"I say we went up there to ask for
compensation. They being the wrongdoers,
they made allegations against us. Then I
saw him going to fetch a knife."

"What else did you see?"

"I pushed him away and snatched it away from
him."

30

"And then you chopped him?"

"Someone punched me from behind. I turned
around and chopped and injured him."

"Do you know what sort of knife you were
holding?"

Then he goes on with the description of the
knife. Now, this is the state of it. This
evidence shows his presence. He was one of a

party who went up there to ask for compensation. There is someone went to snatch, to pick up a knife. Of course, at that juncture, the knife, if it was picked up at all, the likelihood is that D.5 himself would be chopped.

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"I snatched it away from him."

10 Now then, at this juncture, someone punched him in the back. Of course, one cannot see what kind of thing happens in the back, and we all know that that atmosphere was dim or very dim, but what the likelihood was at the time, it looked like some sort of blue on the back - whatever we call it, of course, one cannot see the back - anyway, he felt something like a punch on the back. At this juncture he managed to push the one who got the knife away and managed to snatch it away from that person, and because someone else, belonging to the rival party, punched him in the back, he turned around and chopped and injured him. That is the evidence, my Lord.

20

Now the case here is murder and wounding with intent. I wish to refer to the two latest leading authorities on the subject of self-defence, my Lord. The Crown v. Palmer, a Privy Council's decision, which is a very elaborate decision. I have asked your clerk to bring it out already.

Volume 55, Mr. Chang, Criminal Appeal Reports, page 223.

30 I have given my friend the reference since last Saturday of the cases that I'll refer to already. Now, look at the headnote my Lord.

40 "Where an issue of self-defence is raised on any charge, there are no prescribed words which must be used in a summing-up. All that is needed is a clear exposition, in relation to the particular case, of the conception of necessary self-defence. Where there has been an attack so that defence is reasonably necessary, it should be recognised that a person defending himself cannot weigh to a nicety the exact measure of necessary defensive action. If a jury is of the opinion that in a moment of unexpected anguish the person attacked did only what he honestly and reasonably thought was necessary, that should be regarded as most

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potent evidence that only reasonably defensive action was taken. A jury should be directed that the defence of self defence must fail only if the prosecution have proved that what the defendant did was not by way of self defence, but that if the prosecution do prove this, the issue of self-defence must be eliminated from the case."

COURT: Is it necessary at this stage?

10

MR. HUANG: Yes, my Lord, the position is this. From this evidence the self-defence is crystal clear. It stands out.

COURT: This evidence is only for the purpose of indicating that the defendant was there. He was present in the premises. You must relate this to the earlier evidence as well. The evidence of Miss Tang and also Mr. LI Kwong-ye.

MR. HUANG: Yes.

COURT: And what was the position of the persons who went there in the first place?

20

MR. HUANG: For compensation, to ask for compensation.

COURT: It was denied. It was put to them and it was denied that they went there for compensation.

MR. HUANG: Yes, but

COURT: The self-defence ought to be put to the jury.

MR. HUANG: But at the moment, my Lord, the Crown has to negative that. If the Crown has not negated that, then the issue of self-defence is now standing out prominently in the evidence. At this juncture the issue is a subjective one. Well, at page 230, my Lord.

30

COURT: I fail to see what it is

MR. HUANG: You are not with me.

COURT: If there is any issue of self-defence, that issue must go to the jury based on the evidence of the other witnesses for the Crown.

All this - these two passages seem to do is to indicate or prove that the accused, 5th accused, was in those premises at that time.

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MR. HUANG: Yes, that is part of it, one way of looking at it, but the issue of self-defence stands out glaringly there in the evidence, and because - and the Crown has not negatived it. If it is in dispute, well that is a matter for the jury, but if the Crown has not negatived it

10 COURT: The Crown has negatived this self-defence by the earlier evidence of Miss Tang and Mr. LI Kwong-ye. They went there in a group according to these two, they took out weapons. It is the defence that the weapons or weapon was taken out by the inmates of the premises on the mezzanine floor of 689 Nathan Road.

20 MR. HUANG: Anyway, if that is your Lordship's view of the matter, I will stop there, but the two cases that I intend to refer to - I have been studying these, the other one is the Crown v. Lobell. I have already told your clerk.

COURT: The principle of self-defence is well-known.

MR. HUANG: But if your....

COURT: The main point here is presence at the scene at the relevant time.

MR. HUANG: If that is your Lordship's view, I will not take your time.

COURT: Yes.

30 MR. MARASH: I agree with what your Lordship has said regarding D.5, and I do not wish to say anything further.

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Ruling
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No. 10

JUDGES RULING

I have already made myself perfectly clear as regards the position of the 5th accused and accordingly, he also has a case to answer on the three charges. So the result would be that the 2nd and the 5th accused have cases to answer in respect of the three charges in the indictment whilst the 3rd and the 4th defendants have no case to answer on the three charges in the indictment.
Yes?

10

No. 11
Appellants
Evidence
D.W.4.
WONG Kam-
ming.
28th
September
1976.

No. 11

APPELLANTS EVIDENCE

MR. MING HUANG: That is the case for the 2nd defendant, my Lord. Now I call the 5th defendant.

D.W.4 - WONG Kam-ming (5th accused) Affirmed in
Punti

XN. BY MR. MING HUANG:-

- Q. Mr. Wong, you are the 5th defendant in this case. 20
A. Yes.
Q. How old are you?
A. Nineteen.
Q. Where were you born?
A. Macau.
Q. How long have you been residing in Hong Kong?
A. For about 16 years.
Q. How much schooling did you receive? 30
A. Up to Primary 3.
Q. And prior to your arrest what was your occupation?
A. Textile printer.
Q. Where were you living prior to your arrest?
A. In the New Territories.
Q. Now what was the address, if any, in the New Territories?

A. Wooden hut No. 63 Pak Fuk Village, Fanling.
 Q. Now do you know the 1st defendant, CHEUNG Kwan-sang?
 A. Yes.
 Q. What was his occupation as far as you knew?
 A. Textile printer.
 Q. Is it because of the same trade that you got to know him?
 A. No.
 10 Q. How you came to know him?
 A. He was introduced to me by my sworn brother?
 Q. Who is your sworn brother?
 A. Ah Yuk.
 Q. What is Ah Yuk's full name?
 A. LI Yuk.
 Q. When did LI Yuk introduce him to you?
 A. Sometime in October 1975.
 Q. And how long have you known LI Yuk?
 A. Several years.
 20 Q. How you came to know him?
 A. I came to know him because we were both working in the textile printing trade.
 Q. Now why you call him your sworn brother?
 A. Because we were very friendly with each other, our relationship was better than usual friends and later we became sworn brothers.
 Q. The Crown now allege that you have committed murder and two counts of wounding.
 A. Yes.
 30 Q. You are aware of that?
 A. Yes, I am.
 Q. Could you now tell the court honestly and sincerely what you knew about this case and your involvement. Now you have heard all the allegations in this case, you have heard the number of witnesses.
 A. Yes.
 40 Q. When you first came near to the facts of this case?
 A. At night on the 28th.
 Q. How you were connected on the 28th?
 A. At about 1 p.m. on the 28th Ah Yuk rang me up in the New Territories.
 Q. What did he tell you?
 A. He said that he had come back to Hong Kong from Macau.
 Q. Yes.
 A. He told me to come out to meet him so that we could have a chat.
 50 Q. Were you working on that day?
 A. No.

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- Q. You have a telephone in your hut, is that correct?
- A. Yes.
- Q. He telephoned you?
- A. Yes.
- Q. What else did he tell you over the telephone?
- A. He also told me that Kong Sin had been chopped and injured by some people.
- Q. At that time you knew Kong Sin already, is that correct? 10
- A. Yes, I knew.
- Q. What else did LI Yuk tell you?
- A. I asked him how bad were the injuries.
- Q. What did he tell you?
- A. He told me that he had made an appointment with Kong Sin to see him the same night. He invited me to come out and join them, then we could talk together.
- Q. Did you promise LI Yuk? 20
- A. I did.
- Q. When did you come out?
- A. I arrived Kowloon very early; in fact I was there at 6 p.m. but I first went to Kwun Tong to see a friend.
- Q. Where you were at 6 p.m.?
- A. At Kwun Tong.
- Q. I see.
- A. Ah Yuk arranged me to meet him at a restaurant at 10 p.m. that night. 30
- Q. Which restaurant?
- A. Man Nin Wah.
- Q. Now when you came out you paid a visit to a friend in Kwun Tong.
- A. Yes.
- Q. What time did you leave your friend?
- A. Shortly after 9 p.m.
- Q. And is it correct that you left your friend in Kwun Tong shortly after nine and you went to the Man Nin Wah Restaurant? 40
- A. Yes, I went to Man Nin Wah alone.
- Q. Did you meet anyone on arrival?
- A. No I did not.
- Q. So what did you do?
- A. When I came downstairs I saw 1st accused standing on the opposite side of the road and he called me.
- Q. And you went over, you crossed the road to meet him, is that correct?
- A. Yes. 50
- Q. What street is that?

- A. Argyle Street.
- Q. Then what happened? Was he alone?
- A. Yes, he was alone.
- Q. You met him.
- A. He told me that Man Nin Wah was full house because the place was fully booked for dinner parties and that is why they had come over to the other restaurant.
- 10 Q. When you met DL on the pavement, at that time roughly what time was it then, roughly?
- A. About 10 p.m. or 10.15 p.m.
- Q. Then what happened? You met him, he told you that Man Nin Wah was fully booked.
- A. We went inside the Lung Wai Restaurant.
- Q. He led you in, is that correct?
- A. Yes.
- Q. What happened at the Lung Wai Restaurant, please tell us?
- 20 A. Inside the restaurant I saw Ah Yuk together with a number of persons whom I did not know.
- Q. Roughly how many at the time you entered how many roughly?
- A. Six to seven persons.
- Q. Tell us the persons there you knew?
- A. CHEUNG Kwan-sang, Ah Yuk. That is all.
- Q. Who were the others?
- A. Ah Yuk's friends.
- Q. Were you introduced to each other?
- 30 A. It seems to me that only the man sitting next to me was introduced but I cannot remember who he is now.
- Q. What happened at that table?
- A. We had a chat. I asked him whether he had a lot of fun in Macau.
- Q. You mean LI Yuk?
- A. Yes.
- Q. And did you talk to anyone else?
- A. I talked to DL.
- Q. What did you talk to him about?
- 40 A. I enquired about his injuries and how he was chopped.
- Q. Did he tell you?
- A. He said his arm was chopped but it was not very serious and because it was covered up, so it was not visible.
- Q. Did you ask him more, why he got chopped and who chopped him?
- A. I did.
- 50 Q. And he told you, is that correct?
- A. Yes.
- Q. What did he tell you at the time?

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- A. He said when he went up there for a
massage on the night of the 27th he had an
argument with the girl. After the argument
he was beaten up by them and then he left
the premises, but he was chopped and
injured at Yaumati.
- Q. Did he tell you who chopped him at
Yaumati?
- A. He did not name the persons. He only said
he had been chopped by people of the music
parlour. 10
- Q. Now tell us what else was said at that
table. You had more conversation with D1.
- A. Yes.
- Q. Please tell us.
- A. I asked him whether he was able to work.
- Q. What did he say?
- A. He said his arm was in pain and he could
not work.
- Q. What else? 20
- A. We had no further conversation until later
Ah Yuk asked me whether I was going anywhere
later.
- Q. What did you say?
- A. I said no. He said "If you are not going
anywhere you can go up with us to ask for
compensation."
- Q. Did he tell you - make clear to you where
they were going?
- A. To go up to Siu Nui Chin Kiu. 30
- Q. Yes. What else did you talk with LI Yuk
about?
- A. I said "Good" and I agreed to go. Nothing
else was said.
- Q. Any other conversation among others -
between you and others?
- A. No.
- Q. Now what about this 2nd defendant here, did
you know him?
- A. No, I do not - I did not. 40
- Q. When you saw him for the first time?
- A. On the night of the 28th.
- Q. Did you meet him there when you arrived or
some other situation?
- A. I met him on my arrival there.
- Q. So he was already there when you arrived,
is that correct?
- A. I met him in the restaurant but I arrived
there before him.
- Q. I see. He came in later. 50
- A. Yes.

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- Q. Now when did he come in, how long after you had arrived?
- A. Not long afterwards, about a little over five minutes or ten minutes.
- Q. When he arrived what did he do? Were you introduced to each other?
- A. No.
- Q. Is that the first time you met him?
- A. Yes.
- 10 Q. What did he do there?
- A. He read newspapers.
- Q. What else did he do?
- A. Nothing else.
- Q. Did you all have something to eat there?
- A. Yes.
- Q. Then what happened at that table, please tell us as far as you can remember, anything that transpired at that table.
- A. Nothing else.
- 20 Q. Any discussion or any conversation that you can recollect?
- A. No.
- Q. Apart from eating did you have anything to drink?
- A. Yes. We drank some beer.
- Q. Who drank?
- A. Practically everyone.
- Q. How much did you drink - did everybody on the whole?
- 30 A. About two bottles.
- Q. Two bottles shared among seven or eight persons, is that correct?
- A. Yes.
- Q. Were there any other activities you can remember at that table?
- A. They asked me when I would hold a dinner party.
- Q. Dinner party for what?
- A. They were making jokes at me.
- 40 Q. Anything else?
- A. They played a game of guessing fingers.
- Q. Nothing else.
- Q. Did you take part in that game?
- A. No.
- Q. Who took part?
- A. Ah Yuk was playing with his friends.
- Q. Until what time this party, this dinner lasted?
- A. Until about 11 p.m.
- 50 Q. Then what happened?
- A. Finally they said "Let's go up.". They mean going up to Siu Nui Chin Kiu, and we left.

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- Q. Who left? When you say "we", who?
A. After the bill was paid we all left.
Q. How did you go to the Siu Nui Chin Kiu?
A. It is round the corner. We walked from this side street to the main street in Nathan Road.
Q. Now who was in the front? You picture yourself now at the door of the Siu Nui Chin Kiu, who was in the front?
A. Ah Yuk was walking in front with two other men. I was following behind Ah Yuk. 10
Q. What about Cheung Kwan-sang, where was he?
A. He was behind me. I don't know exactly where.
Q. What about D2, where was he?
A. I did not see him at that time.
Q. You did not see him?
A. No.
Q. Do you know where he had gone?
A. I don't know. 20
Q. Now picture yourself at the door of the music parlour. You say LI Yuk was in the front. Did you carry anything there?
A. No.
Q. Now as far as you knew did LI Yuk carry anything?
A. No.
Q. CHEUNG Kwan-sang?
A. No, I did not see.
Q. You did not see anything. Now what about all the other people, LI Yuk's friends, as far as your eyes can tell did they carry anything? 30
A. No.
Q. Now who entered the music parlour first?
A. I don't know the name of that person.
Q. Or you did not see - did you see the person - among your group how many went, let's come back.
A. Four persons. 40
Q. No, in all how many?
A. Seven.
Q. Now did you all walk in one after another?
A. Almost, because after the door was pushed open we entered one after another.
Q. So in all how many of you entered your group?
A. Six to seven, I did not see clearly.
Q. Now they all entered one after another following the queue, is that correct? 50
A. Yes.
Q. Now what was the lighting like as you first entered the door?

- 10 A. Very dim.
Q. Can you see people that clearly?
A. I could not.
Q. Now as you yourself entered at that
juncture did you hear any conversation?
A. Yes, I did.
Q. Who?
A. The employees of the establishment approached
us to welcome us. They asked how many of us
were there.
Q. Did anyone answer?
A. Ah Yuk said "No, we only come to look for
someone."
Q. Did Ah Yuk tell you who he was looking for?
A. No.
Q. Did he tell you beforehand who he was going
to see at the restaurant, did LI Yuk tell
you?
A. No.
20 Q. LI Yuk said "We are looking for someone", what
happened next?
A. At that time D1 was standing behind me.
Someone pointed at me and said "Look at your
fucking face. What are you doing up here?"
Q. Were the words addressed to you or you just
heard these words, which way?
A. That person was pointing at me when he made
this remark. I did not know to whom was he
talking.
30 Q. Have you ever been there before?
A. No.
Q. Do you know any of the fokies there?
A. I don't know.
Q. Now is it the case that one of the fokies up
there said these words?
A. Yes.
Q. Then what happened next, what did you hear?
A. At first I thought he was talking to me but
later I realised that in fact he was talking
to the man behind me.
40 Q. Who was the man behind you?
A. He was CHEUNG Kwan-sang.
Q. How you knew he was in fact talking to
CHEUNG Kwan-sang and not you?
A. I walked away and that speaker was not
looking at me.
Q. At whom he was looking?
A. He was looking at CHEUNG Kwan-sang, he was
talking to him.
50 Q. And then what happened?

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- A. Ah Yuk said "Don't be so fierce. If there is anything we can always talk."
Q. Yes, did Ah Yuk say anything more?
A. Not at that stage. The two of them walked to one side.
Q. Which two?
A. Ah Yuk and an employee of the establishment.
Q. Then what happened?
A. I did not follow them. I stood several paces away from them and remained standing there. 10
Q. Did Ah Yuk appear to know that person, that foki?
A. He did not.
Q. From the way they walked away together?
A. He did not know him from what I saw.
Q. Then what else did you hear?
A. I heard Ah Yuk say to that man "If CHEUNG Kwan-sang had offended you, you just tell me, but if he had not offended you it is not right to chop him." 20
Q. Did that man say anything?
A. That man said "There is nothing seriously wrong but he had assaulted our girl, that means he was not showing face to the floor managers."
Q. Yes?
A. Ah Yuk said "We can always talk to reason, but you have chopped him and injured him. Therefore he cannot work. You have to pay him some compensation." 30
Q. Yes. Did that man say anything - answer LI Yuk?
A. The man said "It is not out of the question to get compensation but it would be difficult." So he meant he was not going to pay.
Q. Then what happened?
A. After hearing this LI Yuk said "Do you mean that you are not going to pay?" 40
Q. Yes.
A. This employee then said "There will be no compensation but if you are not satisfied we have weapons."
Q. What did you understand that to mean?
A. He was behaving in a fierce manner. They had done something wrong but they made an allegation against us.
Q. Anything else did you hear or see?
A. At this time I noticed that there was another man who had been standing next to 50

the employee with whom Ah Yuk was talking and this other man at this stage walked away hurriedly.

Q. At this stage how many of the male employees were there that your eyes could see?

A. Four to five.

Q. You saw an employee who was standing next to the employee talking to LI Yuk and then you said he walked away. How did he walk away?

10 A. He walked away hurriedly from his side and he pushed us aside.

Q. Then what happened?

A. It struck me odd from his behaviour, I was aware that something unusual was going on, so I followed him.

Q. What was turning in your mind at that time?

A. I expected something was going on.

Q. Tell us exactly how your mind was turning at the time.

20 A. I was thinking how I could stop that man from getting anything.

Q. What did you think he was getting?

A. Because they said they had weapons.

Q. When they said they had weapons how did you feel, what did you think they would do?

A. I thought they would resort to violence.

Q. You saw that man walk away hurriedly and what did you do?

A. I followed him, watching him.

30 Q. At that time what did you intend to do in your mind?

A. I wanted to see what he was up to. If he really got hold of a weapon then I would stop him.

Q. Tell us what you did do.

A. I saw him pull out a drawer trying to get something, I pushed him away.

Q. Now wait a second. You are talking now in the reception hall, right, where did he go to?

40 A. Can I have the photographs?

Q. Which picture first?

A. P2D. He walked from here to here, he walked inside the counter. (indicating)

Q. He walked inside the counter. Then what happened, did you yourself follow him behind the counter as well?

A. There was a resting room at one side, there was a passageway, I stood there watching him.

50 Q. What did he do as you were watching him?

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- A. I saw him quickly pull out a drawer, so I rushed at him, I said "Don't move."
Q. What he was trying to get from the drawer?
A. I believe he was trying to take a knife.
Q. What was in the drawer, did you see?
A. I did not see at that time.
Q. You told him "Don't move".
A. Yes. I pressed down his hand and pushed him away. 10
Q. Then what happened?
A. Right after I had pushed him away someone gave me a punch on my back from behind.
Q. How did you feel at that time?
A. I did not feel anything in particular. I only jerked forward a little and the man who was in front of me moved forward.
Q. How he moved forward?
A. I had already pushed him away and he was standing face to face with me. He tried to plunge forward. It happened that there was a round stool in the accounts office, so I kicked the stool away. 20
Q. Then what happened?
A. But the other man behind me gave me a push and I bumped against the drawer.
Q. Then what happened?
A. I noticed that there were some objects in the drawer. I grabbed hold of one of them and I waved it about.
Q. What was the object - what did the object look like? 30
A. The object was long and square in shape, wrapped up in newspaper. I think it was used as a weight to put on newspapers, as a paper weight.
Q. Now indicate clearly the length first.
A. This long. (indicating)
Q. What about the width?
A. This wide. (indicating)
Q. Was it wrapped or not? 40
A. Yes.
Q. With what?
A. Newspaper.
Q. How was it wrapped?
A. The newspaper was wound around it.
Q. You grabbed hold of it, then what happened?
A. I was driven at bay, so I waved this object about until finally the man who had been behind me rushed into the resting room. 50
Q. What about the man in front of you?

A. The man in front remained standing there all the time.
 Q. What about outside, what did you observe?
 A. I did not see clearly. I noticed that there was a great confusion like a coop of hens being upset.
 Q. Did you see any female around?
 A. Did not notice.
 Q. What did you hear?
 10 A. I did not hear anything except the noise of people running about.
 Q. Now when you began to move from your position?
 A. When I noticed that the man who had been behind me had rushed into a room, I immediately ran out of the entrance of the premises.
 Q. What about the object that was in your hand?
 20 A. I was still holding it in my hand. I put it against my thigh.
 Q. And then what happened?
 A. When I ran down to Nathan Road I saw a taxi and I went into the taxi.
 Q. What about the object.
 A. After I had entered the taxi I dropped it inside the taxi.
 Q. But before you ran out of the music parlour tell us what did you observe again, what about LI Yuk and the other men that you came with?
 30 A. It was a great confusion, I did not see clearly.
 Q. Now when you were running, out was LI Yuk and his friends there still or they had run out already, which way?
 A. I believe they were still there.
 Q. But you ran out by your own self.
 A. Yes.
 Q. You said you hailed a taxi.
 40 A. Yes.
 Q. You ran with the object in your hand.
 A. Yes. I saw a taxi right after I had come out of the staircase in Nathan Road.
 Q. Then what happened?
 A. I boarded the taxi and the taxi went past several junctions until it stopped outside the ABC Restaurant where I alighted and went to Shanghai Street.
 Q. What about the object?
 50 A. I left it in the taxi.
 Q. Now you alighted at the ABC Bakery.
 A. Yes.

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- Q. Then where did you go?
A. I went to Reclamation Street where I took a public light bus and returned to the New Territories.
Q. When you promised LI Yuk to go there, the Lung Wai Restaurant, did you expect all this?
A. No I did not expect.
Q. You took a public light bus back to the New Territories. 10
A. Yes.
Q. Then on the 31st December last year some policemen came and arrested you, is that correct?
A. Yes.
Q. And from the New Territories you were taken back to Mongkok Police Station.
A. Yes.
Q. And you were later charged with the offence of murder and two counts of wounding. 20
A. Yes.
Q. On the 2nd of January when you were charged you wrote some remarks.
A. Yes.
Q. Is that in Chinese - is that Chinese handwriting there, is that yours?
A. Yes.
Q. And you signed it?
A. Yes.
Q. And what you say there is true? 30
A. Yes.

P23 MR. MING HUANG: P23 my Lord. That is all, my Lord.

COURT: We will adjourn to tomorrow morning at 10 o'clock. Accused remanded one day in gaol custody.

4.10 p.m. Court adjourns.

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10.05 a.m. Court resumes 40

All accused present. Appearances as before.
JURY PRESENT.

XXN. BY MR. MARASH:

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- 10 Q. Mr. WONG, I want to ask you two preliminary questions and I would advise you to think very carefully about your answers before you give them. On that night inside the Siu Niu Chin Kiu Music Parlour, did you kill anybody?
- A. No.
- 10 Q. On that night while you were inside the Siu Niu Chin Kiu, did you injure anybody?
- A. I did brandish that object but I am not sure whether I did chop anyone.
- Q. You might have chopped somebody and you might not have chopped somebody, you are not sure?
- A. I cannot say for sure.
- Q. All right. And you say that this man LI Yuk is your sworn brother.
- 20 A. Yes.
- Q. Can you provide us with some more details about how he became your sworn brother?
- A. We were on good terms. Our characters are more or less the same. We got on together very well.
- Q. Is he older than you?
- A. Yes, he was.
- Q. How old is LI Yuk?
- A. He is now 23 years old.
- 30 Q. Do you know where he lives?
- A. I do not know his present address.
- Q. Do you know where he was residing on the 27th of December last year?
- A. He was also living in the New Territories.
- Q. Whereabouts?
- A. I do not remember the name of that place but it was in the New Territories.
- Q. Well, is it Fanling, Taipo or whereabouts?
- A. In Taipo.
- 40 Q. Do you know which part of Taipo?
- A. I cannot say the exact address.
- Q. He is your sworn elder brother, surely you saw him quite regularly.
- A. Yes.
- Q. How did you contact him?
- A. By telephone. He telephoned me.
- Q. Have you ever been to his home?
- A. I have not been to his present home but in the past he was living together with me in Pak Fook Village.

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- Q. Do you know why he was in Macau on the 27th of December?
A. Go there to play.
Q. How long had he been there in Macau?
A. One or two days.
Q. Does he work?
A. I do not know whether he is working or not.
Q. Haven't you seen him for quite some time prior to the 27th of December?
A. Not for long, only for a few days. 10
Q. Is it possible, Mr. WONG, that he was living in Macau?
A. I don't know.
Q. Do you know where he is now?
A. I do not.
Q. When you say sworn brothers, how did this swearing take place?
A. Well, there was an ancestral tablet in the New Territories and the ceremony was carried out there. 20
Q. Who was present at this ceremony?
A. Just myself and he and nobody else.
Q. When did that take place?
A. Half a year ago.
Q. Is he your only sworn brother?
A. Yes.
Q. When LI Yuk rang you up on the 28th of December of last year, why did you undertake to enter into this compensation request as you call it on behalf of the 1st accused?
A. It is only a trivial matter, nothing serious, to accompany him up there. 30
Q. You didn't think it was of such importance?
A. That was what I thought at that time. I believed it was not important.
Q. Mr. WONG, you came all the way from New Territories, out from Fanling, all the way into this restaurant, the Lung Wai Restaurant, just for that matter?
A. No. 40
Q. Why did you come?
A. To visit my friend and it also happened that LI Yuk had just returned from Macau and he invited me to have a meal with him.
Q. It's not the way you told us yesterday. Yesterday you said he rang you up and invited you to dinner and on your way down to dinner you went to visit your friend in Kwun Tong.
A. No, not so. I arrived at Kowloon at 6 p.m. and I went to Kwun Tong to visit my friend. 50

- Q. Well, don't you agree with me that from Kwun Tong to Lung Wai Restaurant is about 45 minutes by public transport?
- A. From Kwun Tong to where?
- Q. From Kwun Tong to Lung Wai Restaurant in 6 o'clock traffic is about 45 minutes.
- A. Shortly after 6 p.m. I was still on my way coming out from the New Territories to Kowloon. I told my solicitor the same yesterday.
- 10 Q. You said you went to see a friend in Kwun Tong at about 6 p.m.
- A. Shortly after 6 p.m. I arrived at Kowloon and I went to Kwun Tong to find my friend.
- Q. How did you get back from Kwun Tong to the Lung Wai Restaurant?
- A. I took a public light bus - Castle Peak Road route from Kwun Tong.
- 20 Q. How long did that take from Kwun Tong back to the Lung Wai Restaurant approximately?
- A. About half an hour.
- Q. Having made that journey back to the Lung Wai Restaurant, you stayed, according to your evidence, for about three-quarters of an hour.
- A. Thereabout.
- Q. Wouldn't you say that it was rather a lot of trouble to come all the way from Kwun Tong for a 45 minutes meal, especially when you lived in Fanling?
- 30 A. It was no trouble and I had not seen my friend for a long time, I had not seen him for several days.
- Q. I suggest to you you came to that meeting in the Lung Wai Restaurant not simply for the purpose of having a meal with Ah Yuk.
- A. I also went up to the Siu Niu Chin Kiu to ask for compensation.
- Q. I suggest to you you knew you were going up to Siu Niu Chin Kiu as early as the phone call from Ah Yuk in the morning.
- 40 A. I did not know at that time. He only told me that the 1st accused had been chopped and injured by someone.
- Q. You didn't collect any knives while you visited your friend at Kwun Tong, did you, by any chance?
- A. No.
- Q. And you say that you left Kwun Tong after 9 p.m. for the Man Nin Wah Restaurant.
- 50 A. Yes.
- Q. When you got to the Man Nin Wah, you couldn't find anybody.

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- A. Correct.
- Q. And when you came down, did you wait for some time outside the Man Nin Wah Restaurant before you saw anybody?
- A. No. As soon as I came downstairs I saw him standing on the opposite side of the road, outside the Lung Wai Restaurant.
- Q. That was the 1st accused?
- A. Yes.
- Q. And you place that time as being between 10.10 and 10.15 p.m. that night? That is the time that you gave yesterday. 10
- A. Yes.
- Q. When you went inside, am I right in saying that you saw Ah Yuk and the 1st accused sitting around a table, a round table, with some other people?
- A. Yes.
- Q. Was there any food on the table at that stage? 20
- A. Yes, there was.
- Q. Was there also tea on the table?
- A. Yes.
- Q. How many of these others had you seen before when you first came?
- A. Only two, that is the 1st accused and LI Yuk.
- Q. You had never seen these other men at all?
- A. No.
- Q. Did somebody introduce them to you? 30
- A. One of them was introduced to me. I do not remember his name now.
- Q. You were sitting next to him for 45 minutes, I suppose you spoke to him.
- A. Yes.
- Q. Throughout the whole of those 45 minutes, you didn't get to know him well enough so that you can remember his name?
- A. The attention was on the game of finger guessing and they did not pay attention to me. 40
- Q. The 2nd accused estimated that the game of finger guessing lasted 15 minutes.
- A. I did not chat with the others. I only talked to D.1 and LI Yuk who were sitting next to me.
- Q. Did you ask them what the other people were doing there?
- A. No.
- Q. Weren't you curious as to who they were? 50
- A. Even if I were curious, I should not ask such questions.

Q. Why not?
 A. Because I did not know them well.
 Q. All the more reason to ask who they were and why they were there.
 A. They came to have tea and it seems unreasonable to ask them bluntly what are their names.
 Q. These were the people that you were going up to the Siu Niu Chin Kiu with, wouldn't you like to know who were going with you?
 10 A. I did not know whether they were going up there or not. I did not know until we were about to leave.
 Q. It never occurred to you to ask anyone what they were doing there?
 A. It's not a matter of whether it occurred to me or not but I just couldn't abruptly ask them.
 Q. Now during the conversation at the Lung Wai Restaurant, you said yesterday that the 1st accused said that his arm, his injured arm, was not very serious, did he say that?
 20 A. I asked him whether he was seriously injured. He said "Not serious".
 Q. When the 1st accused mentioned to you that he had been chopped by people at the Siu Niu Chin Kiu, is it correct that he didn't mention any names as to who these persons were?
 30 A. No.
 Q. Did you ask him?
 A. I did not.
 Q. Had you ever been to the Siu Niu Chin Kiu or the Sun Sze Suk Lui yourself?
 A. No.
 Q. You say that it was only towards the end of the conversation that Ah Yuk asked you if you were going anywhere later on.
 A. He meant if I was free then I could go up there with them.
 40 Q. That was the first time you say you had ever heard about the compensation?
 A. At about that time.
 Q. You say that 5 to 10 minutes after your arrival, the 2nd accused came in.
 A. Yes.
 Q. That was while you were talking to D.1 and LI Yuk?
 A. Yes.
 50 Q. When he came in, was he introduced to you?
 A. No.

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- Q. Didn't somebody say "This is my friend" or something like that?
- A. The 2nd accused came in together with the 1st accused, so naturally they were friends.
- Q. Mr. WONG, you just told us you were talking to the 1st accused and LI Yuk when he came in.
- A. Yes, but at times the 1st accused would be away.
- Q. How often did the 1st accused go away?
- A. After I had sat down for about a little over 5 minutes, D.1 walked away. At that time I was talking to Ah Yuk. 10
- Q. You say that when the 1st accused returned with the 2nd accused, he didn't introduce you?
- A. No.
- Q. The 2nd accused just sat down and read newspapers?
- A. Yes.
- Q. Was there any more discussion about compensation after the 2nd accused arrived? 20
- A. Yes.
- Q. Before you tell us about it, how would you describe the active game to ask for compensation?
- A. We would go there to ask those people and if we found out that the 1st accused had not offended them, then the 1st accused should get compensation for not being able to work, but if we found out that it was the 1st accused who was in the wrong, then there was nothing we could do. But at that stage, we did not know who was right and who was wrong. 30
- Q. Didn't you ask the 1st accused who was right and who was wrong?
- A. Naturally he would say he was right but it is useless to listen to a one-sided story.
- Q. He was your friend, wasn't he?
- A. That is another question. Perhaps he had taken the initiative to assault the other party, then he would be in the wrong. 40
- Q. You didn't know any of the people inside the Siu Niu Chin Kiu, did you?
- A. No.
- Q. Why should you take their word ahead of the 1st accused's word?
- A. The 1st accused would be put before the other person, then we could ask them, like we are being asked here.
- Q. Do you think the 1st accused's word is unreliable? 50

- 10 A. Not so, but it seems unreasonable just to listen to his words, perhaps he had done something wrong.
- Q. Why not ask him point blank "Did you do anything wrong?"
- A. The natural answer would be "No".
- Q. Why not accept it?
- A. Even if we accepted his words, we still would have to go up to talk with the other party, otherwise how could we get any compensation?
- 10 Q. Mr. Wong, how could anything that the 1st accused could have done justify these people in chopping him in the Yaumati?
- A. For these people working in this kind of joints, as you know, they are rather tricky persons, they would not like people to disturb their place where they are making a living. If you have offended them, it is no surprise that they would chop you.
- 20 Q. And you would say that if somebody offended them, they would be justified in going out to chop him?
- A. Yes.
- Q. You condone that sort of action?
- A. It's not a question of condolence. Of course, we would try to make a big incident become small.
- 30 Q. It's a very big incident to go out to the middle of the streets in Yaumati and chop somebody with long knives. Do you think that can be justified under any circumstances, no matter what your friend did?
- A. If not, what should we do?
- Q. That's my point. You say you were going up there to confront them to see who was wrong.
- A. Yes.
- 40 Q. My suggestion to you is that they couldn't possibly be in the right under any circumstances to go out and chop him up with knives.
- A. It is difficult to say for people like them. Perhaps they had chopped him for a very minor matter or perhaps it arose because of a serious matter.
- Q. So if it had arisen because of a serious matter, that would have been all right and you would have walked out of the music parlour and said "Well, you boys were in the right"?
- 50 A. If D.1 was in the wrong and had offended those people, then there was nothing we could do.

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- Q. I suggest to you there was a lot you could do and that you did it.
- A. No, we only talked with them.
- Q. Sitting in the Lung Wai Restaurant, you knew the 1st accused had been attacked with knives, didn't you?
- A. Yes, I knew.
- Q. Didn't it occur to you that these men were armed and dangerous, that is the man inside the music parlour were armed and dangerous? 10
- A. Yes, I knew.
- Q. Didn't you think it would be rather unwise to go up there unarmed?
- A. This question did not occur to me because I thought they were still carrying on business.
- Q. They had knives on the 27th, wouldn't you say there was a very good chance they had knives on the 28th?
- A. They might have knives but they had to take care of their business inside the premises. It's different from being in the streets. 20
- Q. You thought they wouldn't be ready for you?
- A. That I don't know. Perhaps they were not prepared. I don't know.
- Q. You must have thought about it surely. Your physical safety was involved.
- A. We were going up there to talk with them and they had to care for their business.
- Q. But you were going into a music parlour where you know there are dangerous armed men. According to you, you know they had chopped your friend the night before and you are saying that you didn't think that they might still be armed. 30
- A. As I have said, they were still carrying on business, I didn't anticipate that they would become fierce all of a sudden and we went there to talk, if they did not pay, we would forget it.
- Q. So you had decided before leaving, in the Lung Wai Restaurant, that if they didn't pay you would forget it and go home? 40
- A. We would say that "He (meaning D.1) is unable to work and if you do not pay, he might go to the police."
- Q. Why didn't D.1 go to the police straight after he was chopped - assaulted and identify these people? Can you suggest a reason for that?
- A. D.1 at that time was still in fear and he had to consult us what to do. 50

- Q. Why did he have to consult you as to what to do?
- A. D.l would discuss with us. He would say that he had been chopped and as a result of the injuries, he was unable to work and then he would ask us whether it was advisable to report to the police.
- Q. What did you boys advise him, report or not to report?

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COURT: I think he's only putting it on a suppositional basis. hypothetical basis.

Q. Well, did you have a discussion in the Lung Wai Restaurant about whether to report to the police or not?

A. We said "If we go up there and they are willing to pay you, then we would let the matter rest so that we would not contract any emnity with them."

20

Q. So you had decided in the Lung Wai Restaurant that if you did not get compensation, you were going to leave.

A. Yes.

Q. What about if they were in the wrong and you didn't get compensation?

A. It's better that they would pay but if they refused to pay, we would have to think of a solution, like reporting to the police.

Q. Well, they didn't pay and you say they attacked you, why didn't you report to the police?

30

A. Attacked who?

Q. You say these men attacked you and they did not pay compensation, you didn't report it to the police, why not?

A. The main thing in my head at that time was to run away. If I did not manage to escape, how could I report?

Q. But you did escape and you still didn't report.

40

A. Well, I had to find the 1st accused and ask him what he intended to do because I was not the one who had been chopped and injured.

Q. Did you go back to the 1st accused's home to look for him?

A. No, I did not know where he was living.

Q. Did you try to find Ah Yuk to find out where he was living?

A. Even if I wanted to find him, I could not ...

Q. You had his telephone number.

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- A. ... because it was he who telephoned me.
Q. You said you had his number.
A. He did not have a telephone at home.
Q. You weren't arrested until the 30th, you had a day and a half to try and find out.
A. 31st.
Q. 31st. Then you had two and a half days to try and find out.
A. If he had telephoned me then I would be able to contact him, otherwise I could not. The best I could do was to wait. 10
Q. You could have gone from Fanling to Taipo.
A. I would not be able to find LI Yuk.
Q. You didn't do anything about the reporting to the police and making any enquiries of the other people who were with you, did you?
A. I only know D.1 and LI Yuk, who else could I talk to?
Q. While you were in the Lung Wai Restaurant, did you hear LI Yuk giving any instructions to the men that you didn't know? 20
A. I did not hear.
Q. Did you hear anybody mention who you would be looking for inside the music parlour?
A. I did not hear.
Q. Did anybody mention whether you would go to the Siu Niu Chin Kiu or the Sun Sze Suk Lui?
A. To Siu Niu Chin Kiu.
Q. While you were in the restaurant, the Lung Wai Restaurant, did you see the 2nd accused leave at any stage? 30
A. I did not pay attention to him. He was sitting there all the time reading newspapers. He did not make any noise. There was nothing unusual about him.
Q. Mr. Wong, I suggest to you that inside the restaurant you men decided upon a plan.
A. No.
Q. And that was not the plan to ask for compensation. 40
A. No.
Q. The plan was to go up armed with knives to either the Siu Niu Chin Kiu or the Sun Sze Suk Lui to chop the people who were pointed out by the 1st accused as having assaulted him the night before.
A. No.
Q. When you got into the music parlour, you say that LI Yuk was walking first with two other people, is that right?
A. Yes. 50
Q. Were you behind that first three or were you a member of the first three?

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- A. I was behind the three.
Q. So you were number 4?
A. Yes.
Q. And you say that the 1st accused was behind you.
A. Yes.
Q. How far through the door did you go before this employee came forward to ask "How many?"
10 A. I was about from the witness-box to this picture here inside the parlour.
Q. A couple of paces.
A. Yes.
Q. And you say that you all came in together, is that right, all your group?
A. Yes.
Q. Do you remember giving evidence in chief yesterday? Your counsel was asking you questions about how you first came into the parlour. He asked you how many persons were in your group.
20 A. Yes.
Q. And the first answer that you gave was four.
A. Yes.
Q. And then he asked you how many were there altogether and you said seven.
A. Yes.
Q. And it was only after that that he asked you if you were all in a queue and you said yes. I suggest to you that it was your first answer that came out before you thought that was the correct one: two groups went in, one of three and you were in the second group of four.
30 A. Not true.
Q. Do you recall the evidence of LI Kwong-ye?e?
A. Yes, I do.
Q. He said there were two groups that came in, didn't he?
40 A. That was what he saw and as we were entering, naturally someone would be ahead, others would be behind.
Q. Having got in the door, before this man saw the 1st accused and swore at him, did you move your position from this, two paces from the door?
A. Well, I cannot remember clearly but how would you consider that I had moved?
Q. Well, you say that you came through the door two paces.
50 A. Yes.

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- Q. Then this other man came forward to ask "How many?".
- A. Yes.
- Q. Did he come from the right-hand side or in front of you?
- A. He came from directly in front.
- Q. When he first reached the position where Ah Yuk was standing, were you still standing two paces from the entrance of the doorway?
- A. No. 10
- Q. Where were you at that stage?
- A. I was standing a short distance away when the two of them were talking.
- Q. As he got to Ah Yuk and said "How many?", at that stage, were you still standing two paces from the doorway?
- A. No.
- Q. Look at the photograph No. P.2(B). Can you indicate where you were standing in that photograph? 20
- A. I was standing here.
- Q. About parallel with the left-hand side of the coat you see on the ground.
- A. Yes.
- Q. Was Ah Yuk nearer to the photographer who took this picture or was he more to the left-hand side further into the room?
- A. Ah Yuk was standing far inside. Here.
- Q. So Ah Yuk was about parallel with the pole on the left-hand side of it in the photograph? 30
- A. Yes.
- Q. And you agree with the 1st accused's evidence that he was at the back, somewhere behind this pole?
- A. He was here, behind me.
- Q. Now at this stage somebody saw the 1st accused and swore at him?
- A. Yes.
- Q. You say that at first you thought that he was referring to you. 40
- A. Yes.
- Q. How did you feel at that stage?
- A. Nothing in particular. I just looked at him and then I walked away. I ignored him.
- Q. He said this in a very fierce manner, didn't he?
- A. I would consider him as fierce.
- Q. At that stage you were not frightened, is that right? 50
- A. Of course I was not frightened. Why should I be?

Q. It was after that that Ah Yuk said "Don't be so fierce. If there is anything, we can always talk about it."?

A. Yes.

Q. At that stage were you still standing in the same place?

A. No. I had walked to the bar. Here.

Q. Why did you walk to the bar there?

10 A. Because the whole group of men was standing at the entrance, it would obstruct people or customers coming in.

Q. Were there any customers coming in behind you other than your friends?

A. No.

Q. Were you going to order a drink from the bar?

A. No, but I did not want to obstruct the main entrance, to be in the way.

Q. Where did all your friends go other than Ah Yuk?

20 A. They were standing near the sofa.

Q. So they had moved to the right.

A. Yes.

Q. And they went around this pole to a position in front of the sofa in photograph (B)?

A. Yes.

Q. And what were they doing there?

A. Standing there, doing nothing in particular.

Q. Were they listening to the conversation between Ah Yuk and this other man?

30 A. Yes.

Q. The other man was not LI Kwong-ye, is that right?

A. I do not know who is LI Kwong-ye. Do you mean the one who has given evidence here?

Q. Yes.

A. He was standing there.

Q. But he was not the one who was discussing compensation with Ah Yuk.

A. No.

40 Q. Where was LI Kwong-ye standing?

A. I did not pay attention. I did not look carefully.

Q. You said you know he was there.

A. Yes.

Q. When did you first see him?

A. I first saw him when I had walked away towards the bar.

Q. Whereabouts was he in the room? Look at photograph (C).

50 A. I did not pay particular attention to him but he was somewhere in this area. (Witness indicates)

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Exh.P2C

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- Q. Near the christmas tree?
A. More or less at that place.
Q. And then you say that while you were at the bar, you heard Ah Yuk say to the man "If the 1st defendant has offended you, just tell me, but if he hasn't offended you, it is not right to chop him."
A. He said "If he has offended you, you will just make a clean breast of it by telling me and don't memorize it by heart." 10
Q. Now at that stage discussions were going along quite amicably, would you agree?
A. That's true when the first two sentences were said.
Q. Did the other man then say "There is nothing seriously wrong but he has assaulted our girl."?
A. More or less words to that effect.
Q. Did the other man also say "That means he wasn't showing face to our floor managers"? 20
A. Yes.
Q. At that stage, did you get the idea that perhaps it was the 1st accused who was in the wrong?
A. This matter did not occur to me because I was not the spokesman.
Q. That was the purpose in going, wasn't it, to find out who was in the wrong?
A. Yes.
Q. Then Ah Yuk said "We can always talk to reason but you have chopped and injured him and he couldn't work, so you have to pay compensation." 30
A. Yes.
Q. What did the employee say to that?
A. The employee said "It's not impossible but it would be difficult."
Q. In other words, the employee did not say there would be no compensation.
A. From what he said, it means almost like refusing to pay because he also said "You will not get compensation but you will get weapons." 40
Q. He did not say that at this stage.
A. Yes. But after hearing his first sentence, he said "It is not out of the question", then it would mean he was not going to pay.
Q. "It's not out of the question but would be difficult" does not mean he was not going to pay. 50
A. But from the way he put it it would mean he was not going to pay.

10 Q. If he was not going to pay, he would have said "I am not going to pay."
 A. But that is the usual manner they talk.
 Q. You call that subtle sarcasm, do you?
 A. More or less like that.
 Q. After that you say Ah Yuk asked him if he was going to pay compensation or not.
 A. Yes.
 Q. And after that the man replied "There would be no compensation but if you are not satisfied, we have weapons."
 A. Yes.
 Q. At that stage were you frightened?
 A. I did not anticipate that as soon as they said they were not going to pay they would become angry and I had not thought of being afraid at that stage.
 20 Q. Do you agree with me that the phrase "But if you are not satisfied, we have weapons" is not a direct threat, it only becomes a threat if you are not satisfied?
 A. More or less like that.
 Q. If you walked out of the door at this stage, then nothing further would happen.
 A. Not so.
 Q. Well, the phrase is, "But if you were not satisfied, we have weapons, if you are satisfied, you can walk out and that is the end of it."
 30 A. As you know, when he was being in this manner, it means more or less he intended to resort to violence, then we would do the same and we did not want to leave.
 Q. So you were quite prepared to resort to violence when you went in there in the first place if they did not pay compensation?
 A. Now to resort to violence?
 Q. You say if they were going to resort to violence, you were going to resort to violence, why, why not leave?
 40 A. We did not come to the main point of our discussion, we had not talked about compensation and then they spoke in this manner, we were startled.
 Q. According to you, you had come to the main point. Ah Yuk had said, "Are you going to pay compensation or not?" and they said, "We are not."
 50 A. We still had to talk about the amount, would it be ten cents or what, Ah Yuk would have to discuss with them.

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- Q. But they said there would be no compensation, none at all.
- A. If they said they were not going to pay, then we could say that D.1 would report to the police and we would not be able to stop him.
- Q. You were going to threaten them with a report to the police, were you?
- A. It is not a question of threat, it would be nice if we could come to terms, but if not, there was nothing we could do. 10
- Q. Yesterday you used this phrase, "They had done something wrong but they made an allegation against us."
- A. Yes.
- Q. What was this allegation that they made against you?
- A. The meaning is that they were in the wrong but they were speaking in a loud voice and behaving in a fierce manner. 20
- Q. That is one thing but I don't understand how that is an allegation.
- A. It is only a matter - it is a figure of speech in Chinese.

MR. MARASH: Perhaps that would be a convenient time, my Lord, for the morning break?

COURT: We will adjourn for fifteen minutes.

11.20 a.m. Court adjourns.

11.50 a.m. Court resumes.

All accused present. Appearances as before. 30
Jury present.

D.W. 4 - WONG Kam-ming (5th accused) (of.a.)

XXN. BY MR. MARASH: (continues)

- Q. You have told us that you were standing by the bar as shown in photograph C at the time that this man said, "But if you are not satisfied, we have weapons", whereabouts exactly in photograph C were you standing in relation to the stools?
- A. Here. 40

COURT: That is the second stool.

A. Yes.

Q. Were you standing right beside the stool?
 A. In that vicinity.
 Q. Well, within a couple of feet of the stool?
 A. Yes.
 Q. Now many of the employees did you see in the reception room at that stage?
 A. Four or five.
 Q. You say that you saw one of them walk away hurriedly.
 10 A. Yes.
 Q. Where did he walk from?
 A. From the area near the Christmas tree.
 Q. So he came from behind you and went past you, is that right?
 A. Yes, went past me.
 Q. Was this LI Kwong-yea?
 A. No.
 Q. He walked past you, could you indicate looking at photograph D the direction in which he travelled?
 20 A. He walked round to behind the counter.
 Q. How far in the counter did he go?
 A. To near the telephone.
 Q. You set off after him when he went past you, is that right?
 A. Yes.
 Q. This man was not the man that Ah Yuk had been talking to.
 A. No.
 30 Q. Did this man touch you as he went past you?
 A. No.
 Q. Yesterday you said he pushed you aside.
 A. Well, the others were standing there, those people who had been talking to him were there when he walked past, he pushed them away.
 Q. He didn't push you?
 A. Not me.
 Q. How did you feel as he went past you towards the bar?
 40 A. I realized that something was wrong.
 Q. Were you scared?
 A. No, not scared.
 Q. You had not lost control of yourself at that stage?
 A. No.
 Q. And you decided the best course of action would be to follow this man?
 A. It was better to see what he was up to, the best thing to do was to follow him.
 50 Q. What did you think he was up to?

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- A. I thought he was getting something.
Q. What did you think that something was?
A. Knives and things like that.
Q. Wouldn't you say that the best thing to do would be to leave at that stage?
A. I could leave but what about the others? If they did not manage to go away, what then?
Q. Why not shout out to your friends, "He is going for a knife, quick, let us get out of here?" 10
A. There was not enough time. When I am talking here, it seems a long time, but in fact when it was happening it happened very quickly.
Q. This man came past you at the second stool in photograph D and he had to walk all the way around this bar and in behind the counter to where this telephone was.
A. Yes.
Q. And he wasn't running, he was walking hurriedly. 20
A. Not running.
Q. There must be a good few seconds in which to make some attempt to get away from where he was going to.
A. I saw him in a split of a second, when he was walking I had no reason to stop him, I did not know what he was doing until he reached the drawer in the bar.
Q. How far behind him were you as he was walking towards the bar, that is while you were still outside? 30
A. Not far away, about from where I am to the Interpreter. What exactly is your question? Are you asking me the distance between myself and the man as he was walking behind the bar?
Q. Yes, as he was walking towards the end of the bar to go behind it, how far behind were you?
A. It is from where I am to Mr. LI here. 40
Q. Were you walking or running?
A. I was walking behind him at about the same speed as he was.
Q. Why didn't you try to grab him and stop him from going behind the bar?
A. Before he got hold of anything, I did not know what actually he was going to do, it was only what I thought he might do.
Q. They said, "We have got knives" and he set off towards the bar, what did you think? 50
A. They only said they had knives, but before I actually saw the knives I could not stop him.

Q. So you say that you walked towards the end of the counter and you stopped at the entrance part of the counter where you walk in to go behind and you watched him.

A. Yes.

Q. Quite sure that the point at which you set out after him from is the second stool?

A. It is in this area.

10 Q. The 1st accused said that you set off after him from a position near where he was standing, near the door.

A. I would not consider my position there as near the entrance.

Q. Are you saying that the 1st accused is not telling the truth?

A. I did not see the 1st accused at that time, perhaps it is a slip of his memory.

Q. When you got to this point at the end of the counter, you say you stopped there and just watched.

20 A. Yes.

Q. Why did you stop there?

A. Because there was a cashier's desk.

Q. The cashier's desk is at this end of the counter which we see in photograph C underneath the clock.

A. The whole place is the cashier's office, there is no reason why I should enter that place.

30 Q. There is a reason if you thought that the man was going after a knife.

A. Yes.

Q. Anyway, you stopped there and you watched?

A. Correct.

Q. How far away from you was he when he got to this drawer?

A. The distance is about from where I am to the Crown Counsel.

Q. Would you say about four yards?

40 A. I do not know how many yards, more or less this far away.

Q. What did you see the man do?

A. As soon as I saw him pull out the drawer and put his hand inside, I rushed up at him and stopped him.

Q. Did you see the cashier sitting at the other end of the counter?

A. I did not notice.

Q. Where was this drawer, underneath the counter?

50 A. Here is the counter, this is the wall and the drawer is over here.

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- Q. But TANG, when she gave her evidence, said there was no drawer under the counter, what do you say to that?
- A. There is.
- Q. When he opened the drawer, did he put his hand into it?
- A. Yes.
- Q. Was it at that stage that you rushed at him?
- A. Yes.
- Q. What happened then? 10
- A. I pushed him away.
- Q. Yes?
- A. I said, "Don't move."
- Q. And then?
- A. Someone punched me once from behind.
- Q. Go on.
- A. I fell forward and the man who had been pushed away by me came up to me from in front.
- Q. And he was further inside the counter than you? 20
- A. Yes.
- Q. At that stage the man still had not got hold of any weapon, had he?
- A. No, he had not because I had pressed down his hand and pushed him away.
- Q. Yes, go on, what happened after that?
- A. I was punched on my back, as a result I fell forward and I leaned against the drawer.
- Q. Was it then that you reached into the drawer and took something out? 30
- A. At that stage, one of them was behind me, another man was in front, under that circumstance, I had to do something.
- Q. So you picked up something out of the drawer wrapped in newspaper.
- A. Yes.
- Q. And you thought that that something was an iron bar or a paper-weight, is that right?
- A. Yes. 40
- Q. It was long and square.
- A. Yes.
- Q. Was it heavy?
- A. Not very heavy.
- Q. You picked this thing up and you waved it about.
- A. Yes.
- Q. And the man behind you rushed into the resting-room he rushed away from the counter and out. 50
- A. Yes, he ran into this room.

Q. You had not hit him, had you, at that stage?
 A. I did not know whether I had hit him or not, I waved the object about and he immediately turned round and ran into the resting-room.
 Q. Did you feel the object make contact with anything?
 A. Yes.
 Q. I see, you think that you might have hit him with this object then?
 10 A. Yes.
 Q. This left just you and the other man who was further in the counter?
 A. Yes.
 Q. And did he appear to be injured at that stage after the other man had left?
 A. No, he was not, he was holding a stool in his hand.
 Q. At that stage you say you backed off and went out of the counter?
 20 A. Yes.
 Q. You didn't hit that man prior to leaving?
 A. You mean the man in front?
 Q. Yes.
 A. No.
 Q. Did you make your way out from the end of the counter through the front door and out of the premises?
 A. Yes.
 Q. Did you see the 1st accused by the doorway?
 30 A. At that time I ran straight downstairs without noticing anyone.
 Q. Did you see anybody standing by the door?
 A. There was a great confusion, there were many people standing near that place.
 Q. Did you see the deceased LAM Shing?
 A. I did not.
 Q. When you got downstairs into the taxi, you still had not spoken to any of your friends, had you?
 40 A. No.
 Q. In the taxi, did you have a look at this paper-weight or iron bar?
 A. No.
 Q. You just left it in the taxi?
 A. Yes.
 Q. Well, Mr. WONG, do you remember giving evidence in this court last time on the 25th of August about this incident?
 A. Yes.
 50 Q. Do you recall the court reporter coming to court and giving evidence as to what you said?

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- A. Yes.
- Q. Perhaps I can go through with you what you said last time and compare it to what you said this time. Last time I asked you, "Is it correct that at the time you were at the Siu Nui Chin Kiu you were at some stage holding a beef-knife?" and you answered, "No".
- A. Correct.
- Q. I then asked you, "You have just told us that you were" and you said, "I said we went up there to ask for compensation. They being the wrong-doer, they made the allegation against us. Then I saw him going to fetch a knife." I asked you, "What else did you see?" and you said, "I pushed him away and snatched it away from him."
- A. Yes.
- Q. It is different from taking it out of a drawer, isn't it?
- A. Are you saying you do not consider this action as snatching it away? 20
- Q. I am saying that you snatched away from him, not from the drawer.
- A. I snatched it away and pushed him away, if I did not do so I would be beaten up by him.
- Q. And then I asked you, "And then you chopped him?" and you said, "Someone punched me from behind. I turned around and chopped and injured him." That is rather different from what you are telling us now? 30
- A. I turned round and waved it about.
- Q. The last time you said you turned around and chopped and injured him. Then I asked you - do you wish to make an answer?
- A. You are saying that I had chopped ...
- COURT: He is not saying, he is reading what you said.
- A. At that time I did not know whether I had chopped him or not when I turned round.
- COURT: Those are your answers. 40
- Q. Last time you said you chopped and injured him, did you see him injured?
- A. I did not see him being injured, I saw him run away desperately.
- Q. Did you chop him?
- A. When I was waving it about and he was so close, I cannot say for sure whether he was injured or not, but since he was so close, it is possible that he had been chopped.

Q. The last time you were definite, you said, "I chopped and injured him." Then I asked you, "Do you know what sort of knife you were holding at the time when you chopped him?" and you answered, "I did not know, it was something wrapped in a sheet of newspaper, I thought it was an iron bar."

A. Yes.

10 Q. You agree that that is correct, do you?

A. Correct.

Q. You thought you had an iron bar?

A. Yes.

Q. And then I asked you, "At the time you chopped, you didn't know what you were chopping with, is that what you are saying?" You said, "I did not know what it was at the time."

A. Correct.

20 Q. The next day I questioned you about this again, I asked you, "What sort of blade did the knife that you had in the music parlour have?"

A. Yes.

Q. And you said, "Up to the time when I had chopped that person and ran away, I did not notice what the blade looked like."

A. Correct.

30 Q. I asked you, "Would you agree that the description 'beef-knife' is not inaccurate?" and you said, "Not correct." I asked you, "How long was the knife?" and you indicated. I then asked you, "What sort of knife would you call it?" and you said, "It belonged to the melon-knife type."

A. Yes.

Q. And I said, "How do you know that?" and you said, "Because the shape of the knife was straight which looked alike - similar to a melon-knife."

40 A. Yes.

Q. That is extraordinarily different from the evidence you have given this time.

A. Not different.

Q. Last time you said you knew you had a knife, you were able to describe it, this time you said it was an iron bar or a paper-weight.

A. I had already answered you all the questions you put to me. I said at that time I did not know what it was.

50 Q. Yes, but the next day you said that you did know, you said that it belonged to the melon knife family and that it was a knife with a blade.

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- A. Yes.
- Q. Was it a knife with a blade?
- A. Yes, it had a blade.
- Q. Why are you telling the jury now that it was a paper-weight or an iron bar?
- A. The questions you had just put to me were like asking me whether I knew what the object was at that time, I did not know.
- Q. When did you find out?
- A. After I had left and had reached downstairs. 10
- Q. You told us yesterday that you left it in the taxi, you didn't examine it properly, it was still wrapped in newspaper.
- A. I did not say that it was wrapped in newspaper all the time.
- Q. You did, you said you left it in the taxi wrapped in newspaper.
- A. No, at that time it was not wrapped in newspaper. At the time when I was waving it about, the newspaper had come off. 20
- Q. You have never told us that before. When you gave evidence yesterday, you said, "I left the object in the taxi."
- A. Yes.
- Q. You never said it was a knife.
- A. From the way the question was put, the counsel asked me whether I had put that object in a taxi. I said yes, so I was referring to the object.
- Q. You never ever told the jury that you had a knife and that you knew you had a knife. 30
- A. But the knives had been exhibited to the jury, they would be able to see them.
- Q. Did you have one of those knives?
- A. Which knife?
- Q. Those two knives that were produced here in court.
- A. No.
- Q. Yesterday you told the jury that when you went out you put the object beside your thigh. 40
- A. Yes.
- Q. How did you do that?
- A. Like this.
- Q. It was a sharp knife.
- A. Yes.
- Q. MR. WONG, I suggest you did not want to tell the jury at all that you had a knife in your hand, your evidence was aimed at giving the jury the impression that you at all times held a bar or a paper-weight. 50

10 A. I do not have this idea at all. When you asked me what had occurred previously I told you.

Q. I put it to you that you have told two very different stories.

A. I do not see any difference.

Q. The stories differ as to whether you snatched the object away from the man or from the drawer, as to whether the man was chopped and injured, whether or not it was a bar or a knife.

10 A. On the previous occasion when you asked me what had happened up there, I only gave you a gist of roughly what had happened there, but when I am telling you now I am telling you everything and the circumstances.

Q. But you have told it differently.

20 A. I snatched it from that man but you do not consider this action as snatching it from him. Do you think that I just picked it up?

Q. Did you snatch it from his hand?

A. No, but I pushed him away and got it.

Q. You suffered no injuries as a result of all these goings-on, did you?

A. No, I was not injured except I was punched.

Q. Any of your friends suffered any injuries as far as you know?

A. I don't know.

30 Q. Three of the employees of the music parlour did.

A. Yes.

Q. I put it to you that the reason they suffered injuries and that your group didn't was because none of this happened at all.

A. I do not know whether anyone was injured but I have told you exactly what I know.

Q. I put it to you that your group came in and said, "C.I.D. from Mongkok, don't move."

40 A. No.

Q. That was done because not all of the people that you were looking for were in the reception room when you went in.

A. Not true.

Q. You were not just looking for one man, were you, you were looking for a group.

A. No, we were looking for the persons who were responsible for that place and also for those who had assaulted D.l.

50 Q. You were looking for a group of persons?

A. No.

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- Q. According to the 1st accused, one of those persons was CHAN Heung-choi, and another was LI Kwong-ye, they were the persons who had beaten you up the night before.
- A. Did he say that?
- Q. I suggest to you that you were looking also for SO Hung and Fei Chai Au.
- A. No, I did not know who we were looking for.
- Q. I put it to you that when these people came out thinking that it was a police raid, the last four of your group which you were among drew out weapons from some sort of paper or plastic bag. 10
- A. We never had any knives or any bag.
- Q. Then having taken the knives out, in pursuance of your agreement reached at the Lung Wai Restaurant, you people attacked those people in the parlour.
- A. No.
- Q. And when you did so, you intended at the very least to cause them really serious injury. 20
- A. No.
- Q. It was as a result of that attack that CHAN Heung-choi and LI Kwong-ye were injured, and LAM Shing, an innocent bystander, was accidentally killed.
- A. Not true.
- Q. That you got the wrong man and that is why LAM Shing died.
- A. Not true, no such thing, I did not know whether we had got the wrong man. 30
- Q. Can you account for the fact that LAM Shing received four injuries, two of which appear to have come from the back?
- A. Now can I explain?
- Q. Would you say that that look like self-defence?
- A. I did not know what was happening outside.
- Q. What about when you ran out the door, surely you saw something of what was going on? 40
- A. There was a great confusion, it was dark, I did not see clearly.
- Q. You didn't see a single thing?
- A. I did not.
- Q. I put it to you that you were involved right in the centre of this attack, that you saw everything.
- A. I did not see.
- Q. The 1st accused and the 2nd accused were there in it with you. 50

A. Did you say the 1st and the 2nd accused?
The 1st accused was there but I do not
know about the 2nd accused.

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MR. MARASH: No further questions, my Lord.

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NO RE-XN. BY MR. HUANG.

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MR. HUANG: That is the case for the 5th defendant.

BY COURT:

Q. Did you say that the premises were very
dark when you walked in?

10

A. Yes.

Q. Was it very difficult to see?

A. When I first entered, I had difficulty in
seeing because I was coming from the bright
outside into a dark place.

Q. But later on?

A. After standing inside for a long time, I was
able to see.

Q. But you were able to see objects wrapped in
newspapers inside this drawer?

20

A. I could not see.

Q. But I thought you said you did. "I noticed
that there were some objects in the drawer
and grabbed hold of one of them and waved it
about." You said this yesterday.

A. I saw it when I had stopped him and was
leaning against the drawer.

Q. That is not what I have recorded yesterday.

A. Perhaps I had made a mistake.

30

Q. You said, "The man behind me gave me a push
and I bumped against the drawer. I noticed
that there were some objects in the drawer
and grabbed hold of one of them and waved it
about. The object was long and square in
shape wrapped up in newspaper. I think it
was a weight put on newspapers as a paper-
weight. It was wrapped up in newspaper and
newspaper was wound around it."

A. Yes.

Q. You told me you could see it.

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- A. When I was leaning forward I could see it.
Q. And when you waved it about, it was still wrapped in newspaper?
A. When I started to wave it about, the newspaper came off.
Q. Now you said before you went there there was some discussion about compensation.
A. Yes.
Q. Was any amount agreed on? 10
A. No.
Q. How were you going to fix this compensation?
A. I only accompanied them to go there, I did not ask.
Q. And how much were you going to get out of this compensation?
A. I did not gain anything.
Q. Why go?
A. My friend asked me to go, he is my sworn brother.
Q. Now did the 1st defendant tell you that he was assaulted in the massage parlour? 20
A. Yes, he did, he mentioned that he had been beaten up and then chopped.
Q. Did he say where he was beaten up, was it in the massage parlour?
A. I cannot remember for sure, it seems to me that he did not specify where.
Q. How did you know where to go if he did not specify?
A. He said he was chopped by people of the music parlour. 30
Q. I thought you said, no, you did not know where?
A. That was in respect of the chopping.
Q. What about the beating?
A. I was not listening attentively, I heard music parlour being mentioned.
Q. Not massage parlour?
A. No.
Q. You just followed around, you didn't know where you were really going to? 40
A. I knew we were going to the music parlour.
Q. Do you know whether Ah Yuk spoke to the responsible person who was in charge of the music parlour?
A. Ah Yuk spoke to someone but I did not know who that person was and I did not know who was the person in charge.
Q. Did Ah Yuk appear to know that person?
A. It is difficult to say. They seemed to know each other but on the other hand it seems that they did not know each other. 50

Q. Were they very friendly towards each other?
A. From the way they were talking, it appeared that they knew each other, but they did not greet each other.
Q. You said somebody asked you or asked the party, "How many".
A. Yes.
Q. Did it appear that they knew your people at all? They knew Ah Yuk, Ah Yuk was the leader of the party.
A. I was standing behind, I did not pay attention. Under normal circumstances, when the employee greeted us in this manner, it would appear that he did not know us.

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30

COURT: Yes?

MR. MARASH: My Lord, it would suit me, and I think my friend, particularly myself, if we could adjourn till tomorrow morning for final addresses. I would like some time to look at some matters of law and I am still not feeling very well. I do not know whether your Lordship wishes to address the jury tomorrow afternoon or later tomorrow morning or on Friday.

COURT: I think Friday morning would be more suitable. What about you, Mr. Ming HUANG?

MR. HUANG: I will leave it to your Lordship, I have no strong feeling, either course is all right with me, I have no strong view about that. If my learned friend would like to adjourn till tomorrow, it is all right with me.

COURT: I would like to say to the members of the jury that we will definitely finish by Friday. We will adjourn now till tomorrow morning at 10 o'clock. Defendants remanded in jail custody.

12.45 p.m. Court adjourns.

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No. 12

JUDGES SUMMING-UP

IN THE HIGH COURT OF JUSTICE
CRIMINAL JURISDICTION

Case No. 41 of 1976

Transcript of a tape-recorded summing-up delivered by Mr. Commissioner Garcia on 1st October, 1976 at the trial of Regina v. CHEUNG Kwan-sang and 2 others, charged with Murder etc.

10

Well, members of the jury, you have heard counsel address you on our various functions which we have in this trial. The time has now arrived for you to take a more active part in these proceedings. The three defendants, I will call them the 1st, the 2nd and the 5th defendant, are now before you charged with the one count of murder and two counts of wounding with intent to cause grievous bodily harm, and the particulars of these charges are fully set out in the copy of the indictment which you now have in your hands. These charges, as you are aware, arise out of the same incident which occurred on the 28th day of December, 1975 in the premises of the Siu Nui Chin Kiu Music Parlour situated on the mezzanine floor of 689 Nathan Road, Kowloon. My task now is to sum up to you and my main duty is to direct you on the law concerning the matters before you, and you may take whatever directions I give you on the law to be correct because if there are any errors on my part in this respect it will be subject to correction by the Court of Appeal. In the course of this summing-up I shall be referring to some aspects of the evidence which you have heard in the course of this trial and while you will appreciate that it will not be possible for me to refer to all the evidence, you will however consider your verdicts on a totality of the evidence. It does not mean that just because I have omitted to refer to certain of the evidence it is unimportant or that you should not pay any attention to it.

20

30

40

10 Let me first express my gratitude to you for the close and careful attention which you have paid to all that has gone on in this court. I noticed that some of you have taken copious notes of the evidence of the various witnesses who have appeared in this court to give their testimony, and I am sure that these notes would be of great assistance to you when you come to consider your verdicts. I think you have also paid close attention to what both counsel in their addresses have said with regard to the evidence yesterday, and you have also heard it said several times that you are the sole judges of fact and it is your duty to find facts from the evidence which has been presented at this trial. To the facts that you find you should apply the relevant law which I will direct you on and then you will arrive at your verdicts.

20 You have seen and heard in the course of this trial a fairly large number of witnesses including, of course, the three defendants, and it is your task to assess their evidence. In doing so you will have regard to their demeanour in the witness-box, how each one of them has stood up to cross-examination by opposing counsel, and also you should consider whether in your opinion they have given their evidence honestly and truthfully. I need hardly remind you of the great responsibility which you bear as a jury and these matters are
30 entirely for you to judge. But I would say one word of caution: because one side is lying, it does not necessarily mean that the other side is telling the truth, or vice versa. It could be that both sides are not telling you the truth. It is open to you to accept part of a witness's evidence and also reject part of it, and it is similarly open to you to reject or accept that witness's evidence as you wish. However, in
40 considering these matters, you should apply to them your common sense which you use in your every day affairs as men and women of the world.

I mentioned earlier that counsel have expressed their views on the evidence and you would also, in the course of this summing-up, be hearing some of my views on the evidence of the various witnesses. These views and opinions are not binding on you because it is your duty to find the facts, but you may of course adopt some or
50 all of our views if you think fit, and similarly you may also ignore our views completely.

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You have heard a lot of talk about speculation yesterday. It is not your function to speculate on the evidence, it is for you to find facts from the evidence which you have heard from the witnesses in court, and you are also not to speculate on witnesses who have not been called to court, they might give this evidence or they might not give this evidence, but we cannot speculate, we cannot say what they were going to say.

Now passing to the first principle of law in criminal trials, the fundamental principle which you should bear in your minds throughout your deliberations is that a person accused of a crime is innocent throughout until he is proved guilty, that is, the Crown must prove every ingredient of the offence to your entire satisfaction so that you would be sure of the guilt of the defendant before you may convict him. The defendants need not prove anything at all, and if at the end of your deliberations you are not satisfied that the Crown has discharged its duty, which is an onerous one, then you must acquit the defendants altogether. This burden of proof rests on the Crown throughout the trial and it never shifts to any of the defendants. 10 20

You may have heard it said that the Crown must prove to you the guilt of the defendants beyond a reasonable doubt before you may convict them of the offences with which they are charged. This simply means that you must be completely satisfied or completely sure from the evidence which is before you that the defendants are guilty of the offences charged. If you are not so satisfied and you entertain a reasonable doubt as to their guilt, then it means that the Crown has not discharged this burden of proof, and such doubt must be resolved in favour of the defendants and they are then entitled to be acquitted. Reasonable doubt, however, does not mean any fanciful or imaginary doubt, but it means a doubt which you as reasonable men and women of the world would entertain when determining important matters affecting you in your daily lives. Again, although the Crown has to prove the guilt of the defendants beyond a reasonable doubt, it does not mean that they have to prove it beyond any doubt nor do they have to prove it to you with mathematical certainty. 30 40

10 Now part of the Crown case against the 1st and the 2nd defendants consists of cautioned statements. These are in the nature of confessions and one very important legal principle governing these statements must be borne in mind when you come to consider their contents. Each such statement is evidence only against the maker himself and not against any of the other persons named in those statements, so that the statement made by the 1st defendant may be used only against him and similarly this applies in the case of the statement made by the 2nd defendant. These statements must be considered, as it were, in isolation as far as each defendant is concerned.

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20 Before I pass on to the principles of law which are applicable to the particular circumstances of this case I think it would be more appropriate at this stage if I were to refer to some aspects of the evidence adduced at this trial. I do not propose to go into the details of that evidence because you have had very full resumes of the evidence given to you by counsel in their addresses yesterday, and also much of what the various witnesses have said would still be fresh in your minds. Moreover you have had the advantage of counsel pointing out what they thought were the most important and salient features of the evidence in this case. The incidents which led to these charges being brought against the defendants began on the evening of the 27th of December, 1975 when the 1st defendant went for a massage at the Sun Sze Suk Lui Electronic Centre of 689 Nathan Road, 1st floor. I shall in the course of this summing-up refer to this particular establishment as the massage parlour. Just below this massage parlour in the mezzanine floor of the same building is the Siu Nui Chin Kiu Music Parlour which I shall refer to as the music parlour, and both these establishments were owned by the same proprietor, a Mr. LAN Siu-hin. And apparently the employees of the one establishment could be called to the other at a moment's notice because there is in evidence a signalling system by means of which electric bells could be sounded between the two establishments. Mr. LAM Sui-hin also operated a tailoring establishment known as the Japan Fashion Shop where the girls employed in the massage and music parlours could buy their clothing at a discount and on credit, and among the persons he employed was LAM Shing, the deceased, who did duty

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both as the proprietor's chauffeur and also as a bill collector for the Japan Fashion Shop. In the course of his duties LAM Shing would visit the two establishments to collect outstanding accounts from the girls or he would just turn up at the establishments for a chat or to watch T.V. or play mahjong. Now it is being suggested by the 1st defendant that LAM Shing was employed as a fighter by the two establishments but this is denied by Miss TANG Yuk-kuen, Mr. LI Kwong-ye and the deceased's wife, Mrs. CHAN Suet-lan, who gave evidence was not contradicted when she said that her husband worked in the two above-mentioned capacities of a driver and bill collector. You would also remember that in response to a question the deceased's wife stated that her husband worked as a taxi driver before he worked for Mr. LAM Siu-hin.

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In the course of the same evening, that is 27th of December, the 1st defendant was assaulted by some employees of both the massage and music parlours because he was involved in some unpleasantness with a massage girl called Jenny or CHEUNG Wan-ying over the quality of her services as a masseuse, following which assault he left the massage parlour. After his enforced exit from the massage parlour he encountered further misfortunes in Yaumati and a full account of these is set out in the statement which he made to woman detective constable YUEN Kwai-ping of the C.I.D. Yaumati Police Station while he was being treated for his wounds in the Queen Elizabeth Hospital. This particular statement is also in your hands and the contents of that statement have been fully discussed with the 1st defendant whilst he was in the witness-box. Following treatment in the hospital, he returned home with the 2nd defendant who had been called there to the hospital, and LI Ming also, and they all returned at about 1.00 a.m. on the 28th December, 1975 which the defendant, the 1st defendant, has reminded us was a Sunday because it was his holiday. I am stating this because it was pointed out to you yesterday that because of the assaults on him, the defendant, the 1st defendant claimed compensation from the music parlour. Now this is part of his case. You also heard yesterday certain matters mentioned with regard to SO Hung and Fai Chai as to the assault, and also the assault by the 1st defendant on the girl to show that he was a person of violence.

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Well, this has nothing whatsoever to do with this case. Whether he was violent on that occasion does not affect the events in this present case.

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10 I would now pass on to the evidence relating to the events which occurred later in the day, that is on the 28th of December, and this evidence may be divided into four parts. Firstly, the evidence of two eye witnesses, Miss TANG Yuk-kuen and Mr. LI Kwong-ye. Secondly, the cautioned statements of the 1st and 2nd defendants. Thirdly, the identification parade held on the 2nd of January, 1976 at the duty room of Mongkok Police Station where Mr. LI Kwong-ye identified the 1st and the 2nd defendants and LI Ming. And fourthly, the answers which the 5th defendant gave to questions put to him in cross-examination in earlier proceedings in this trial.

20 Miss TANG's evidence covers the whole period from the time a group of seven persons first entered the music parlour till the time they left, and she estimates that this period was of a duration of about five minutes. She states that she was in a vantage position to see what was going on all that time as she was made to stand by the counter in the reception room of the music parlour, having been dragged there by a member of the group of seven persons who went into the music parlour. She gives an account of how after the seven persons entered the reception room of the music parlour they
30 announced that they were C.I.D. officers, following which they drew out some weapons, and she mentions that these were beef-knives, and began chopping some of the employees of the parlour who had come out to the reception room in response to the call from the group to come out, and LI Kwong-ye, who says that he was the first to approach the group thinking that they were potential customers. She also tells us how CHAN Heung-choi was chopped on his hands when he raised them up to ward off blows, how LI Kwong-ye was
40 chopped on the head and his running in the direction of the toilet, to escape further attack, and how LAM Shing had something stuck into his waist and how he was chopped when he fell on the floor. As a result of this attack LAM Shing died in Kwong Wah Hospital on the 30th December, 1975 after efforts had been made by the surgeon to save his life. You have heard from Dr. YIP, the forensic pathologist, that the cause of death was

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a stab wound in the right kidney. Besides this stab wound there was a cut wound on his right buttock $2\frac{1}{2}$ " long, a cut wound 2" long on the left upper back and a tri-radiate stab wound, each limb measuring about $\frac{3}{8}$ " on the right middle abdomen about 2" from the midline and $\frac{1}{2}$ " below the level of the navel. These wounds can be seen from the photographs which you have in your possession. In Dr. YIP's opinion, the first wound could have been caused by a knife which has a blade of one sharp edge used with a rather severe force. The second and third wounds could have been caused by any sharp instrument, more likely a knife, whilst the fourth one could have been caused by a triangular scraper or file. A triangular file was found after the incident and this is shown in photograph P.2(D). You will note that this is the only weapon found in those premises.

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LI Kwong-yeo in his evidence says that he was chopped on the head by a member of the group whilst he was sitting on the sofa which is partly shown in photograph P. 2(B). LI Kwong-yeo is 5'5" in height and it is for you to consider whether it is reasonable for him to say that he was chopped whilst he was sitting down on the sofa because it is alleged that there was a fight in the music parlour and if he was then standing up and taking part in the fight, the person inflicting such a wound on his head would have to be rather much taller than LI Kwong-yeo. He also adds that he thought that the instrument used to chop his head was a melon knife. Well, the result of this chopping was that he had a wound on his head of about 3" long and he was sent to Queen Elizabeth Hospital where he was detained for two days for treatment, and this treatment consisted of a seven-stitched suture to the wound.

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CHAN Heung-choi, who is described by Miss TANG as Ah Hung or Ah Choi, did not give any evidence at the trial although he was asked to attend in Court. Well, no reasons have been given as to why he has not come to court but every effort has been made to locate him. However, Miss TANG describes the attack on him as follows: "I also saw Ah Hung," that is CHAN Heung-choi, "and YIP Bun being attached. When Ah Hung was chopped he raised his hands to ward off the blows. He was injured and he immediately ran to the rest-room. Ah Hung also pushed YIP Bun into the same rest-room." In addition to this evidence of the site -

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of the sites of his wounds, there is the evidence of WONG Lung-piu who is the sergeant attached to the Emergency Unit, Kowloon West, and he was amongst the first police officers to arrive at the scene at about 11.50 p.m. that evening. He says he saw the deceased LAM Shing lying on the ground close to the main entrance of the music parlour, injured, whilst he saw that CHAN Heung-choi had injuries to his left fingers and right elbow, and LI Kwong-yee was bleeding from a wound on his head. CHAN Heung-choi was taken to the Casualty Department of the Kwong Wah Hospital where at 6.00 a.m. on 29th December he was examined by Dr. NG Sun-cho and found to have sustained the following injuries: one, a cut wound to the right elbow 1" long and muscle deep, secondly, cut wounds to the left middle finger and left index finger and left ring finger.

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Following this incident at about 4.50 a.m. on the 29th December, Inspector Robson and a party of detectives from C.I.D. Mongkok Police Station went to the 10th floor of the Kam Tong Mansions, Block A, Waterloo Road where they located the 1st and the 2nd defendants and LI Ming. There was a large number of people in the premises at that time, and it was ascertained then and there that the 1st and the 2nd defendants were residing in the same premises. A search of those premises was made, and in the cockloft under a mat of the bed and on top of which mat was a pillow two knives which are exhibited were found. It was further ascertained after the finding of these two knives that the defendant, the 2nd defendant, slept in the cockloft. The 1st and the 2nd defendants and LI Ming were taken back to the Mongkok Police Station at about 6.00 a.m. that morning, and the 1st and 2nd defendants each made a cautioned statement when they were informed that investigations were being made into the incidents which occurred at the music parlour at 11.40 p.m. on the 28th of December, 1970 when LAM Shing, LI Kwong-yee and CHAN Heung-choi were injured. The 5th defendant, WONG Kam-ming, was arrested at Fanling on 31st of December, 1975, one day after LAM Shing had died.

Following their arrests, the 1st and 2nd defendants were charged with murder on the 30th December, 1975 whilst the 5th defendant was charged with the same offence on the 2nd of January, 1976. To that charge each of them made an answer.

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Now on the 2nd of January, 1976 an identification parade was held at 1.30 p.m. in the duty room of Mongkok Police Station at which the 1st and 2nd defendants and LI Ming were identified by LI Kwong-yeo amongst a line-up of twenty-one persons of similar age, height, appearance and dress. Following the identification parade when the 1st and the 2nd defendants were informed of the results, the 1st defendant objected to the parade because the witness LI Kwong-yeo knew him as he had taken tea with him on several occasions, whilst the 2nd defendant objected on the ground that he had not taken part in the incident at all and was innocent.

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The 5th defendant, in certain proceedings held on the 25th and 26th August this year gave answers to certain questions put to him in cross-examination by Mr. Marash, of Crown counsel, and such answers indicate that he was present in the premises of the music parlour on the night of the 28th December, 1975. A copy of those questions and answers is also in your hands.

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This then is the summary of the evidence which the Crown has adduced in support of its case against these three defendants on the charges preferred against them in the indictment, and I shall deal more fully with that evidence as it affects each of the defendants individually. You will notice that I have not touched on the evidence given by Dr. Dailly, the senior chemist at the forensic laboratory, in relation to certain clothing worn by the 1st accused and by the deceased at the time of the incident. This evidence only relates to the 1st defendant and I shall deal with it when I refer to him specifically.

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The principal charge against the three defendants is murder, and in order to establish their guilt on that count it must be proved that the deceased LAM Shing was unlawfully killed by a person or persons who intended to kill him or others inside the music parlour or to cause them grievous bodily harm. The ingredient of unlawfulness would be established if the deceased were killed as a result of and in the course of the attack on him. The other two charges, that is wounding with intent to do grievous bodily harm to persons in the music parlour on the 28th December, 1975, are laid against all the three defendants, and as I see the evidence, they either

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stand or fall with the first charge because they all arise out of the same incident. From the evidence I have referred to there is no actual evidence as to whose hand it was that caused the death of LAM Shing nor is there any actual evidence as to who wounded either LI Kwong-yeo or CHAN Heung-choi.

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10 The other ingredient in all these charges which the Crown has to prove is an intention to kill or to cause grievous bodily harm to the persons inside the premises of the music parlour. You may ask how can the Crown prove such an intent when a person's mind cannot be read? If you look at how a person behaves or listen to what he says, then you may be able to draw inferences from which you can conclude what his intent was at the time of or shortly before the attack. You can also look at such matters as to what occurred just prior to their setting out for the music parlour, the number of people involved in the attack, what kind of weapons was used in carrying out the attack, what type of blows was struck and what injuries were actually caused, and in the present case if you accept the evidence of the eye witnesses, I would expect that you would find little difficulty in coming to the conclusion that there was an intent at least on the part of these persons going to the music parlour to cause the persons inside grievous bodily harm, but this, of course, is entirely a matter for you. Again, if you come to the conclusion that the three victims were attacked by an organised group of persons who were armed with knives as described by the two witnesses, Miss TANG and Mr. LI, and also with the triangular file left behind at the music parlour, it would be an inference open to you that each member of that group intended to cause at the very least grievous bodily harm to those persons attacked.

40 Now for there to be a wounding all the layers of the skin have to be broken so that if there is a cut or a stabbing through all the skin there is a wounding. What grievous bodily harm really means in everyday language is serious harm to the body, and you will notice that the offence is committed if a wound is inflicted so as to cause serious bodily harm. Again I don't think you will have much difficulty over the matter of wounding in view of the evidence given by Dr. NG Sun-cho, the doctor who examined CHAN Heung-choi, the evidence of Mr.

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LI Kwong-yeo himself and also the evidence of Dr. YIP and Dr. NG Sheung-yeo, that these two persons and the deceased had been seriously wounded in the music parlour.

The Crown's case is that each of the three defendants, together with other persons, were all involved in the attack on the persons present inside the music parlour on the 28th December, 1975, and that each of them bear an equal share of the responsibility for the death of LAM Shing and for the wounding of LI Kwong-yeo and CHAN Heung-choi. As I pointed out earlier there is no evidence that any of the three defendants aimed the blows which together caused the death of LAM Shing, or the blows which wounded LI Kwong-yeo and CHAN Heung-choi, and therefore you cannot say that any of them was directly and individually responsible for the death or the wounding. However, the law is that if a group of men set out together with a common intent to commit a crime, the action of each and any one of that group in the course of committing that crime is treated as the action of each of them. Thus if a group of men intended to kill someone or intended to cause someone serious harm and all the persons comprising that group who were present at the time took some part in those actions either by actually inflicting the blows themselves or encouraging others of that group to inflict blows or were standing by ready to assist the others in the group if necessary, then each and every one of the members of that group would be guilty of murder if death ensues, or wounding with intent to cause serious harm if the person attacked is wounded only. The position is the same if the group intends to kill or wound one person but in fact kills or wounds another.

You were also referred to the fact that there should be an express agreement. It is not necessary that there be an express agreement as such, there can also be a tacit agreement, an understanding between the same members of the group to carry out their common intent. But here the important thing to remember is this, that mere standing by and watching such as an on-looker is not enough to bring a person within the common intent so as to make him responsible with the others if he does nothing to assist or he is not ready or willing to assist even if called upon to do so.

Turning now to the 1st defendant, and in this you must bear in mind that he is not required to prove anything at all, he says that shortly after 9.00 a.m. on the morning of 28th December, 1975, he had tea with LI Yuk after the latter had telephoned him to go to the Pak Cheuk Restaurant. There at tea he told LI Yuk of his having been chopped the previous night by employees of the music and massage parlours. At that meeting LI Yuk suggesting going to the music parlour with him together with some of LI Yuk's friends to ask for compensation since he, that is LI Yuk, knew some of the floor managers of the music parlour. A further meeting was held at the Lung Wai Restaurant the same evening at about 9.00 p.m. where LI Yuk brought some of his friends along, and the persons present there were the 5th defendant, and later on the evening the 2nd defendant came along and he says that he had only gone there for the purpose of having dinner on an invitation made to him by the 1st defendant. You have heard from these two defendants, that is the 2nd defendant and the 5th defendant, as to how they happened to be at that meeting and it has been emphasized by both the 1st and the 2nd defendants that the latter, that is the 2nd defendant, did not take part in any of the discussions regarding the decision of LI Yuk and the 1st defendant to go with his friends to the music parlour for the purpose of seeking compensation from the floor managers of the music parlour for having wounded the 1st defendant.

Following this meeting the party moved directly from the Lung Wai Restaurant, that is with the exception of the 2nd defendant, to the music parlour for the stated purpose. After the group had entered the music parlour the 1st defendant says that he was recognised by CHAN Heung-choi who then abused him, and instead of negotiating the compensation the party was told that they would get knives instead. Following this one of the employees of the music parlour was seen to squat down in the reception room near the sofa in order to get a parcel from underneath the sofa, but before he could pick up the parcel one of LI Yuk's friends, whom the 1st defendant did not know, knocked his hand and the parcel fell on to the ground with a clashing sound. Following this - and these are the 1st defendant's own words in the witness box - "There was a great confusion

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and at this time I ran to the entrance and I stayed outside. Before I ran out of the premises I saw another man rushing to the bar. There he had a struggle with another person. I did not know what they were struggling for. One of the two was Ah Yuk's friend and the other was a member of the music parlour. People were knocking against each other. Someone knocked his body against me. I felt pain in my arm so I ran out of the entrance. The confusion did not calm down. It lasted for three minutes. When I heard someone shouting 'Save life' I ran away following other persons. On that night I was wearing a red jacket and flannel trousers in cowboy style." The 1st defendant then indicated that he wore Exhibits 10A and 10B that night. After he had run out of the music parlour he took a taxi home and went up to the 11th floor of the Kam Tong Mansion where the 2nd defendant was placing bets on greyhounds and that was the place to which he had gone after he had left the group when they all left the Lung Wai Restaurant. He placed bets at the betting stall at that address and the 1st and 2nd defendants say they did not leave for home until the results of the 14th race were announced, and after they had gone home they saw that the principal tenant was still watching television.

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The 1st defendant says he went to bed at 1 a.m. the next morning, that is 29th December. You will remember that when he was asked as to why he did not leave the music parlour during the confusion over this struggle for the parcel that fell on to the ground with a clashing sound, he said that he had promised LI Yuk that he would wait for him before leaving and that was the reason why he had to go up and that was the reason why he waited there to leave with the others. Again when he was asked why he had to go up to the music parlour to ask for compensation with so many other people, and some of whom he did not know, his reply was he was afraid of going alone after having experienced the assault on him in the massage parlour and after that, the chopping in Yaumati. His story therefore is that he took no part whatsoever in what went on in the music parlour after the negotiations, if these can be so called, for compensation for they were unsuccessful, and that he stayed outside the music parlour throughout the further events which occurred there that evening. Well these are matters entirely for

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you again. If you accept his story it must raise a reasonable doubt in your minds as to whether the Crown has proved its case against him and if that is so, he is entitled to be acquitted of all the charges preferred against him.

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10 Following his arrest on 29th December the 1st defendant made a statement to Sergeant NG Sai-kit in which is a confession of his involvement in the incident which occurred in the music parlour on the 28th December. This statement is attacked on the grounds that it is not his statement and that it was obtained from him by the Sergeant through improper means and misconduct on the part of the Sergeant and two of the Sergeant's colleagues, such misconduct consisting of violent assaults and also improper questioning. He states that the statement is not his own because he had been forced to copy it from a composition prepared by the Sergeant and that it is an edited and
20 embellished version of what he was forced to tell the Sergeant. He further complains that after he was assaulted he was forced to copy the prepared version into the Sergeant's notebook, and he also states that he was not cautioned as was recorded in the notebook.

30 Mr. Ming Huang has drawn your attention to the poor standard of education of the 1st defendant and also as to other matters regarding his writing of Chinese characters and I do not propose to go into that again with you. Suffice it to say that the gist of his submission made is that the 1st defendant would not be able to write the characters, at least all of them, which appear in the Sergeant's notebook without having copied them from a prepared version. You will also take into account the statement which the 1st defendant made in answer to the charge of murder where he stated orally that he could not write and his reply to that charge was written by
40 the interpreter, SHAM Chu-woon, at his dictation.

The law regarding the statement, as far as you are concerned, is that if a statement is put before you, you may consider it as you would consider any other piece of evidence that is put before you, and having considered it you will attach what weight to it as you think fit. The criterion is whether the statement is true. Of course if you decide that the statement was obtained in the manner stated by the 1st

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defendant you will come to the conclusion that it is not his statement and therefore you will give no weight to it whatsoever. On the other hand, like any other piece of evidence adduced in this trial, if you think that the whole statement or part of it is true and that it is the defendant's own statement, then it is good evidence against him.

At an identification parade held on the 2nd January 1976 LI Kwong-ye identified the 1st defendant, and you have heard from woman Superintendent CHU Ying-nee the manner in which that parade was held. I have already mentioned the objection which the 1st defendant had to this identification parade. Well LI Kwong-ye, when asked whether he knew the 1st defendant, denied that he did although he had had a glance at him on the night he was assaulted by Fei Chai and the other floor managers in the massage parlour. However, besides saying that he had had tea with LI Kwong-ye before the 1st defendant states that LI Kwong-ye was one of the persons who assaulted him in the massage parlour and was also one of the persons concerned in wounding him in Yaumati the same evening. The 1st defendant has admitted in evidence going up to the music parlour on the night in question.

MR. MARASH: Perhaps if I could interrupt, my Lord, He did not allege that LI Kwong-ye was one of the persons. It was CHAN Heung-choi and LAM Shing.

COURT: I am sorry.

Please disregard what I said about this wounding in Yaumati. I now remember that he said that it was LAM Shing and CHAN Heung-choi who chopped him and two other persons whom he does not know.

The 1st defendant has admitted in evidence going up to the music parlour on the night in question but only for the purpose of asking for compensation for the assault, and his identification by LI Kwong-ye only establishes that he was there at the material time, but further than that it does not go.

I now return to Dr. Dailly's evidence and

10 this concerns only the 1st defendant. You have
each a copy of his diagram showing the transfer of
fibres from various articles of clothing taken
both from the deceased and from the 1st defendant,
and also the photographs taken of those fibres.
In his opinion it is highly probable that the
wearer of the blue jeans, that is Exhibit 10D,
taken from the home of the 1st defendant, and the
brick red jacket, Exhibit 10A, taken from the
20 person of the 1st defendant, had been in contact
with the trousers, that is Exhibit 7C, taken from
the deceased person at the time of the incident,
and the jacket Exhibit 8B which was found at the
scene of the incident and which had been
identified as having been worn by the deceased at
the time he was wounded in the music parlour. The
1st defendant denies that he was wearing the pair
of blue jeans, Exhibit 10D, at the time of the
incident in the music parlour and his testimony
20 in respect of those jeans is this:

30 "Right after we had finished our snack and
after we had walked two paces, suddenly I
saw four men rushing from our front towards
us holding melon knives. Then they chopped
at us from the front. I recognised two of
them, LAM Shing and CHAN Heung-choi. Four
of them came towards us. I could not
recognise the other two. I never saw them
before. When they were chopping at me I
raised my hand trying to ward off the blow.
As a result my arm was injured and the back
of my shoulder was injured. LAM Shing
chopped me. NG Wai Keung was running away
together with me."

Further on he says:

40 "On that night I was wearing a pair of
partly dyed denim trousers. Only the upper
part was dyed blue while the lower part was
white. I was injured on the arm and
shoulder and I bled a lot. The blood got on
to my clothes at the time of operation and
during the journey in the taxi the blood
dropped down and my trousers were stained."

The trousers referred to are Exhibit 10D.

Now at no stage in his evidence, nor in the
statement which he made to the W.D.C. in Queen

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Elizabeth Hospital on the evening of the 27th December, was there any hint of any struggle between him and his attackers in Yaumati. In fact if you look at the latter statement you will find - that is the statement which he made to the W.D.C. - you will find the following :

"Suddenly three strangers who were holding knives in their hands chopped at the four of us. I then warded it off with hand and so I was chopped and injured on the left upper arm. Those three men then left speedily."

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When Dr. Dailly was asked how recent contact was made between the relevant items of clothing he replied -

"Recent. In the transfer of fibres from one person to another ninety per cent of the fibres would be lost within two hours. Only five per cent would remain and they would fall exponentially from that. I would say within two hours of being worn."

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That is his answer. Now it is for you to draw your own conclusions from his evidence. The 1st defendant explains how the fibres from his red jacket came into contact with the deceased's clothing. This was mentioned earlier, that is that while he was standing at the entrance of the music parlour during the confusion someone had bumped against him. If so, you would have expected the transfer of fibres only from the 1st defendant's jacket, that is Exhibit 10A, to the deceased's jacket, Exhibit 8B, or vice versa. But how did the fibres from Exhibit P10A transfer to the deceased's blue trousers, that is Exhibit 7C? These are also matters for you to consider, and you might ask yourselves the question: how this transfer could have been made if the 1st defendant just stood at the entrance of the music parlour during that incident?

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In considering this question I would also draw your attention to the following evidence of Miss TANG Yuk-kuen -

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"After the attackers had gone some floor managers approached LAM Shing and held up his hand. He was not moved. After the assailants left some of us took the cushion from the sofa to support his head."

Before this she said-

"I saw people attack LAM Shing. I saw someone stick something into his waist. I don't know whether it was in the left or right side. He shouted out and prostrated forward over the entrance and fell on the floor."

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10 That was the final position of LAM Shing when he was found by Sergeant WONG Lung-piu at 11.50 p.m. that same evening because he says "Upon entering the premises I saw a man later known to be LAM Shing lying on the ground. He was lying very close to the main entrance on the right as I entered." It is hardly likely that the 1st defendant could have missed noticing LAM Shing under those circumstances, because he says he did not leave the music parlour, that is the entrance of the music parlour, until he ran out with the others.

20 The 2nd defendant has maintained throughout that he was not present at the music parlour at all, and you have heard his evidence that on the night in question, after having had dinner with the 1st defendant and LI Yuk at the Lung Wai Restaurant, he went to place bets on greyhounds on the 11th floor of Kam Tong Mansion and that he waited there for the 1st defendant because the latter had lost his key to the premises on the 10th floor of the same building. The only evidence against him, you will remember, as far as his presence in the music parlour on the night in question is concerned, is 30 the identification which LI Kwong-ye made of him at the identification parade held on the 2nd January, 1976. This identification is attacked on the ground that the lighting in the music parlour was very dim and this is acknowledged by Miss TANG Yuk-kuen and also by Sergeant Wong Lung-piu who had to light his way into the music parlour, when he went there, with his torch. You will appreciate 40 it is quite easy on the one hand to be mistaken about recognising people, especially in a matter that takes place in a matter of a few seconds, or at most a minute, in unexpected circumstances such as happened that night and in a place which has been admitted to be rather dimly lit. It is, however, not so easy to pick out people when they are placed in an identification parade held five days after the incident had taken place out of

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twenty-one persons taking part in the parade. Of those twenty-one persons LI Kwong-yeek picked out the 1st and the 2nd defendants and LI Ming as being persons who were present at the music parlour that night. LI Kwong-yeek has, however, not been able to identify any of the defendants in court when he gave evidence here, but again you will appreciate that there has been a period of almost nine months after the incident and the identification parade. However, I must warn you of the possibility of a mistaken identification since this is the only evidence which places the 2nd defendant in the music parlour on the night in question. On this you will have to ask yourselves the question: how reliable is the identification of the 2nd defendant by LI Kwong-yeek and how reliable his evidence is? If you come to the conclusion that you cannot act on that evidence, that is the evidence of identification, then you must give the 2nd defendant the benefit of that doubt. 10
20

The 2nd defendant also made a cautioned statement. Like the 1st defendant he alleges that the statement was obtained from him by improper means and by force, and you have heard how he was beaten on the soles of his feet, so much so that he was willing to do anything the Detective Constable, CHEUK Wah-ngok, told him to do. The result is that that statement, which is now produced as evidence, was, he says, dictated to him by the Detective Constable although he had had it written in his own style of language. The same principles which I have stated earlier in respect of the statement of the 1st defendant apply similarly to the 2nd defendant's statement. 30

I should have mentioned earlier that when considering the meaning of the statements you must look at their English versions, but you may of course look at the originals in Chinese for any guidance you may wish to seek therefrom, particularly as regards the writing of certain Chinese characters by the 1st defendant which were mentioned to you yesterday by Mr. Ming Huang and also when the Sergeant was cross-examined in court. 40

There is evidence to indicate that two knives were found under the mat of the 2nd defendant's bed in the cockloft of the flat at Kam Tong

Mansion. There is, of course, no evidence connecting these knives to the incident which occurred in the music parlour on the 28th December and though these might appear to be highly suspicious and it might be also highly suspicious as to why knives like these should be kept under the mat of the 2nd defendant's bed, this evidence does not add anything further to the Crown's case, and I think you should disregard it altogether.

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10

I have to refer to the 2nd defendant's cautioned statement in connection with another matter. It is the Crown's case that on the basis of the contents of that statement the 2nd defendant counselled and procured the offences with which he is now charged. The law is that a person who counsels or procures an offense is liable in the same manner as the principal offender. However, in order to constitute a person a counsellor or procurer of an offence it must be proved first that the offences counselled or procured had been committed; secondly, that the defendant knew that the offences were intended and were going to be committed; and thirdly, that he, knowing what was going to happen, at the very time and place provided the necessary weapons for the offences to be committed. This proof has, of course, to be proof beyond a reasonable doubt and in this instance provided you come to the conclusion that you can accept that what is said in the statement is true and you are prepared to give full weight to it, if all these or any of this proves admissible, then you have to give - you have to acquit the 2nd defendant of this offence of counselling and procuring.

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Now looking at that statement, can you say whether you are satisfied that the 2nd defendant did have the requisite knowledge as set out in the three conditions which I have mentioned, and did he wilfully assist in the commission of the present offences in the manner indicated in the statement, that is did he assist in obtaining the knives from his bed and taking them to the Lung Wai Restaurant to be used in the music parlour for the commission of the offences with which he is now charged?

The 3rd defendant admits that he was present in the music parlour at the time of the incident but he states that he was acting in self-defence

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and he places reliance on the following evidence which he has given.

MR. MARASH: I think, my Lord, that should be the 5th defendant.

COURT: Yes, I am sorry, the 5th defendant.

"I saw him - an employee of the music parlour - pull out a drawer trying to get something. I pushed him away. He walked inside the counter. There was a rest room at one side and there was a passageway and I stood there watching him. I saw him quickly pull out a drawer, so I rushed at him and I said 'Don't move'. I believe he was trying to take a knife. I did not see at that time what was in the drawer. I pressed down his hand and pushed him away. Right after I pushed him away someone gave me a punch on my back from behind. I did not feel anything in particular. I jerked forward and the man who was in front of me moved forward. I had already pushed him away and he stood face to face with me. It happened there was a low stool in the accounts office, so I kicked the stool away, but the man behind me gave me a push and I bumped against the drawer. I noticed that there were some objects inside the drawer. I grabbed hold of one of them and waved it about. The object was long and square in shape and wrapped up in newspaper. I think it was used as a weight to put on newspapers as a paper weight, about 12 inches long and 1 inch wide. It was wrapped up in newspaper, newspaper was wound round it. I was driven at bay, so I waved this object about until finally the man behind me rushed into the rest room and the man in front remained standing there all the time."

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20

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Now this is the evidence which indicates his claim that he was acting in self-defence.

40

Now for the purpose of self-defence the principle is this: if a person considers that he, or another person, is being attacked, then such person is entitled to use such force as he reasonably believes to be necessary in order to repel the attack and if in using such force he kills or injures the attacker, then he would not be guilty of any crime, and in considering whether

10 such a person used such force as he reasonably
considered necessary, you will have regard to all
the circumstances as they appeared to him at that
time: what actual danger he thought there was,
how it appeared to him, could he have taken steps
to avoid that danger? All these circumstances are
matters which you should consider in deciding
whether there was reasonable conduct on the part of
the person who is acting in self-defence. When
20 considering these matters you should not weigh them
in too fine a balance as to whether the person
behaved reasonably or not in the circumstances. It
has also been said that self-defence is a
straightforward conception and it involves no
abstruse legal thought and only commonsense is
needed for its understanding. It has also been
said that it is both good law and good sense that
a man who is attacked may defend himself and he may
do, but only may do, what is reasonably necessary,
30 but everything will depend on the particular facts
and circumstances and on these a jury can decide.
It is therefore for you to decide on this matter
of self-defence. If you come to this conclusion,
that the 5th defendant acted in self-defence then
you will acquit him of all the charges. I must
add that in relation to the alibi of the 2nd
defendant, that is that he was not present at all
in the music parlour on the night in question,
and also this claim of self-defence by the 5th
defendant, that is not for them to prove their
innocence but it is for the Crown to negative
these claims.

40 I think this is all I have to say, members
of the jury, regarding the matters concerning this
case. Now with regard to the verdicts which you
are required to deliver - you are required to
deliver a total of nine verdicts, that is three
verdicts in respect of each of the three
defendants because they are all on three separate
charges - if at the end of your deliberations you
come to the conclusion that the proper verdict is
that of murder or alternatively not guilty of
murder, then for each of these verdicts you must
be unanimous, that is you must all come to the
same conclusion, either they are or are not guilty
of murder. With regard to the verdicts on the 2nd
and 3rd counts a majority verdict either way, that
is guilty or not guilty, would be perfectly
acceptable, and a majority verdict is 6 - 1 for or
50 against but at the very least that majority or
that proportion should be 5 - 2 for or against.

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It is unfortunate that we have no jury room to which you can retire but the next best thing we can do is that all of us will leave this court room and leave you at your task. You can sit anywhere you wish to consider your verdicts in this court room. Before we leave, my clerk will swear the usual oath to keep you all together and also that no one would either speak to you or interfere with you whilst you are engaged in your deliberations. If there is any indication that you will carry on with your deliberations beyond 12.30, will you please let my clerk know so that we can have the necessary luncheons ordered for you whilst you are deliberating during the lunch hour. My clerk will now swear the necessary oath and we will leave this court room for you to use.

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No. 13
VERDICT

4.50 p.m. Court resumes

All accused present. Appearances as before.
JURY PRESENT.

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CLERK: Mr. Foreman, will you kindly stand up. I am going to ask you to return your verdict on the 1st count of murder against the 1st accused CHEUNG Kwan-sang. Have you agreed upon your verdict?

FOREMAN: We have.

CLERK: Are you unanimous?

FOREMAN: We are.

CLERK: How say you, do you find him guilty or not guilty?

30

FOREMAN: Guilty.

CLERK: On the same count of murder against the 2nd accused CHEUNG FAI-hung, have you agreed upon your verdict?

FOREMAN: We have.

CLERK: Are you unanimous?

FOREMAN: We are.

CLERK: How say you, do you find him guilty or not guilty of murder?

FOREMAN: Not guilty.

CLERK: Have you any other verdict to return?

FOREMAN: On the 2nd count?

CLERK: Yes, on the count of murder.

FOREMAN: Yes. We find the 2nd defendant not guilty on all counts.

10 CLERK: On the same count of murder against the 5th accused WONG Kam-ming, have you agreed upon your verdict?

FOREMAN: We have.

CLERK: Are you unanimous?

FOREMAN: We are.

CLERK: How say you, do you find him guilty or not guilty?

FOREMAN: We find him guilty.

20 CLERK: On the 2nd count of wounding with intent to do grievous bodily harm against the 1st accused CHEUNG Kwan-sang, have you agreed upon your verdict?

FOREMAN: We have.

CLERK: Are you unanimous?

FOREMAN: We are.

CLERK: How say you, do you find him guilty or not guilty?

FOREMAN: Guilty.

30 CLERK: On the same count of wounding with intent to do grievous bodily harm against the 2nd accused CHEUNG Fai-hung, have you agreed upon your verdict?

FOREMAN: Yes, we have.

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CLERK: Are you unanimous?

FOREMAN: Yes.

CLERK: How say you, do you find him guilty or not guilty?

FOREMAN: Not guilty.

CLERK: On the same count of wounding with intent to do grievous bodily harm against the 5th accused WONG Kam-ming, have you agreed upon your verdict?

FOREMAN: We have.

CLERK: Are you unanimous?

10

FOREMAN: We are.

CLERK: How say you, do you find him guilty or not guilty?

FOREMAN: Guilty.

CLERK: On the 3rd count of wounding with intent to do grievous bodily harm against the 1st accused CHEUNG Kwan-sang, have you agreed upon your verdict?

FOREMAN: We have.

CLERK: Are you unanimous?

20

FOREMAN: We are.

CLERK: How say you, do you find him guilty or not guilty?

FOREMAN: Guilty.

CLERK: On the same count of wounding with intent to do grievous bodily harm against the 2nd accused CHEUNG Fai-hung, have you agreed upon your verdict?

FOREMAN: We have.

CLERK: Are you unanimous?

FOREMAN: We are.

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CLERK: How say you, do you find him guilty or not guilty?

FOREMAN: Not guilty.

CLERK: On the same count of wounding with intent to do grievous bodily harm against the 5th accused WONG Kam-ming, have you agreed upon your verdict?

FOREMAN: We have.

CLERK: Are you unanimous?

FOREMAN: We are.

CLERK: How say you, do you find him guilty or not guilty?

10 FOREMAN: Guilty.

CLERK: Thank you.

COURT: Thank you very much, Mr. Foreman. Yes, Mr. Marash?

20 MR. MARASH: Only the 5th accused has any previous record, my Lord. He has a conviction for robbery in 1973 on the 5th of March. At the same time, he was convicted of possession of an offensive weapon and he was sentenced to three years for the robbery and one year for the possession of the offensive weapon and sentences were to be concurrent.

INTERPRETER: Record admitted by 5th accused, my Lord.

COURT: Well, the 2nd defendant is entitled to be discharged and he is accordingly discharged. Mr. Ming HUANG, have you anything to say?

MR. HUANG: Well, in a case of this kind, I don't think there is anything to say.

30 COURT: Well, the 1st and 5th defendants, the jury has found you guilty on the 1st count of murder, on the 2nd count of wounding with intent to do grievous bodily harm to LI Kwong-ye and on the 3rd count, a similar offence of wounding with intent to do grievous harm to CHAN Heung-choi. Well, the sentence of this court is that you suffer death as described by law in respect of the 1st count. Members of the jury, thank you very much for your attendance and this has been a very long

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case indeed for you. You will be exempted from further jury service for the next five years. Thank you.

MR. MARASH: Perhaps if the respective weapons could be forfeited and the other exhibits returned to their respective owners.

COURT: There are three?

MR. MARASH: Yes, a triangular file and two knives.

COURT: Well, the two knives as exhibited and the one triangular file confiscated and the other exhibits, I think, are to be kept in police custody pending claim to be made. 10

5.00 p.m. Court rises.

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No. 14
NOTICE OF SUBSTITUTED
GROUNDS OF APPEAL

IN THE SUPREME COURT OF HONG KONG

COURT OF APPEAL

CRIMINAL APPEAL NO. 1049/77 20

Between

CHEUNG KWAN SANG 1st Appellant

WONG KAM MING 2nd Appellant

And

THE QUEEN Respondent

NOTICE OF SUBSTITUTED GROUNDS OF
APPEAL OF THE SECOND APPELLANT

TAKE NOTICE that the abovenamed Second Appellant, Wong Kam-ming intends to rely on the following grounds of appeal in substitution for 30

those set forth in his Notice of Application for Leave to Appeal Against Conviction, dated the 4th day of October 1976, namely,

In the
Supreme
Court

A. The learned Commissioner failed to draw or sufficiently to draw to the attention of the jury evidence which was favourable to the Second Appellant, particularly the following :

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10

- (a) that the Second Appellant and his friends went to the scene unarmed (p.822Q-V, and p.952A-B);
- (b) that some of the floor managers were very arrogant men (p.587);
- (c) that on the night of the 27th December 1975, after having assaulted and chopped the First Appellant, the floor managers hold a discussion among themselves and expected a revenge attack (pp.527A-529H); and

20

- (d) that one of the floor managers, Fai Chai, had in fact at the time of the incident ran behind the counter and grabbed hold of weapon (p.561K-5627J) as alleged by the First and Second Appellants (p.824A-E, 953-954T).

B. That the learned Commissioner erred in not sufficiently explaining the law relating to self-defence having regard to the particular evidence of the case (p.1066-7)

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C. Alternatively, the learned Commissioner erred in not directing the jury to consider the issue of manslaughter as there was evidence of provocation (P.823A-824H, 952-955B).

D. The learned Commissioner was wrong in law in allowing Counsel for the Prosecution to cross-examine the Second Appellant during voir dire with respect to his personal involvement at the scene of crime and in admitting subsequently the same at the trial (p.175A-176M, 774E-777K).

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E. That the convictions are unsafe and unsatisfactory.

Dated this 20th day of May, 1977.

In the
Supreme
Court

(Sgd.) (P.D. Smith)
Asst. Director of Legal Aid
Acting on behalf of the Appellant

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c.c. Attorney General
(with enclosure)

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No. 15
JUDGMENT OF HUGGINS J.A.

IN THE COURT OF APPEAL

1976 No. 1049
(Criminal)

10

Between

CHEUNG Kwan-sang

WONG Kam-ming

Appellants

And

THE QUEEN

Respondent

Coram: Briggs, C.J., Huggins, J.A. and McMullin,
J.

J U D G M E N T

Huggins, J.A.:

The Chief Justice has read in draft the
judgment which I am about to read and he
authorises me to say that he agrees with it.

20

There is in this case only one ground of

10 appeal which calls for our giving detailed reasons. The point arises in this way. This Appellant (who was in fact the 2nd Appellant) was alleged to have made a confession statement to the police. He objected that it had been obtained from him by improper means and in accordance with established practice a trial within the trial was held to determine (a) the admissibility of the statement and also (b) where there were
20 circumstances requiring the exclusion of the statement even if it was admissible. The learned judge ruled as a matter of law that the statement was inadmissible and therefore did not have to go on to consider the matter of discretion. However, in the course of the proceedings on the issue of admissibility, which were (properly) held in the absence of the jury, this Appellant had elected to give evidence. In his evidence in chief he admitted that he had been present at the scene of
30 the alleged murder. In cross-examination he had been asked whether his confession statement was true. His reply was to the effect that it was true in substantial respects, namely that he had been present at the scene of the alleged murder and that he had chopped the Deceased. When the jury had returned, the Crown adduced on the general issue evidence of what this Appellant had said against his interest in their absence, although counsel for the Crown was careful not to reveal the existence of the extrajudicial confession statement. Objection was taken by counsel for the defence but the objection was overruled. The question is whether that ruling was correct.

40 Of all the subjects which occupy the courts at all levels perhaps that which takes up (and often wastes) the most time, produces the largest number and most vehement of dissents and has led to the greatest inconsistencies is the use of confessions in proving the guilt of accused persons. Whatever the decision of this court it is to be hoped that the present case will be taken further and that an authoritative and final ruling may be given for the guidance of judges and magistrates in Hong Kong.

50 I shall not attempt a complete review of the arguments which have been advanced for and against the exclusion of confessions, but it is necessary to make a brief reference to the historical background and then to review the more important of the cases.

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The Exclusion of Involuntary Extrajudicial
Confessions

It would seem that originally the admissibility of evidence depended upon the competence of the witness rather than upon the nature of the evidence he could give, but it is sufficient for our purposes to observe that admissibility now depends upon relevance. As was said in Kuruma v Reg. 1955 A.C. 197, 203:

"In their Lordships' opinion the test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained. While this proposition may not have been stated in so many words in any English case there are decisions which support it, and in their Lordships' opinion it is plainly right in principle."

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20

Their Lordships referred to the well known dictum of Crompton J. in Reg. v Leatham (1861) 8 Cox C.C. 498, 501:

"It matters not how you get it; if you steal it even, it would be admissible in evidence."

They then referred to the discretion in a criminal case to disallow evidence which is strictly admissible (the nature of which discretion we shall have to consider) and added at p.205:

"It is right, however, that it should be stated that the rule with regard to the admission of confessions, whether it be regarded as an exception to the general rule or not, is a rule of law which their Lordships are not qualifying in any degree whatsoever. The rule is that a confession can only be admitted if it is voluntary, and therefore one obtained by threats or promises held out by a person in authority is not to be admitted. It is only necessary to refer to Reg. v Thompson (1893) 2 Q.B. 12, where the law was fully reviewed by the Court for Crown Cases Reserved."

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The special rule as to confessions was said in

10 Ibrahim v. R. 1914 A.C. 599, 609 to have been "long established". In Reg. v Thompson Cave J., reading the judgment of the Court for Crown Cases Reserved, had briefly reviewed the leading cases and deduced that the reason for the rule as to confessions was that which had been given by Pollock, C.B. in Reg. v Baldry (1852) 2 Den. C.C. 430, 442, namely "that it would not be safe to receive a statement made under any influence or fear". The reasons for its being "unsafe" are not stated, but they clearly include the fact that a statement so made is as likely to be untrue as it is to be true, since the prisoner in the circumstances predicated would be more concerned with saying what he believed his questioner wished to hear than with maintaining the truth. It is commonly argued that another reason the court had in mind was the desirability of giving effect to the maxim nemo tenetur seipsum accusare and, while it may be difficult to see any connection between that maxim and the question 20 Which statements is it "safe" to receive?, the fact that the court in Reg. v Baldry went on to refer to the statutory caution and the objection to telling a prisoner that it would be better to speak the truth does support the contention that the court thought the rule was based in part upon that maxim. At one time I tended to believe that the first reason was the only valid reason supporting the rule, a view supported by Reg. v Mazerall (1946) 86 Can. 30 Cr. Cas. 321, 336 :

"It would be a strange application of a rule designed to exclude confessions the truth of which is doubtful, to use it to exclude statements that the accused, giving evidence upon this trial, has sworn to be true".

40 On that view it would be unsound to exclude evidence solely to punish the police or other executive authority for obtaining evidence created as a result of an improper inducement despite the fact that obtaining existing evidence by improper means is not so punished. However, I am now persuaded that it is too late to limit the rule in this way.

It is, then, established that even an admittedly true confession must be excluded unless it is proved to have been voluntary, however absurd that may appear. It follows that a defendant is entitled to object to the admission of a confession, even though he knows it to be true, if it was obtained by means of improper inducement.

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The Voire Dire

It has long been the practice upon a trial by jury to determine the competence of a witness or the admissibility of his evidence, these being matters of law, by holding a "trial within the trial". In other jurisdictions it has been held that this procedure is essential even where the trial is before a judge with assessors or before a judge alone: see Reg. v M'Murairi (1954) 21 E.A.C.A. 262, Bakran v. Republic of Kenya (1972) E.A.L.R. 92 and Smith v Reg. (1954-7) 97 C.L.R. 100. In the last-named case the High Court of Australia said at p.118:

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"His Honour was placed in a somewhat difficult position in having to sustain the dual functions of judge and jury in a criminal case but he was quite right, in my opinion, if I may say so with respect, in deciding in the first instance on a voire dire as a judge the question whether the confessions were admissible in evidence and subsequently decided as a jury the weight that should be given to them in the light of the whole of the evidence, because it was only after the question of admissibility had been held against the accused on the voire dire that the accused could be called upon to decide whether to give evidence or not and if he did thereby to subject himself to the risk of cross-examination."

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In a trial within a trial the jury plays no active part but as a general rule it ought to be present because the proceedings constitute an integral part of the trial as a whole: R. v Reynolds 1950 1 K.B. 606. Once again an exception is made where the issue is the admissibility of a statement containing admissions. There are two reasons for this. First, it may be necessary to reveal to the judge the terms of the statement and, lest he rules the confession to be inadmissible, it is necessary to prevent the jury from hearing the terms of the statement at that stage. Secondly, the Accused himself is now entitled to give evidence both on the trial within the trial and upon the general issue. Equally he is entitled to give evidence in the trial within the trial but to remain silent upon the general issue. If the jury were to hear his evidence in the trial within a trial and were thereon to form an adverse opinion

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of his character, that might materially diminish the value of his right to remain silent upon the general issue.

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Court

The trial within a trial has come to be known as "the voire dire" because of the form of oath which was used upon the enquiry - a form different from that which is used during the rest of the trial:

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"That was not an oath as to a matter in issue between the Crown and the prisoner; it was an oath to inform the court truthfully in answer to its questions;"
Butterwasser (1947) 32 Cr. App. R.81,88.

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However, the form of the oath appears to have no practical significance (at least at the present day) in view of the fact already noted that the jury are, as a general rule, present during a trial within a trial and may presumably act upon the evidence then given in so far as it is relevant to the issues they have to try. In Reg. v Amo (1963) P.N.G.L.R. 22 Mann, C.J. said at p.27:

"... it is not possible to say that certain evidence is before a judge for one purpose and not another.

.....

30

It appears to me ... that the expression 'voire dire' has no effect such as has been suggested. The words voire dire appear to have been adopted in practice from the early form of oath administered on these occasions in a wide variety of cases, and the only reason for giving the procedure a name appears to be to signify that the court is embarking on an enquiry, which is not necessarily based on any issue between the parties, and may be of the court's own motion."

40

Where there is no jury the fact that the exclusion of the jury from the trial within a trial will prevent jurors from learning the terms of the alleged confession ceases to be material: it is assumed that a judge sitting alone is capable of ignoring, and will ignore, any inadmissible matter which may come to his notice whether accidentally or in the course of a voire dire. Equally, as it seems to me, it must be assumed that he is capable of ignoring,

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and if the Defendant does not give evidence on the general issue will ignore, the evidence of an accused who elects to give evidence upon the voire dire, however damaging that evidence may be. In Hong Kong, but not in territories where a separate voire dire is de rigueur, the evidence of the prosecution witnesses (so far as it is relevant) may, as we have seen, be taken into consideration. This is the justification for what has been called in Hong Kong "the alternative procedure" under which no separate trial within a trial is held but at the end of the prosecution evidence the defendant is permitted to give evidence confined to the issue of admissibility, the judge rules on the admissibility of the confession and the prosecution then formally closes its case: se Li Kam-ming v Reg. 1967 H.K.L.R. 513.

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There has been some disagreement whether the judge is concerned upon a voire dire to decide any question as to the authenticity of the alleged confession. Clearly it is for the jury to decide after hearing all the evidence and not for the judge upon the voire dire to reach a final decision whether the statement was made by the accused. Devlin, J. (as he then was) thought in Reg. v Roberts (1953) 37 Cr. App. R.86 that in a case where the voluntariness of the confession was contested it was for the judge to decide whether there was prima facie evidence that the statement was made by the accused.

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Evidence Admissible on the Voire Dire

Having considered the nature and purpose of the voire dire we must now decide what evidence may properly be called in those proceedings and in particular whether a defendant who elects to give evidence therein may be asked whether the extra-judicial confession the admissibility of which is in issue was true. This matter was raised squarely in Hammond (1941) 28 Cr. App. R. 84 and it was held by the Court of Criminal Appeal that the question was a proper one. That is a decision which has been widely criticised and, as we are not bound by it, it is necessary for us to examine the ratio decidendi and the criticisms which have been made. The court said at p.87:

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"This appeal is brought on the sole ground that the question which was put by counsel

for the prosecution to the appellant in cross-examination was inadmissible. In our view it clearly was not inadmissible. It was a perfectly natural question to put, and was relevant to the issue whether the story which the appellant was then telling of being attacked and ill-used by the police was true or false. It was put by the Lord Chief Justice in the early part of the argument of counsel for the appellant, that it surely must be admissible because it went to the credit of the person who was giving evidence. If a man says, 'I was forced to tell the story, I was made to say this, that and the other', it must be relevant to know whether he was made to tell the truth or whether he was made to say a number of things were were untrue. In other words, in our view, the contents of the statement which he admittedly made and signed were relevant to the question of how he came to make and sign that statement and, therefore, the questions which were put were properly put."

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It is not suggested before us that the truth of the confession was directly relevant to the issue of admissibility, and I think it clearly was not: although questions may be put to the defendant as to the truth of his extrajudicial confession that does not make the truth or falsehood of that confession relevant to the issue of voluntariness: what is relevant - because it goes to the credibility of the defendant - is that the defendant asserts that the extrajudicial confession is true or false. Otherwise all the evidence relevant to the general issue would be admissible upon the *voire dire*. As upon all matters concerned solely with credibility, answers given in cross-examination must be accepted and evidence in rebuttal is not admissible. The court in Hammond thought the answer given by the accused went to his credit. That was the view taken in Reg. v. Plante 1958 O.W.N. 80 and by the majority of the Supreme Court of Canada in DeClercq v Reg. (1969) 70 D.L.R. (2d) 530, and it has no doubt been applied since then in numerous cases in various jurisdictions, including Hong Kong. DeClercq was one of those cases tried at first instance by a judge without a jury and much of what was said in the judgments reflects that fact. In that case Hall, J., treated what was said in Hammond about the confession's being relevant to credibility as an obiter dictum, while Spence, J. thought that the answer of the accused had no relevance to his credibility and for

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that reason no relevance, direct or indirect, to the issue of voluntariness. The latter's view (at p.551) was that, at the stage when the judge is called upon to rule whether he will admit the confession,

"If the accused were to answer the question... in the negative, then there would be no basis upon which the trial Judge could come to the conclusion that his answer was false and that therefore his credibility in his testimony to the effect that the statement was not voluntary might be untrue until the trial had been completed".

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Admittedly, a jury is in a better position to decide the credibility of the accused at the end of the trial than would a judge be at an earlier stage, but that applies also to the credibility of the witnesses for the prosecution who have given evidence on the issue of admissibility. It is no reason for saying that the judge should not assess the accused's credibility upon the material then available to him. (Having ruled on the admissibility of a confession a judge may later, after hearing further evidence on the general issue, decide that his decision was wrong and then he may either discharge the jury or direct them to ignore the confession if he thinks that such a direction will suffice). With respect, I think Martland, J. was nearer the mark when he said at p.537:

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"... the admitted truth or the alleged falsity of the statement could be a relevant factor in deciding whether or not he would accept the evidence of the accused regarding such pressure".

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In the same case Pigeon, J. said at p.554 that, upon the accused's admitting that his confession was true,

"the trial Judge, the Chief Justice himself, ruled the confession admissible, saying that would be a 'public scandal' if, after a full confession upon oath in open Court, the accused should thereafter be acquitted. Who will say that this man should properly have been disbelieved when saying that the confession had been extorted because he ought to be believed when confessing his crimes? Yet this is what must be the reasoning on the

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issue of credibility if one is going to contend that the principle of not allowing involuntary confessions in evidence remains unimpaired".

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I shall endeavour to show that this is not the reasoning. When we come to the commentators we find that R.S.T. Chorly at (1942) 5 Mod. L.R. 236, 237 said:

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"It is not very easy to follow the argument about the question going to the man's credit. If he had answered 'No,' the inquiry would not have been further advanced. The fact that he answered 'Yes' when his answer practically meant a death sentence would persuade most people that he was so truthful a person that his account of what occurred during the interrogation was to be preferred to that of the police. But if this were so, then the confession itself was inadmissible."

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That, surely, would depend upon the other evidence. Heydon on Evidence 181 says of Hammond:

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"This is a strange case. The accused's answer was as a matter of fact extraordinary and unexpected. The Court's reasoning that the truth of the confession is relevant to the question whether the accused can be believed in saying it was extracted by violence is odd. If the confession is true this presumably shows that the accused tends to tell the truth, which suggests that he is telling the truth in saying the police were violent. Yet the Court apparently thinks it tends to show him a liar on the basis that confessed criminals are likely to be liars, but if so his confession should be false."

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With respect I do not think that is what the court thought, but unfortunately neither the court in Hammond nor the majority in DeClercq discussed in detail how the answer of the accused might affect his credibility: they seem to have thought it was self-evident. For my part I cannot treat what Humphreys, J. said as obiter and it seems to me that what the court had in mind was that, if an accused was prepared to confess on oath to a crime on the *voire dire*, he might be so reliable a witness that his allegations of inducement ought to be believed, whilst, if he was prepared to confess (as he says) untruthfully to a crime when the

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inducement was comparatively slight, he might the more readily be prepared to tell lies against the police to escape the consequences of his having made an extrajudicial confession which was in fact true. While that, no doubt, may involve to some extent judging a witness's credibility upon his physical and moral courage, it cannot be said that that is wrong. Heydon also suggests that questions as to truth on the *voire dire* "operate as an incitement to perjury". Neasey in his article at (1960) A.L.J. 110 accepts the correctness of the decision in Hammond and says:

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"the truth or otherwise of the confession no doubt was [relevant to the question whether the appellant's story of how the confession came to be made was true or false] for the following reasons, namely :

(a) A true confession is more likely to be voluntarily made than an untrue one.

(b) A person who admittedly committed the crime would have an excellent motive for alleging that his confession of it was not voluntary.

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(c) A person who on his own admission committed the crime would be much more likely to make false accusations against the police than one who had not committed the crime".

However, at p.111 he points out:

"If the accused's confession is in fact true, he faces the unfair alternative of committing perjury or of confessing to the crime in open court, with all the consequences which may follow, and thus the decision is an incitement to perjury."

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It may be a quibble to question the use of the word "incitement" but there is certainly some force in the argument. Yet immediately one starts talking about "unfairness" one is forced to the conclusion that the argument is shifting from admissibility to a discretion to exclude admissible evidence. Since it has been a failure to keep those two aspects of the matter entirely separate and distinct which has led to all the confusion in the past, it is important that we should endeavour not by the same error to

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make confusion worse confounded. It is, I think, generally accepted that the rule under which involuntary confessions were excluded was the outcome of the repeated exercise of a discretion to exclude.

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10 Mr. Marash contends that "there is no general rule against self incrimination" and that the only "fundamental right" is the right not to be questioned extrajudicially after one has been charged with an offence and to remain silent in court during one's trial: Cheung Chung-yat v Reg. 1970 H.K.L.R. 269, 272. Therefore, he says, a defendant who elects to give evidence on the voire dire does not "voluntarily". Nowhere can I find any statement that there is a rule of law which renders self incriminating evidence inadmissible: the only rule is that identified in Reg. v Thompson (supra). Indeed, s.54(1)(e) of the Criminal Procedure Ordinance would appear to negative the existence of any other rule.

20 Although at one time I shared McMullin, J.'s doubts as to the correctness of the decisions in Hammond, Reg. v Plante and Reg. v DeClercq (confirmed in Reg. v Van Dongen (1975) 26 Can. Cr. Cas. (2d) 22), I am now persuaded that they were right and I think the questions as to the truth of the extrajudicial confession were relevant and permissible.

The Discretion to Exclude Evidence on the Voire Dire

30 Cartwright, C.J.C., in Reg. v DeClercq, although one of the majority, was of opinion that the question there put, although legally permissible, should not have been allowed by the judge, whilst others have said that the defendant in such circumstances should be warned that he is not obliged to answer. Section 54(1)(e) of the Criminal Procedure Ordinance makes the second of these arguments untenable in Hong Kong. The first brings us to a consideration of the nature of the discretion, recognised in Kuruma v Reg. (supra), to exclude admissible evidence. Cartwright, C.J.C. 40 himself indicated that the discretion to exclude was that discussed in Noor Mohamed v R. 1949 A.C. 182. In addition to Noor Mohamed v R. and Kuruma v. Reg. both of which are binding on this court, Mr. Marash has referred us to other cases, not so much to ascertain the principle as to see how the principle has been applied. The principle is clear: in a criminal case the court has a discretion to exclude admissible evidence where the

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probative value of that evidence is outweighed by the prejudice which would result from its admission. In Li Ming-kwan v Reg. 1973 H.K.L.R. 275 the Full Court explained what "prejudice" means in this context. There have been dicta which might suggest that there is a wider discretion, extending to the exclusion of any evidence which the judge thinks is "unfair". I am not persuaded that any such discretion exists and I agree with those who point to the dangers of allowing so uncertain a basis for the exclusion of legally admissible evidence: Lord Chancellors are not the only judges who do not necessarily all wear the same size of shoe. I refer only to the strong statements of Davitt, P. and McLoughlin, J. in The People and O'Brien v. McGrath (1965) 99 Ir. L.T.R. 59 and of Martland, J. In Reg. v Wray (1970) 4 Can. Cr. Cas.1. Martland, J., with whom the majority agreed, said at p.19:

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"In my opinion the recognition of a discretion to exclude admissible evidence, beyond the limited scope recognized in the Noor Mohammed case, is not warranted by authority, and would be undesirable. The admission of relevant admissible evidence of probative value should not be prevented, except within the very limited sphere recognized in that case. My view is that the trial Judge's discretion does not extend beyond those limits".

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In my view there is already enough scope for differences of opinion in the application of the rule in Noor Mohamed v R., as the reported cases show, and appellate courts have repeatedly declined to substitute their own discretion for that of the trial judge. Cartwright, C.J.C. in Reg. v DeClercq cited from the judgment in Noor Mohamed v R. and concluded that, although in his view the judge should have exercised his discretion by excluding the answer, the Supreme Court of Canada did not have jurisdiction to interfere with a mistaken exercise of a discretion. He did not say what was the prejudice which he thought arose, but it seems clear that he must have had in mind prejudice arising from the self incriminating nature of the answer. It has been said that such an answer can be "of no real help" in deciding the issue of admissibility, but in my view it is either relevant to credibility or it is not and, if it is, it is of real help. Neasey (op. cit.) suggests

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10 that the exercise of judicial authority to discourage the asking on the voire dire of questions relating to the truth or otherwise of an extra-judicial confession "would in the great majority of cases accord with justice and principle" and he infers from some of the dicta in Hammond "that the court thought that in ordinary circumstances it would be better not to ask the question". I think the most that ought to be inferred from that source is that it would be wrong for counsel to ask questions on the voire dire about the truth of an extrajudicial confession for the purpose of obtaining a confession which could be used later, and with that I would agree, but Hammond itself is sufficient authority for holding that it is not always oppressive or unfair to ask such questions for the purpose of testing the credibility of the defendant as a witness. It is true that in that case the court decided that the answer on the voire dire was admissible and nothing was expressly said about the judge's discretion, but, as it seems to me, bearing in mind that there would be a further discretion to exclude evidence of the answer if the prosecution sought to lead such evidence subsequently, it could hardly be said that at the stage of the voire dire any prejudice was substantial. That being so, however, slight the probative value of the answer the prejudice would not necessarily outweigh it and the answer could properly be admitted in the exercise of the judge's discretion.

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30 Whilst this may be the weakest link in the Crown's case, nevertheless of the conflicting principles those which leave intact the discretion of the judge to decide each case upon its merits and which do not compel him to exercise his discretion in favour of exclusion of the question and answer appear to me the weightier. I see no sufficient ground for holding that the judge in the court below was not entitled to exercise his discretion as he did.

40 Admissibility of Judicial Confession on the General Issue

We come next to the question whether it was permissible to lead evidence before the jury upon the general issue of the answers given on the voire dire. No one could reasonably argue that a confession to the offence was not relevant to the general issue. In the absence of any rule that self incriminating evidence is inadmissible does there remain any

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other basis for contending that this evidence should have been excluded as a matter of law? Mr. Marash argues with considerable force that in the nature of things the rule excluding "involuntary" confessions can apply only to extrajudicial confessions. Is it to be said that a confession made in the course of judicial proceedings is "improperly obtained" and "involuntary" because the person who makes it is being overborne in the presence of a judge? The majority of the Supreme Court of Canada in Reg. v Plante and Reg. v DeClercq obviously did not think so. Basically the Crown's argument in favour of permitting evidence to be introduced of the judicial confession is that to rule otherwise would produce gross injustice and absurdity, and that argument could be no less valid because the extrajudicial statement was not admissible. The contrary argument is based upon the so-called "right to silence" and the contention that it is unfair in effect to compel a defendant to go into the witness-box in order to protect himself against the admission of evidence which he says should not be admitted and then to make use of his evidence for another purpose. It can be said that if his objection to the admission of the extrajudicial confession is overruled that shows that the substance of his evidence on the voire dire was untrue and he has only himself to blame if he has gone into the witness-box to commit perjury, whilst where his evidence has been believed or has raised a reasonable doubt he can fairly be regarded as having been "forced" to place himself in jeopardy of being asked the possibly fatal question, "Was your extrajudicial confession true?" I will consider whether there is a sufficient basis for excluding evidence of the judicial confession as inadmissible where the extrajudicial confession is held to be inadmissible when I come to review the judgment in Reg. v Van Dongen.

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It may be noticed that there seems to be no general rule against cross-examination of a witness on the general issue concerning inconsistent statements made by him on the voire dire. Thus in Reg. v Darwin (1973) 13 Can. Cr. Cas. (2d) 432 it was held that counsel for the defence was entitled to cross-examine before the jury a witness for the prosecution who had given evidence on the voire dire. In Reg. v Gray 1965 Q.R. 373 the Criminal Court in Brisbane held that even a defendant may be cross-examined about an inconsistent statement made by

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him on the voire dire and that such inconsistent statement could be proved if he did not admit it.

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10 Several of the cases cited to us are of, at most, limited assistance because they come from jurisdictions where a voire dire is necessary even though the trial is before a judge sitting without a jury. What was there in issue was whether evidence, either for the prosecution or by the defendant, given on the voire dire was ipso facto available to the judge for the purposes of the general issue. Of necessity it was held that the evidence was not available. Thus in Reg. v Gauthier (1975) 27 Can. Cr. Cas. (2d) 14 the Supreme Court of Canada held (1) that even on a trial by judge alone there must be a voire dire to determine admissibility; (2) that that applies even where the accused denies making the statement; and (3) that the evidence on the voire dire cannot be used on the general issue unless both parties consent. The minority thought the Crown had consented: the majority found no evidence of such consent but that what had been consented to was the use of the voire dire evidence in one case to be used as voire dire evidence in two other cases. In Chitambala v Reg. 1961 R. & N. 166 the Federal Supreme Court held that evidence by an accused on the voire dire was not evidence on the general issue and, in particular, that it was not evidence against a co-accused, who had had no opportunity to cross-examine in the voire dire proceedings: where the trial is before a judge alone the evidence on the voire dire should be treated in the same way as it would if there were a jury and should be disregarded on the issue of guilt. In spite of the distinction which we have already noticed between that case and the present the following observation of the Federal Supreme Court is not without relevance to the point we have to decide:

40 "In any criminal trial the accused has the right to elect not to give evidence at the conclusion of the Crown case. To regard evidence given by him on the question of admissibility as evidence in the trial itself would mean either that he must be deprived of that right if he wishes properly to contest the admissibility of a statement or that, to preserve that right, he must abandon another right in a fair trial, the right to prevent inadmissible statements being led against him."

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The abandonment of "the right to prevent inadmissible statements being led against him" may not be so direct where it is not the evidence of the defendant itself which is in question but evidence of an admission made in the course of that evidence, yet there can be no doubt that where the extrajudicial confession is true a defendant would be handicapped in contesting the admissibility of that statement.

That consideration did not outweigh the other factors in the minds of the judges in DeClercq v. Reg. (supra). I shall not repeat the circumstances of that case, which have already been set out in this judgment. It is apparent from the judgments that all the judges thought the answer given by the defendant on the *voire dire*, once it was admitted, would necessarily be available on the general issue. When Cartwright, C.J.C. said that "grave prejudice" would result, he presumably had in mind that evidence might be led of the new confession and he thought the judge should, in the exercise of his discretion, not have allowed the question. For our purposes it matters not that this dictum was obiter (since the Supreme Court of Canada had no jurisdiction to interfere on a pure matter of discretion) - and I emphasise that we are still considering admissibility and not a discretion to exclude. With respect to Pigeon, J. I think he must have misunderstood the decision in Reg. v Monks (1960) 34 A.L.J. 111: the learned Chief Justice did not there say that it would be a public scandal if the extrajudicial confession were ruled to be inadmissible but that it would be a public scandal if the accused were acquitted and he accordingly permitted evidence of the judicial confession. It is not to be inferred that the Chief Justice disbelieved the accused as to the alleged police brutality because he had confessed to the crime. Reg. v Monks is therefore directly in point both on the issue which we are now considering and on the further issue of discretion.

We have seen that in Reg. v Van Dongen the Supreme Court of Canada confirmed the view of the majority in Reg. v DeClercq that it was permissible on the *voire dire* to ask an accused whether his extrajudicial confession was true. Robertson, J.A. then held (1) that the *voire dire* was "part of the trial", in the sense that evidence given thereon need not be called a second time if the party consented to its being so used (Reg. v Gauthier),

10 so that (2) the evidence of both prosecution
witnesses and of the defendant on the voire dire
might, where consent had been given, be referred to
on the general issue; but that, (3) because counsel
for the Crown had indicated his intention not to
use the answer of the defendant on the voire dire
to the question whether his extrajudicial confession
was true as evidence against the accused on the
general issue, it would be unfair to have regard to
the answer in deciding the guilt of the accused.
The basis of his decision appears to have been that
the objection to the question would have been
pressed if counsel for the Crown had not so indicated.
It is, however, a little difficult to see how such
objection could ever have succeeded if Robertson,
J.A.'s view of the law at "(2)" is correct. Where
consent has not been given, an admission by the
defendant on the voire dire would not be immediately
available on the general issue, but he seems to have
20 thought that evidence of it could be given, for he
said at p.49:

"The relevance of an answer to a question ...
cannot be limited by the purpose of counsel who
called the witness, or the purpose of counsel
who asked the question, or the purpose of the
witness in answering the question."

30 and he referred to the "retaking " of evidence given
on the voire dire in Canada by the reading of the
shorthand note. I am not sure whether he was there
confining himself to the "retaking" of evidence of
the defendant only. Under s.60 of our Criminal
Procedure Ordinance, to which he referred and which
has now been repealed as being unnecessary, the
retaking of evidence of course involved the recalling
of the witness to give the evidence himself a second
time and s.60 had no relevance to calling another
witness to prove a confession by the defendant on
the voire dire. Branca, J.A. concluded his judgment
by saying at p.34:

40 "In my judgment the learned judge erred
in considering the statement made by the
appellant on the voire dire after he had ruled
the same to be inadmissible",

but what the trial judge had ruled to be inadmissible
was not "the same" (i.e. the judicial confession) but
the extrajudicial confession. The editor of the
report, no doubt rightly, assumes that the learned

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judge was expressing the view that the admissibility of the judicial confession depended upon the admissibility of the extrajudicial confession, and that was undoubtedly the reasoning upon which Carrothers, J.A. founded his judgment. This would, therefore, appear to be the ratio decidendi of the majority. Carrothers, J.A. gave as the connecting link the self incriminating nature of the evidence, but, as I have previously said, I can find no authority for a rule that a self incriminating statement other than one which is involuntary is inadmissible as a matter of law. In my view to hold that such a rule exists in Hong Kong would be unwarranted judicial legislation. What the law does not allow is improper pressure. Even where an extrajudicial confession was involuntary the defendant is not "compelled" to give evidence: s.10 of the Evidence Ordinance. Neasey, writing in 1960 (op.cit. at p.111), appeared to accept that once a question as to the truth of an extrajudicial statement had been asked and answered on the voire dire "there is nothing to prevent the Crown from leading evidence before the jury of the further confession made on the voire dire" and he referred to Reg. v Monks. Since then the point has been considered by the Supreme Court of South Australia in Reg. v Wright 1969 S.A.S.R. 256. All three judges there held that the Crown had the right to lead as part of its case evidence of admissions, relevant to the issue, made by the accused on oath during the cross-examination on the voire dire. They further agreed that this right was subject to the discretion of the trial judge to disallow the evidence but (as we shall see) they were not agreed as to the proper approach to the exercise of that discretion.

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Stewart v R. (1922) 29 C.L.R. 234 and the English case of Reg. v McGregor 1967 3 W.L.R. 274 give some support for the view that there is no fundamental objection to leading evidence of admissions made by the defendant in the course of defending himself against the charge before the court. Those were cases where, upon a trial at which the defendant gave evidence in his own defence, the jury disagreed. Upon his retrial the prosecution led evidence of what the defendant had said at the first trial and it was held that that was certainly not "unfair in the general circumstances of the administration of justice". I think Li Kim-hung v Reg. 1969 H.K.L.R. 84, Reg. v Gauthier (supra) and Ng Chan-kwan v. Reg. 1974

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H.K.L.R. 319 are all distinguishable because the trials were before a judge or magistrate sitting alone and no further evidence of the confession was led. It is true that the learned judge in the court below here appears to have regarded Reg. v Gauthier as supporting the view that he was taking, but he relied principally upon Reg. v Wright. It is also true that in Ng Chan-kwan v Reg. a Full Court (of which I must confess to having been a member) said at p.328:

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"... The essence of the matter is that what the accused says on the voire dire may not be used as substantive evidence against him or his co-accused. Thus if on the voire dire the accused admits the truth of his extrajudicial statement a witness may not be called to acquaint the jury of that admission as part of the prosecution case. If the trial is by judge alone similarly the judge must not treat the admission as part of the prosecution case. (That is what appears to have been done in Chitambala v Reg.) In this respect evidence on the voire dire is distinguishable from an extrajudicial confession and the basis for the distinction lies in the accused's right to remain silent upon the trial of the general issue even though he has elected to give evidence on the voire dire. The only way in which evidence of an admission made by the accused on the voire dire may be adduced in evidence is by way of rebuttal if he gives evidence on the general issue and if that evidence is inconsistent with what he has said on the voire dire."

That was obiter and in any event is not binding on the Court of Appeal.

In my view, as now advised, there was no rule of law which compelled the learned Commissioner to hold that evidence of the confession made by the Defendant on the voire dire could not be adduced before the jury.

Exclusion of Evidence of the Judicial Confession as a Matter of Discretion

I have already discussed the nature of the discretion to exclude admissible evidence and concluded that the only basis for exclusion is that stated in Noor Mohamed v R. In the course of a

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masterly analysis of the cases, and exposition of
the law based thereon, Martland, J. in Reg. V Wray
(supra) said at p.17:

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"It is only the allowance of evidence
gravely prejudicial to the accused, the
admissibility of which is tenuous, and
whose probative force in relation to the
main issue before the court is trifling,
which can be said to operate unfairly".

He went on to say that if the probative value of the
evidence was unimpeachable there was no discretion
to exclude evidence even though obtained unfairly.
In Reg. v Monks (supra) Morris, C.J. must have been
satisfied that there was no manifest prejudice which
required him to exclude evidence of the admission
made on the voire dire. In Reg. v. Wright (supra)
the matter did not arise for decision because the
reference to the Supreme Court was made before the
conclusion of the trial at first instance. Zelling,
A.J. expressed no opinion as to how the trial judge
should exercise his discretion. Bray, C.J. said that
he thought that in the circumstances of the case the
discretion should be exercised to exclude the
evidence, whereas Chamberlain, J. could see in the
circumstances no justification for such an exercise
of the discretion. In my judgment the evidence of
a shorthand writer concerning a confession made on
oath in relation to the offence with which a
defendant is charged is evidence of unimpeachable
probative value and I would doubt the propriety of
a judge's excluding such evidence in the exercise of
his discretion. Mr. Commissioner Garcia did not
exclude the evidence here and I see no ground upon
which we could interfere with the exercise of his
discretion in this matter.

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For these reasons I would dismiss the
application.

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IN THE COURT OF APPEAL

1976 No. 1049
(Criminal)

Between
CHEUNG Kwan-sang Appellants
WONG Kam-ming

And

The Queen Respondent

In the
Supreme
Court
No. 16
Judgment of
McMullin, J.
12th July
1977.

Coram: Briggs, C.J., Huggins, J.A. and McMullin, J.

J U D G M E N T

McMullin, J.

10 The two appellants were amongst six persons
 charged upon an indictment containing three counts :
 one of murder and two of wounding with intent to do
 grievous bodily harm. These charges arose out of a
 single incident which occurred on the 28th of
 December 1975 at an establishment known as "massage
 parlour" at No. 689, Nathan Road. It was the case
 for the Crown that the appellants and their
 companions launched what amounts to a revenge attack
 upon inmates of that massage parlour the background
20 to that affair involving violence done to one of
 their number on a previous occasion by persons who
 were suspected of being at the massage parlour on
 the occasion of this attack. It was common ground
 that in the course of the assault one man was killed
 and two others received serious injuries inflicted
 with knives. Directed verdicts of not guilty were
 entered by the jury following upon submissions of
 no case in respect of three of the accused. Another
 of the accused, the original second accused, CHEUNG
30 Fai-hung, was found not guilty upon all three
 charges by unanimous verdict of the jury. The
 present appellants were each found guilty on all
 three charges by unanimous verdicts. A number of
 points were taken upon the appeal in respect of
 both appellants but in the upshot we found that
 there was substance only in one of the grounds
 argued before us. We found no substance in any of
 the matters urged on behalf of the first appellant
 but the point which occasioned concerned and in
 respect of which we reserved judgment arises in the

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case only of the second appellant. It is the last of the grounds set forth in his memorandum for appeal and is in the following terms :

"D. The learned Commissioner was wrong in law in allowing counsel for the prosecution to cross-examine the second appellant during voir dire with respect to his personal involvement at the scene of crime and in admitting subsequently the same at the trial."

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It is conceded that the only evidence against the second appellant (fifth defendant at the trial) consisted of admissions made by him to questions put to him in cross-examination by counsel for the Crown on the voir dire and that these were in fact repetitions of parts of a statement made by him to the police which was then under consideration. He claimed that the statement had been procured by various kinds of inducement including a mild degree of physical force. The statement itself was excluded by the Commissioner on the basis that it had not been proved to be voluntary. When the jury returned however he permitted the prosecution to call the court reporter to put in the record of the questions and answers made by the defendant on the voir dire. The prosecution then relied upon this as substantive evidence to show that the defendant had taken part in the attack upon occupants of the massage parlour. Two questions of the utmost importance arise in relation to this unusual procedure. They are as follows : (1) Is it permissible on the trial of the separate issue to ask a defendant who is giving evidence on his own behalf on the voir dire whether the contents of a disputed statement are true? (2) If this is permissible is it permissible for the prosecution to adduce evidence of the answer to that question on the general issue before the jury? In considering the principles involved it is advisable for simplicity to treat of the case where the excluded statement amounts to a full confession to the crime charged and where the subsequent admission on the voir dire amounts to a simple affirmation of the truth of that confession.

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The root of the problem raised by the first question is to be found in R. v. Hammond(1) a case in which the defendant upon a voir dire made an admission of this straightforward type in answer to

(1) (1941) 3 All E.R. 318.

10 questions concerning a statement to the police which
itself amounted to a full confession. The statement
was admitted in evidence and the defendant was
convicted. On appeal Humphreys, J. giving the
judgment of the court said that the question put to
the defendant as to the truth or falsity of the
statement was admissible because it went to the
credit of the defendant. He stressed however that
the trial judge had not formed his opinion as to the
admissibility of the statement by relying on the
defendant's admission that it was true. This is a
vital point for, as it seems to me, in none of the
Canadian and Australian decisions to which we have
been referred by counsel have any of the judges who
resorted to Hammond's Case (1) as authority for the
relevance of this question on the voir dire
discussed the nature of its relevance to the issue
of credibility - the only issue which, by the
consensus of most of these cases, affords a ground
for the putting of the question. Humphreys, J. in
20 Hammond(1) itself gives no reason for his emphatic
opinion. It is clear that the truth or falsehood
of the statement has no direct relevance to the main
issue on the voir dire - the issue of voluntariness.
But for my part after long consideration I cannot
see that the answer to this question has any
material relevance even to the issue of credibility.
Where the answer to the question "Is this confession
the truth?" is "No" the inquiry is no further
30 advanced. The credibility of the defendant in
relation to the alleged improprieties can scarcely
be enhanced or impaired by an answer which favours
his own interests in opposing the admission of the
statement. On its own, demeanour apart, it is
neutral. It is precisely the answer one would
expect - true or false - given the reason for the
opposition to the statement, viz. the desire of the
defendant to save himself from condemnation. If the
answer is : "Yes, it is the truth" it is relevantly
40 probative only if it enhances the credibility of
the defendant on the question of voluntariness. It
can only do that upon the basis of a presumption
in favour of the truthfulness of statements made
against a party's own interest. At that stage the
court is not concerned - indeed not entitled - to
form a concluded opinion on the truth of the
statement. If, thereafter, the statement is
admitted then the probative effect of the answer has
clearly been negligible on the issue of credibility.
50 On the other hand if the statement is excluded this
may not necessarily be because of the high probative

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value of the answer in relation to the defendant's credibility. In most cases, one would hope, it would primarily be because the evidence led by the prosecution on the issue had proved unsatisfactory and because the external circumstances generally tended to support the defendant. In other words while there may technically be a probative element in an affirmative answer to the question that element rests upon the possible truth of the answer and that is something which strictly speaking can only be established either by a plea of guilty or else by a determination of the issue of guilt upon the trial.

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I adhere therefore to the strongly reasoned judgments of the three dissenting judges in DeClercq v. The Queen (2) and in particular to that passage in the judgment of Hall, J. which appears on pages 547 and 548 which amounts to a cogent summary of the reasons for not permitting questions as to the truth of a challenged statement to be put to the defendant on the voir dire :

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"The problem is whether the truth of the statement is relevant to this inquiry. It is obvious that it is not directly relevant because fundamentally it is relevant only to the main issue, namely, the guilt or innocence of the accused. However, it is contended that it is indirectly relevant as bearing on the credibility of the accused testifying on the voir dire. But is it not rather a petitio principii, trying to find out from the accused whether he is guilty in order to decide whether to admit his confession as evidence of his guilt?

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Whenever the statement or confession amounts to an admission by the accused of that he has committed the offence of which he is charged, the truth of the incriminating statement is but theoretically distinguishable from his guilt. If the statement is totally incriminating, asking the accused testifying on the voir dire: 'Is the statement true?' is tantamount to asking him : 'Are you guilty of the offence?' But that is precisely what an accused may not be asked unless he chooses to testify at the trial. In Batary v. A.G. Sask, (1966) 3 C.C.C. 152 at p.162, 46 C.R. 34, 52 D.L.R. (2d) 125, Cartwright, J. (as he then was), said, speaking for the majority of the Court :

(2) Vol. 70 D.L.R. 1968 p.530.

10 'It would be a strange inconsistency if the law which carefully protects an accused from being compelled to make any statement at a preliminary inquiry should permit that inquiry to be adjourned in order that the prosecution be permitted to take the accused before a Coroner and submit him against his will to examination and cross-examination as to his supposed guilt. In the absence of clear words in an Act of Parliament or other compelling authority I am unable to agree that that is the state of the law.'

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20 Would it not be a stranger inconsistency if the law which carefully protects an accused from being compelled to testify at his trial should permit that, if an incriminating statement has been improperly obtained from him, he would not be permitted to give evidence of such impropriety without being submitted against his will to cross-examination as to his guilt.

30 It is true that an accused cannot be compelled by the Crown to testify on the voir dire and does so only of his own will. However, the very purpose of holding a separate inquiry into the admissibility of a confession is that this issue may be dealt with only on evidence relevant thereto. It is an essential feature of this system that the accused is thereby permitted to testify on that issue without prejudice to his right not to testify on the main issue. As Cartwright, J., said in the *Batary* case (at p.164):

40 '... the maxim *nemo tenetur seipsum accusare* ... has been described (by Coleridge, J., in *R. v. Scott* (1856), *Dears & B.* 47 at p.61, 169 *E.R.* 909) as "a maxim of our law as settled, as important and as wise as almost any other in it".'

If an accused cannot testify on the voir dire without being liable to be asked questions bearing directly on his guilt or innocence, he is put in a situation where he cannot do so without in effect being deprived from the benefit of the rule against compulsory self-incrimination."

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The majority judgment of the court in DeClercq (2) was delivered by Martland, J. It is a very brief judgment in which, adopting the conclusions in Hammond's case (1), he is content merely to say that the truth or falsity of the statement could be a relevant factor on the issue of voluntariness (page 537). Cartwright, C.J. took a separate direction and, while echoing the general consensus of the courts in all these jurisdictions to the effect that the question to be determined on the voir dire is whether the disputed statement is voluntary, he held that the question though not legally inadmissible should not have been asked and further that the trial judge had wrongly exercised his discretion in allowing it. He felt however that the wrongful exercise of discretion did not amount to an error in law and so he declined to interfere. He was incidentally of the view that much of what had been said in Hammond's Case (1) was obiter.

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I cannot agree that the only reason for excluding an involuntary confession is that it may be untrue so that if it is admitted to be true there is no longer any reason for excluding it. Consideration of the latter proposition to my mind precisely pinpoints the nature of the confusion which has resulted from the decision in Hammond (1). If the truth of the statement is to be not merely a relevant but a decisive consideration on the special issue then when the defendant on the voir dire denies that the statement is true it should be proper for the prosecution to prove the truth of it aliunde. This indeed is the robust view taken by Chamberlain, J. in R. v. Wright (3) the Australian decision on which Mr. Marash principally relies. At page 270 he says :

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"Another objection made is that if the prosecution are to be permitted to ask if the confession was true, they could equally well prove it to be true by external evidence. I do not see that this provides any objection. If it requires external evidence to enable a judge to decide a question which may well be vital to the trial, then surely the evidence should be given. Supposing in the present case the defendant's answer had been 'What I told the police was untrue, I said it only because I thought I would be better off if I made a false confession - in fact I never touched the knife or the girl.' Could it be

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- (1) (1941) 3 All E.R.318.
(2) Vol. 70 D.L.R. 1968 p.530
(3) (1969) S.A. State Reports.

suggested that the Crown could not have shown (if it were so) that his fingerprints were on the knife, and bloodstains corresponding with the girl's were on his clothes?"

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10 Neither of the other judges in that case, and no other judge in any of cases cited, was prepared to take the contention that far and for my own part I cannot see how it can be sustained. If that be the law then there is much force in Mr. Ming Huang's contention that the necessity for the voir dire has been altogether eliminated. The Crown would then be at liberty to deploy its full panoply of proof on the issue of guilt for the purpose of discrediting the defendant on the voir dire. The "trial within a trial" would spread to the full limits of the contest on the general issue. I can only, with the greatest respect, regard this passage in the judgment of Chamberlain, J. as a salutary "reductio ad absurdum" of the idea that the truth of the disputed statement is a relevant consideration on the special issue. In the same case Zelling, J., while holding with the majority, takes a very different view from his brother Chamberlain. At page 276 he says :

30 "It is true that the proper test of the exclusion of a confession is not whether the confession is true or untrue but (a) whether it is voluntary; or (b) whether in the due administration of justice it is proper in the exercise of the Judge's discretion to reject it. See Sinclair v. The King; R. v. Lee.

I am conscious that in considering this matter, competing questions of policy arise and it is in the last resort a question of which policy should be regarded as pre-eminent."

He went on to consider what he termed the "powerful dissent" of Hall, J. in DeClercq (2) in relation to the policy of the law against self-incrimination and then he said (p.277) :

40 "Weighing these competing statement of policy as best I can, I find myself, with respect, in agreement with the majority judgment. In my view, the questions were legally admissible subject to the exercise of judicial discretion which is discussed later in this judgment."

(2) Vol. 70 D.L.R. 1968 p.530.

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Bray, C.J. in the same case (like Cartwright C.J. in DeClercq (2)) took a somewhat different path from his colleagues. He was of the view that the question was always admissible as to credit on the voir dire but also held that it might in some additional and separate sense be relevant on the issue of voluntariness. I cannot say that I follow this distinction very well, and it is not made any easier to understand by the illustrations he gives of the way his principle would operate, for he says that the question of the truth of the statement would probably not be relevant on the voluntariness issue where the alleged impropriety amounted to a mild inducement of the kind familiar in the old cases where statements have been excluded because the defendant was exhorted that "it would be better for him to tell the truth". It probably would be relevant, he says, where the impropriety alleged was physical maltreatment. Even allowing the validity of the distinction between relevance as to credit and relevance in relation to voluntariness it is not easy to see how the truth of the statement is more relevant to one situation than to the other. Physical force may occasion a false admission of guilt but so might a mere exhortation if the suspect was timid and overawed by his circumstances. Both are capable of producing either a true confession or a false one. Given the variety and unevenness in the distribution of physical and moral resources among individuals I do not think it would be wise to attempt the formulation of some general rule of psychology to provide a guide in the matter. In any event it is clear from the judgment of Bray, C.J. that he too, although dealing with the question as one of discretion to exclude, was satisfied that impropriety or unfairness (matters which I think he equated with each other) were, on their own, grounds for excluding a confession apart from truth for he says in relation to that discretion (page 262) :

"Objectionable police methods do not become unobjectionable if they turn out to have been successful in eliciting the truth."

He does not support the idea that the Crown could call evidence to prove the truth of the disputed statement.

I find abundant authority in the cases cited to show that the exclusion of involuntary confessional statements is grounded equally in public policy as in the fear that they may not be

(2) Vol. 70 D.L.R. 1968 p.530

true. That policy as I see it embraces two things: (a), the need to preserve some check by the Courts on improper investigative practices; and, (b), the need to preserve the common law right enshrined in the maxim "nemo tenetur seipsum accusare". I prefer the Latin over the English equivalents: "the right to silence" or "the right against self-incrimination" because it emphasizes that no one is to be placed in the position of having to accuse himself as an alternative to some other disadvantageous course. The three dissenting judges in DeClercq (2) regard the maxim as providing the root of the objection to the putting of this question on the voir dire. At page 554 Spence, J. says :

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"Because the rule against compulsory self-incrimination is the root of the objection, I cannot agree that this is a matter of judicial discretion respecting the extent of cross-examination on credibility."

In Reg. v. Van Dongen (4) Carrothers, J. at page 56 says :

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"The accused is not a compellable witness and ought to have the protection of the fundamental principle expressed in the maxim 'nemo tenetur seipsum accusare.' His right not to give evidence should not by indirection be violated. He ought to be able on a voir dire to give evidence on the circumstances and influences surrounding the making of an inculpatory statement prior to trial, which statement is being sought by the prosecution to be introduced against him at trial, without prejudicing his right to immunity from self-incrimination."

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Admittedly he is there dealing with the second of the questions which I posed at the start viz. : can the answers on the voir dire be introduced on the general issue - and he has already consented to the view that the question is admissible as to credit on the voir dire - but the principle applies equally at both stages and indeed if it is valid, logic would seem to imply that it should be applied at the earlier rather than the later stage. Mr. Marash has relied on s.54(1)(e) of the Criminal Procedure Ordinance which he says takes away the defendant's right to silence. That right he says

- (2) Vol. 70 D.L.R. 1968 p. 530.
(4) 26 C.C.C. 22.

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exists only outside the confines of the court :
within the court the defendant is free to give
evidence or not to give evidence and if he decides
to do so he is obliged to answer questions even if
the answers may incriminate him. Zelling, J. in
Wright's case (3) would allow an escape from this
dilemma by reference to the wording of the
equivalent Australian legislation which he says
permits the question to be put but does not oblige
the defendant to answer. But leaving that aside
it seems to me that it is idle to contend that a
defendant, who is frequently the only source of
evidence to counter the prosecution's story of
entire propriety, is not, in nearly all cases,
obliged to go into the witness-box in order to
challenge the damaging statement. Once there, if
this question is permissible, he must inevitably
take the risk of being his own accuser. There is
substance in the criticism of this situation in the
article by Mr. Neasey (later Neasey J.) in the
Australian Law Journal for 1960 at page 111 where he
comments that the accused thus faces the unfair
alternative of confessing his crime (if his statement
to the police was true) or of committing perjury.
It is true that he takes the view that Hammond (1)
was rightly decided although he clearly does not
relish the decision and goes so far as to stigmatize
the result as "absurd". I suggest therefore that
even if I am wrong to say that the answer to the
question "Is it true?" on the voir dire is not
relevant to the special issue nevertheless there remain
two other roots to the claim to have the confession
excluded even if it be true. The first is in the
maxim "nemo tenetur etc.", to which Hall, J. refers
in the passage quoted above from DeClercq (2), and
that would oblige the judge to prevent the question
being put, no question of discretion being involved
for even if it be said that the question has
potential probative value its probative value can
scarcely exceed the prejudice to the defendant of
being, in effect, put, under oath or affirmation, to
plead a second time when he has not chosen to do so.
Alternatively, if this be wrong then as a question
of discretion he should at the later stage, having
excluded the statement, exclude any answers given
on the voir dire if he was satisfied that the
statement had been obtained by means so outrageous
that it would bring the administration of justice
into disrepute to stand over them. Such a discretion
to exclude as acknowledging oppression by authority
is approved by Lord Parker in Callis v. Gunn (5) and

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(1) (1941) 3 All E.R. 318.

(2) Vol. 70 D.L.R. 1968 p.530.

(3) (1969) S.A. State Reports.

(5) (1964) 1 Q.B.50.

10 it appears to be supported by the dissenting judges in DeClercq (2). This principle - exclusion on grounds that the admission of the evidence might bring the administration of justice into disrepute - is strongly endorsed by Cartwright, C.J. and Spence, J. in Reg. v. Wray (6) expressly relying on Callis v. Gunn (5) among other English authorities, although the majority in Wray (6) did not approve such a principle. In the Canadian case of Reg. v. Hnedish (7), the principle suggested by Humphreys, J. in R. v Hammond (1) was considered by Hall, C.J. Q.B. who asked himself whether the decision reflected the "final judicial view held in England." He answered that question by saying that he regarded the opinion expressed in the English case as obiter and he went on to say (page 349) :

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20 "Having regard to all the implications involved in accepting the full impact of the Hammond decision which can, I think, be summarised by saying that regardless of how much physical or mental torture or abuse has been inflicted on an accused to coerce him into telling what is true, the confession is admitted because it is in fact true regardless of how it was obtained, I cannot believe that the Hammond decision does reflect the final judicial reasoning of the English courts. I feel that when the point comes squarely to be decided, another court will take a hard look at the whole question, including the
30 implications above mentioned and others."

40 I can only say that I believe that the courts in this jurisdiction also would welcome some guidance at the highest appellate level on the principles underlying the decision in Hammond (1) even should that decision be regarded as expressing a principle inseparable from the ratio in the case. On the kindred question as to whether valuable evidence discovered as a result of a confession improperly obtained should be excluded Cross on Evidence 3rd Ed. at page 269 suggests that there must be a limit to the doctrine that evidence of a fact such as the discovery of a murder weapon can be given although procured by illegal means as a result of an inadmissible confession. The learned author asks :

"... what if the whereabouts were ascertained by means of prolonged torture of the accused"?

(1) (1941) 3 All E.R. 318.

(2) Vol. 70 D.L.R. 1968 p.530.

(5) (1964) 1 Q.B. 50.

(6) 4 C.C.C. 1970 p.1.

(7) (1959) Vol. 19 Criminal Reports Canada 347.

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I echo that question and I would say emphatically that where something of that kind was in the picture the courts must retain a discretion to exclude the fruits at least of such abominations from the category of honest proof. Apart from that as a general principle I feel that once it is conceded that even a guilty defendant has the right to put the Crown to proof if its charge, and therefore to challenge a confession improperly obtained, then any device intended to re-introduce the excluded evidence by the back door ought to be disarmed.

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I think that the Full Court was right to say in NG Chun-kwan (8) that evidence taken on the voir dire could not be resorted to on the general issue save for the purpose of impeaching credit if the accused gave evidence once more on the general issue. I think the court was wrong however simply to accept in that case that Hammond (1) was rightly decided. On the fuller argument now exposed I would be prepared to say that Hammond (1) should no longer be followed. If this is correct it becomes unnecessary to consider the second question posed at the outset. It should be noted that the decision of the Full Court in NG Chun-kwan (8) was never drawn to the attention of the learned Commissioner in the submissions on the voir dire. Had it been, it is doubtful that he would nevertheless have done what he did since the persuasive authority of Wright (3) would then have been set over against a direct opinion of the Full Court which was to the contrary effect. It may be that what was there said should be regarded as obiter since the point then at issue was not identical with the point here but even so it was an opinion which followed directly on the line of what was decided in that case. Moreover the learned Commissioner who was aware of the Canadian decision of Gauthier (9) appeared to think that that case favoured the Crown's contention whereas it clearly does not.

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If I am wrong in all of this then, considering the second of the two questions posed at the start I would say that the decisions in Van Dongen (4) and Gauthier (9) are strong support for what we said in NG Chun-kwan (8) as to the impropriety of resorting to voir dire material in considering the issue of guilt at the conclusion of the trial. I think however that if the court had pressed the

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- (1) (1941) 3 All E.R. 318.
- (3) (1969) S.A. State Reports.
- (4) 26 C.C.C. 22.
- (8) (1974) H.K.L.R. 319
- (9) (1975) 27 Can. Cr. Cas. (2d) 14.

logic of the matter to its conclusion it would have departed from the decision in Hammond (1) since with the greatest deference to the learned judge in that case the question was dealt with somewhat summarily, and none of the abstruse and riddling questions which may arise in this area of the law in respect of matters probative as against matters prejudicial would arise if we were firmly to grasp the nettle and say that the truth of the confession is not a relevant consideration on the trial of its admissibility.

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A final consideration is this : the foregoing examination of the case law and the principles involved in it has, for simplicity, assumed the situation which occurs when a statement amounting to a full confession is fully and simply affirmed on the voir dire. Where, in other words, there is something approximating to a plea of guilty to the charge. That was, of course, not the situation here. What counsel for the Crown did was to elicit in cross-examination a confirmation of certain facts appearing in the statement which did not in themselves amount to a confession to the crime but which was essential, in the absence of any other evidence, to establish the presence of the appellant at the scene and to establish his being at one point in possession of a knife. Without those admissions it is very unlikely that his case could have been left to the jury. In such circumstances there does not seem to be any very real distinction between what was done eventually with the voir dire material and cross-examination upon an inadmissible statement. What it amounts to is that Crown Counsel, in pressing the appellant before the jury on statements which the appellant had made in their absence, was cross-examining him on admissions of fact which did not amount to confessions to the crime and which derived from admissions made in the inadmissible statement. It was these admissions, made upon the voir dire, which were introduced as part of the Crown's case later on in the trial before the prosecution case closed by calling the court note-taker to produce part of transcript which included those admissions. In dealing with this evidence Crown counsel was careful not to reveal to the jury that those admissions had arisen out of cross-examination of the appellant upon a statement made to the police which had been excluded from the evidence. The existence of such a statement was never brought to their attention. Although it is true that,

(1) (1941) 3 All E.R. 318.

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following the line taken by the Court of Appeal in England in R. v. Treacy (10) , all the authorities to which we have been referred - even those which would allow the accused's answers on the voir dire to be made known to the jury - agree that the existence of the disputed statement must not be made known to the jury, for my own part I wonder whether that consensus does not precisely circumscribe the area of rights to which an accused person may legitimately resort in insisting that he be not put to the test on the voir dire in this way. The rule in R. v. Treacy (10) is intended to preserve the case of the accused from the damage which might be done to it by revealing a confession or admission wrongfully obtained. Where however the Crown has succeeded in re-introducing the disputed material, or some part of it, under circumstances which, on the face of them, would seem to make the admission or confession unimpeachably reliable, would it not be proper, in justice to the accused, to make manifest that his statements on oath were preceded by an unsworn statement - similar in effect to that which had been excluded for reasons which the jury might find relevant - in order to explain, or dilute, or extenuate, or expound the admissions on which the Crown sought to rely? It was indeed Humphreys, J. (who gave the decision of the court in R. v Hammond (1)), who, in R. v Treacy (10) also said (page 96) :

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"If it" (i.e. the statement) "is not admissible nothing more ought to be heard of it. It is a complete mistake to think that a document which is otherwise inadmissible can be made admissible in evidence simply because it is put to an accused person in cross-examination."

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Bray, J. in R. v Wright (3) would seem to echo this idea when, having held that an answer amounting to a confession on the voir dire ought to be admitted in proof of guilt, he went on to say :

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"There is, however, one qualification when the judge excludes the confession on the voir dire" - the confession there means the disputed statement - "the jury must obviously not be told that the accused has confessed to the police."

But if the only reason for excluding an involuntary statement were the danger of its being untrue why

(1) (1941) 3 All E.R. 318.

(3) (1969) S.A. State Reports.

(10) 30 Cr. App. R. 93.

should nothing more be heard of it when its truth is admitted upon oath? It cannot be solely for the protection of the accused that mention of the inadmissible statement is forbidden although his confirmation of the truth of its contents is allowed. Indeed it may be adverse to his interests not to allow the background to his words appear for, unless the accused is actually pleading guilty, it must be assumed that he is maintaining, notwithstanding an apparent confession to the crime, that the Crown has not proved its case against him. The entire genesis of his admission must surely then be relevant to enable the jury to deal with such a paradoxical situation. At least one would think that should be so where the admission amounts to a plea of guilty. If there is another reason for not allowing knowledge of the statement to the police affect the jury's consideration of the evidence in any way it must be a reason not related simply to the truth or falsity of the statement. I think there is such another reason : it is to be found in that most general duty placed upon a judge to see that the prisoner has a trial which is in every sense a fair trial. That would include seeing that he has not without good reason been put in effect to the test of a plea upon oath. Where, as in the present case, the answer on the voir dire does not amount to a plea of guilty but is by way of admitting the truth of facts vital to the Crown's case but admits those facts by way of "confession and avoidance" the probative potential of the question is, ex post facto, shown to have been virtually nil. In that event, to adduce the answers as substantive testimony after the statement itself has been excluded bears so plainly the appearance of contrivance - the artificial creation of evidence out of suspect material - that one would think the maxim "nemo tenetur etc." was even more clearly in point. If, in addition, a statement has been excluded because of the suspicion of some gross and criminal impropriety in the manner of its production the court would, in my view, have an additional reason for maintaining the principle underlying the maxim. For these reasons and upon this ground only I would allow the appeal of the second appellant.

In the
Supreme
Court

No. 16
Judgment of
McMullin, J.
12th July
1977
(cont'd)

Ming Huang (D.L.A.) assigned for both accused.
Marash, Crown Counsel for the Crown.

In the
Privy
Council

No. 17
Order
granting
Special leave
to appeal in forma
Pauperis to Her
Majesty in
Council
1st March,
1978.

No. 17

ORDER GRANTING SPECIAL LEAVE
TO APPEAL TO HER MAJESTY IN
COUNCIL IN FORMA PAUPERIS

AT THE COURT OF BUCKINGHAM PALACE

The 1st day of March 1978

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

WHEREAS there was this day read at the Board
a Report from the Judicial Committee of the Privy
Council dated the 9th day of February 1978 in the
words following viz.:-

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"WHEREAS by virtue of His late Majesty
King Edward the Seventh's Order in Council of
the 18th day of October 1909 there was
referred unto this Committee a humble
Petition of Wong Kam-ming in the matter of
an Appeal from the Court of Appeal of Hong
Kong between the Petitioner and Your Majesty
Respondent setting forth that the Petitioner
prays for special leave to appeal in forma
pauperis from a Judgment of the Court of
Appeal of Hong Kong dated the 12th July 1977
which dismissed the Appeal of the Petitioner
against his conviction in the Supreme Court
of Hong Kong of murder: And humbly praying
Your Majesty in Council to grant the
Petitioner special leave to appeal in forma
pauperis against the Judgment of the Court of
Appeal of Hong Kong dated the 12th July 1977
and for other relief:

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"THE LORDS OF THE COMMITTEE in obedience
to His late Majesty's said Order in Council
have taken the humble Petition into
consideration and having heard Counsel in
support thereof no one appearing at the Bar
on behalf of the Respondent Their Lordships
do this day agree humbly to report to Your

Majesty as their opinion that special leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment of the Court of Appeal of Hong Kong dated the 12th July 1977:

In the
Privy
Council

No. 17
Order
granting
Special leave
to appeal in
Forma Pauperis
to Her Majesty
in Council
1st March,
1978

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"AND THEIR LORDSHIPS do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before Your Majesty on the hearing of the Appeal."

(cont'd)

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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Whereof the Governor or Officer administering the Government of Hong Kong and its Dependencies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

N. E. LEIGH

Exhibits

EXHIBIT P.34

P.34
Statement
of accused
WONG Kam-
ming.
2nd January
1976.

STATEMENT OF ACCUSED WONG KAM-MING

The defendant is charged in the presence of
Woman Superintendent of Police CHU Ying-nee.

(sd.) CHU Ying-nee, A.D.S./
M.K.

Criminal Investigation Department of Mongkok STATION

OFFICER IN CHARGE OF CASE Detective Inspector W.S.
Robson.

INTERPRETER'S NAME Police Interpreter II SHAM 10
Chu-woon.

TIME & DATE 1504 hours on 2/1/1976

NAME OF DEFENDANT Chinese male WONG Kam-ming,
19 years old.

Charge:- MURDER

Statement of offence:- Contrary to Common Law.

Particulars of offence:- WONG Kam-ming, you are
charged that on the 28th day of December, 1975,
at Kowloon, in this Colony, you did, together
with CHEUNG Kwan-sang, CHEUNG Fai-hung, LI 20
Ming, CHO Shu-wah and others not in custody,
murder LAM Shing alias LAM Chung.

IN THE MAGISTRATE'S COURT AT NORTH KOWLOON.
EXHIBIT NO. <u>P34</u>
Case No. <u>NK 2232/3576</u>
<u>42</u> - 4 MAR 1976

IN THE SUPREME COURT OF HONG KONG
Criminal Jurisdiction
Case No. <u>61</u> of 1976 Session
Exhibit No. <u>P23</u>

Defendant was cautioned in the following terms in
Punti Dialect

Do you wish to say anything in answer to the charge?

You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.

States:-

Exhibits

P.34
Statement
of accused
WONG Kam-
ming.
2nd January
1976.
(cont'd)

Chinese document marked
"C-100(c)"
[Signature]
Court Translator

2 JAN 1976

[Handwritten signature]

我唔認謀殺
我無殺過人

警告

你想唔想講嘢
答辯告你嘅罪名
呢？
唔係是必要你講
嘅，除非你自己
想講喇。但係無
論你講乜嘢，就
用筆寫住，或者
用嚟做證供嘅。

EXHIBIT P.34A

Translation of the statement of the
accused WONG Kam-ming in answer to
the charge of 'Murder'.

Exhibits

P.34A
English
Translation
of Statement
of accused
WONG Kam-
ming.

" I did not kill anyone.

I do not plead guilty to the murder. "

(signed) WONG Kam-ming.

No.21 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG

B E T W E E N :

WONG KAM-MING

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

HATCHETT JONES & KIDGELL,
8/9 Crescent,
London EC3N 3NA.

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London WC2A 3UL.

Appellant's Solicitors

Respondent's Solicitors