

PC
~~646.6.2~~

Judgment
25, 1966

IN THE PRIVY COUNCIL

No. 5 of 1966

O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG,
APPELLATE JURISDICTION

B E T W E E N :

^A
CHAN ~~W~~EI KEUNG ... Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.

Solicitors for the Appellant

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.

Solicitors for the Respondent

CLASS MARK

PC

~~DMG.C.2~~

ACCESSION NUMBER

87088

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
24 APR 1967
25 RUSSELL SQUARE
LONDON, W.C.1.

(i)

IN THE PRIVY COUNCIL

No. 5 of 1966

O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG,
APPELLATE JURISDICTION

B E T W E E N

^A
CHAN ~~W~~I KEUNG ... Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT</u>		
1.	Indictment	7th July 1965	1
2.	Proceedings	4th August 1965	2
3.	Opening Address for the Crown	4th August 1965	4
	<u>PROSECUTION EVIDENCE</u>		
4.	Extract from the Evidence of Dr. Lee Fuk-Kee	4th August 1965	20
5.	Chan Pui	4th August 1965	22
6.	Proceedings	5th August 1965	26
7.	Ruling	6th August 1965	34

(ii)

No.	Description of Document	Date	Page
	<u>PROSECUTION EVIDENCE</u>		
8.	Chan Pui (continued)	6th August 1965	35
9.	Leung Shui Wing	6th August 1965	57

10.	Submissions re Admissibility of Statements	6th August 1965	61
11.	Ruling	9th August 1965	75
	<u>PROSECUTION EVIDENCE</u>		
12.	Leung Shui Wing	9th August 1965	83
13.	Tsang Kei	9th August 1965	105
14.	Wan Ming	9th August 1965	113
15.	Choy Chuen	9th August 1965	121
16.	Lai Yin-Hung	9th August 1965	126
17.	Cheung Lan-kan	9th August 1965	135
18.	Pan Ying	9th August 1965	142
19.	Lau Kin Yeuk	9th August 1965	144
20.	Mok Yim Tong	9th August 1965	159
	<u>DEFENCE EVIDENCE</u>		
21.	Chan Wei-keung	10th August 1965	161

22.	Closing Address for the Crown	10th August 1965	192

	Closing Address for the Defendant	10th August 1965	209
	Summing-up	11th August 1965	219
	Proceedings re Question by Judge prior to verdict	11th August 1965	232
26.	Verdict and Sentence	11th August 1965	235

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
24 APR 1965
25 RUSSELL SQUARE
LONDON, W.C.1

87088

(iii)

No.	Description of Document	Date	Page
	<u>IN THE SUPREME COURT</u> <u>(APPELLATE JURISDICTION)</u>		
27.	Application for leave to Appeal	12th August 1965	236
28.	Additional Grounds of Appeal	3rd September 1965	238
29.	Judgment, Rigby P., and Macfee A.J.	8th October 1965	239
30.	Judgment, Huggins A.J.	8th October 1965	257
	<u>IN THE PRIVY COUNCIL</u>		
31.	Order granting Special Leave to Appeal in forma pauperis	31st January 1966	272

E X H I B I T S

Mark	Description of Document	Date	Page
P.26A	Statement by Accused	25th May 1965	274
P.30	Statement by Accused	26th May 1965	278

DOCUMENTS TRANSMITTED BUT NOT REPRODUCED

Description of Document	Date
<u>IN THE SUPREME COURT</u> <u>PROSECUTION EVIDENCE</u>	
Lau Sang	4th August 1965
Leung Po Ip	4th August 1965
Tse Tong	4th August 1965

Description of Document	Date
Dr. Chan Leong Chye	4th August 1965
Dr. Lee Fuk-Kee (in part)	4th August 1965
Leung Luen	4th August 1965
Tsui Chung-Kwong	4th August 1965
Tsui Yuk Lam	4th August 1965
Shum Kin Ying	4th August 1965
Lam Shun	4th August 1965
Wong Lap Miu	4th August 1965
LamNam	4th August 1965
Wong Chung Kai	5th August 1965
Ho Chi Shing	5th August 1965
Wong Chun Nin	5th August 1965
Tsoi Chi	5th August 1965
Ng Chi Fong	5th August 1965
Tsang Kei	6th August 1965
Dr. Lee Fuk Kee (recalled)	6th August 1965
Wan Ming	6th August 1965
Lan Kin Yeuk	6th August 1965
Mok Yim Tong	6th August 1965
<u>DEFENDANT'S EVIDENCE</u>	
Chan Wai Keung	6th August 1965
<u>IN THE SUPREME COURT</u>	
<u>(APPELLATE JURISDICTION)</u>	
Particulars of Trial	17th August 1965

EXHIBITS

Exhibit Mark	Description of Document
P1.A - Q.	Seventeen Photographs
P3	Plans
P24A	Wage Envelope
P29A	Hing on Apartment
P29B	Hing on Apartment
P29C	Hing on Apartment
P29D	Hing on Apartment

O N A P P E A L
FROM THE SUPREME COURT OF HONG K^oNG,
APPELLATE JURISDICTION

^A
CH~~A~~N W~~E~~I KEUNG ... Appellant
 - and -
THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

10

No. 1.

In the
Supreme Court

INDICTMENT

No. 1

IN THE SUPREME COURT OF HONG KONG

Indictment

The 7th day of July 1965) At the Ordinary Criminal Session of
) the Supreme Court holden at Victoria
) for the Month of July 1965, THE COURT
) IS INFORMED by the Attorney General on
) behalf of Our Lady THE QUEEN that
) CHAN Wai-keung is charged with the
) following offence:-

7th July
1965

20

Statement of Offence

Murder, contrary to Common Law.

Particulars of Offence

CHAN Wai-keung, on the 12th day of
May, 1965, in this Colony, murdered
LEUNG Pui-chuen.

(Sd.) M. Morley-John.
Deputy Public Prosecutor,
for Attorney General

In the
Supreme Court

To CHAN Wai-keung

No. 1
Indictment
7th July
1965
Continued

TAKE Notice that you will be tried on the
Indictment whereof this is a true copy at the
Ordinary Criminal Session above mentioned to be
holden at Victoria in and for the Colony of
Hong Kong on the 9th day of July, 1965

(Sd.) B.L. Jones
Asst. Registrar

No. 2
Proceedings
4th August
1965

No. 2

PROCEEDINGS

10

IN THE SUPREME COURT OF HONG KONG
CRIMINAL JURISDICTION

Case No. 3
July 1965 Session

Transcript of the shorthand notes taken by
the Court Reporters at the trial of
Regina v. CHAN Wai Keung, charged with
Murder, before the Honourable Mr. Justice
G.G. Briggs

Date: 4th August, 1965 at 10.03 a.m.

20

Present: Mr. J. Swaine (Tang & Co.) assigned
for the accused.

Mr. F. Addison, Crown Counsel, for the
Crown.

CLERK: CHAN Wai Keung, the Court is informed by
the Attorney General on behalf of our Lady
the Queen that you, CHAN Wai Keung, are
charged with the following offence:
Murder, contrary to common law. The
particulars of the offence are that you,
CHAN Wai Keung, on the 12th day of May 1965,
in this Colony, murdered LEUNG Pui Chuen.
How say you, are you guilty or not guilty?

30

ACCUSED: I plead not guilty, my Lord.

CLERK: CHAN Wai Keung, the names that you are about to hear called are the names of the jurors who are to pass between our Sovereign Lady the Queen and yourself upon your trial. If, therefore, you object to them or to any of them you must do so before they come to the book to be sworn, and before they are sworn, and your objection shall be heard. Do you understand?

In the
Supreme Court
No. 2
Proceedings
4th August
1965
Continued

10 ACCUSED: I understand.

CLERK: Jurors in waiting, answer to your names and step into the jury box as you are called.

JURORS EMPANELLED AS FOLLOWS:

(Duncan CHAN On Pong - absent)

- 20
1. David TIN Wa Cheong
 2. CHAO Ju Tai
 3. NG Yuen Ying
 4. Alfred Stanley Pugh (Foreman)
 5. Stig Birch Poulsen
 6. Augustine LI Chun Wai
 7. Desmond John Quirk

CLERK: Accused, have you any objection to the jury empanelled or to any of them?

ACCUSED: No objection to any one.

COURT: No objection, Mr. Swaine?

Mr. SWAINE: No objection.

Jurors sworn or affirmed. Mr. Pugh selected as Foreman of the jury.

30 CLERK: Jurors in waiting, you are discharged for the remainder of this session. You may now go and need not return.

40 CLERK: Members of the jury, the accused, CHAN Wei Keung, stands indicted for the following offence: murder contrary to common law. The particulars of are that he, CHAN Wai Keung, on the 12th day of May 1965, in this Colony murdered LEUNG Pui Chuen. To this indictment he has pleaded not guilty and it is your charge to say, having heard the evidence, whether he be guilty or not guilty.

In the
Supreme Court

No. 3

OPENING ADDRESS FOR THE CROWN

No. 3

Opening Address
for the Crown

4th August
1965

MR. ADDISON: May it please you, my Lord.

Members of the jury, I appear on behalf of the prosecution and my learned friend, Mr. John Swaine, appears on behalf of the defendant whom you see on your left in the dock. It is my duty to place before you as clearly as I am able the fact of this case, but before I start to do that perhaps I should make one point abundantly clear because this will be one point which will prevail throughout the whole of this trial, namely that you must be satisfied as to the accused's guilt beyond any reasonable doubt. Members of the jury, if when you have heard part of the evidence and seen some of the witness you feel there is some doubt, a reasonable doubt, which causes you to reflect on the truthfulness or the weight you can put upon that matter, I am sure you will happily resolve that doubt - as indeed it is your duty, in favour of this accused person.

10

20

Now, members of the jury, Counsel for the Crown is sometimes faced with some difficulties and I find myself in a difficulty in this case for this reason: we are not able to produce as a witness in this trial any person who can come and say to you, "I saw this man do this particular thing." Members of the jury, sometimes persons who commit offences leave finger prints behind and of course such evidence is a very acceptable thing to the Crown and very damaging to the accused person. Members of the jury, again I say to you there is no such evidence available in this case and the nature of the evidence will unfold itself, but I think in order to assist you, as indeed it is my privilege so to do, perhaps with his Lordship's leave I might be allowed to show you a plan of the scene and also some photographs.

30

MR. ADDISON: My Lord, these will be proved.

40

COURT: Any objection, Mr. Swaine?

MR. SWAINE: Subject to proof, no objection, my Lord.

MR. ADDISON: Perhaps I might indicate at this stage that there are two bundles of photographs, my Lord. What was in the lower court

as P2, I do not propose to show to the jury in this particular case, subject of course to your Lordship's direction.

MR. ADDISON: My Lord, these will be proved.

COURT: Any objection, Mr. Swaine?

MR. SWAINE: Subject to proof, no objection, my Lord.

10 MR. ADDISON: Perhaps I might indicate at this stage that there are two bundles of photographs my Lord. What was in the lower court as P2, I do not propose to show to the jury in this particular case, subject of course to your Lordship's direction.

COURT: We must stick to the same number of the exhibits, even if there are copies.

MR. ADDISON: I am much obliged, my Lord. This is P1 in the lower court.

COURT: Photographs P1.

MR. ADDISON: That is so, my Lord.

20 Now, members of the jury, you have in front of you I trust one large plan and a bundle of photographs, the first of which shows a lift. Now before looking at this perhaps I should just tell you this: that the accused is charged, as you have heard, with murdering a man by the name of LEUNG Pui Chuen and this offence is alleged to have taken place on the 12th day of May. Members of the jury, he was last seen alive on the night of the 11th and he was found to be dead on the
30 morning of the 12th. This deceased person was a man of 60 years of age, who was a watchmen employed by a factory known as the Bonnie Hair Products and they had their premises at 95 Ha Heung Road, and he had been employed at this place for a short period commencing on the 19th April and finishing on the night when he died. At this place of employment as a watchman, naturally he had the care and responsibility for the safety of these premises. He worked there
40 during the day time and at night time it was his custom to sleep on the premises and for that purpose he had a camp bed, and in the evenings he would undress, sleep on the camp bed, and that would be his evening's duties, so that by and large for the purpose of this story he was more

In the
Supreme Court
No. 3
Opening Address
for the Crown

4th August
1965

Continued

In the
Supreme Court
 No. 3
 Opening Address
 for the Crown
 4th August
 1965
 Continued

or less permanently on these premises and he was paid a salary of \$250 per month plus food, and the relevance of that is this: his pay was given to him in a pay envelope - no doubt many of you know what a pay envelope is - and after the murder took place a pay envelope bearing his name - we say that belongs to him - was found on the floor. You may think that from that fact alone the person who committed this assault upon him afterwards rifled his clothing to see what money he could find. Now he was there for a very short period and he had in his possession a number of keys - two of them related to the door leading into the premises, and it was his duty to see the workmen off the premises and then lock the main door from the inside. You see, there was not a padlock from the outside as in some premises; it was locked by means of a bar from the inside. Now let me try, if I may, and explain to you the nature and description of these premises because I myself, and you may likewise, find the same difficulty in understanding the plan.

10

20

Now the whole block is called On Lock Mansions and there is for the whole of the mansions a caretaker, and the caretaker's name is LAM Nam and he will be called as a witness and will tell you that on the night of the 11th of May he turned off the electric supply for the lifts at about midnight so that after that time no lifts were working. Now the whole building is called On Lock Mansions but it is divided more or less into four blocks inside the building. There is the A Block, B Block, C Block and D Block, and the plan which you have in front of you relates to the D Block. I do not know why precisely, but if you look at the plan on the left hand side you will see there is a letter A. Well, perhaps the relevance of that may be explained later, but this block here is D Block and, as you may see by looking at the plan, it is served by a lift which is just to the right of that letter A and also stairs which go both up and down, and the address of this building is 95 Ha Heung Road and this particular factory is on the 9th floor. Now, members of the jury, this is a matter of some importance because the lift goes only to the 9th floor and that, so far as we are concerned, is the end of any journey made in the lift. Nevertheless, if you come out of the lift, you can still go up some stairs to what is the roof top and on the roof

30

40

50

top - no doubt many of you have been on roof tops of factory buildings - you have other little factories and other places which are used by various persons for varying purposes. So, if you go to the top floor on the lift you can turn left and then enter the factory or, alternatively, if you wish, you can go up to the roof top, part of which is open to the sky.

In the
Supreme Court
No. 3
Opening Address
for the Crown

4th August
1965

Continued

10 Now on the very roof top there is a factory known as the Tat Kwong Electric Bulb Factory and I suppose it could be said that would be on the 10th floor, although in fact there is no 10th floor; it really is the roof top. So if some person should say to you "on the 10th floor" I am sure you will understand precisely what they are saying in effect is the roof top. But the Tat Kwong Electric Bulb Factory is a factory in which there is one person named Mr. HO whom we are
20 calling as a witness and who is a contractor, and the relevance of that bulb factory will appear later in my opening because at one time the defendant in this case was employed there.

Now let us look, if we may, at this particular plan because if you look at the left, members of the jury, you will see to the left and the right of the words "unsurveyed area" there are two other lifts, and in fact for the whole of this building there are four. But the photograph will show you the lift which is immediately out-
30 side the office of the Bonnie Hair Products. Now the Bonnie Hair Products Factory is the style and title for a wig factory. There hair comes from abroad. It is coarse when it first arrives and it is thinned and wigs are made. There are two processes apparently, one of using the machine and one of using hand, and you will see that in the various rooms there is a stitch room and, to save confusion, I am going to call one room the stitch room and another room the watchman's room.
40 Members of the jury, if you wish to do so, you may mark any of these plans in any way you choose.

Now if we come from the lift and turn left, you will see there an opening leading into a hallway on the left of which is an office. Then you go through another doorway and that is labelled "working place" which I shall call the watchman's room. You see in that room, members of the jury, a number of lines representing "fluorescent lights

In the
Supreme Court
No. 3
Opening Address
for the Crown

4th August
1965

Continued

over"? Then on the upper part of that room you see there is a working place and store room. If you walk across the watchman's room you will then come to an opening here, and there you see on your left is an office, and we say that the defendant broke into that office on that night and that whilst he was in that office he was seen by the watchman. But leaving that aside for the moment, this second room, if you like to label it No.2, which has the office on one side and the working place on the other, I propose to call it the stitching room.

10

Now, members of the jury, you will probably know that the darker line represents the actual wall of that building and perhaps you can see that from this stitching room there are two entrances or exits, one into the working place and that I am glad to say we are not concerned with, and the other one at the top which leads into this last room. Now, members of the jury, this last room, which is certainly the largest of the three, is called the dyeing room - dyeing and cleaning, dyeing or bleaching room - and I will show you photographs of it in a moment. But if you put your finger along the dark lines you will get some idea of the shape of the room and by any standards it is unusual. Do you see there in the middle, members of the jury, two little squares which have been darkened? They represent pillars. Then going from the wall, along the wall you will see that there is to the right at the bottom a wall which separates that room from the stairs which go down outside that room. Now perhaps it may be clearer to you if I point out the entrance to that dyeing room. It is here from the stitching room at the top of the plan and it is also here between the lift and the stairs. Now what is shown here as being an exit leading to the lobby of the lift on the right hand side, that exit was permanently closed, so with that we are not concerned. Now then, members of the jury, if you want to go through the stitching room which is where the office is, which we say was broken into, then you will go up to the top of the plan and then through this aperture and then down into this room; and a person inside the dyeing room could only leave those premises by going out through that particular door.

20

30

40

50

Now, members of the jury, there is one other thing which I feel I should try to explain to you and perhaps make it a little clearer than what I have done already and that concerns the light well. Do you see there, members of the jury? It is shown on the right hand side of the dyeing room. Now the very dark line on the outside is the actual outside wall of the whole of the building, and because this is a factory and because factories require light, in the construction of this particular building it is so arranged that there is, as it were, an inside wall forming the wall of the actual dyeing room and that you would look out over a gap which will go right down to the ground level which affords light for all the floors whose walls abut on to that light well. Now, members of the jury, I mention this because this is an important thing, because actually at these premises a window was missing or a pane of glass was missing from a window which overlooked the light well, and it would follow, would it not, that anybody who knew of that missing pane of glass would know for one of two reasons: either because he worked there and had seen it whilst he had work, or had been somewhere in or around the premises in a position where he was able to see it? And, members of the jury, as I already told you, the defendant in this case was at one time employed at the Tat Kwong Electric Bulb Factory which was on the 10th floor, and if you are on the 10th floor and look down the light well you can actually see a pane of glass missing from this particular window which is situated on the floor below. Of course, if a person was minded - as indeed it will be our case - to break into the factory for the purpose of stealing, well then he would have to clamber down somehow or the other from the 10th floor to this particular window frame which would admit a human person.

Now at this time there was being constructed something - I believe it was air-conditioning - or there was some decoration work being done which required bamboo poles to be erected, and these bamboo poles had been erected sufficiently to allow a man to clamber down from the 10th floor down to the 9th floor and although to you and I it may be a hazardous thing to do, nevertheless it was quite feasible. Another thing is that the murderer in this case obtained entrance into this factory by scrambling down the bamboo poles and then forcing his way into the premises by means

In the
Supreme Court
No. 3
Opening Address
for the Crown

4th August
1965

Continued

In the
 Supreme Court
 No. 3.
 Opening Address
 for the Crown
 4th August
 1965
 Continued

of the missing pane of glass by just climbing through the window. Perhaps it may be of assistance to you if I seek, as quickly as possible, to relate the photographs to the actual plan.

Members of the jury, you have in front of you a bundle of photographs P1 and the first photograph shows the lift door which you will hear is the lift for Block D. You see the bundle in the corner? That's got nothing to do with this case at all.

10

COURT: This is the lift you have been talking about, not the lift on the right hand side?

MR. ADDISON: My Lord, the lift on the left hand side.

COURT: I am sorry to interrupt you.

MR. ADDISON: That is the lift which gives access to the main entrance of this particular factory.

So, members of the jury, this is the lift of the 9th floor and the position of the lift is seen on the left hand side, and of course if you then come to the lift, look ahead, you see the stairs going up to the roof top. But we are not going there, we are going to turn to the left - you may mark any of these photographs - you will then begin to face the entrance to this particular factory, and there it is. The entrance is shown in the photograph B, that is the second photograph. Now do you see there the first door which is in fact open? This door is the main entrance to this particular factory. Members of the jury, do you see there on the left there are two doors, one of which has a window - we are not concerned with that door at all - that leads on to another part of the premises, but the door there which is open is the main door leading into the factory, and if you go into this corridor you see there on the left a window. Lest there be any confusion at all, this is the window to the office which you see in the plan and again it is an office with which I am glad to say we are not concerned in this case. Walk down a little further, members of the jury, and you will see what I will call the second door, and that second door is the one which leads into what I propose calling the watchman's room and it is the one shown on the plan as being 5 feet - where the figures 5' 9" appear. Let us go into

20

30

40

that room and there is the watchman's room, and there you see a camp bed and you see some equipment, and then to the far left hand corner do you see there an opening? Well, members of the jury, that opening is shown on the plan as a break in the wall between the store room and the wall of the working place and the stitching room is there and you see the lights suspended from the ceiling. The next photograph, members of the jury, is taken from that opening which you see in the photograph C. In other words, the fourth photograph D is taken looking back towards the entrance to the factory itself. So the photographer has simply walked to this point here and taken the photograph. So where you see people standing, that's in the corridor outside, the first office on the left after entering the premises. The next photograph is merely a close-up of the camp bed, and perhaps you will see there a pair of clogs on the ground and what looks like package. Likewise photograph F, that's another view of what I would call the watchman's room.

Now, members of the jury, if we now go to this opening, that is by the office which you see in photograph C, you can see in photograph a box and a fire hydrant in the corner. Well, a close-up of this has been taken and is shown in photograph G. And do you see there something on the ground? We are going to call evidence to show you that is a pay packet envelope.

Now let us go on then to the stitching room. You see a photograph at H and on the left there, coming through that opening, you see the office, and this is the office which we say was broken into. Now, members of the jury, do you see there against the wall an iron rod? Well, that rod we say was the rod used by the offender in striking this man to death.

Now perhaps I should tell you just a little about this office because there are two windows which slide and over-lap, and as you will be well aware there is a device here whereby you can lock a window - it is a kind of ratchet with a key - and each pane section has such a ratchet lock, and we are able to tell you that this was interfered with because on the morning following this offence when the girls who worked there went back into that room they found one of the ratchets had been forced off. So there is the office, members of the jury. And do you see this: that on the right hand side

In the
Supreme Court
No. 3

Opening Address
for the Crown

4th August
1965

Continued

In the
Supreme Court
No. 3
Opening Address
for the Crown
4th August
1965

there is an aperture, a door leading into that office? This particular door is the only door which leads into that office and you will hear that it has a self-locking Yale lock which means this: if you were inside you can always open it. If you were outside you cannot get in if it is locked without a key.

Continued

The next photographs I and J show you the desk inside this particular office, and the first one shows you on the floor on the left in between the supports of the back of the chair the ratchet lock which has been forced off that window. And do you see the middle drawer of that desk with the tongue of the lock up? Well, we say, and evidence will be given, that these drawers had been forced open and I will invite you to say as a matter of common-sense - it is a matter entirely for you - obviously the person who entered the premises was that very same person who was seeking to break open the drawers to take whatever he could find.

10

20

The next photograph is another photograph showing the same office and on the desk you will see a pair of scissors. I say this now: the scissors has got nothing to do with this case, although you will hear about scissors later on. On the floor is a screw-driver and both girls who work in this office will tell you there was no screw-driver there when they left their office at 8 p.m. on the night of the 11th, and one of them will tell you - if you accept her evidence - that there was no iron rod outside the office when she left there that night. You remember I drew your attention to that in photograph H.

30

Now for one reason or another the photographs have been so arranged that the next photograph merely shows what you will hear were bloodstains on the floor of the watchman's room. It is another photograph of a section of the rack which you will have seen earlier in the third photograph C. However, leave that for the moment and then let us go now into the last room, which is the dyeing and bleaching room, and it is in this room that one finds various equipment for dyeing - basins, rubber gloves and other paraphernalia necessary for the preparation of wig making; and also it is used at this factory a fork. I suppose all of you have seen, and indeed you will do in this case, a Prestige cooking fork with two prongs. That is for stirring the hair inside the bowl when it is

40

being bleached. But the view inside the actual dyeing and bleaching room is in the 13th photograph, photograph M, and there is the paraphernalia necessary for the manufacture of wigs.

Members of the jury, do you remember when I showed you the plan a little earlier I pointed out what these square blocks are? Well, these represent pillars and if you look at the plan you will see two blocks in the dyeing room. Well, one of those blocks is a pillar which you see in photograph N and there are three taps, and also you will see a basin in which are some clothing and we say that the person who murdered the person that night rifled his clothing and thereafter, for reasons best known to him, although I am sure you won't find it difficult, he decided to put the clothing in a bowl of water, perhaps feeling that he might get fingerprints or something of that kind, or that by doing this he will in some way or other escape detection.

Now would you please look again at photograph M because in that photograph, among the confusion there, you will be able to see the window, the pane of which is missing, and through which we say the defendant made his entry. Now do you see there a stove in the middle against the wall? Now then that stove has behind it a window which is being darkened, and then to the left of that you will see a little white area which is looking through to the outside wall. Perhaps if I put my finger on it it may be of assistance to you. That is that part just there. You see it has many panes concealed by this pillar but in fact that pane there looks on to the outside wall forming part of the premises - the whole of the building.

Now, as I mentioned before, there is this roof top or 10th floor, and the police very kindly took photographs of the 10th floor, standing in a position where a person could look down the light well, and photograph O is a photograph of that light well taken on the 10th floor. And do you see there the bamboo scaffolding? Well, we say it was down that scaffolding that the intruder effected his entry.

Let us go up to the edge of that light well and look down, and that is what you can see. It is in photograph P and very ably the photographer has been able to take a photograph showing the missing

In the
Supreme Court
No. 3
Opening Address
for the Crown

4th August
1965

Continued

In the
 Supreme Court
 No. 3
 Opening Address
 for the Crown

4th August
 1965

Continued

pane and, members of the jury, it is almost plumb, if I may say it, in the middle of this photograph. It is the white part shown just there. So we say he climbed down there.

And the last photograph is merely a close-up of a concrete cross-section, if that is what that is called, a little nearer the scene of entry. Below the scene of entry I think it has the same cross-section which you can see in photograph B, because found on that ledge was a fork, and we say that that fork had been taken for one reason or another by the intruder. I don't know - we are merely conjecturing - but somehow it dropped and fell on to this cross-section and was later picked up by the police.

10

Now as to the facts. Well, members of the jury, I must tell you this, and you will hear it many times: it is for us to prove our case beyond reasonable doubt. We are not entitled to conjecture. We must put the facts clearly before you, however they turn out - whether they are in our favour or not in our favour - because the Crown have a duty to put all the facts before you irrespective of whether they assist us or not. And, members of the jury, you are the judges of the facts. It is your sole function here to decide what facts you find proved and it is a matter exclusively for you. Our difficulty is that no one saw this man enter, no one saw this man leave; but from various things that were found inside the premises we would, in my humble opinion, be entitled to say to you, if you are satisfied as to these facts and if you are satisfied that they can prove a particular thing without any doubt at all, well then you are entitled to say "I am satisfied that those facts are proved".

20

30

Now on the night of the 11th of May there was at the factory a number of people working and it would seem that they were not all obliged to leave at the same time. For example, the supervisor, a Mr. TSUI Chung Kwong, left the premises at about 8 p.m. and he went to the watchman's room, saw the watchman, and it was the watchman's duty, when there were few people left on the premises, to see each person out and he would unlock the door and allow him to leave and thereafter he would lock it again; and the supervisor will tell you that he left at about 8 p.m. and was let out by the deceased. And these two girls, a Miss TSUI Yuk Lam

40

and a Miss Shum Kin Ying, who worked in this office of which you have seen a photograph, they left at about 8 p.m. One of them closed the door of the office which locks itself and they left and were seen going away from the premises. Now the premises have a cleaner - we may or may not call her - but the cleaner left the premises at about 9 p.m. and she will tell you that at the time she left there were about four people still working in the dyeing room and she was seen out by the night watchman. Now the four people working, whose names I am not going to trouble you with at the moment except one, were working over-time and one of them was a man named WONG Lap Miu, and he is a hair-cleaner in this particular section and he will describe to you something of the nature of the work that he does, and he himself will tell you that he used this rod that night at about 9 o'clock or a little later. He left it by the stove. It is a rod which is used for weighting down the hair in the dyeing vat, and he will explain that to you. He also used this fork or one similar to it and that he put it and left it on the ground near the pot, and he together with three others left the premises at about 11 p.m., and after they left they heard the door being re-locked by the watchman.

Now what happened that night is of course not a matter on which we can give you any direct evidence because the workmen came back in the morning and the supervisor, Mr. TSUI Chung Kwong, knocked on the door to gain entrance but found he could not do so and therefore he broke open the door and he went inside. What he saw inside was the body of the deceased lying on this camp bed and he stopped anybody else from coming in and sent for the police, and the police arrived very shortly afterwards and began their investigations.

Now we will invite you to say, and this is an important part of our case, that the watchman was killed during the furtherance or course of a felony. That may seem pretty high brow to you, but in ordinary language all it means is this: that a person broke in to steal and that he was disturbed by the watchman and therefore he killed him. And we will invite you to say from the facts that there was one or two items missing from the premises - from the fact that the drawers had been tampered with and that the pay packet had been taken from the clothing and emptied, which was the whole object of the person's entry, and that death resulted. It may

In the
Supreme Court
No. 3
Opening Address
for the Crown

4th August
1965

Continued

In the
Supreme Court
No. 3.
Opening Address
for the Crown

4th August
1965

Continued

not be easy to check up all the equipment, but nevertheless people will be called to say that a pair of scissors were removed and that a fork was taken and you will be satisfied - it is a matter entirely for you - that a pair of rubber gloves were taken and it may be, members of the jury - it is merely conjecture - that the offender wore rubber gloves in order to prevent fingerprints from being discovered because none were discovered which would link with this particular defendant.

10

The police go to the scene and they are headed by Inspector LAU, and not unnaturally inquiries began, and the police feel perhaps - I don't know - you'll hear evidence about this later on - that somebody must have had some knowledge of these premises in one way or the other, and of course immediately there came under suspicion everybody who worked there and there were over 100 people who worked there, and statements had to be taken. So every person was interviewed and many statements were taken in an endeavour to discover the author of this offence.

20

Now one of the persons who was interviewed is a lift operator by the name of CHAN Pui, and he is an important witness for the Crown, and he will come before you and give evidence. Members of the jury, whether you believe him or not believe him, whether part of his evidence you can accept or all of it, that is entirely a matter for you, but he will tell you - we say he is in no way connected with this offence - he knows the defendant and that it was he who spoke to Mr. HO and arranged for the defendant to be employed by this Tat Kwong Electric Bulb Factory on the roof top and that from time to time they used to meet each other. Well, members of the jury, there is nothing suspicious about that, but of course the police are interested in interviewing anybody who knows any one who works at the factory and so there were a number of interviews between the police and CHAN Pui, as indeed there would have been many other employees in this factory, and these interviews took place between the 12th of May, the day of the discovery of the offence and the 25th of May, which was the day when the defendant was invited to go to the police station for inquiries there.

30

40

Now what we are able to learn from CHAN Pui, and he will tell you, is that the defendant began working at this bulb factory on the 17th of April

10 this year and that for reasons with which we are not concerned - apparently his work was not satisfactory or something of that kind - at any rate he did not work there for very long because he left that employment on the 11th of May in the morning. Now he had at this time, so far as we know, been living on the premises. We don't know entirely, but he had a suitcase there and when he left on the 11th of May, which was on the morning of the night when these persons left the factory before the deceased was murdered, he handed CHAN Pui a suitcase saying, "Just keep this for me in the meanwhile". Well, members of the jury, there may be nothing in that but nevertheless this is what he did, and it may satisfy you as being some evidence in fact they did meet that morning.

20 Now from time to time during the period that the defendant was working at this factory on the 10th floor, he had seen CHAN Pui and they lent each other money on odd occasions, as people do in these conditions, and sometimes CHAN Pui wanted to borrow money from the defendant, and it seems that each of them was a bit short of money. But, be that as it may, the defendant handed this suitcase to CHAN Pui on the 11th of May and then he did not see him again until the 21st.

30 Now on the 21st of May, some 9 to 10 days after the offence, the defendant went to this wig factory and saw CHAN Pui and he asked him for some money and there was a conversation between them, as one would expect, "Where are you working? What are you doing? Where are you living?" and so on, and we will call evidence to say that the defendant said he was working at Shaukiwan. You will remember that the police was interviewing everybody, interested in everybody, and there was throughout this time conversations on and off between the police and CHAN Pui, and CHAN Pui told the police he had seen this person and he was working at Shaukiwan and naturally the police would make inquiries. But, be that as it may, the defendant came again to see CHAN Pui, and so did the police officer. He was also seeing CHAN Pui. Then later on, on the 25th of May, CHAN Pui decided that he would go and see a man named PAU Ying. Well, he went to PAU Ying's house and there he happened to see the accused and that was during working hours. Nothing suspicious so far because he was on shift work. But he was surprised to see the defendant and he said to him there and then words to the effect, "Why are you not at work? What are you

40

50

In the
Supreme Court
No. 3
Opening Address
for the Crown

4th August
1965

Continued

In the
Supreme Court
No. 3.
Opening Address
for the Crown

4th August
1965

Continued

doing here?", and the accused said to him, rather
oddly, "Don't talk about it here. Let's go out."
And so they went to a coffee shop on Laichikok
Road and they had a conversation together, and
CHAN Pui told the defendant, "Look, I am being
asked a number of questions by the police about
this particular murder", and the defendant
apparently was very worried at the police asking
questions of CHAN Pui and he asked CHAN Pui for
some money, saying to him, "Lend me some money
because I want to go to Macau or to the Mainland
China." And CHAN Pui said, "Why do you want to go
there?" and according to CHAN Pui the defendant
said; "I don't want the police to question you."
Well, members of the jury, whether that is of
great significance or not, it is entirely a matter
for you. What was arranged was that they would go
to an apartment, that is the Hong Lok Apartment
in Ma Tau Wai Road, and they went to this apart-
ment and there was another conversation between
them in which the defendant sought to get CHAN Pui
to go and meet a friend and ask him to lend money
for the accused's benefit. Now this is perhaps an
odd matter, members of the jury. These things do
happen, strange things do happen at times for
which there can be no reason, but nevertheless it
was agreed between them they would go to a
restaurant, the Kam Moon Restaurant, and that the
defendant would be outside when CHAN Pui met this
man who was to be asked to lend money and that
man's name is WONG Chun Nin. Now WONG Chun Nin
happens to be a lift operator at these premises on
the A Block. One person knows another. Anyway at
this restaurant, the Kam Moon Restaurant, there
were inside the premises CHAN Pui, WONG Chun Nin,
and they were seeking to discuss the lending of
money, and the defendant was also inside that same
restaurant but at a different table, and the
reason we say he was at a different table is
because he was rather worried about his position,
knowing that the police were making inquiries of
CHAN Pui, and he did not want anybody who knew him
or was likely to know him to see him, so he kept a
little bit at the back. He could not lend him
any and WONG Chun Nin left. Then CHAN Pui said to
the accused, "Sorry, can't give you any money".
Things were getting rather worrying for the
defendant and so what he said to CHAN Pui was, as
they were walking along, "I'll meet you tonight at
this spot" and he just chose at random a spot,
which was a rock near the Hoi Sum Temple in Lock
Shan Road, and it was agreed they were to meet

10

20

30

40

50

between 8 to 8.15. Well, CHAN Pui, for obvious reasons, made an appointment with the police and so he went to see P.C.4215 - and you will hear a lot about this P.C. WAN Ming - and told him what had happened and where they were to meet, and after a conversation with this police officer he went back to meet the defendant a little later, about 9 o'clock, and after they were together three police officers put in an appearance and then invited both of them to go to the police for investigations.

10

Now, members of the jury, the police were merely carrying out inquiries. Nothing more, nothing less. They were interested in anybody who may know anything and they said to this man they wanted him to go with them to the police station for inquiries and would he go, and he agreed to go and went with them that night to the Hung Hom Police Station.

Now, we will invite you to say later on if the police knew that this man was guilty they would have many more police officers at that time. However, be that as it may, they invited this man to go and he went to Hung Hom Police Station, accompanied by three other police officers, along with CHAN Pui. Now they arrived at this police station at about 9.25 p.m. and P.C.4215 led this man into the C.I.D. Office where he was seen by the Detective Sergeant TSANG Kei 1075 and P.C.4463 who also went with him to the police station. I must say this: at the police station he was asked to account for his whereabouts on the night of the 11th and he just told them where he had been, and the Sergeant left that room and went to P.C.4215 and said to him, "I want you please to go up and bring in four people, because they were the persons whom the defendant said he had seen and visited and could account for his movements on the day and the night of this particular murder." And so the officer went off and he found those persons and brought them back to the police station and they were then led into the room where the defendant was with two other officers, and these persons were asked in the presence of the defendant, "Do you know this man? Was he with you at such and such a time on that night?" And they each said that he was not.

40

Well, members of the jury, what transpired after that is evidence which you may or may not hear, but this is the basis of the Crown's case so far as I may be allowed to open at this stage, and

In the
Supreme Court
No. 3
Opening Address
for the Crown

4th August
1965

Continued

In the
Supreme Court

No. 3
Opening Address
for the Crown
4th August
1965
Continued

I say this: that it is a matter which you are entitled to take into consideration, namely, "Where was this man on that night? Why did he behave so peculiarly? Did he not in fact have an opportunity to commit this offence by reason of the place where he worked and also by virtue of the fact that he was short of money? So, although we are not obliged to prove motive, you may feel that there is some evidence of motive sufficient to help you in making up your mind one way or the other. And later on, members of the jury, this man was charged with this offence and you may hear evidence about this at a later stage. But let me say this, if I may: some of you may have seen something about this case in the local newspapers. Of course, members of the jury, it is your privilege just to hear this case on the evidence which is brought before you at this trial and for you to say whether, having heard the evidence, seen the witnesses, you accept what they say and are left in no doubt whatsoever, reasonable doubt, as to the accused's guilt. Perhaps I may conclude simply by saying this: you will of course give every reasonable doubt where it is necessary in favour of the defendant and, of course, you will listen to such evidence as he gives with as much, if not more, attention as to the evidence of the witnesses called by the Crown.

10

20

MR. ADDISON: My Lord, subject to your Lordship's permission, I will call my first witness.

30

Prosecution
Evidence

No. 4

EXTRACT FROM THE EVIDENCE OF DR. LEE FUR-KEE

No. 4
Extract from
the evidence
of
Dr. Lee Fuk-kee
Examination

Q. Now on the 26th of May this year at 6.30 in the morning at the CID room Hung Hom police station in the presence of Inspector Lau, did you examine a chinese male, CHAN Wai-Keung? A. Yes.

Q. Did he consent to you examining him? A. Yes.

Q. Is that person in court?
A. This is the man I examined (indicating defendant).

Q. Doctor, this is an important question - what was his condition at the time that you examined

him? A. I don't quite get your question.

Q. You saw him at 6.30 a.m., how did he seem to you - you say he gave you his consent? A. Yes.

Q. Did you have any difficulty in him understanding what you asked him at the time? A. No difficulty.

Q. Did he seem reasonably bright for 6.30 in the morning? A. Yes.

Q. Seemed composed at that time? A. Yes.

10 Q. Anything about his condition at that time to suggest he was anything but normal? A. He is normal.

Q. He was normal. Did he give his age to you? A. Yes, stated age was 23 years.

Q. Speak up so the jury may hear. A. Stated age 23 years.

Q. And what did you find as a result of your examination?

20 A. He was wellbuilt, no deformity on the body; his muscle power was good, left hand grip is stronger than right hand grip, no signs of injury on his body, blood group is group 'B'.

Q. Now you say his left hand grip is better stronger than his right hand - is that indicative of anything?

A. In my opinion he is left-handed.

Q. And if as a matter of commonsense one who is left-handed grips heavily at the throat of someone in front, which side of the throat would you expect to be bruised? A. Left.

30 Q. Which side did you find this bruise? A. Left.

Q. How long did the examination last? A. About half an hour.

Q. Were you talking to him at this time? A. Yes.

Q. Were you alone with him when you conducted this examination?

A. No, Inspector LAU Kin-Yeuk was present.

Q. Who else? A. And also my assistant who has the equipment with me.

In the
Supreme Court

Prosecution
Evidence

No. 4
Extract from
the evidence
of
Dr. Lee Fuk-kee
Examination

Continued

In the
Supreme Court

Prosecution
Evidence

No. 4

Extract from
the evidence
of
Dr. Lee Fuk-kee
Examination

Continued

Q. What is the name of your assistant?

A. Mohammed Ali.

Q. Did he speak Cantonese? A. Yes, he does.

Q. Did the defendant speak to you in Cantonese?

A. I spoke to the man in Cantonese.

Q. Did he answer all your questions? A. Yes.

Q. Such as you put to him? A. Yes.

Q. Did he seem at ease throughout the
examination? A. Yes.

Q. Did he in any way seem to be perturbed by the
presence of any police officer - did he in any way
seem to be perturbed by the presence of a police
officer whilst you were conducting your
examination on him? A. No.

10

No. 5
Chan Pui
Examination

No. 5

CHAN PUI

P.W. 13 - CHAN Pui - Affirmed.

INTERPRETER: CHAN Pui, my Lord, affirmed in Punti.

EXAMINED BY MR. ADDISON:

Q. Is your full name CHAN Pui? A. Yes.

20

Q. And you are also known as CHAN Wing Pui? A. Yes.

Q. Are you employed in the On Lok Mansions 95 Ha
Heung Road, Kowloon, as a lift attendant? A. Yes.

Q. At 'D' block? A. 'B' block.

Q. 'B'? A. 'B' yes.

Q. How long have you been so employed?

A. For several months since the occupation permit
was issued.

Q. And what hours do you work?

A. From 7.30 a.m. to 3.30 a.m. my Lord - I mean to
3.30 p.m. my Lord. That is 8 hours work and

30

sometimes from 3.30 to sometime after 11. That is on irregular shifts, my Lord.

Q. And the lift - does that go only up to the 9th floor? A. Yes, my Lord.

Q. And from that 9th floor, there is a stairway leading on to the roof top? A. Correct.

Q. You see the defendant in this case?
A. He is called CHAN Wai-keung.

Q. Do you know him? A. Yes.

10 Q. Just listen to the question. How - and could you speak up so that the jury may hear - How long have you known him?

A. I have known him for the last four months.

Q. Which month did you come to know him?

A. I came to know him sometime in December last.

Q. And at the time you were working as a lift operator at these premises did you know him then?

A. Yes.

20 Q. Did you know what work he was doing?

A. I am not clear.

Q. In April of this year did you know what work the defendant was doing?

A. Well, I introduced him to work at the Tat Kwong Electric Bulb Factory.

Q. You said you introduced him to work - what do you mean by that?

A. Well, he said he was unemployed; he was jobless.

Q. And when he told you that, did you see somebody?

30 A. Yes, I went to see Mr. Ho the supervisor.

Q. What? Of this Tat Kwong Electric Bulb Factory? A. Yes.

Q. Where is this Tat Kwong Electric Bulb Factory?

A. On the roof top of this On Lok building, that is one floor above the lift.

Q. And when you went to see Mr. Ho, did you go alone or with the defendant?

In the
Supreme Court

Prosecution
Evidence

No. 5
Chan Pui
Examination

Continued

In the
Supreme Court

Prosecution
Evidence

No. 5
Chan Pui
Examination
Continued

A. Well, I went up to see Mr. Ho by myself, and then I came down with Mr. Ho to the ground floor and at the coffee stall I introduced this accused to Mr. Ho.

Q. For the purpose of him obtaining employment at this factory? A. Yes.

Q. And were your endeavours successful? A. Yes.

Q. When did the defendant start working at that factory?

A. Well, the accused went to Tat Kwong Factory on the evening of the 17th of April and spent the night there and commenced working the following morning, that was the 18th April. 10

Q. And did he continue to work there? A. Yes.

Q. And when he was working at this bulb factory did you have occasion to see him from time to time? A. Yes.

Q. How often were you seeing him - once a day, or more than once a day, or once a week?

A. Well, at the very beginning, my Lord, after I had recommended the accused to work in this factory I went up to the factory every day to see how he was doing and asked him whether he could do the job, as well as advising him to work hard and to do the job well. 20

Q. Yes. Do you remember any particular day when you went up to see him to ask him for something?

A. On the 9th of May he telephoned me - on the 8th of May he telephoned me ...

COURT: When did he telephone you?

INTERPRETER: On the 9th of May, my Lord. 30

A. Well, on the 6th of May, my Lord, that was pay day for the accused, and I knew he had got his pay, so when I saw him in the lift I then asked him to lend me \$20 and he promised to give me that loan that same evening ...

Q. Yes. A. ... But that evening he did not take my lift and I do not know where he had gone to.

Q. So it seems he - according to you - he left the premises without seeing you? A. Yes.

Q. Whereas if he used your lift you would have asked him for the \$20 you sought to lend from him - to borrow from him? A. Yes.

In the
Supreme Court

Prosecution
Evidence

Q. And did you see him again afterwards?

A. On the morning of the 7th of May at about 10 minutes past seven, I saw the accused again, and I asked him why did he not keep his promise by giving me the loan of \$20.

No. 5
Chan Pui
Examination

Q. Did he explain why?

Continued

10 A. In answer, he said he had no more money because he lost all his money at the mahjong games. He had only several 10-cent coins left ...

Q. Did you see him again after this?

A. And I went back to work at 7.30 and on the 9th of May at about noon, the accused rang me up ...

Q. Yes. A. On the 9th at about noon, my Lord, the accused rang me up.

20 Q. What did he say? Just one moment. My Lord, I have some difficulty here. Perhaps I had better be more specific. Did he ask you to go and see him? A. Yes, he did.

Q. And as a result of his request did you go and see him? A. Yes, in fact I went straight away.

Q. Yes. Now, after this day, the 9th of May, you saw him again?

A. I said to him that you have embezzled a hundred odd dollars.

30 Q. Would you please answer the question. Did you see him again after the 9th of May? I am not interested in anything other than after the 9th of May. A. Yes, on the 11th - morning ...

MR. SWAINE: It is my duty to report that the witness said something in Chinese which I just managed to catch, and as four members of the jury are Chinese members I have no doubt they understand the Cantonese dialect. It seems to me, my Lord, that perhaps the jurors should leave the room while I make my submission.

In the
Supreme Court

No. 6

PROCEEDINGS

No. 6
Proceedings
5th August
1965

5th August, 1965

10.05 a.m. Court resumes

Accused present. Appearances as before. Jurors answer to their names.

MR. SWAINE: May it please, my Lord, I have an application to make, one which I would like to make in the absence of the jury.

COURT: Members of the jury, there is a legal point of which you are not concerned at the moment that we have to discuss, so will you please absent yourselves from the court. I am sorry to say there is no proper jury-room to go to. Will you please leave - we don't know how long we would take - hang about until you are recalled.

10

10.05 a.m. JURY LEAVE COURT

MR. SWAINE: My Lord, the words used by the witness yesterday in Chinese language were these, according to the interpretation by the Court Interpreter:-

20

"I said to him that you have embezzled a hundred odd dollars."

These words, my Lord, cannot but prejudice the accused, because apart from showing that the accused was a man of bad character and had committed a crime, they also showed that the accused was dishonest, and that he would embezzle, and the words might well also be construed as suggesting that the accused needed money sufficiently to embezzle. The dishonesty and the need to embezzle, my Lord, are particularly relevant in this case, because the motive attributed to the accused having committed the murder is that he went to steal and killed in the course of the theft. Having regard to those facts, my Lord, I shall deal with the law which ...

30

COURT: What are you asking for?

MR. SWAINE: A new trial - I am sorry, I am asking for a new trial. Simonds Volume 10, at page 427, top of 427:-

In the
Supreme Court

No. 6
Proceedings

5th August
1965

Continued

10 "The jury ought to be discharged where an injurious statement as to the defendant's previous record has inadvertently been made by a witness and counsel for the defence applies for a fresh trial before another jury. If, however, counsel fails to make such an application, that is not necessarily fatal to an appeal founded on improper admission of evidence though it may bear on the question of whether the defendant was really prejudiced. It is not a proper use of counsel's discretion to raise no objection at the time in order to preserve a ground of objection for a possible appeal. If such a defendant is not defended, the judge must inform him of his right to apply
20 forthwith for a fresh trial."

The leading case, my Lord; appears to be in 1935, the case of R. v. Peckham, and I say, as well as a case which was determined later in 1938 - R. v. Firth. These two cases appear to be the point and these are the two cases that I propose to read.

Peckham's case is in 25 Criminal Appeal Reports at Page 125, and I think it would be sufficient for my purpose to read from page 127 of the judgment - at the foot of 127:-

30 "Another matter which is complained of is that a certain witness for the prosecution in reply to a question put to him in cross-examination whether he had been to the prisoner's house, said that he had been in that house when the prisoner was away in prison. The appellant's counsel raised an objection and asked that the trial should be begun again with a new jury, but his objection was overruled. Moreover, no
40 warning was afterwards given to the jury that they were not to pay any attention to this inadvertent statement on the part of the witness. It may be that in particular cases and on particular facts it is not necessary for a reference to be made in the summing-up to a prejudicial statement of this kind inadvertently made by a witness. Every case

In the
Supreme Court

No. 6
Proceedings

5th August
1965

Continued

must be looked at in relation to its own facts. But there is a great difference between those cases and the present case in that here there was an application by counsel for the prisoner that the trial should be started afresh. It was in those circumstances that the Deputy-Chairman refrained even from alluding to the topic when he came to sum up. In the opinion of this Court, where a statement with regard to a prisoner's previous record is inadvertently made from the witness-box to his prejudice, and his counsel applies for the trial to be begun again before another jury, the Court ought to begin the trial again."

10

And these words are repeated at the very end of the judgment at page 129,

"and secondly, where a statement injurious"etc.

The next case I wish to cite, my Lord, is R. v. Firth, 1938 3 All England Law Reports, 783, and in the judgment of the Lord Chief Justice on page 784, in small print the evidence is set out, and the part that is relevant, my Lord, begins just under the marginal note H,

20

"There was some hemp, but this matter was relating to other things which if mentioned here might not be in favour of the prisoner."

This given by the police constable when cross-examined,

30

"There was nothing else taken I can remember now, apart from what I have mentioned. There was some hemp, but this matter was relating to other things which if mentioned here might not be in favour of the prisoner

Did you regard that explanation as necessary in answer to my question? - Well, yes. Were you unable of your own intelligence to devise any way in which that matter might not have been mentioned? - I thought that was the better way to mention it."

40

The rest of the evidence goes on in that theme.
Then in big print again:-

In the
Supreme Court

No. 6
Proceedings

5th August
1965

Continued

"The cross-examination having been continued to that point, counsel for the accused said: 'I ask that this jury be discharged, sir.' To this the assistant recorder rejoined: 'You brought it out.' Then counsel for the Crown said:

10

I was going to say it was entirely in consequence of his questions, with the greatest possible respect to my learned friend, that the witness answered it in the only possible way to answer it.

To this the assistant recorder replied; 'I think so.' Counsel for the Crown then said: 'The officer was unwilling to do so.' The assistant recorder added:

20

It brought out the fact there were other police investigations. I do not think it is a ground for discharging the jury - no.

Afterwards, when the summing up was reached, the assistant recorder added this passage:

30

At one period of the case there were questions put to a witness for the prosecution by defending counsel, who was asking him about certain things that were submitted to the expert witnesses, two of whom we have had called from Nottingham, whereupon the police officer said that there were some other inquiries, and made some reference to another case. That, if it is evidence at all, has nothing to do with the case. We do not know anything about another case, whether the inquiries were with a view to charging this man or some other man, or whether he was going to be asked to assist the police. Anyhow, it was some other case. I direct you that, whatever else you consider, you consider that no more. There is no evidence before you at all, except that some inquiries were going on, and that is irrelevant. So, if it was in your minds - I daresay you have entirely discarded it already - cut it right out. Consider this case against the man Firth purely and simply on the evidence as to the breaking and stealing which is brought before you against him.

40

In the
Supreme Court

No. 6
Proceedings

5th August
1965

Continued

The assistant recorder did every-
thing in his power to remove or mitigate
the mischief that had been done, but one
thing he refrained from doing, for a reason
which is a little difficult to fathom -
he did not say that in these circumstances
the jury would be discharged and the proceed-
ings commenced anew. It seems a little
unfortunate that he did not take that course,
because the whole trouble might have been
avoided.

10

It is a very difficult matter always to
arrive, with certainty, at what effect a
particular incident may have on the minds of
the jury, and it is important to remember
that the jury is not one person, but twelve
persons. It might be a profoundly difficult
matter to arrive with real certainty at the
effect of such an incident on the mind of
each of the twelve persons in the jury-box.
Ought a prisoner to be called upon to take
that risk? Is it right that he should be
exposed to the perils arising out of an
inadvertent answer given in cross-
examination? He had not asked for it himself,
and he had not gone out of his way in
inviting any sort of trouble. The police
officer was asked a question in cross-
examination, and he volunteered - we do not
say it in any disparaging sense or
criticising sense - a piece of evidence
which cannot be regarded as being other than
highly prejudicial. That he tried to avoid
it is plain enough, but we have to consider
what was done.

20

30

This is a matter which is not open to any
real doubt, and the court has expressed its
opinion more than once on what is the right
and proper course to take in the circum-
stances which arose here. The matter was
put with sufficient clearness in the
judgment of this court in 1935 in
R. v. Peckham, where the judgment used
these words at p.275

40

Those words are, I think, sufficiently
free from ambiguity. There are three
elements: (i) statements with regard to a
prisoner's record, and statements of that
kind, inadvertently made from the witness-
box; (ii) statements of that kind to the

50

prejudice of the prisoner; and (iii) in these circumstances, an application by the counsel for the prisoner for the trial to be begun again before another jury.

In the
Supreme Court

No. 6
Proceedings
5th August
1965
Continued

10 In Nov., 1935, this court was of the opinion that, in such circumstances, the trial ought to be begun again, and to that opinion we adhere. It is not very profitable or useful to enter into a speculation as to what effect might be produced in the minds of the jury, still more in the minds of a collection of jurors, on hearing this piece of evidence. If an incident of that kind takes place, then there ought to be an end of the trial, unless it is plain that the jury would inevitably have arrived at the same conclusion notwithstanding that irregularity. In the opinion of this court, it is impossible to say with
20 certainty what conclusion the jury arrived at on hearing this piece of evidence, and it seems to us in a high degree dangerous to allow a trial to continue to the end after such an irregularity. In these circumstances, it seems to us that we have no alternative but to quash the conviction."

30 There are other cases, my Lord, but I think this case is nearest to the point, in the circumstances of our case; there is leading authority and I shall not read the other cases but content myself with these two.

COURT: Yes.

40 MR. ADDISON: My Lord, I am indebted to my learned friend for having now before us all the cases which he has discovered as a result of his research, but there is one case I would wish to draw your Lordship's attention to, and this is reported in 1942, 2 All England Law Reports, one of the later announcements of this particular branch of the law - the case is R. v. Featherstone at page 672. My Lord, this is a case where a witness called by the prosecution inadvertently offered a piece of evidence which was prejudicial to the defendant. The headnote reads:-

In the
Supreme Court

No. 6
Proceedings
5th August
1965
Continued

"During the course of a trial for larceny and receiving stolen property, counsel for the prosecution asked a witness if she knew what the appellant was, and she replied, 'Yes, I was told he had been in prison once.' The judge directed the jury to disregard this answer, and the appellant, who was not defended, was convicted:-

HELD: (i) having regard to the nature of this irregularity, it was a case where the judge should have ordered a new trial. 10

(ii) since the appellant was undefended, the judge should have informed him of his right to a new trial before another jury.

(iii) in the circumstances of this case, there was no substantial miscarriage of justice and the appeal should be dismissed."

My Lord, in the short judgment which I would like to refer you to - one or two paragraphs of the judgment, my Lord, at page 673 at E:- 20

"The first question which we have to consider is whether that was an irregularity which really had the effect of making the trial an improper one. The deputy chairman did his best to correct the mistake, for mistake, we think, it must be taken to have been, notwithstanding the suggestion of counsel for the Crown that there was nothing wrong in the answer. In those circumstances, the deputy chairman told the jury that they must act simply on the evidence, and, if they heard one of the witnesses slip out what she had heard about Featherstone's character they were to leave that out of their minds, since it was nothing to do with the case. In our view, as I have said, the answer was one which not only should not have been given; it was an irregularity which ought to have been taken notice of in some way beyond the mere direction to the jury, which, though quite proper in itself, was, in our judgment, not adequate in the circumstances." 30 40

And then, my Lord; the Lord Chief Justice considers the case of Firth, and perhaps the dictum, my Lord, on page 673 is significant because the basis for the decision would seem to be stated:-

"It is not very profitable or useful to enter into a speculation as to what effect might be produced in the minds of the jury, still more in the minds of a collection of jurors, on hearing this piece of evidence."

In the
Supreme Court

No. 6
Proceedings

5th August
1965

Continued

10 And then, my Lord, if I may refer your Lordship to the bottom of this page,

20 "There is one addition which we think should be made to the rule there laid down by Lord HEWART, L.C.J. He was dealing with a case where counsel appears for the defendant, and makes an application for a new trial. In cases where a person charged is not defended, and an irregularity of this character takes place, we think that it is the duty of the judge to inform the prisoner that he has an opportunity and a right to submit that the trial should not proceed, and that he should make the application there and then if he wishes to do so. It by no means follows that in every case a person charged would desire to apply for a new trial, but, if an application is made to that effect, it is the duty of the judge to decide upon the application according to the circumstances.

30

40 Now, my Lord, that, in my respectful submission, would seem to be one of the principles that your Lordship is now faced with the difficulty of deciding, whether the evidence which has been inadvertently given by this witness is of such character that it may be nothing but highly prejudicial - my Lord, without using the word 'highly' - perhaps even prejudicial. The seriousness of this trial is one which is wellknown to all present in this court, and though my learned friend would seek to suggest that the statement volunteered by the witness, namely,

"I said to him that you have embezzled a hundred odd dollars"

is one which he would seek to suggest automatically means that this man is pecunious, he has a

In the
Supreme Court

No. 6
Proceedings
5th August
1965
Continued

dishonest character, and that he has in fact embezzled a hundred dollars, would in my opinion seem to take the matter very far, because a person can make pure accusations without any particular answer, and in fact from the depositions, it is clear it is an accusation which the defendant has denied, and my Lord, where would be the prejudice. Nevertheless, the suggestion of my learned friend at this stage is that an accusation has been made about the defendant that he is a person who is capable of being dishonest - a dishonest person, to bring him under suspicion in the minds of his friends or of those persons associated with him. My Lord, some of the cases cited, I think, accept the principle, and very clearly there is a possible distinction in that to say a person was away in prison obviously means he must have been convicted - if a person is in possession of hemp, one knows not only he is in possession of unlawful dangerous drugs but ipso facto he has committed an offence. My Lord, an accusation might possibly, I don't put it any higher than that - might possibly just come within the boundary.

10

20

I say this here now, that I am not seeking to say to your Lordship that this is a matter which should be disregarded, but it may be that my learned friend would consent for your Lordship to direct the jury here now, and then later on in the judgment, that my learned friend may consider that indeed any damage has been done, if it has been done, a direction to the jury on this witness's statement. If my learned friend does not take that view, I would accordingly seek to suggest to your Lordship, if your Lordship feels that there may be any prejudice done to the defendant, to of course have a new trial, and I am ready to start all over again. I may say that this is a matter which your Lordship has to decide. I am merely here to assist your Lordship, nothing more.

30

40

No. 7
Ruling
6th August
1965

No. 7

RULING

COURT: Well, I don't think that this is a case which I should order a new trial for these reasons. The words complained of, 'I said to

10 him that you have embezzled a hundred odd dollars', cannot be taken as suggesting that this man had been in prison. A witness has given evidence and not a police officer. There is no suggestion, I think, that some crime as such has been committed. It is an accusation of misconduct made by a friend or an ex-friend of the defendant. These proceedings are for murder. It is not as though this was a case of embezzlement and which I may hold a different view. However, I think it is most material the jury, as such, have not heard these words - only part of the jury - because the jury consists in part of Chinese and part of people who are not Chinese. The words were in Chinese and were not translated in the presence of the jury, so I don't think that this is a case in which I should order the trial to start de novo, nor do I think this is a case which I should address the jury now. It will only draw their attention more - as I say the words had not been translated and so I think we will just continue the trial from where we left off yesterday.

20 MR. ADDISON: My Lord, with great respect, perhaps your Lordship might mention this matter at the conclusion ...

COURT: Well we will see how the case goes - if you will remind me at that time.

10.30 a.m. JURY RETURN.

No. 8

CHAN PUI (Continued)

30 P.W. 13 - CHAN Pui - On former affirmation.

CROSS-EXAMINATION BY MR. ADDISON (Continues):

Q. Now would you please answer the questions which you were asked. Did you see the defendant after the 9th of May? A. Yes, I did.

Q. When was that? A. On the 10th when he came down by my lift, he said to me, Mr. Ho wanted to see me.

In the
Supreme Court

No. 7
Ruling

6th August
1965

Continued

Prosecution
Evidence

No. 8

Chan Pui
(continued)
Examination

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
(continued)
Examination

Q. Will you please answer the questions which I ask - the answer is you saw him on the 10th?

A. Yes.

Q. Where did you see him?

A. He came to the lift to see me.

Q. Did he speak to you? A. Yes, he did.

Q. What did he say?

A. He said, 'Mr. Ho wants to see you after your work'.

Q. Did he say anything else? A. No. 10

Q. Did you later go to see Mr. Ho?

A. I did after my work.

Q. And was there a conversation between you and Mr. Ho - yes or no? A. Yes.

Q. Was the defendant present at that conversation you had with Mr. Ho? A. He was not there.

Q. After that conversation did you see somebody?

A. Yes, I saw the defendant.

Q. Did you speak to him?

A. Yes, I did after I had gone down. 20

Q. Did he tell you anything about his intentions with regard to staying at the Tat Kwong Bulb Factory? A. No, he did not.

Q. Did you see the defendant after the 10th of May?

A. Yes.

Q. What date was that? A. Some time after eight on the 11th of May.

Q. It was in the morning?

INTERPRETER: Morning - I beg your pardon - some time after 8.00 a.m. 30

Q. Whereabouts did you see him? A. Also down-stairs where the lift is.

Q. Did he have anything with him?

A. Yes, he was carrying a fibre suitcase with him.

Q. Did he say anything to you?

A. He said, 'I am not working there any more, and I am leaving this luggage with you.'

Q. Did he say why he was leaving his luggage with you?

A. He, having said that he was no longer working there and that he wanted to leave his luggage with me, he said he was coming back later to fetch the suitcase.

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
(continued)
Examination

10 Q. Do you know why he was leaving his suitcase with you instead of taking it himself?

A. Because he said he had nowhere to put it.

Q. Did he leave it with you? A. Yes.

Q. Did he leave? A. Yes.

Q. Did you see him again?

A. Yes, about an hour later he returned to me.

Q. What reason was that?

A. Well because it was raining then and he said he was coming back to fetch his raincoat.

Q. Did he collect it?

20 A. Well I told him I had put his suitcase at the coffee stall next-door.

Q. And then did he leave?

A. I told him if he wanted to fetch his raincoat he may as well go next-door to the stall.

Q. What about the suitcase, is it still in your possession or not? A. Yes, it is still with me.

Q. Now after - on this day, 11th of May, were you working - were you working on the 11th?

A. Yes, I did.

30 Q. What time did you finish work? A. 3.30 in the afternoon.

Q. Now you say that you saw the defendant on the morning of the 11th of May, when did you next see him? A. On the 21st.

Q. What time was that? A. Some time after 9.00 p.m.

Q. Whereabouts did you see him? A. He came to the lift to see me.

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
(continued)
Examination

Q. Why did he come?

A. He said, 'Well you got your pay yesterday, have you got money?'

Q. Yes? A. Well I said to him, 'I have just moved to a new place and I bought some new furniture, and I have got only five dollars left'.

Q. Yes? A. I then said to him, 'A murder had been committed upstairs in the factory. Do you know about it?' In answer he said, 'Yes, I know about it. I read it from the paper.'

10

Q. Yes? A. When he was saying that he appeared to be very frightened and he was perspiring - there was perspiration on his forehead.

Q. Yes? A. I then asked him where he was working. He said he was working in a Garment Factory in North Point.

Q. Did he give you the name of that factory?
A. He did, but I have forgotten about that name.

Q. Yes? A. He further said there is also a branch factory in Cheungshawan, and that he was earning \$12.00 a day.

20

Q. Yes? A. I then said to him, "Well you better go along with me to my place and fetch your luggage." In answer he said, 'No, I am not going to fetch the luggage as I am going to cross the harbour.'

Q. Any other conversation? A. I then said to him, 'If you have nothing in particular please don't come to see me any more because the policemen keep coming to make enquiries from me.'

30

Q. Did you say anything else about enquiries being made of you by the police?

A. Well in answer he said, 'All right I am not coming to see you any more to save you from the trouble of having the police to come and make more enquiries of you.' Having said that he then left.

Q. Now had you been seen by the police, at least during this time? A. Yes.

Q. By one officer or more than one officer?

A. One.

40

Q. Always the same officer? A. Yes.

Q. Do you know his name? A. No, I don't know his name. Well I can recognise him.

Q. And have you spoken to this officer about your friends and acquaintances? A. Yes, I did.

Q. And had you mentioned to this officer anything about the defendant?

(Man enters court)

Q. Is that the officer? A. Yes, he is the one.

10 MR. ADDISON: This is D.P.C. 4215 - WAN Ming.

Q. Have you mentioned to this officer anything about your friends and acquaintances? He said, yes. Had you mentioned to this officer anything about the defendant?

COURT: This is hearsay.

MR. ADDISON: With great respect I submit that this is not hearsay - what this witness says to another officer, in my submission, is evidence which can properly be given.

20 A. I did.

Q. And you told my Lord and the jury that after you asked the accused not to trouble coming to see you and he then left? A. Yes.

Q. Did you see the defendant again after the 21st of May? A. Yes, on the 25th.

Q. What time was that when you saw him?

A. Round about 4.00 p.m.

Q. Whereabouts? A. At his friend's place in Taikoktsui.

30 Q. What is his friend's name? A. His friend is called PAU.

Q. Pau what? A. Pau Ying.

Q. Is he a witness in this case?

COURT: No.

MR. ADDISON: Well, my Lord, I knew that would be

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
(continued)
Examination

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
(continued)
Examination

immediately open to particular comment, perhaps I better merely ...

COURT: Better call him to be identified.

Q. Is this the person in whose house you saw the defendant? A. Yes.

Q. When he comes - was anybody else there? Who was present at this house of Pau Ying when you saw the defendant?

A. I saw Pau Ying's wife - she was there but Pau Ying was not home. 10

Q. Was anyone else there? A. The children.

Q. What was the defendant doing there?

A. He was sleeping on a bedspace at the rear portion of the house.

Q. Did you speak to him?

A. Well Pau Ying's wife told me that ...

Q. We cannot have that - did you speak to the defendant? A. Yes, I did.

Q. What did you ask him?

A. I asked him, 'Well I thought you said you were working. Why are you sleeping here?' 20

Q. Did he say anything?

A. He then waved his hand at me, and said, 'Don't talk about it here. We will talk at the teahouse!'

Q. Did you go anywhere afterwards?

A. Well he then dressed up and went out with me to a cafe in Laichikok.

Q. Do you know the name of that cafe?

A. I don't remember but it is in the vicinity of Taikoktsui. 30

COURT: Vicinity of what?

INTERPRETER: Vicinity of Taikoktsui - I don't remember the name of the cafe but it is in the vicinity of Taikoktsui.

Q. Was anybody else with you in that cafe?

A. Yes, many people, but I did not know them.

Q. Were you together with the defendant in that cafe? A. Yes.

Q. Was there a conversation? A. Yes.

Q. Will you tell my Lord and the jury what was said?

A. I said to him, 'I am a friend of yours and have always been honest to you, but you always lie to me.'

Q. Yes? A. 'Since you were working at the Garment Factory, why were you sleeping here at this time of the day?'

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
(continued)
Examination

10 Q. Yes? A. In answer he said, 'Well I don't wish you to know that I have been unemployed.'

Q. Yes? A. 'Because that will make you feel sad.' He then asked me whether I had money or whether I could raise some money so that he could go either to Macau or back to Mainland China.

20 Q. Yes? A. I then asked him, 'Why did you suddenly want to go to Macau or Mainland China?' He then said, 'Because I don't wish the policemen to keep coming to you and asking you questions and to interfere with your work'. Well I had no money with me then, therefore, I said to him, 'All right I will go and try and raise money from friends to give to you.'

Q. What did he say about that suggestion?

A. He then left the cafe with me.

Q. Did you go somewhere? A. Yes, I did.

Q. Where did you go? A. I went to Hunghom.

Q. Whereabouts in Hunghom?

30 A. I went to Ma Tau Wei Road and alighted from the bus at the bus-stop opposite Tai Ho King Tea-house.

Q. Were you alone?

A. No, I was together with the accused - we got off together.

Q. Did you go somewhere after you got off the bus?

A. Well he, the accused then said, 'Well let's go and rent an apartment room so that we can talk'.

40 Q. Did you? A. Yes, I did.

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
(continued)
Examination

Q. What time was this? A. About 5 p.m.

Q. What was the name of these apartments?

A. Hong Lok Apartment.

Q. Did you go into that apartment? A. Yes.

Q. Both of you? A. Yes.

Q. How long did you stay there?

A. For less than an hour.

Q. What were you talking about?

A. I asked him how much he needed in order to get to Macau. 10

Q. Did he say anything? A. He said, 'The best is if you could raise 150 dollars for me'.

Q. Was there any discussion between you apart from this question of raising money for him? A. Yes.

Q. What was that?

A. I asked him, 'Why do you want to go to Macau or back to Mainland China?'

Q. Yes? A. He said, 'I cannot tell you now, but wait until I get back to Mainland China to my sister or to Macau, and from there I shall write and tell you all in detail.' 20

Q. Did he say anything else?

A. Well I then said to him I would try to ring up my friend and ask whether I could ask for the loan of the money and to give him.

Q. Now when you saw him on the 21st you told him that you were being seen by the police? A. Yes.

Q. When you saw him on the 25th did you tell him about any visits anyone had made to you? A. No.

Q. When you saw him on the 25th did you say to him anything about anyone having come to see you and ask you any questions? A. Yes, I did. 30

Q. What did you tell him?

A. Well I said to him, 'I recommended you to that job at Tat Kwong, and now the policeman wants to see you. They are looking for you.'

Q. Did you say in connection with what? A. No.

Q. Did you tell him what the police had been seeing you about? A. No.

Q. Did you tell him when you saw him on the 25th when you said that the police were looking for him, that you had been seen by the police, did you tell him what the police had seen you for?

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
(continued)
Examination

10 MR. SWAINE: I think really once the witness has given a positive answer one way or the other, that answer is to be taken to be his evidence - you cannot go on the same ground to get another answer, my Lord.

COURT: I think you will have to accept that - he has given an answer.

MR. ADDISON: Sometimes my learned friend understands the interpretation, I don't.

Q. Now whereabouts were you on that day of the 25th when you told the defendant the police were looking for him and wanted to see him?

20 A. In the Apartment room.

Q. Did he ask you why the police were looking for him? A. No, he did not ask me.

Q. Then was there any further conversation on any other matter inside this apartment?

A. No, except about loan.

Q. Was some suggestion made?

A. I told him - I said to him I had made a phone call to my friend and that I would meet my friend at the Kam Moon Restaurant at six o'clock.

30 Q. What is the name of your friend?

A. Wong Chun Lin - W-O-N-G C-H-U-N L-I-N.

Q. And you were going to meet him at the Kam Moon, was the time fixed, yes or no?

COURT: He said six o'clock.

Q. And did you go and see him? A. Yes, I did.

Q. Did you go with anybody?

A. With the accused, Chan Wai-keung.

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
(continued)
Examination

- Q. Did you meet Wong Chun Lin? A. Yes, I did.
 Q. Whereabouts did you meet him?
 A. Wong Chun Lin - just outside Kam Moon Restaurant at the entrance we met there.
 Q. Was the defendant with you at that time?
 A. Yes, he was with me.
 Q. Right beside you?
 A. He was behind me on my right-side.
 Q. How far away? A. About four or five paces.
 Q. And did you go inside the restaurant? A. Yes. 10
 Q. Who went inside?
 A. Well I entered with Wong Chun Lin first followed by the accused.
 Q. How much later - what was the interval of time before he followed?
 A. Shortly after I had just sat down he then entered.
 Q. Was it arranged that he would come in after you had sat down?

MR. SWAINE: This is a little leading - it was arranged - might have been inadvertent. 20

COURT: He could answer no.

MR. SWAINE: The whole point of the questions in examination-in-chief is not to try and get a yes or a no.

COURT: Well he can answer no can't he? I don't think it is leading. It is not a suggestion that it was arranged.

MR. SWAINE: If your Lordship pleases - but I would have thought a more appropriate question would be, why did he come after you. 30

COURT: Only he can say that.

MR. SWAINE: Well then ...

COURT: It is a correct question - was it arranged - did you arrange this matter, yes or no.

MR. SWAINE: If your Lordship so rules.

- A. No, no arrangement.
 Q. Now inside that restaurant were you sitting at the table with anyone?
 A. I sat down with Wong Chun Lin. 40
 Q. And what about the defendant when he came in?
 A. Well he sat at three or four tables away from us.

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
(continued)
Examination

Q. Do you know why he did that?

A. Well he knows Wong Chun Lin, but he did not wish Wong Chun Lin to see him.

Q. How do you know that?

A. Because he told me about that in the apartment room and also when we were leaving the apartment.

Q. What did he tell you?

10 A. He asked me, 'From whom are you asking the loan?' And I told him, 'Wong Chun Lin.' He said, 'Well I don't want him to see me.'

Q. Did he say why?

A. Well he said, 'You are asking the loan from Wong Chun Lin on my behalf and should he know about it I am sure he could not give you that loan.'

Q. Yes, now did you ask Wong Chun Lin for a loan?

A. Yes, I did ask him.

20 Q. Were you successful in getting a loan? A. No.

Q. Afterwards what did you do?

A. I then left with Wong Chun Lin.

Q. Yes, what happened then?

A. When I left with Wong Chun Lin together the accused was following me, and then we went to Hoi Sum Temple.

Q. Who went to Hoi Sum Temple?

A. The accused and myself walked to Hoi Sum Temple.

Q. What about Wong Chun Lin? A. I don't know.

30 Q. Did he leave your company?

A. He said - Wong Chun Lin said to me at the restaurant - he said, 'You better go first. I will go later.' I then left him.

COURT: So you left Wong Chun Lin at the restaurant, is that right?

A. Correct, my Lord.

Q. I see, and you say that the defendant followed after you? A. Yes.

Q. Where did you speak to him then afterwards - was it outside the restaurant? A. Yes.

40 Q. Did you tell him of the conversation which you had with Wong Chun Lin? A. Yes, I did.

Q. Did you tell him about the money? A. Yes, I did.

Q. What did you tell him?

A. Well, I told the accused I did not get the money because Wong Chun Lin had no money.

Q. When you told the accused that, did he say anything to you?

A. The accused then said, 'So you couldn't get the loan. Have you any other ways or means?'

50 Q. What did you say?

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
(continued)
Examination

- A. Well I then said, 'I have got a friend who is working at the airport.'
- Q. Yes? A. .. but he finishes work at 9.00 p.m. I will have to wait until after nine before I can see him.'
- Q. Yes? A. I then said, 'Well where are we going now and where am I going to meet you?'
- Q. Yes? A. 'Well I will try some other ways or means.'
- Q. Yes? A. He then said, 'Well I will see you sometime after eight tonight by the rock near Hoi Sum Temple. 10
- Q. Yes? A. Well I then left him.
- Q. Now did you have an appointment at this time?
- A. Yes, in fact I had another appointment.
- Q. Yes, what time did you leave the defendant?
- A. That was some time after six.
- Q. So that you have been with him from what time in the afternoon? What time did you first meet him that afternoon? 20
- A. Well I saw him some time after four and left him some time after six.
- Q. And then after you left the accused, did you go and see somebody? A. Yes, I did.
- Q. Where did you go?
- A. Kam Wah Teahouse at Kowloon City Road.
- Q. Who did you see there?
- A. I saw that officer who came in some time ago.
- Q. D.P.C. 4215.

COURT: What was the name of the restaurant? 30

INTERPRETER: Kam Wah - K-A-M W-A-H Teahouse,
my Lord.

- Q. And did you speak to him? A. Yes.
- Q. Did you tell him anything? A. I did.
- Q. What did you tell him?
- A. Well I told the police officer I went to see Pau Ying on that same day but I did not find Pau Ying there instead I saw his wife, and I also saw Chan Wai-keung at Pau Ying's house.
- Q. Yes? A. And then I related what had happened. 40
- Q. Did you tell him anything about your intended meeting or arrangement to meet the defendant that evening?

COURT: Hearsay.

MR. ADDISON: In my respectful submission, it is not hearsay.

COURT: 'I told him' - he said just now.

MR. ADDISON: In my respectful submission, this witness tells a police officer that he has an arrangement to meet somebody at such and such a time - that in my respectful submission is clearly direct evidence - I told this officer that I was to meet the defendant at 9.00 p.m.

In the
Supreme Court

Prosecution
Evidence

No. 8

Chan Pui
(continued)
Examination

COURT: All right.

10 MR. ADDISON: This is what this witness says - the officer himself could not say, nor could the defendant or any other person say - its significance will be, in consequence of what was said to you, did you then go somewhere - yes. Where did you go?

COURT: All right.

Q. Did you tell this officer about the arrangement you had to meet the defendant later that night? A. No, I did not.

Q. And then having seen this police officer did you later leave? A. That is right.

20 Q. And did you go somewhere?
A. Well I went around the various friends in Kowloon City in order to raise the money but I failed to get from any of them.

Q. Afterwards did you go somewhere?
A. Well then some time after eight I went to see the accused again.

Q. Where did you go?
A. To that rock near Hoi Sum Temple.

30 Q. Did you see anyone there?
A. Yes, I saw the accused there.

Q. Was he alone? A. Yes, he was alone.

Q. Did you tell him?
A. I told him I did not get the money.

Q. Whilst you were with him did something happen?
A. He then said to me, 'Well I am hungry now. Let's go and have dinner.'

Q. Yes; did somebody come then?
A. Yes, the policeman came.

40 Q. How many policemen? A. Several - I think three.

Q. How long had you been with the defendant before the three policemen arrived?

COURT: What is going on there?

MR. SWAINE: I have asked my solicitor's clerk to take instructions on one or two points.

In the
Supreme Court

Prosecution
Evidence

No. 8

Chan Pui
(continued)
Examination

COURT: You could have an adjournment if you need it - you cannot listen - you cannot hear what is going on.

MR. SWAINE: If your Lordship would agree to rise for about ten or fifteen minutes?

COURT: You can make an application.

MR. SWAINE: Thank you.

COURT: Sorry.

Q. How long had you been with the defendant before the police arrived?

10

A. Several minutes - before I could finish one cigarette.

Q. And late that evening did you go to the Police Station - yes or no? A. Yes.

Q. Yes, thank you.

COURT: Well I will rise now for ten minutes.

11.30 a.m. Court adjourns.

11.50 a.m. Court resumes.

Accused present. Appearances as before. Jurors answer to their names.

20

P.W. 13 - CHAN Pui - On former oath.

Cross-
Examination

Cross-Examined

CROSS-EXAMINED BY MR. SWAINE:

Q. You were saying that while the police officer was seeing you during this period in May, when were you first interviewed by the police regarding the murder at the Bonnie Factory?

A. I was asked to go to the police station on the 13th.

30

Q. You went to the station and no doubt you gave a statement? A. Yes.

Q. And how many times were you interviewed by the police after that: up to the 25th May?

A. Well, the police officer came to the lift to see me many, many times.

- Q. Yes, how many times in all were you interviewed by the police officer; that is to say, apart from going to the station, how many times altogether were you interviewed by the police officer, including visits to the police station and including interviews at the lift?
- A. On the 15th, 17th, 19th and 22nd and 25th.
- Q. And when was it that you first told the police that you had this friend Chan Wai-keung?
- 10 A. On the 15th.
- Q. And did the police officer say that he would be interested to interview Chan Wai-keung on the 15th after you first told him? A. Yes.
- Q. And no doubt the police officer repeated his desire to you that he wished to see Chan Wai-keung on his subsequent interviews with you?
- A. Yes.
- Q. And did you tell the police officer that you would try to arrange for the police to interview Chan Wai-keung? A. Yes, I did.
- 20 Q. And of course the police officer said that he would like you to arrange for Chan Wai-keung to be interviewed by the police? A. Yes.
- Q. So after the 15th May it was your intention to try to get Chan Wai-keung to meet the police? A. Yes.
- Q. Well, that being your intention from the 15th May, why did you on the 21st May, according to your evidence, tell Chan Wai-keung: "Please don't see me any more because policemen keep coming to make enquiries from me"?
- 30 A. Well, I did not know what was the matter and then I was afraid that would interfere with the defendant's work because he told me earlier that he had employment.
- Q. Now, of course you said that it was your intention, after the 15th May, to get the accused to see the police and I am suggesting to you that your evidence that on the 21st May you told the accused not to see you is nonsense. If you were intending for him to see the police you would not have told him: "Don't come and see me"?
- 40 A. Well, my Lord, because I care for my friends and as I knew that the accused had obtained employment and was already working, therefore I did not want the police to trouble him because he had had enough troubles from the police; so I didn't want him to get these troubles.
- 50 Q. I further suggest to you that, bearing in mind what you have just said, you were intending to get the accused to see the police and what you had told the police officer, in your earlier

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
Cross-
Examination
continued

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
Cross-
Examination
continued

- evidence, that you were trying to raise money for the accused for him to go to Macau or Mainland China is equally nonsense?
- A. Well, he did ask me for the money. It is a true fact. I am not lying and if I had lied about it doom would be upon me, my Lord, and I would be run down by a car and killed. I have got my conscience.
- Q. You mean to say that at one and the same time you were intending to assist the police and also intending to assist the defendant by getting him money to leave the Colony? 10
- A. Well, I was between the police and the accused, my Lord. It was very, very difficult for me. I really did not know what to do.
- INTERPRETER: The witness said, my Lord, there are flesh on both sides of your palm, so I really didn't know what to do.
- Q. On the 25th May after you left the accused in the evening near the Hoi Sum Temple, you went to meet the police officer at the Kam Wah Teahouse? A. Yes. 20
- Q. And no doubt you met by pre-arrangement A. Yes.
- Q. And you said, in your evidence, that you told the police officer what had happened?
- A. Well, I told the police officer about what happened that day and about - well, I had seen the accused, my Lord, that day.
- Q. Yes and no doubt you told the police officer that you were going to meet Chan Wai-keung again that evening near the Hoi Sum Temple? 30
- A. No, no, I did not tell the police that I had an appointment with the accused.
- MR. SWAINE: Put his head up and don't swallow answers which you say is not truthful.
- A. Well, I am sorry, my Lord because I didn't sleep well last night and therefore I am a bit drowsy.
- Q. After you had had your meeting with the police officer on the 25th, you said that you left and went around to various friends in Kowloon City but you failed to raise any money and at some time after eight you returned to the spot near the Hoi Sum Temple where you met the accused again? A. Yes. 40
- Q. And quite by chance the police party happened to be at Hoi Sum Temple?
- A. How should I know? I didn't even dream about it myself. 50

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
Cross-
Examination
continued

- Q. You were completely surprised therefore when the police party arrived? A. Yes.
- Q. Well, I suggest to you that during this period in May your desire was to get the accused in touch with the police and your meetings with the accused, your conversations with him, were directed towards bringing him and the police together? A. Slightly.
- 10 Q. And you never once for a moment led on to the accused that that was what you were aiming to do?

INTERPRETER: You did not

- Q. For a moment tell the accused or made it known to him that that was your intention?
- A. I did. I told him that the police was looking for him.
- Q. That you never did. You were concerned to assist the police and you kept your friend completely in the dark?
- 20 A. Well, I did tell him that the police was looking for him and that the police wanted to see him, my Lord.
- Q. Now, the accused never asked you to lend him money during this period in May? A. He did.
- Q. And he never said to you that he wanted to go to Macau or Mainland China?
- A. He did say that.
- Q. And you never met him on the 21st May?
- 30 A. Yes, I saw him on that day. He came to the lift to see me.
- Q. If, as you say, you saw him on the 21st, did you tell the police officer, at your meeting with him shortly afterwards, that you had seen the accused on the 21st May? You saw the police officer on the 22nd, that being the first occasion after the 21st

INTERPRETER: No, after the 19th

- Q. On the 21st, did you tell the police officer that you had seen the accused on the 21st?
- 40 A. Yes, I did tell the police.
- Q. And did you tell the police officer that accused told you that he was working at a garment factory at North Point? A. Yes, I did.
- Q. In order of course that the police could go along and make contact with the accused.
- A. Yes.
- Q. So what is the difference about the 25th May when you had this interview with the

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
Cross-
Examination
continued

- police officer and you shortly afterwards met the accused? Why did you not tell the police officer that you were going to meet the accused on the 25th at 8 o'clock? What is the difference on the 25th that you were going to meet the accused at 8 o'clock?
- A. Well, I think, my Lord, I have made it clear earlier that because I care for my friends and I was caught in-between my friend and the police. I did not know what to do. There are flesh on both sides of one's palm and I thought if I could avoid getting a friend into trouble, well, I would do it. 10
- Q. Now, you no doubt knew that this person, Pau Ying, was a friend of the accused?
- A. Well, in fact the accused introduced me to Pau Ying.
- Q. And when you went to Pau Ying's home on the 25th May morning was it with a view to finding out whether Pau Ying knew the whereabouts of the accused? A. Correct. 20
- Q. No doubt to assist the police?
- A. Well, I had been visited by the police so many times on so many occasions, my Lord, that I really did not know what to do. I didn't know how to balance it. It was just-like a scale.
- Q. Did you say yes to my question that you went to Pau Ying's place in order to discover the accused no doubt to assist the police; and the answer was yes? 30
- A. Half yes and half no, my Lord.
- Q. And you were very surprised to see the accused in Pau Ying's home? A. Yes.
- Q. And you said: "I thought you were working. Why are you sleeping here?" A. Yes.
- Q. Now, you said that you had been told the name of the garment factory where the accused was working but you have now forgotten? A. That is correct. 40
- Q. And when was it that you forgot the name?
- A. Well, the accused told me about the name of the factory in fact verbally and I had no pen and paper with me and therefore I did not jot it down and I couldn't remember it. And in fact I had forgotten about it the next morning.

COURT: Did you tell the police about it?

- A. My Lord, I did not tell the police the name of the garment factory in North Point because I couldn't remember it. But I did 50

tell the police that I was told by the accused that there was a branch of that factory in Cheung Sha Wan, Kowloon.

10 Q. On the 21st you knew that the police wanted to interview Chan Wai-keung and you had told the police you would try to arrange for them to see Chan Wai-keung; and yet you say when the accused told you the name of the factory at which he was working it made so little impact on you that the morning after you had forgotten the name?

A. This is just a trifle, my Lord and since he had got a job I was very pleased and glad about it and therefore I did not remember it particularly, the name he told me.

20 Q. And yet you were sufficiently concerned to ascertain the whereabouts of the accused on the 25th morning when you went to Pau Ying's place in order to find out where the accused was?

A. Well, because I forgot the name of the factory therefore I thought I would go to Pau Ying's place and see whether Pau Ying know the name of the factory accused was working.

30 Q. On the 21st it was such a trifle matter where the accused was working; but on the 25th it was no longer such a trifle because you went to Pau Ying's place to find out about the accused?

A. Well, because the accused had lied to me 3 times therefore I didn't trust him any more. And I thought I would go and see Pau Ying and find out whether he was working in the factory.

Q. In which event it was not a trifle - the name of the factory - it was something about which you had given thought to.

40 A. Well, at the time I was very happy that he had obtained employment and I didn't particularly remember the name he told me of the garment factory. And, well, after some days I thought whether it was true what he had told me that he was working in the garment factory, therefore I went to see Pau Ying to find out whether he was actually working there.

50 Q. Now, I suggest to you that this is the case: that on the 25th you went to Pau Ying in order to discover the whereabouts of the accused; and on the 25th you had no idea how you might locate the accused directly?

A. That is true, I did not know.

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
Cross-
Examination
continued

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
Cross-
Examination
continued

Q. And you did not know because you had not been told - not because you had been told by the accused where he worked and you forgot, that is not the case; you were never told at all?

A. Well, if he had not told me how could I have told the police on the 22nd about what the accused had told me earlier that he was working in a factory in North Point. You can ask the police officer to testify.

Q. You said he did then? A. Yes.

Q. You said you are angry, is that right?

A. Well, the accused in fact has never taken me as a friend, my Lord. He is a beast in human form.

Q. Now, do tell me why you should have been angry on the 25th?

COURT: I have not heard that. Were you angry on the 25th? A. Yes.

Q. On the 25th morning you had said to him, according to your evidence: "I thought you were working. Why are you sleeping here?"

A. Yes.

Q. Why should it matter to you whether the accused is working or sleeping?

A. Well, he was my friend.

Q. About four months standing - according to your evidence? A. Yes.

Q. And you were not being a friend to him when you were trying to assist the police? Were you being a friend to him? A. Half half.

Q. I suggest to you that you were out to deliver your so-called friend to the police right from the start as soon as you were questioned by them? A. No.

Q. And on the 25th your whole actions of the day were the result of your intention to deliver your friend to the police?

A. Well, if that was my intention why had I not told the police that I had made an appointment with the accused to meet him by the rock?

Q. Was it your intention throughout the 25th to deliver your friend to the police and was that the reason for everything you did on that day?

A. No.

Q. You it was who invited the accused to leave Pau Ying's home and to go to this teahouse with you? A. No, in fact he invited me.

Q. You it was who told the accused that you needed money because you had lost money gambling?

A. Me losing money in gambling?

10

20

30

40

50

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
Cross-
Examination
continued

- Q. Yes, you. Did you tell the accused on the 25th May that you wanted to borrow money because you had lost money in gambling?
- A. No, I did not tell him that.
- Q. And you said to the accused that you were going to try to contact this friend of yours, Mr. Wong, in order that he, Wong, might lend you money?
- 10 A. Well, I did tell him that I was going to ask Wong to lend me money but I was going to lend that money for the accused to go to Macau or the Mainland.
- Q. And it was you who suggested to the accused that the two of you should go to the Kam Moon Restaurant to keep your appointment with Wong Chun Nin?
- A. Well, that is right. I was the one who asked him to go along to Kam Moon Restaurant.
- 20 Q. And the reason that accused sat at a separate table from that which you shared with Wong Chun Nin was that your business with Wong was your own private business and had nothing to do with the accused? A. No, he is lying.
- Q. Now, you say that the accused sat three or four tables away from you in the Kam Moon Restaurant? A. Yes.
- Q. And you say that the accused did not want to be seen by Wong Chun Nin? A. That is right.
- 30 Q. And did you think it curious that if the accused did not want to see Wong he should take a chance on being seen by Wong by sitting in the same teahouse a few tables away? Don't you think that curious?
- A. Well his object was that I should be able to borrow the money and I could get it from Wong to give it to him.
- Q. Don't you think it curious that as the accused does not want to meet Wong, he should sit in the same restaurant a few tables away?
- 40 A. Well, when the accused went into the cafe he was wearing a pair of dark glasses and besides he was sitting back to back with Wong Chun Nin. Therefore Wong could not see him.
- Q. Did you think of saying to the accused: would it not be better for you to wait outside and not come in at all?
- A. Well, he didn't trust me. As a matter of fact he was standing right beside me when I was making a phone call to Wong Chun Nin.
- 50 Q. And I suggest to you that it was on your invitation that you and the accused went for this walk to near the Hoi Sum Temple?
- A. No, he is lying.

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
Cross-
Examination
continued

Q. And it was you who suggested that both of you should meet there at the same evening at 8 o'clock?

A. Well, I asked him where was I going to meet him that same evening. He then said: Well, here by this rock.

Q. You said to him: "We meet here this evening at 8 o'clock near this rock"?

A. No, I did not say that. If I had said that, my Lord, I would be run down outside this building on the street by a car to pieces.

10

MR. SWAINE: I beg the Court's indulgence for half a minute while I check.

Q. Now, going back a little earlier in time, you said on the 6th May you had asked the accused to lend you \$20? A. Yes.

Q. And you had recommended him to his job at this Tat Kwong Factory? A. Yes.

Q. And no doubt you thought that in the circumstances the accused should have lent you \$20?

20

A. No, in fact I helped him by rendering a loan of \$50 in order to purchase his suitcase; his blanket; clothing, as well as towels, tooth-brush, everything. And Wong Chun Nin knew about it. And up to now the accused has not repaid me the money.

Q. Was that money lent to the accused before you asked him for the \$20 or after?

A. Yes, because he was looking for a job.

30

Q. And you helped him to look for a job? A. Yes.

Q. And you thought that when you asked him for a \$20 loan he should have lent the money to you?

A. Well, to me friends should not be so particular about such things. I think friends should help one another and there should be mutual assistance whenever it is needed. When he needs money I should lend it to him and when I should be in need of money then I think it is natural he should help me.

40

Q. Yes, and when you asked for the \$20 loan it was in the expectation that he would give you the loan? A. Yes.

Q. And he said that he would lend you the money? A. Yes.

Q. But the day after he said that he was not going to lend you the money?

A. Well, in fact I did not even see him. He

50

did not come down by my lift. I did not see his shadow. He was lying.

Q. And you were disappointed?

A. Of course I was very disappointed.

Q. Very angry too? A. A little.

Q. Now you said that the next day, that is 7th May, you had seen the accused and you had asked him why he did not keep his promise?

A. Yes.

10 Q. Now I suggest to you that all the accused said to you on that occasion was: "I am not going to lend you the money". That was all he said and he did not say about gambling the money away? A. He did say that.

MR. SWAINE: My Lord, I have no further questions.

COURT: Any re-examination?

MR. ADDISON: No re-examination, my Lord.

COURT: Well, we'll adjourn until 2.30 this afternoon.

20

(Court adjourns at 12.55 p.m.)

No. 9

LEUNG SHUI WING

No. 9
Leung Shui
Wing
Examination

P.W. 19 - LEUNG Shui Wing (Affirmed in Punti)

EXAMINED BY MR. ADDISON.

Q. Is your full name, LEUNG Shui Wing? A. Yes.

Q. And are you a Detective Police Constable attached to the C.I.D. Hung Hom Police Station? A. Yes.

30

Q. At about 9 p.m. on the 25th of May of this year did you, together with Detective Corporal 1488 and Detective Police Constable 4215 go to the reclamation area near Hoi Sum Temple at the end of Lok Shan Road? A. Yes, I did

Q. What time did you arrive there?

A. Approximately 9 p.m.

Q. Did you see anyone there?

A. I saw the accused and this man CHAN Pui. (Pointing to back of Court)

In the
Supreme Court

Prosecution
Evidence

No. 8
Chan Pui
Cross-
Examination
continued

In the
Supreme Court

Prosecution
Evidence

No. 9

Leung Shui
Wing
Examination
continued

- Q. What were they doing?
A. They were sitting on a rock.
Q. Did you speak to them yourself? A. No, I did not.
Q. Did anyone in your party speak to either of them? A. Yes.
Q. Who was that? A. D.P.C.4215.
Q. Did you hear what he said - yes or no? A. Yes.
Q. To whom did he speak?
A. He spoke to CHAN Wai-keung, the accused.
Q. What did he say? 10
A. He asked the accused for his surname and name.
Q. Yes?
A. And he also revealed his identity to the accused and further told the accused that he was making enquiries in connection with a murder case and that he was inviting the accused to go back to the Police Station.
Q. Did the accused say anything?
A. Well, he gave his name. 20
Q. And when he was invited to go back to the Police Station, did he say anything?
A. Well, he then walked along with D.P.C.4215. Whether he said anything I did not hear.
Q. Just answer my question. What about CHAN Pui, did he go with you or not?
A. Yes, he did.
Q. And did you go along with them together with the other Officer who was present? A. Yes, I did.
Q. And return on foot to the Police Station?
A. No, we all boarded a private car. 30
Q. A private car. I see.
COURT: A Police car?
A. No, my Lord, the car belonged to Detective Police Constable 1488.
Q. I see. Was that his own vehicle, as far as you know? A. Yes.
Q. And then did you go back to Hung Hom Police Station? A. Yes.
Q. What time did you get back, do you remember?
A. 10 minutes past 9 about. 40
Q. And on arrival there, what happened?
A. Well, when I got back to the Police Station, I went into the O.C.'s office, that is the office of the officer in charge, together with Sergeant 1075 - and the accused was with us.
Q. Yes. What about CHAN Pui?
A. CHAN Pui was outside.
Q. What - outside the Police Station or outside the office? A. Outside the office.
Q. And what about D.P.C.4215 who had been with you? A. 4215 was also outside the office. 50
Q. Now Sergeant 1075, is he the Sergeant in charge of the Police Station? A. Yes.

In the
Supreme Court

Prosecution
Evidence

No. 9
Leung Shui
Wing
Examination
continued

- Q. Now inside this office, what happened?
A. The Sergeant then instructed me to interrogate CHAN Wai Keung.
- Q. And did you do so? A. I did.
- Q. Now what were you interrogating him or questioning him about?
A. Well, I asked him about the background of his family and the condition of his family, as well as about his life.
- 10 Q. Yes, well, what was the object of bringing him to the Police Station?
A. About this murder case.
- Q. Well, what murder - we have not heard that yet? -
A. About the murder, about the watchman of Bonnie Hair Products Factory being murdered.
- Q. Was he told that that was the murder for which enquiries were going to be made? A. Yes.
- 20 Q. Now you told us that you got back to the Police Station about 9.10 - about what time would you say you began questioning the defendant?
A. Well, when I began to question him it was round about 25 minutes past 9.
- Q. And in which room were you questioning him?
A. At the office of the officer in charge.
- Q. And was anyone else there when you began your questioning? A. Yes.
- 30 Q. Who was that? A. Sergeant 1075, TSANG Kei.
- Q. Apart from that Sergeant and yourself and the defendant, was there anyone else present in that office? A. No.
- Q. And you questioned him? A. Yes.
- Q. Now whilst you were questioning him, what position did he occupy in the office - was he sitting down or standing or what?
A. He was sitting down.
- Q. Where at? A. In the office.
- 40 Q. And did you question him as to his movements?
A. Yes.
- Q. As to any particular date? A. Yes.
- Q. What date was the date that you were interested in?
A. The dates after the 11th of May.
- Q. And did he answer your questions? A. He did.
- Q. Did he raise any objection to any of the questions which you asked him? A. No.
- Q. Did he tell you what his movements were?
A. He did.
- 50 Q. And did he account for his movements for the whole of the 11th and the night of the 12th, part of the night of the 12th of May this year?
A. Yes.

In the
Supreme Court

Prosecution
Evidence

No. 9
Leung Shui
Wing
Examination
continued

- Q. Now do you remember, yes or no, the names of any persons he mentioned to you in that room? - (Witness speaks) Perhaps you didn't understand - A. I don't remember clearly.
- Q. I see. Well, whilst you were in the room with him and you say he gave you an account of what he was doing that night, did he mention whether he was with anyone?
- A. What do you mean "together with"?
- Q. Did he ever give the names of any alibis - who could prove at the particular time - at any time - where he was during that night? 10
- A. He did.
- Q. And after he had given that information did either you or the other Officer leave the room?
- A. Yes.
- Q. Was that you or the other Officer?
- A. In fact Sergeant 1075 left the room.
- Q. And after he left the room, did he come back again? A. Yes. 20
- Q. Are you able to tell us about how long the Sergeant was absent from the room?
- A. About three minutes.
- Q. A short time or a long time? A. Very short time.
- Q. Now did you write anything down inside this room? A. I did.
- Q. What were you writing down?
- A. I was writing what the accused was telling me.
- Q. What, in the nature of a statement? A. Yes.
- Q. And did he seem ill at ease at this time in any way? A. Yes. 30
- Q. Did he seem worried, not at ease? Ill at ease?
- INTERPRETER: Oh, not "at ease", "ill at ease", I'm sorry. (repeats question)
- A. Yes, he appeared to be sad and worried.
- Q. What, from the beginning? A. Yes.
- Q. I see. And then you say the Sergeant returned after a few minutes. Well, sometime later did anyone come into that room? A. Yes.
- Q. Who was that? A. D.P.C.4215. 40
- Q. Do you know what time that was or not?
- A. About 10.
- Q. P.M.? A. P.M.
- Q. And did anyone come in with that Officer? A. Yes.
- Q. Do you know who that person is?
- A. Well, following 4215, in fact there were four persons who were brought in one after the other.
- Q. Do you remember their names or not? A. Yes.
- Q. Who were they?
- A. The first one was CHOY Chuen (spelt).. 50
- MR. ADDISON: Well, 25 on the list.

In the
Supreme Court

Prosecution
Evidence

No. 9
Leung Shui
Wing
Examination
continued

- Q. Yes, who were the others?
- A. The second one was LAI Yin Hung. (spelt)
- Q. Yes?
- A. The third one was CHEUNG Lau Kan (spelt).
The fourth one was PAU Ying (spelt)
- Q. And did they come into the office together or
one after the other?
- A. They came in one by one.
- Q. And the Officer will tell us about that --
But were those persons who were brought into
the room asked anything in the presence of
the defendant? A. Yes.
- Q. And did they give an answer, - to what they
were asked? A. Yes.
- Q. Who asked those persons questions?
- A. D.P.C.4215.
- Q. Did you ask any of those persons any
questions? A. No, I did not.
- Q. And did they leave the room one by one?
- A. Yes.
- Q. And what about the Officer who introduced
them into that room - did he stay in the room
or did he also leave?

10

20

- INTERPRETER: 4215?
- MR. ADDISON: Yes.
- A. He also left the room?
- Q. So that after these persons had been intro-
duced and the Officer had left, how many
persons were now in the room?
- A. Well, three were left in the room.
- Q. Yourself, the Sergeant and the defendant?
- A. Yes.
- Q. And after these persons left the room did
anything happen? A. Yes.
- Q. Did anyone say anything? A. Yes, the accused.

30

MR. SWAINE: I object to the admission of further
evidence on this matter, my Lord.

No. 10

SUBMISSIONS RE ADMISSIBILITY OF STATEMENTS

40 COURT: The Crown will begin first.

No.10
Submissions re
Admissibility
of Statements

6th August
1965

MR. ADDISON: I must satisfy your Lordship beyond
all reasonable doubt that these statements
were made voluntarily. Now, this perhaps, this
is the most important point in the trial of
this case.

In the
Supreme Court

No. 10
Submissions re
Admissibility
of Statements
continued

6th August
1965

COURT: May I say what I have in my mind? The first statement - which is the one which is started by the policeman - the second, at the factory ground; and the third before the Superintendent.

MR. SWAINE: The third came before the second one.

COURT: I'd like you to deal with the second.

MR. ADDISON: With great respect to your Lordship; one, your Lordship has sole discretion; and the second, as your Lordship is aware, whether to admit it and if your Lordship is not satisfied that this is not a voluntary statement then it is out. 10

There are these 3 statements and perhaps I might just open by saying that at first sight here is a man who is invited to the police station, he said in cross-examination he was invited to the police station. In cross-examination he seemed to imply: "I didn't know why I was going, nevertheless I went along. Never suggesting that he was under arrest. 20

My Lord, your Lordship will perhaps agree with the evidence that the policeman investigating this case was still continuing and that he eventually led them to this defendant. And the fact that it was immediately verified does not make it one way or another discreditable. Your Lordship has heard from the witness the practice during investigations carried on by the police. Answers to questions and answers and I would say that such a statement is by no means inadmissible inasmuch as the police is entitled to investigate and to enquire into the offence and the identity of defendants. As suggested by the defendant that pressure had been brought to bear and if this man had been assaulted, then he might at least have told the doctor. My Lord, the facts of the matter have to be determined by virtue of the truthfulness or otherwise of the defendant himself and he was very reluctant to say that the doctor had examined his hands. 30

And the doctor's evidence is quite clear in this case and I recall it for the benefit of my learned friend. There was not a police officer there and furthermore he, the doctor, examined his grip and he found the left-hand grip being stronger than the right-hand grip. It was never put to any of the officers when they gave evidence that this man was threatened in the police station; and certainly the story that he 40 50

In the
Supreme Court

No. 10
Submissions re
Admissibility
of Statements
continued

6th August
1965

10 was handcuffed behind his back, my Lord, came
as a surprise because again this matter was
never put to any police officers. If it is
put behind his back one should have thought
that the man would have been seen before the
witnesses. Your Lordship may take the view
that this is a sophisticated way of saying
that this witness, who perhaps isn't able to
express himself as well as he would like to
do so and therefore be given the benefit of
the doubt on that matter. There was no great
concern if he satisfies that point. So, my
Lord, I would say this: that perhaps the
first question is: what is the truth? What
truth can one give the defendant on matters
which are in dispute? And there are the 3
police officers; they said they were together,
they described the arrival of Inspector Lau
for a short time. If the defendant's story
20 is true: that he suffered an assault, that
his hands have been handcuffed and furthermore
he had been seen by two officers each of whom
tricked him and that he was threatened by
this Constable 4463, it is surprising that he
should then proceed to write a statement using
his own hand. Because he first of all signed
that he understands the caution and thereafter
he made a statement in his own handwriting
and then thereafter signed again by him. Now
30 the facts would seem to show that at 10 o'clock,
10.30, the first witness was introduced and
at 10.40 the last witness was introduced and
it was after the fourth witness had left that
suddenly he made up a confession. My learned
friend has sought to suggest that the police
deliberately introduced these witnesses for
the purposes of confronting this man and to
undermine his confidence and extort a con-
fession from him. My Lord, pausing there for
40 one moment, is it not inconsistent with the
story that the defendant has himself said
because up to the time the witnesses came he
was then still able to tell the police officers
he was at so-and-so place; I am covered;
I have an alibi; I was with so-and-so. So
if his story is being contradicted by another
and tricked by another, one would have
expected him that at least by 10.40 that he
would have broken down; that means therefore
50 that he had been in the police station from
9.25 to 10.40 - a matter of one hour 15
minutes and whatever have been done to him
had no effect upon him whatsoever. I would

In the
Supreme Court

No.10
Submissions re
Admissibility
of Statements
continued

6th August
1965

say it improved on the evidence of the police officers that what happened is that he, realising that his alibis were not able to substantiate the story, had little else to do. The nature of the offence was one which would trouble any person having that in mind. Your Lordship has seen the statements - that at the end of one he says: "I ask the judge should have mercy upon me". It is part and parcel of the evidence. Is it not in his state of mind that he was anxious to rid himself of this spell which he had in his mind? I would deal with the first statement in that light - that for one moment he was handcuffed throughout and in another he was not handcuffed. And in answer to your Lordship's questions he said he was not handcuffed all night. The Sergeant said he was not there. There was not another person with him that night. The evidence of the police officers is corroborative. One matter which is applicable, and I trust your Lordship will give me leave to repeat in order to emphasise the point, and this is: that the knowledge of an injury of some force applied to the neck of the night-watchman could only have been known by the doctor pathologist who carried out the examination. Any person whom he told or anyone who read or knew of his report and the actual offender himself. My Lord, it is ridiculous to ask the police officers whether they knew the contents of this post-mortem report. My Lord, it is my respectful submission that the defendant could only know because he was there. There was a dispute as to the description given by the defendant at the factory as to what he did. One of them said, two of them said, he put his arm around him and pushed him; the other said he grabbed hold of his neck and he gave a demonstration showing how the defendant demonstrated this inside the factory. It is entirely consistent with the injuries seen on the deceased's body by the pathologist. I mentioned that for this reason: if the defendant was being told what to say at all times, as he suggests, then I say this is one matter which has been proved beyond reasonable doubt that he could not have been put in this mind by any police officer. And I asked him: Did you mention anything about his neck? No, he said, the others mentioned it and that is how it came about. On the evidence of the police officers you accepted the truth in this respect. Now, my Lord, as to the second statement and the statement made before the Superintendent, that 4 hours, approximately 4 hours have elapsed between the time when he made the first confession and the second - I think your Lordship is satisfied that

10

20

30

40

50

that the first statement is voluntary and I would invite your Lordship to take the view that the second statement is also voluntary. If your Lordship has some doubts then, in law, I would humbly submit it does not follow that the second statement is inadmissible. I don't think I need cite any authorities but the matter is decided in the case of Smith which dealt with this particular point. It is in the 1959 Queen's Bench Division at P.35. So that if your Lordship is satisfied that - at P.35 - he was in the same position, then it is a statement which is admissible in law. My Lord, what was the position here? He has taken away the officers who have been guarding him and they were removed and a new set of officers appeared on the scene and very wisely Inspector Law had a civilian, Mr. Mok, present for the purpose of taking the statement in front of Supt. Jenkins. That statement must be admissible because of its voluntary nature. What the defendant says about the threat made by 4463 some four hours earlier? He had to admit in cross-examination that although the threat of being beaten to death do exist, nevertheless he knew the officer was exaggerating and all that he was really frightened of was being beaten. Is it really hard to understand that a man, bearing in mind the nature of the injuries caused to the deceased, that he would be worried by being beaten? My Lord, I would ask your Lordship to look at it this way: the nature of the crime is one of surrounding circumstances and that, taking everything into consideration, he must have been a man with very much on his mind and troubled. So far as the time he was kept in custody, I don't propose citing very much from this law case of Q.B. but its a wellknown case - the man was in the police station for 4 days during their investigations and every opportunity was given by the police to the defendant to try to extricate himself. Then he had to admit that he did it. If your Lordship will bear in mind the evidence given by Chan Pui about his reluctance to be seen by others, then there was in his mind some degree of anguish at his actual apprehension. It is unusual, to say the least, to invite a person to the scene of the crime. Here is a man who has been up all night and although he is permitted to go to sleep, what has he got to say about that? Certainly the courts take very great concern about careful treatment of prisoners whilst in police custody.

In the
Supreme Court

No.10
Submissions re
Admissibility
of Statements
continued

6th August
1965

In the
Supreme Court

No. 10

Submissions re
Admissibility
of Statements
continued

6th August
1965

He had been seen by a doctor at 6.30. It would have been advisable if he had been allowed to go to sleep and let the man stay until the following day. It would have been better certainly if he had been taken to the factory later on. There are practical considerations, my Lord, because factory workers have to go to work and so the police asked him if he was willing to go. My Lord, at the top of the notebook it does not say: you are charged. It says: are you willing. He elected to do that. That may be subject to query by your Lordship but the police cannot be condemned for doing their duty now for bringing offenders to the courts with only evidence to substantiate that charge. So far as the factory was concerned the defendant made certain admissions. My Lord, it all ends up in two parts - admission in part after he was cautioned. My Lord, he already made two confessions and therefore he made a clean breast of the matter then and there would have been little sense in not going to the factory and explaining what exactly happened because what further harm would he do to himself? It was not a question of his being inveigled to go there. What more can a man do than ask a question in the presence of another police officer? And let him write down that if he agrees. Other than that one has to go to one of Her Majesty's judges and ask him to write it down. That seems to be the only way the police officers could do it. It was not a question of one officer with the defendant but a question of 3 officers with the defendant. He came back - it is true that he admits signing the document - and he says: I don't know what it is about? There were approximately 7 or 8 signatures made in the police station and while in custody. My Lord, I don't think I can say another more. I don't propose citing a lot of law. Perhaps I might refer you to only one case in the Law Reports. It is Vol. XVIII of Cox's Criminal Cases. The case of Miller at P. 54. - Perhaps I might very briefly summarise its contents. What happened there is a murder and the Inspector who investigated said: Be careful how you answer. And he questioned this man about his movements on the night of the murder and the following morning and asked him to produce his clothes. And when they were produced to ask him to account for the bloodstains on them and at the end of the conversation the Inspector took this man into custody on the charge of murder. And the question was whether this was admissible or not and Mr. Justice Hawkins admitted the evidence. He held

10

20

30

40

50

that no threat was made or exercised and therefore his answers were admissible and that they were voluntary statements. His Lordship went on to say: "It is impossible to discover the facts of a crime without asking questions and these questions were properly put. He did not express dissent from any of the cases cited, but every case must be decided according to the whole of its circumstances. My Lord, here is a person arrested. He had been acting strangely but it is completely explicable in relation to other matters. My Lord, the police did not produce the witnesses in order to embarrass the defendant and I would invite your Lordship to say that the officers acted in a proper manner and that they had to make sure that the witnesses knew the person by sight and to whom the questions related. Why not take the statement the next day. It is a very easy thing to say after the event. There was no question of him being tricked or anything of that kind and I would recall the admission of these police officers who said: He would have been released immediately. Not even at that time was he being in custody. I would invite your Lordship to say on this trial within a trial that it has been proved beyond any reasonable doubt that this was a voluntary confession. If the first one was not voluntary - your Lordship might think it is not - it is very difficult to know what the position is. The second statement was admissible. My Lord, they are so closely related, one with the other, my Lord, I would say this confession on the second occasion bears on the confession of the first, and the first one is likewise voluntary because the police did all they could - gave him tea and cigarettes and treated him with all the courtesy they could do so at that time.

MR. SWAINE: If your Lordship, on the evidence, should have any doubt whether or not the inducements and threats given in evidence by the accused, then your Lordship would find that the prosecution had not proved beyond reasonable doubt that the statements were voluntary. I shan't, my Lord, try to analyse the evidence given nor comment on the evidence because I am sure the evidence is fresh in your Lordship's mind, but even if your Lordship were able to say that: I did not believe

In the
Supreme Court

No. 10
Submissions re
Admissibility
of Statements
continued.

6th August
1965

In the
 Supreme Court
 No. 10
 Submissions re
 Admissibility
 of Statements
 continued
 6th August
 1965

the accused at all when the accused said that threats have been made and inducements offered to him, my submission is that, looking at the matter from the prosecution's point of view, from the point of view of the evidence adduced by the prosecution, the statements in question are tainted and should be rejected by the court. But before I deal with that aspect, my Lord, I beg to correct my learned friend as to his understanding of the evidence of the accused. It appeared to me that my learned friend is under the misapprehension that the accused had said that he had been subjected to a beating and had been threatened right from the word "go" as soon as he arrived at the police station. That, I think, was not what the accused had said because he arrived at the point where threats were made to him and a punch delivered on his chest after he had been confronted with the witnesses. And prior to that point, all the time, no evidence was given, that is my understanding of the way the evidence went, of any threat to the accused or any inducements or any violence.

10

20

MR. ADDISON: With great respect to my learned friend, defendant said in cross-examination that he was handcuffed immediately he arrived at the police station. The handcuffed yes, but it is my understanding of my learned friend's submission was that the threats and beatings took place before the witnesses confronted the accused. Then I say that that was not the case, according to the evidence of the accused. But, of course, if I misunderstood my learned friend then I'll say no more about it. But quite apart from what my learned friend understood to be the evidence, the evidence was, I think, that the accused spoke of the threats and the inducements as having taken place after he had been confronted with the 4 witnesses. My learned friend agrees. I agree, according to the accused, pressure was applied as soon as he arrived at the station but the threats after he had been confronted.

30

40

COURT: Yes, after. I got it very clear in my notes.

MR. SWAINE: I don't think he was referring specifically like that; certainly it was quite clear as to the threats occurring after the confrontation by the witnesses. But looking

In the
Supreme Court

No. 10

Submissions re
Admissibility
of Statements
continued

6th August
1965

at the matter now, from the point of view of
the prosecution's evidence, my Lord, it must
be, I think, accepted that the police were
making a special effort to locate the accused
and, despite the evidence of the detective
constable who was in touch with Chan Pui, 4125.
At this point - as to why he contacted two of
his colleagues so as to make a party of three
when they went to keep this rendezvous, I
say that the police were concerned that they
would, with or without the consent of the
accused, have apprehended him and taken him to
the police station. They were making special
efforts to locate the accused and they would
apprehend him by force if necessary. The
accused is taken to the police station and is
questioned about his background and about his
movements on the 11th and 12th. The Sergeant
then gave instructions to the police
constable to round up 4 persons who are in a
position to break the alibi of the accused
person and these 4 witnesses came along and
each in their turn, in the presence of the
accused; denied the alibi. My submission is,
my Lord, that even if no threat had been
offered to the accused, at that point the
whole conduct of the police officers
investigating amounted to saying to the
accused: Well, it is no good your adhering
to this alibi because here we have witnesses
who have contradicted you and who have
exploded your alibi. There was, therefore,
at the very least, my Lord, an implied but
obvious threat. And a case, which is not
perhaps as near to this as I would like, but
the case I had to draw upon by way of analogy,
is R. v. Mills in 6 Carrington & Paine 146;
also in the English Courts Vol. 172 at P. 1183
and it is a very short report, my Lord.
Perhaps your Lordship might like me to read

COURT: Yes.

MR. SWAINE: P. 1183 Vol. 172 English Reports:-

"A constable said to a prisoner charged with
felony - 'It is no use for you to deny it,
for there is the man and boy who will
swear they saw you do it' :- Held, that
this was such an inducement as would
exclude evidence of what the prisoner
said".

In the
Supreme Court

No.10
Submissions re
Admissibility
of Statements
continued

6th August
1965

And the actual report. That was the police attitude, I submit, my Lord, and that was what the accused understood the police effort to be. And even therefore if there had been no threats, no inducement, my submission is that any confession subsequent to this type of veiled threat is tainted, is no longer voluntary and therefore should be rejected.

My Lord, the accused has said that he gave his statement in answer to the charge read in the morning under the same apprehension as when he gave his first statement. Not four hours would have elapsed when he was formally charged and I submit that in those circumstances the initial inducement was still operative. A case in point, where the interval of time appears to be not so very different from ours, is R. v. Boswell in 1843 Carrington & Marshman at P.584. At the head it reads:

10

"The mere knowledge by a prisoner of a handbill, by which a government reward and a promise of a pardon are offered in a case of murder, are not sufficient ground for rejecting a confession of such prisoner, unless it appear that the inducements there held out were those which led the prisoner to confess. Where a prisoner desired that any handbill that might appear concerning a murder with which he stood charged might be shown to him, and a handbill was shewn to him by a constable, by which a reward and free pardon was offered to any but the person who struck the blow, and the prisoner three days afterwards made a statement, this statement was held to be receivable in evidence. But where it was afterwards proved by another constable, that the prisoner, on the night before he made the statement, said to him, that he saw no reason why he should suffer for the crime of another, and that as the government had offered a free pardon to any one concerned who had not struck the blow, he would tell all he knew about the matter. The judge held that the statement that had already been given in evidence was not properly receivable, and struck it out of his notes "

20

30

40

Interval of one night here, my Lord, in the circumstances which was held not sufficient to remove the inducement. Here, not more than four

50

elapsed. The accused was certainly in police custody after he had made his first confession and the inducement continued to operate on this line. There can be no doubt, my Lord, whatever the contention of the accused when first asked to go to the police station whether or not he was then a free agent. There can be no doubt but that after he had made his first confession he was no longer a free agent. Two constables were assigned to guard him during the night. No question whatever that at least after the time of the first confession, he was in police custody. If the first statement is tainted, equally the statement in English to the judge is tainted. I have here a case for the supposition that where a person is in custody, it is not right that he should be charged over and over again with a view to eliciting a statement

In the
Supreme Court
No. 10
Submissions re
Admissibility
of Statements
continued
6th August
1965

COURT: He was only charged once, wasn't he?

MR. SWAINE: Charged only once. Now, this case I have R. v. Morgan in LIX Justice of the Peace Journal at P.827, there is a short report reading:-

"At Birmingham, before Mr. Justice Cave, James Morgan, 61, hairdresser, John Hemming, 25, burnisher, and George Stevens, 47, boatman, were indicted (under 24 and 25 Vict. c.99, s.24) for having in their possession and custody on November 26, knowingly and without lawful excuse, a galvanic battery, which was intended to be used for the counterfeiting of the Queen's current silver coin. Mr. Russell Griffiths appeared for the prosecution, and Mr. Daly defended Stevens. The other two prisoners were not defended by counsel. Morgan, his son-in-law, Hemming, and his daughter took an empty house, Stevens was also seen at this house. A neighbour spoke to hearing the sounds of hammering at night coming from the house. The police went to the house and found Morgan and Mrs. Hemming there. Hemming came in soon after, and later Stevens came in. In the various rooms of the house were found acids, a saucepan

In the
Supreme Court
No. 10
Submissions re
Admissibility
of Statements
continued
6th August
1965

and ladle for melting metal, and a galvanic battery, also the ruins of matchboxes covered with plaster of paris. The learned judge ruled that answers to questions by the police could not be given in evidence. He also ruled that the prisoners, having been taken into custody at the house, what they said in answer to the charge at the police-station could not be given in evidence against them, as it was not right, when once a prisoner was in custody, to charge him again at the police-station in the hope of getting something out of him. A detective had no earthly business to examine a prisoner".

10

If your Lordship accepts this authority in its entirety then it would appear that the accused, having been in custody at least since after his first confession, he should not have been that is to say, in answer to the charge, should not be repeated in evidence as it was not right, once a prisoner is in custody, to charge him again with a prior charge.

20

COURT: I think the ruling is this: that you can't be bringing the man up over and over again and charging him with that.

MR. SWAINE: Yes, I have a comment to make, my Lord.

COURT: It is analogous. Here they have cautioned him.

30

MR. SWAINE: The comment which I may make applies to the great forcewhen he was invited to take the police to the factory and asked at least 3 questions. But in fact more, because the police constables said that apart from asking about gloves and pipe and window, he was asked about windows and where the pipe had been disposed of. So a number of questions were asked of the accused and I submit those questions should not have been asked, quite apart from any other objections which might be taken, objections arising from the evidence of the accused, apart from inducements and threats. Even forgetting this for a moment, it is quite wrong for this procedure to be adopted in this case. In the judges' Rules, Rule 3 as set out in Phipson at P.332 - Rule governing persons in custody:-

40

In the
Supreme Court

No. 10
Submissions re
Admissibility
of Statements
continued
6th August
1965

10 "Rule 3 was never intended to encourage or authorise the questioning or cross-examination of a person in custody after he had been cautioned, on the subject of the crime for which he is in custody, and long before this Rule was formulated, and since it has been the practice for the judge not to allow any answer to a question so improperly put to be given in evidence, but in some cases it may be proper and necessary to put questions to a person in custody after the caution has been administered".

20 In the present case, my Lord, having regard to the fact that he made a confession, being charged, and made a further statement. It was quite improper for the police to have done what they did, to invite him to go along and questioned him further at the scene of the crime. I say therefore, my Lord, that even looking at the matter from the point of view of the prosecution's evidence, there are objectionable features and they should be rejected. And there is the more fundamental objection on the basis of evidence given by the accused that he was subjected to inducement and it was the inducement, threat of violence which forced him to make the statement.

30 COURT: I don't intend to give an oral judgment now. What I intend to do is to tell you what I think and intend to hold and give you a written judgment on Monday. I think the first two statements are admissible but not the third, that is everything after the statement made to the Superintendent; everything in relation to what happened after that. After Rule 3 of the Judges Rules by the court, two statements are, in my opinion,
40 admissible, but I will give you a written judgment on Monday.

MR. SWAINE: Much obliged to your Lordship.

COURT: There is something I want to ask you. The first statement that part below is not admissible, that I am going to ask you to do that again.

In the
Supreme Court

No. 10

Submissions re
Admissibility
of Statements
continued

6th August
1965

MR. ADDISON: My Lord, I will have that done again.

COURT: In law I am satisfied. I have looked up the law. It should go in exactly as it is said but in view of this particular crime - so those statements will be excluded. There is one whole sentence put in a stupid way.

MR. ADDISON: I respectfully agree with your Lordship.

COURT: If we exclude the whole of that sentence.

MR. ADDISON: My Lord, I have asked the officer to have that first page re-typed as if there was complete continuation. 10

COURT: I don't mind his mark, but the particulars of the sentence, I object. You say what you mean. "I came to Chan Wing Kee It is obvious already that Chan Wing Kee knew him.

MR. ADDISON: Perhaps I will arrange for this to be done again, my Lord.

COURT: Just one like that. I think that is the best. So we'll adjourn until 9.30 on Monday. 20

MR. ADDISON: Would 9.45 be convenient? And I'll show my learned friend the document.

COURT: I shall be ready at 9.30. Right, we'll adjourn then until 9.30 on Monday.

(Court adjourns at 4.35 p.m.)

No.11
Ruling

In the Supreme
 Court

9th August, 1965 at 9.40 a.m. Court resumes

Accused present. Appearances as before.

No.11
 Ruling 9th
 August 1965

JURY absent.

COURT reads out written Ruling, as follows:

10 COURT: The Crown seeks to put in evidence three statements of a confessional nature made by the accused. Before any of these statements can be admitted in evidence it is necessary for the Crown to prove that it is a voluntary statement. In this matter the onus of proof is on the Crown and it is not for the accused person to prove that the statements were not voluntary. The Crown must satisfy me beyond all reasonable doubt that the statements were made voluntarily.

20 To this end Crown Counsel called various Police witnesses. Counsel for the accused called the accused and he was cross-examined at some length by Crown Counsel.

There are, as I have said, three statements. And I will deal with them separately.

The circumstances surrounding the taking of the first statement were as follows:-

30 During their investigation into the crime the Police became anxious to interview the accused. They received information from one CHAN Pui that he, the accused, would be at a certain rock near the Hoi Shum Temple at the end of Lok Shan Road, Kowloon, at about 9 a.m. on 25th May, 1965.

Accordingly, a Police Corporal and two Detective Police Constables, all in plain clothes, converged on CHAN Pui and the accused at about that time.

The Police disclosed their identity and referred to the investigation of this case and

In the Supreme
Court

No. 11

Ruling 9th
August 1965
(Contd.)

asked the two of them to go to the Police Station at Hung Hom. At least that is the evidence of CHAN Pui and the Police witnesses. The accused said that the Police did not speak to him but only to CHAN Pui, but that he went to the Station because one of the Police Officers told him he (the accused) was connected with the case.

At any rate the two men, CHAN Pui and the accused, accompanied the Police to Hung Hom Police Station. They were not arrested, not handcuffed, and went to the Police Station voluntarily. The accused denies this, he says he went to the Station involuntarily. 10

At the Police Station the accused was interrogated by D.P.C. 4463 in an office in the presence of Sgt. 1075.

D.P.C. 4463 stated that he explained that enquiries were being made as to the murder of a watchman at the Bonnie Hair Products Factory at 95 Ha Heung Road. The Constable then proceeded to ask the accused details about his background, origins etc. He also asked him to account for his movements on May 11th and 12th of this year. This the accused proceeded to do. 20

In the course of his answers the accused mentioned the names of four persons with whom he said or in whose presence he was for part of the relevant period of time. 30

These four persons were immediately fetched by the Police and taken to the Police Station. One by one they were brought into the room and were asked in his presence whether what the accused had said was true. In each case the person questioned denied that the accused had been with him on the night in question.

During the time D.P.C. 4463 had kept a record of what was said in his notebook and in his own writing. 40

In the Supreme
Court

No.11
Ruling 9th
August 1965
(Contd.)

After the fourth man referred to above had gone, the accused, who, according to D.P.C. 4463 had all along been looking sad and worried, said that he would tell him what had occurred concerning the watchman at the factory.

10 Immediately and very properly D.P.C. 4463 cautioned the accused. After signing the caution, the accused then wrote with his own pen a confessional statement in the Constable's notebook.

While he was writing this D.P.C. 4463 and Sgt. 1075 were present but remained silent. And the former said he did not know what the accused was going to write in the notebook until he had written it.

20 When he had finished, it was read back to him. And he agreed it was correct. No alterations were made and he and the two Police witnesses signed the statement. This statement is a confessional statement.

D.P.C. 4463 then reported this matter to Inspector LAU who was in the Police Station but not in that room, though earlier in the proceedings before the four men had been fetched he had been in the room for three or four minutes.

30 Inspector LAU gave an iron water pipe to D.P.C. 4463 which had been found at the scene of the crime. He showed this to the accused and again administered a caution to him. The accused made a written admission that he had used this pipe to hit the watchman. Again all the three men signed.

All this took from 9.25 p.m. until 11 p.m. though of course most of that time was spent in the original interrogation.

40 The Police witnesses said that though the demeanour of the accused was sad and worried, he behaved normally. He was sitting down. And the confessional statement was voluntarily made. They say that he was never handcuffed, nor punched and

In the Supreme
Court

No.11
Ruling 9th
August 1965
(Contd.)

that no duress or pressure of any kind was put upon him. And he had tea. After it was all over, he had a meal at about midnight.

In the witness box the accused said that he went to the Police Station involuntarily. And the moment he got there he was handcuffed. He was taken to an office and there interrogated. He admits that four witnesses were brought into the room who contradicted part of the story he had given to the Police as to his movements. 10

After the fourth witness had gone the accused said his hands were freed but again secured behind his back and the handcuffs were made as tight as possible. D.P.C. 4463 was responsible for this. And the same Constable punched him once on the chest and repeatedly threatened to beat him up. He said Sgt. 1075 joined in these threats and he was told he would only be given food if he confessed. Two other Police Officers, Inspector LEE and CHAN Kam Pui, also came into the room, one of whom offered him money, and the other what I took to be drugged cigarettes. 20

When shown his signatures and the words he had written down in the Constable's notebook, the accused said that he had written these at the dictation of D.P.C. 4463 his hands having been freed in order to do this. And he said, he was afraid he would be severely beaten if he did not do so. 30

It was evident that the evidence of this witness became more exaggerated as his examination and cross-examination progressed. He did not make a good witness and some of his statements were almost inexplicable. For example, those concerning Inspector LEE and CHAN Kam Pui whom, he said, offered him cigarettes, drugged or not, and money (said to be 3-4,000 dollars) if he would admit to the murder. His recollection as to 40

who was in the room differs from that given by the Police witnesses and in cross-examination he contradicted himself. Where the evidence of this witness differs from that of the Police witnesses I much prefer the latter.

10 Finally the accused said he was handcuffed with his hands behind his back for some hours: and that those handcuffs were made as tight as possible, causing him pain and making a mark on his wrists. Dr. LEE Fuk Kee examined the accused at 6.30 a.m. on May 26th. He paid particular attention to the grip of the accused. But noted that he appeared to be a left-handed man. The accused made no complaint to Dr. LEE of any hurt to his wrists or to any other part of his body. And nor did Dr. LEE
20 note any mark on the wrists of or elsewhere on the body of the accused.

Counsel for the defence suggests that the conduct of the Police on this occasion was such that it amounted to a veiled threat.

30 Leaving aside the allegations of the accused which I do not believe, what does this conduct amount to? The Police bring in a man for questioning in an investigation into a case of murder. He is not arrested and certainly not handcuffed. He is interrogated by a Constable in the presence of a Sergeant in the usual way. He is asked to describe his movements for a certain period and he does so. During the course of this he mentions he was with A, B, C and D. The Police immediately confront him with A, B, C and D separately - who separately are asked whether this is true. Each one denies it.

40 Can it be said that a confession made immediately after is inadmissible? I do not think so. I see nothing wrong in the Police confronting the maker of a statement with evidence that that statement is untrue. All that the Police were doing in effect was saying, "Look, you have told us lies" - and that that

In the Supreme
Court

No. 11

Ruling 9th
August 1965
(Contd.)

was so in this case, is plain for all to see. Including the accused.

I do not think that such conduct on the part of the Police is a veiled threat. It is merely pointing out that a proposed alibi is untrue. And of course a man may tell lies to the Police for a multitude of reasons. But if he does tell lies to the Police they are entitled to expose them.

In my view there was nothing to complain about in the conduct of the Police as far as the taking of this first statement was concerned, and it was a voluntary statement and therefore admissible and I so rule. 10

I can deal with the second statement more briefly.

The accused had a meal at about 12 midnight on the night of the 25th/26th May, though he himself says it was at about 2 a.m. He remained in the office together with D.P.C. 4463 and D.P.C. 4215 until 5.50 a.m. when he was charged with murder by Inspector LAU, in the presence of Superintendent Jenkins and MOK Yim Tong, a civilian Police Interpreter. He was cautioned and in reply to the charge made a second confessional statement. This he wrote down himself. MOK Yim Tong in evidence said that he was composed but looked 'a bit worried'. 20 30

The accused said that D.P.C. 4463 had threatened him and told him, specifically that he was to tell the Superintendent what he had told him namely he must admit to the crime. But of course when the second statement was made neither D.P.C. 4463 nor 4215 was present.

This is not a case where a man previously charged is then re-charged perhaps with a view to wringing a confession from him. This was the first time that the accused was charged with murder. And I can find nothing wrong with the method which was adopted. 40

Counsel for the defence would have me

decide that the second statement was inadmissible because it followed so closely after the first confession which it is alleged by the defence was obtained under threats. I have rejected this and so this point does not arise. And anyway four hours had elapsed between the two statements and the persons present at the second statement were different persons from those present at the taking of the first statement.

In my view the Crown has clearly proved that this statement is voluntary and it is therefore clearly admissible. And I so rule.

After the statement had been taken D.P.C. 4463 and Sgt. 1075 returned to the room. And at about 7.30 a.m. D.P.C. 4463 asked the accused if he was willing to lead him to the scene of the incident. He was cautioned. And he wrote down words in the Police Constable's notebook to the effect that he was so willing.

Accordingly the accused was taken to the factory. He was handcuffed on one side of D.P.C. 4463 and on the other side to D.P.C. 4215. The party was in charge of Sgt. 1075. They proceeded to the factory where many questions were put to the accused who answered them. In effect these proceedings were an enactment of what the accused said had occurred on the night of the crime.

Since the accused was handcuffed to D.P.C. 4463 he was unable to make a note of what occurred at the factory though why Sgt. 1075 could not have done this I do not know. Anyway on his return to the Police Station D.P.C. 4463 solemnly recorded what had happened, read over his note to the accused who signed it as being correct.

I will say at once that this statement if it can be so called, and the statements made by the accused at the factory, are not admissible in evidence.

Further the accused was given no nourishment

In the Supreme
Court

No. 11
Ruling 9th
August 1965
(Contd.)

that morning before setting out. But he had had little if any sleep. He had been charged and was most obviously in Police custody. Indeed he was physically tied to a Policeman on each side. And then questions were asked of him. It is obvious that Rule 3 of the Judges Rules was ignored here. I understood from the evidence of D.P.C. 4463 that he acted upon instructions from Sgt. 1075 in this matter. But whose idea it was in the first case I do not know. Suffice it to say that what transpired at the factory and any note thereof is inadmissible evidence. 10

This is not as was the first statement of the accused above referred to a confession arising out of a legitimate interrogation by the Police. Nor does it appear from such evidence as I have heard that the idea of going to the factory originated with the accused in order to assist the Police as sometimes (but rarely) occurs. In effect what the Police were doing here was to invite the accused to provide evidence against himself. But I do not think that that is right. 20

COURT: Now there is the ruling, gentlemen.
(To Clerk) Are the Jury outside? -
Well, I will adjourn until 10 o'clock. 30

9.55 a.m. Court adjourns (to 10 a.m.)

No.12
Leung Shui Wing

9th August, 1965 at 10.03 a.m. Court resumes

Accused present. Appearances as before.

Jury answer to names.

P.W.19 - LEUNG Shui Wing (U.F.A. Reminded)

XN. BY MR. ADDISON (continuing)

In the Supreme
Court

Prosecution
Evidence

No.12
Leung Shui
Wing
Examination

10

Q: Now, Officer, in order to refresh the memory of the members of the Jury, - you told us before, during last week, that on the 25th of May at about 9 p.m. you went with Detective Corporal 1488 and D.P.C.4215 to the area of the Hoi Sum Temple and there saw the defendant and CHAN Pui?

A: Yes.

Q: And 4215 invited the accused to go back to the Police Station with you?

A: Yes.

20

Q: And that you went back together, I believe you said using a car, and you got back to the Police Station at about 10 past 9?

A: Yes.

Q: Was the defendant at any time handcuffed up to his arrival at the Police Station?

A: No.

30

Q: And that you told my Lord and the members of the Jury that after your arrival at the Police Station the defendant was taken into the office along with yourself and Sergeant 1075?

A: Yes.

Q: Is Sergeant 1075 TSANG Kei, the Sergeant in charge of the Police Station?

A: Yes.

Q: Now were there any other persons in this

In the Supreme
Court

Prosecution
evidence

No.12
Leung Shui
Wing
Examination
(Contd.)

office apart from yourself, the
defendant and the Sergeant?

A: No.

Q: What position - what was he doing in the
office, sitting down or standing up
or what?

A: He was sitting down.

Q: And what happened then?

A: Sergeant 1075 then instructed me to
question the accused.

10

Q: Yes, and did you do so?

A: I did.

Q: In connection with what did you do so?

A: In connection with the murder which took
place at the Bonnie Hair Products Factory.

Q: Now did he answer your questions?

A: He did.

Q: What were you seeking to find out?

A: Well, I wanted to find out about his
life in general, as well as his movements
during the 11th and the 12th of May.

20

Q: And did he tell you where he had been at
the relevant periods during the night of
the 11th and 12th of May?

A: He did.

Q: What was his mood like at this time?

A: Well, from his outward appearance he looked
slightly depressed.

Q: And after he had told you his movements, did
anyone leave the room?

30

A: Yes, Sergeant 1075 left the room for a
little while.

- In the Supreme
Court

Prosecution
evidence

No.12
Leung Shui
Wing
Examination
(Contd.)
- Q: About how long was he absent from that room?
- A: For approximately two or three minutes - he then returned again.
- Q: And up to this time had any other person been in the room?
- A: Only the three of us, the Sergeant, 1075, the accused and myself.
- 10 Q: Was he still sitting throughout the whole of this time?
- A: Yes, he was.
- Q: Now you were asking him questions, did you at any time write anything down?
- A: I did.
- Q: What were you writing down?
- A: Well, I asked questions and I wrote down - I then wrote down his statement.
- Q: And then later on did somebody come into the office?
- 20 A: Yes, after Sergeant 1075 left the room D.P.C. 4215 then brought four persons into the room one by one.
- Q: Yes, now how much later, are you able to tell us, how much later was that, that the Sergeant, that the D.P.C. 4215 brought some people into the room one by one?
- INTERPRETER: "How long was ----"?
- Q: How much later.
- INTERPRETER: "The Sergeant ---"?
- 30 Q: Let me put it this way. Do you know what time it was that the Sergeant left the room for two or three minutes?
- A: About 10 o'clock.

In the Supreme
Court

Prosecution
Evidence

No.12

Leung Shui
Wing
Examination
(Contd.)

Q: Do you know around what time the first witness was brought into that room by D.P.C. 4215?

A: That was round about 10.30.

Q: Now had anyone been into the room up to this stage, apart from yourselves -- the defendant, the Officer 4215, and the witness?

A: Sergeant 1075 was also there.

Q: Do you know Inspector LAU?

10

A: He was not there.

Q: Did he come into the room at any time?

A: Yes.

Q: Just listen to my question, please. --

A: Inspector LAU had been to the room before the four persons were brought in.

Q: And when Inspector LAU came in did he stay there a long time?

A: No, but only for a short while.

Q: Did he speak to the defendant?

20

A: No.

Q: Did the defendant speak to him?

A: No.

Q: Now you say that the persons were brought in by 4215 - were any of them asked anything? Yes or no?

A: Yes.

Q: By whom?

A: By 4215.

Q: Having been asked something by 4215 did they give any answer?

30

In the Supreme
Court

Prosecution
evidence

No.12

Leung Shui
Wing

Examination
(Contd.)

A: Yes.

Q: Did any of them speak to the defendant?

A: No.

Q: Did he speak to any of them?

A: No.

Q: What they said - is it correct that he was present when the questions were asked of these four persons and was present when they gave their answers to the Officer?

10 A: Correct.

Q: Now at the time these persons were brought in, where was the defendant in that room - was he sitting or standing?

A: He remained sitting.

Q: On the same chair?

A: Yes.

Q: And was he a free agent as far as you can tell? (could tell?)

A: Yes.

20 Q: What about his hands?

A: Well, he placed his hand down like this, when he was sitting. (at sides)

Q: Was there anything on them?

A: No?

Q: And then after the fourth witness left the room - what happened then?

A: After the four persons had left the room I continued questioning the accused?

Q: What persons were then in the room?

No.12
 Leung Shui
 Wing
 Examination
 (Contd.)

- A: Sergeant 1075 and myself, together with the accused.
- Q: And did something -- was something said?
- A: Well, the accused did give answers.
- Q: Yes, what did he say?
- A: He said, "Well, no need for you to ask me so many questions. I am not in the mood."
 "Well, I am telling you all about the affairs of the watchman of Bonnie Hair Products Factory and all the facts." 10
- Q: When he told you that he was going to tell you all the facts, did you say anything to him?
- A: Yes, I immediately stopped him, and cautioned him.
- Q: What do you mean "You cautioned him"?
- A: Well, by cautioning him I mean I told him that I was making enquiries and investigating about a murder case which occurred on the 12th of May this year in On Lok Factory Building on the 9th floor, Bonnie Hair Products Factory, where the watchman had been murdered. 20
 "I am now cautioning you. 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 produced as evidence."
- Q: Did you write this down yourself?
- A: Yes. 30
- Q: As a sort of continuation of the statement you had previously been writing?
- A: Yes.
- Q: Having written that down, did you ask him if he understood it?
- A: I did.
- Q: Did you invite him to do something?
- A: In reply he said he understood and he signed his name, and I signed my name.
- Q: What about the other Officer, the Sergeant? 40
- A: The Sergeant also signed his name.

- Q: Was that read over to him before he signed it?
- A: Yes.
- Q: And having signed it, did he then write something?
- A: Yes, he did.
- Q: Now whose pen did he use?
- A: His own pen. He took it out from his own pocket.
- 10 Q: Was he sitting or standing?
- A: He was sitting down.
- Q: Now Officer, had he at any time been handcuffed in the Police Station?
- A: No.
- Q: And did anyone speak to him whilst he was writing?
- A: No.
- Q: Did anyone say anything to him whilst he was writing?
- 20 A: No.
- Q: And did you know what he was going to write?
- INTERPRETER: What he was -- ?
- Q: What he was going to write.
- A: No.
- Q: And did he finish writing?
- A: Yes.
- Q: And after he had written his statement, what happened then?
- A: I read it back to him.
- 30 Q: And then what happened?
- A: He then signed his name and I signed my name. Sergeant 1075 also signed his name.
- Q: Did you ask him to sign it?
- A: Yes.
- Q: For what purpose?
- A: Well, after he had written something down that is his own statement, I then read it back to him.

In the Supreme
Court

Prosecution
evidence

No.12
Leung Shui
Wing
Examination
(Contd.)

In the Supreme
Court

Prosecution
evidence

No.12
Leung Shui
Wing
Examination
(Contd.)

Q: Did you ask him anything about his statement?

A: He then signed his name, I signed mine, and Sergeant 1075 signed his.

Q: Did you ask him anything about his statement?

A: What statement?

Q: You say you read it back to him - ?

A: Yes.

Q: Did you ask him anything about what you had read back to him? 10

A: No.

Q: How long was he writing?

A: For ten minutes.

Q: And what was his mood like at this time?

A: He was very depressed.

Q: Did anyone come into the room whilst he was writing?

A: No.

Q: Then having written this and signed it -- did you go somewhere? 20

A: Yes, I went out.

Q: Where did you go to?

A: I went out and told Inspector LAU.

Q: Yes, and did you show Inspector LAU the statement.

A: I took it out and showed it to Inspector LAU, and he had just a glance at it.

Q: And were you handed something by Inspector LAU? 30

A: Yes.

Q: What was that?

A: He handed me an iron rod.

Q: And with that what did you do?

A: I then brought it into the room. After I had brought the iron rod into the room I spoke to the accused and said to him that he was still under caution.

In the Supreme
Court

Q: Yes?

A: He then said, "Well, this is the rod which I used to hit the watchman."

Prosecution
evidence

Q: Is that rod here in Court?

A: Yes.

Q: Is it this one here, Exhibit 5?

COURT: What number is that?

MR. ADDISON: 5, my Lord.

No.12
Leung Shui
Wing
Examination
(Contd.)

P.5

CLERK: P.5 (handed to witness)

10 Q: Now you told my Lord and the Jury that before showing him that you cautioned him?

MR. SWAINE: I don't think he said that. He was still under caution; he didn't say that he cautioned him again. He was still under caution.

COURT: He was reminded of the caution.

MR. ADDISON: That is what I understood.

A: Yes, I did.

20 Q: Just tell us again - what did you say - what did you tell him, when you said you reminded him of the caution?

A: "I am now reminding you, CHAN Wai-keung, that you are still under caution." "You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and it may be produced as evidence."

Q: Was this written down by you.

A: Yes.

30 Q: What, at the foot of the statement he had just made with his own hand?

A: Yes.

Q: Did you ask him if he understood it?

A: Yes, I did.

Q: And did he sign his name?

A: Yes, he did.

Q: And you and the other Officer, the Sergeant, did you both sign your name?

In the Supreme
Court

Prosecution
evidence

No.12

Leung Shui
Wing
Examination
(Contd.)

A: Yes, we did.

Q: And did he write down anything on that paper?

A: Yes, he did.

Q: Did he use his pen or your pen?

A: Yes, he did.

Q: Which pen did he use?

A: His own pen.

Q: And after he had written that down, what happened then?

10

A: I then read it back to him.

Q: Did you ask him anything when you read it back to him?

INTERPRETER: Well, first the witness said, "After I had read it to the accused he said, 'It is right, no alterations'."

Q: Yes?

A: He then signed his name, I signed my name, and the Sergeant signed his name.

Q: And did you make a note of the time when you last signed this document?

20

A: Yes.

Q: Now at any time whilst you were taking a statement from him, until the time when he was finished, was he under handcuffs?

A: No.

Q: And what happened then?

A: After that, Sergeant 1075 then said to the accused, "We are now arresting you.", and I followed suit and said to the accused the same thing, that, "We are now arresting you."

30

Q: Well, did anyone leave the room afterwards?

A: Yes, Sergeant TSANG Kei left the room.

Q: Did you stay with the defendant?

A: Yes.

Q: Did anybody else come in with you?

A: Yes, 4215 then joined me in keeping guard on the accused.

- In the Supreme
Court

Prosecution
evidence

No.12
Leung Shui
Wing
Examination
(Contd.)
- Q: This is the practice, is it?
- A: Yes.
- Q: And did you stay with the defendant until about six o'clock that morning?
- A: Yes.
- Q: Along with D.P.C. 4215?
- A: Yes.
- Q: What did the defendant do, during that night?
- A: He was sitting down and smoking cigarettes.
- 10 Q: Where did he get the cigarettes from?
- A: His own cigarettes.
- Q: Well, what was he sitting at - anything or not?
- A: Sitting on a chair.
- Q: Was there a desk there or not?
- A: Yes.
- Q: Did he sleep?
- A: Yes, he was supporting his head with his arm and placed his arm on the table.
- 20 Q: Now was he given anything at the Police Station?
- A: Yes, he asked for tea, and he asked for rice.
- Q: What, at the same time he asked for both those things?
- A: Yes.
- Q: And was he given tea and rice?
- A: He was given.
- Q: What time was he given some food?
- A: At about 12 o'clock.
- 30 Q: And then later on at about six did you leave that room when other Officers came inside?
- A: Yes.
- Q: And after these Officers had interviewed the defendant, did you go back into that room?
- A: Yes.
- Q: And later did you cause a translation of the statement which you had taken first in answer

In the Supreme Court

Prosecution evidence

No.12

Leung Shui Wing Examination (Contd.)

to questions put by you and later volunteered by the defendant - did you cause a translation to be made, translated by the Supreme Court translator?

A: Yes.

Q: Would you please look at a document, Exhibit P.26? (handed to witness) Is that the statement which you wrote down to begin with?

10

A: Yes.

Q: And does that same long statement contain that made by the defendant after he was first cautioned by you?

A: Yes.

Q: And does it bear his signature and yours?

A: Yes.

Q: And does that statement also contain the written statement made by the defendant?

A: Yes.

20

Q: And the following caution you made prior to showing him his statement, and then other signatures?

A: Yes.

Q: Officer, is it correct that that document bears the defendant's signature four times?

A: Three signatures.

Q: There is one signature to the first caution, after his first statement, after the next caution, after the next statement, isn't there?

30

A: Yes.

MR.ADDISON: Now, my Lord, I have had copies made of all the statements. Perhaps these might be put to the Jury now - my learned friend has seen the statements and -

COURT: Now you want the statement put in and then the translation? They are not exhibited yet.

40

MR. ADDISON: That is so.

In the Supreme
Court

Prosecution
evidence

No.12
Leung Shui
Wing
Examination
(Contd.)

COURT: And we will hand the translation to the Jury, that is all they are concerned with.

MR. ADDISON: What I propose to do, with your Lordship's leave, is to read from this document, have it translated to the witness, and then ask him if he agrees that that was what he wrote.

COURT: Yes.

10 MR. ADDISON: I am much obliged.

COURT: That suits you also?

MR. SWAINE: I have no objection to this course, my Lord.

INTERPRETER: The witness says that in this whole bunch (i.e. statements) there are all together four signatures of the accused in the whole bunch.

COURT: That is what?

MR. ADDISON: Exhibit P.26.

P.26

20 Q: Now would you take Exhibit P.26 in your hand, Officer, and is this what the defendant -- what you wrote, first of all?

A: Yes --

Q: The statement purported to have been taken at 25 minutes past 9 on the 25th; did you write: (Crown Counsel reads in English, and Interpreter translates)

30 "My name is CHAN Wai-keung. I am not married. I was born in Tai Nong, Tung Kun. I have an elder brother CHAN Sang, 32 years, res. at 28, Sim Luen Street, 2nd floor, and also an aunt, CHAN Fuk-nui, aged about 57 years, residing at 63A, Tong Mei Road, 5th floor, who is the principal tenant of that flat. On 16th April 1965 C/M CHAN Wing-pui recommended me to work with the Tak Kwong Electric Bulb Factory, at the On Lok Mansion, 10th floor, Ha Heung Road, as an odd job worker, at a wage of \$210. per month."

40 Q: (To Interpreter) You are just reading out what I am saying to him?

INTERPRETER: Yes, I am.

Q: Much obliged.

In the Supreme
Court

Q: (reading)

Prosecution
evidence

No.12
Leung Shui
Wing
Examination
(Contd.)

"I provided myself with food. I slept in the factory. Every day, I worked from 8 a.m. to 6 p.m. Every night, after the working hours, I and another job worker CHCI Chiu-man were responsible and must sleep in the factory. On the night of 10th May 1965 I was dismissed by the contractor of the factory, Mr. HO Shing. That night, I still slept in the factory. The following morning at 08.30 hours, on 11th May 1965, I left the factory. The reason for my dismissal was that Mr. HO Shing discovered that I had not paid my food bill, a total of \$120. H.K., to the factory. He said that I was extravagant and wanted me to obtain a guarantee from CHAN Wing-pui or a shop's seal - CHAN Wai-keung for his continuing to employ me. As a result - CHAN Wing-pui dared not guarantee me and I therefore left. On 11th May 1965, at 08.30 hours, when I was leaving the factory, it was raining heavily. I went to have a haircut in a barber shop somewhere in Ha Heung Road. The barber shop's name I do not remember. After the haircut I went to see the 12.30 p.m. show in the Wah Lok Theatre by myself. It was a Chinese film. The name of the film I do not remember. After the show, at about 3 p.m., I went to the Kung Fat Mahjong School at Wuhu Street, where I played a mahjong game of \$1-2/-. Because when I left the factory in the morning, HO Shing lent me \$30. and therefore I had the money to play the mahjong game. As a result, I won \$45. H.K. At about 19.30 hours, I left that mahjong school, and went to a cooked food stall at Tong Mei Road, Tai Kok Tsui near the Ying King Theatre, to take some coffee. After taking coffee, I went to the Lai Chi Kok Amusement Park where I saw an opera. At 23.30 hours, I took a Route No.6C bus from the outside of the Lai Chi Kok Amusement Park to go to the Walled City and played a mahjong game in the Kai Kee Mahjong School. It was also a game of \$1-2. I played the game until 01.00 hours on 12th May 1965, when I left the Kai Kee Mahjong School. I was then still having \$32. left with me.

10

20

30

40

50

In the Supreme
Court

Prosecution
evidence

No.12

Leung Shui
Wing

Examination
(Contd.)

10 And after having left the Kai Kee Mahjong School I took a taxi to the Hing On Apartment at Shanghai Street and hired room No. 217. The rent was \$5 per day. I registered my name as CHAN Ming on the apartment's register. The time was approximately 2.30 a.m. After I had hired the room, I went downstairs to eat some Wan Tun noddle at a cooked food stall, for which I paid \$1. After finishing eating, I immediately returned to the apartment and after taking a bath I went to sleep in the room. I did not go out again that night. I was sleeping by myself.

20 The following day at about 10.30 hours when I was just getting up from bed inside the room I heard a female worker of the apartment press the bell and say, 'Very late. It will soon be 11 o'clock, still not getting up?' At that time I only replied, 'Thanks'. At that time I did not open the door to see who pressed the bell, and therefore I did not see her. At about 11.00 hours on 12/5/65 I no longer hired the room and left the Hing On Apartment. At Reclamation Street, I took a Route No.12 bus to go to Tai Kok Tsui and went to see a morning show in the Ying King Theatre. I did not meet any friend of mine on my way. At about 12.30 hours after the show I went by myself on foot to 63A, Tong Mei Road, 5th floor, the address of my aunt where I took a meal together with my aunt, CHAN Fuk-nui. After the meal, at about 15.00 hours, I accompanied my aunt to go to Mong Kok somewhere near the market, the name of the street and house number I do not remember, to look for my aunt's elder brother, whose name I do not know. At that time I only accompanied her to go upstairs. I then left her. I walked out to Reclamation Street where I took a bus to go and to visit a friend residing in a hut at the end of Boundary Street. He is named PAU Ying. We both then had a talk. I told him that I was no longer working with the Tak Kwong Factory. That night, I took my meal at PAU Ying's place and slept there. I did not go out to anywhere with him.

30

40

In the Supreme
Court

Prosecution
evidence

No.12
Leung Shui
Wing
Examination
(Contd.)

At 12.00 hours on the 13th May, after I had my meal at PAU Ying's place, I left. I went by myself to play mahjong in a mahjong school near the Ying King Theatre at Tai Kok Tsui. I did not know any of the people in that mahjong school. At that time I still had twenty dollars odd left with me, and as a result I lost them all. At about 16.00 hours I left the mahjong school. I walked aimlessly to Mong Kok and Yaumati Districts until late at 23.00 hours when I went to sleep on the roof-top of my aunt's address. I slept on the roof-top for three nights running. From the night of the 13th to the night of 16th, I slept on that roof-top. My aunt did not know that I slept on the roof-top because there was no space at my aunt's address. Between the 14th and the 16th I took my meal in PAU Ying's place. It was on the forenoon every time I took my meal in his house. I had to suffer hunger during the evening meal (time). During these three days I was wandering about aimlessly. On the 16th May at 8.00 hours on the morning of that day, after I had left my aunt's roof-top and when I was walking along Shanghai Street near the Banyan Tree Square - Later, I went to the Tai Fat Choi Mahjong School at Temple Street to play mahjong.

10

20

30

You need not ask too many questions. I am quite bored. I now tell you about the real facts of the incident that night concerning the watchman of the Bonnie Hair Products Factory at the On Lok Factory building."

Now, you have got written here, 'I immediately stopped him from further saying and reminded him of the caution'?

A: Yes.

40

Q: I am now investigating a case of murder which occurred on the 12th day of May this year at the On Lok Factory building, 9th floor, in which the watchman of the Bonnie Hair Products Factory was murdered. I now caution you, CHAN Wai-keung."

A: Yes.

- In the Supreme
Court

Prosecution
evidence

No.12
Leung Shui
Wing
Examination
(Contd.)
- Q: "You are not obliged to continue 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. Do you understand? 'I understand.'"
You agree to that?
- A: Yes.
- Q: Who wrote 'I understand'?
- A: The accused wrote it.
- 10 Q: And then the other three signatures. "I, on the night of the 12th May at about 2 o'clock midnight at the roof-top of the On Lok Factory building climbed down to the 9th floor from a bamboo scaffolding, entered the Bonnie Hair Products Factory through a window. I first took an iron fork and then entered the office with intent to force open the drawer/s. After having been discovered by the watchman, I pushed the
- 20 watchman out. He tried to take a wooden" - if you look at the original and tell us what that sentence is?
- A: Wooden clog.
- Q: Is that what you read back to him?
- A: Yes.
- Q: "He tried to take a wooden clog to hit me. He was pushed down to the canvas bed by me. I first hit him with fist. He already fainted. Later he called out 'Save life'.
- 30 After that I took up a piece of water pipe and hit him. He fainted. After that I took a suit of clothing from him and went into the dyeing room where I made a search and took away" -- What is the word after that?
- A: A bundle of keys.
- Q: Yes.
- A: I placed the suit of clothing into a basin of water.
- Q: Can you read it back from 'I took a suit of clothing....'?
- 40 A: I took a suit of clothing from him and went into the dyeing room where I made a search and took away a dollar and a half and a

In the Supreme
Court

Prosecution
evidence

No.12

Leung Shui
Wing
Examination
(Contd.)

bundle of keys and placed the suit of clothing into a basin of water. After that I cleaned the piece of iron with water and placed it in the office by the side of the wall.

Q: And "after that I climbed out through the window up the bamboo scaffolding to the roof-top."?

A: Yes.

Q: And "From the roof-top I escaped via a staircase. After that, I threw away the keys. I did not intend to kill him. I wish the judge would pardon me."

10

A: Yes.

Q: And there are the three signatures and the reminder of the caution, and then three more signatures, and then did the defendant write this, 'I did use this piece of water pipe which you are now showing me, to hit the watchman. I recognise this piece of iron pipe.'?

20

A: Yes.

Q: And was the statement completed at 11 p.m.?

A: Yes.

Q: One last question. Was any threat or inducement made or said to the defendant to encourage him to make this statement?

A: No.

Q: One last question. Did you in fact go to the scene before this statement was taken along with other police officers?

30

A: Yes.

Q: And did you examine the scene along with other police officers?

A: Yes.

MR. ADDISON: Yes, thank you.

MR. SWAINE: May I have one moment of indulgence while I speak to Mr. Addison, please?

COURT: Yes.

40

XXN: BY MR. SWAINE:

In the Supreme
Court

Q: You went with your two colleagues to the spot near the Hoi Sum Temple on the 25th May at about 8 o'clock where you came upon the accused and Chan Pui?

Prosecution
evidence

No.12

A: Yes.

Leung Shui
Wing

10 Q: And before this, the three of you, that is you and your two colleagues, had met by arrangement at some other place? You and your colleagues had met by arrangement at some other place?

Cross-
Examination

A: No previous arrangement.

Q: Yes, what I mean to say is this: you and your two colleagues met together by arrangement at some other place before you went to Hoi Sum Temple?

A: Yes.

Q: Where was this place that you had met beforehand - where was this place?

20 INTERPRETER: They had met?

MR. SWAINE: You and your colleagues met.

A: Kum Wah Restaurant.

MR. SWAINE: Kum Wah Restaurant?

INTERPRETER: Kum Wah Teahouse.

Q: And did you proceed by car from Kum Wah Teahouse to Hoi Sum?

A: Yes.

Q: How long did the drive take approximately?

A: Several minutes.

30 Q: And you went there directly - you knew exactly where you were going?

A: Well, it was as a result of the telephone call we went to Kum Wah Teahouse and there met the other officer and from there we went directly to Hoi Sum Temple.

Q: Yes, and the telephone call was from DPC 4215 Wan Ming?

A: Yes.

40 Q: And your police party went to the police station with the accused and Chan Pui?

In the Supreme
Court

Prosecution
evidence

No.12

Leung Shui
Wing
Cross-
examination
(Contd.)

A: Yes.

Q: And immediately upon arrival at the police station you put handcuffs upon the accused?

A: No.

Q: You then proceeded to question the accused about his background and about his movements on the 11th and 12th of May?

A: Yes.

Q: And then, as you said, four persons were brought in one by one, and each of them were - each of them was asked questions in the presence of the accused and each of them gave certain answers?

10

A: Yes.

Q: And, in short, each of those four persons contradicted what the accused had said about his movements at the relevant time?

A: Yes.

Q: And you then said to the accused, 'Well, there is no alternative now. You will have to admit it.'?

20

A: No.

Q: And you went on to say, 'If you don't admit it I will beat you up.'?

A: I did not say that.

Q: You then unlocked the handcuffs from the wrists of the accused and you put his hands behind his back and you handcuffed him again with his hands behind his back?

A: He was never handcuffed throughout.

30

Q: And you then tightened the handcuffs around his wrists to make them tighter?

A: No.

Q: You then said that if he did not admit it you would have no alternative but to beat him up?

A: No, I did not say that.

Q: And then you punched him on the chest?

A: No.

In the Supreme
Court

Prosecution
evidence

No.12

Leung Shui
Wing

Cross-examination
(Contd.)

Q: And you again said, 'If you don't admit it I am going to beat you up many times' - 'going to beat you many times'?

A: No, I never said that.

Q: You asked the accused to co-operate with you and then nothing would happen to him?

A: I never said that.

10

Q: Now, your Sergeant 1075 then said to the accused in your presence, 'Well, you have had a taste of this beating, and you had better admit it because there is no other way for you.'?

A: No, I didn't hear that.

Q: Then the accused said that he had not been to this factory at all?

A: Well, he said to me he had been to the factory.

Q: And Sergeant 1075 said that 'if you don't admit it we will beat you until you do'?

20

A: That was never said.

Q: Then the Sergeant tried another tactic and said, 'Well, if you don't tell us, we will not give you any food to eat'?

A: No.

Q: Then, at this point, Inspector Lee (who has been sitting here at Counsel's table) and another police officer by the name of Chan Kum Pui came into the room where you and the Sergeant and the accused were?

30

A: No, they did not come in.

Q: And I put it to you that Inspector Lee said in your presence to the accused, 'Well, young brother, you had better admit and admit it and co-operate with the police.'?

A: No such thing.

Q: And Inspector Lee further offered money to the accused if he would co-operate with the police?

A: No such thing.

40

Q: And Chan Kum Pui further then asked the accused to co-operate with the police?

In the Supreme
Court

Prosecution
evidence

No.12
Leung Shui
Wing
Cross-
examination
(Contd.)

INTERPRETER: I beg your pardon?

Q: Chan Kum Pui then asked the accused to co-operate with the Police?

A: No.

Q: The Chan Kum Pui offered cigarettes to the accused?

A: No such thing.

Q: And thereafter Inspector Lee and Chan Kum Pui left the room?

A: They never came in. I never saw them. 10

Q: You then told the accused to co-operate and you said to him, 'I am going to ask you questions and you give me the answers.'?

A: I never said that.

Q: Then you put to him certain matters and told him to say yes to you?

A: No.

Q: The accused said to you, 'Well, if you say that is so, well, it is so.'?

A: No. 20

Q: But he told you that he was not clear about what you were saying because he did not know anything about this murder case?

A: He never said that.

Q: And you said to him, 'You simply nod your head as I write and that will be enough.'?

A: I never said that.

Q: Then you started to dictate to the accused?

A: No. 30

Q: And you told the accused to write down what you were dictating?

A: No.

Q: And after he had finished writing according to your dictation you told him to sign what he had written?

A: No.

Q: To sign what he had written?

In the Supreme Court

INTERPRETER: That's right.

A: No.

Prosecution evidence

Q: Now, then, after he had put his signature to the statement, you said to the accused, 'When you go to see the Superintendent, remember you must also admit it.'?

No.12

Leung Shui Wing

A: No, I did not say that.

Cross-examination

Q: And you said to him that if he did not admit it in front of the Superintendent then he would be again beaten?

(Contd.)

10

A: No, I never said that.

MR. SWAINE: No further questions.

RXN: by MR. ADDISON:

Re-examination

Q: Mr. Leung, how long have you been in the Police Force?

A: For about 14 years.

Q: Did you threaten violence against this man?

A: No.

Q: Punch him?

20

A: No.

COURT: Have you any questions?

MR. FOREMAN: No questions.

COURT: The exhibit number of the translation?

MR. ADDISON: 26A. I do not know what is your lordship's wish with regard to morning adjournment.

Ex. P.26A

COURT: Do you wish me to adjourn?

MR. ADDISON: Yes.

COURT: We will adjourn for ten minutes.

30

11.20 a.m. Court adjourns.

No.13
TSANG KEI

No.13
Tsang Kei
Examination

11.35 a.m. Court resumes

MR. ADDISON: My next witness, my Lord, is (20) Detective Sergeant 1075 at page 21 of the depositions.

In the Supreme
Court

Prosecution
evidence

No.13
Tsang Kei
Examination
(Contd.)

INTERPRETER: My Lord, I do not know whether
he is to be reminded or affirmed?

COURT: He has been called?

INTERPRETER: Yes.

COURT: Could you remind him, please.

INTERPRETER: Reminded, my Lord.

P.W.20 - TSANG KEI - affirmed in Punt.

XN. BY MR. ADDISON:

Q: Is your full name TSANG Kei?

A: Yes.

10

Q: Are you Detective Sergeant 1075 attached
to the CID Hung Hom Police Station?

A: Yes.

Q: And are you the Senior Non-commissioned
Officer in charge of that police station?

A: Yes.

Q: Were you present at the Police station on the
night of the 25th of May between at 21.25
hours?

A: Yes.

20

Q: When the defendant was present in a room
being questioned by the last witness DPC
4463?

A: Yes.

Q: Were there any other officers present
apart from yourself, DPC 4463 and the
defendant?

A: No.

Q: And did the defendant make certain
answers to certain questions?

30

A: Yes.

Q: Did you have occasion to leave that room?

A: Yes.

Q: About what time was that?

A: At about 10 p.m.

Q: How long were you absent?

A: For about three minutes.

In the Supreme
Court

Q: Did you speak to anybody?

A: Yes.

Prosecution
evidence

Q: Who was that?

A: DPC 4215.

No. 13
Tsang Kei
examination
(Contd.)

Q: What did you tell him?

A: I instructed 4215 to look for persons from two mahjong schools, one person from the apartment from a certain apartment - and one man called Pau Ying.

10 Q: And later did somebody come into the office?

A: Yes.

Q: Who was that?

A: 4215.

Q: He came alone or with anybody else?

A: 4215 came in alone.

Q: Did he come later with anybody?

A: Yes.

Q: Who were they?

20 A: He brought someone from the Kung Fat Mahjong School. He brought somebody from the Kung Mahjong School.

Q: And was that person asked anything?

A: Yes.

Q: By whom?

A: 4215 asked.

Q: Was the defendant still in the room?

A: Yes, he was.

Q: Did anyone speak to him?

A: Yes.

30 Q: Who did?

A: 4215.

Q: What did he say?

A: Well, 4215 asked the men from the mahjong school.

Q: Did anyone speak to the defendant?

A: No.

In the Supreme
Court

Prosecution
evidence

No.13
Tsang Kei
Examination
(Contd.)

Q: And did the person who was introduced by 4215 give an answer?

A: Yes, he did.

Q: And were other persons introduced one after the other?

A: Yes.

Q: In exactly the same manner they were asked questions and given an answer?

A: Yes.

Q: Now, you have told my Lord and the jury that at one stage 4215 came in alone?

10

A: Yes.

Q: Well, how was that, then, in relation to the time when he came and brought other persons one by one into the room?

A: Well, there was a lapse of about one minute before he came in alone, that is between the time he came in alone and the time when he brought those four persons one by one.

20

Q: Was the defendant at any time handcuffed in that room?

A: No..

Q: And after those persons have left - the four persons left - what did 4215 do?

A: 4215 then left the room but what he was doing outside I do not know because I was in the room.

Q: And afterwards, did the accused say something?

30

A: He did.

In the Supreme
Court

Q: And was anything said to him?

A: Yes.

Q: What was said?

Prosecution
evidence

A: Well, after the four persons - all the four persons had been brought out the accused then said something to 4463.

No. 13
Tsang Kei
Examination
(Contd.)

Q: Did 4463 then say anything to him?

A: Yes.

Q: What was that?

10 A: The defendant said to 4463.

Q: That is not my question. Did 4463 say something to the defendant?

A: Yes.

Q: What did he say?

A: 4463 cautioned the defendant and said to the defendant that he was investigating the case which happened at the Bonnie Hair Products Factory in connection with a watchman.

Q: Anything else?

20 A: And which occurred on the 12th of May this year.

Q: Yes.

A: And about the death of the watchman.

Q: Yes.

A: And the accused was being reminded and that he was still under caution and that was read back to him.

Q: What was read back to him?

A: The caution was read back to him and he was being asked whether he understood or not.

30 Q: Well, what was the caution?

A: Well, reminded him of - that the enquiries and investigations were being carried out in connection with the murder.

Q: What is the caution?

40 A: It was the caution statement administered by the police officer at the time so that the accused was not obliged to say anything but whatever he said would be taken down in writing and might be produced as evidence.

Q: And you say he was asked if he understood?

A: Yes.

Q: Did he say whether he understood.

In the Supreme
Court

Prosecution
evidence

No.13
Tsang Kei
Examination
(Contd.)

- A: He said he understood.
- Q: Did he write anything?
- A: Yes.
- Q: Did you do anything after he had written this?
- A: I signed my name.
- Q: And did he then make a statement?
- A: Well, he wrote something down.
- Q: Did anyone speak to him whilst he wrote something down? 10
- A: No.
- Q: How long was he writing?
- A: He spent about five minutes in writing it down.
- Q: And after he had written this down what did he use to write it down?
- A: He used his own pen.
- Q: Now, after he had written this down, was it read back to him?
- A: Yes. 20
- Q: By whom?
- A: 4463.
- Q: And was he asked anything?
- A: Yes, he was being asked whether there was any alteration to be made.
- Q: Did he do anything?
- A: Nothing.
- Q: Did you do anything after?
- A: I signed my name.
- Q: What about the defendant? 30
- A: Well, he signed his name.
- Q: And after he had made this statement, did anyone leave the room?
- A: Yes.
- Q: Who was that?
- A: 4463.
- Q: With anything?
- A: Yes, he brought iron rod in and showed it to the defendant. 40

In the Supreme
Court

Prosecution
evidence

No.13
Tsang Kei
Examination
(Contd.)

Q: Did he ask the defendant anything?

A: Yes.

Q: And before he asked him anything, did he say anything to him?

A: Yes.

Q: What was that?

A: Well, he again reminded the accused that he was still under caution.

Q: Did you ask him whether he understood that?

10 A: Yes.

Q: Did the defendant do anything?

A: He said he understood?

Q: Did he write anything?

A: Yes.

Q: What did he write?

A: He wrote something down on a sheet of paper.

Q: Did he write down saying that he understood?

A: Yes.

Q: Did you write down anything?

20 A: Yes.

Q: And after that, did the defendant write down anything himself?

A: Yes.

Q: Whose pen did he use?

A: His own pen.

Q: After he had written this own, was anything done?

A: Yes.

Q: What was that?

30 A: 4463 then read it back to him page by page.

Q: Yes.

A: And then 4463 asked him whether he wanted to make alterations.

Q: Yes.

A: He said no alterations to be made and he signed his name.

Q: Did you sign your name?

A: Yes.

40 Q: Would you look, please, at Exhibit 26 - Is that the statement which you read back to the defendant.

A: Yes.

In the Supreme
Court

Prosecution
evidence

No.13
Tsang Kei
Examination
(Contd.)

Q: Did he sign that statement four times -
Do you see your signature on the
document four times?

A: Yes.

Q: Did he also sign at the bottom of every
page?

A: Yes.

Q: Was he at any time in handcuffs while
he was in that room?

A: No.

10

Q: And after he had made that statement -
exhibit 26 - did you leave the room?

A: Yes.

Q: Did you ever go back again?

A: No.

MR. ADDISON: Yes.

XXN: BY MR. SWAINE:

Cross-
examination

Q: Yes, I put to you, Sergeant, that
as soon as accused had arrived at
the police station on the evening of
the 25th May he was out in hand-cuffs?

20

A: No, he was not at all.

Q: And after he had been confronted with
the four persons who were brought in by
4215, Police Constable 4463 said to him
that he had no alternative now but to
admit it?

A: No such thing.

Q: And 4463 said to the accused that if he
did not admit and co-operate with the
police, then he would be beaten up?

30

A: No such thing.

Q: In fact 4463 punched the accused on the
chest?

A: No.

Q: He also removed the handcuffs from the
wrists of the accused, put the hands
of thw accused behind his back and put the
handcuffs on the wrists of the accused
with his hands at his back?

40

	A: No.	In the Supreme Court
	Q: Then Inspector Lee came into the room with another police officer Chan Kum Pui and they also said to the accused that he had better co-operate with the police?	Prosecution Evidence
	A: No, that evening Inspector and Chan (Kum) Pui never entered the room at all.	No.13
10	Q: The fact is that 4463 and you yourself repeatedly threatened the accused with the beating unless he co-operated with the police?	Tsang Kei Cross-examination (Contd.)
	A: No such thing.	
	Q: The accused had said to 4463 and yourself that he did not know about this murder case and was not and was therefore not clear about the matters that were being put to him by 4463?	
	A: No such thing.	
	MR. ADDISON: No re-examination.	
	COURT: He may go.	
20	MR. ADDISON: DPC 4251 - he is at page 17 of the deposition.	

No.14
Wan Ming

No.14
Wan Ming
Examination

P.W. 21 - WAN MING - On former affirmation.

INTERPRETER: WAN Ming reminded, my Lord.

XN. BY MR. ADDISON:

	Q: Is your full name WAN Ming?
	A: Yes.
30	Q: Are you Detective Constable 4215 attached to the Criminal Investigation Department Hung Hum?
	A: Yes.
	Q: On the morning of the 12th of May were you a member of the police party that went to investigate the scene of the murder at the Bonnie Hair Products Manufacturing Ha Heung Road, Kowloon?
	A: Yes.
	Q: And were you one of several officers charges with the investigation of this case?
40	A: Yes.
	Q: Did you interview a number of people?
	A: Yes.

In the Supreme
Court

Prosecution
Evidence

No.14
Wan Ming
Examination
(Contd.)

Q: And one of those persons a man
named Chan Pui?

A: Yes.

Q: Who has given evidence in this case?

A: Yes.

Q: Did you see him on a number of occasions
between that date and the 25th of May?

A: Correct.

Q: What was the date on which you first
saw Chan Pui?

10

INTERPRETER: I beg your pardon?

Q: Do you remember the date when you first
saw Chan Pui?

A: The 13th of May.

COURT: The 13th?

INTERPRETER: 13th, Sir, onethree.

Q: And as a result of certain
information were you looking for a
particular person?

A: Yes.

20

Q: Who was that?

A: CHAN Wai Keung, the accused.

Q: For what purpose did you wish to see him?

A: Well, at that stage we wanted to see the
accused, CHAN Wai Keung, merely for
questioning as routine. He was more or
less considered as one of many whom we
wanted to interview.

Q: Yes, and eventually did you see him in
the evening of the 25th of May with
Chan Pui in the area of the Hoi Sum
Temple?

30

A: Yes.

Q: Did you speak to him?

A: To whom?

Q: To the accused?

A: Yes, I did.

Q: What did you say?

A: Well, there and then I revealed my
identity to the accused and I further
said to him I was making enquiries in
connection with the murder of the watchman

40

of the On Lok building; and I further asked whether he would be willing to go back to the police station with me. He agreed and he went with us willingly.

In the Supreme Court

Prosecution Evidence

No.14

Wan Ming Examination
(Contd.)

Q: Was he handcuffed?

A: No.

Q: And then at the police station did you lead him into a room?

A: Yes, we went to the office of the officer in charge.

10

Q: Was one of the officers who were with him at the time you invited the defendant to the police station DPC 4463?

A: Yes.

Q: Now, were you present at any time when the defendant was being questioned by that officer at the police station?

A: Well, at the very beginning at one stage I was in the room, but later on I left that office and subsequently I took four persons into that room one by one.

20

Q: We will stop there for a moment. Were you present with the Sargeant 1075, 4463 and the defendant?

A: No, I was not there.

Q: And then afterwards did you receive certain instructions from the Sargeant?

A: Yes.

Q: Where were you at the police station when the Sargeant gave you certain instructions - were you in that room or not?

30

A: No, I was in another room.

Q: And as a result of certain instructions did you and other officers go to look for four persons - Choy Chuen, Lai Yin-hung, Cheung Lau Kan and Pau Ying?

A: Yes.

Q: What time did you receive the instructions from the Sargeant?

40

A: At about 10 p.m.

Q: And at what time were these four persons brought in?

A: Well, that was about 10.30.

Q: And did you take them into this room?

A: Yes, but before I took them in I went into the room to inform them first.

In the Supreme
Court

Prosecution
Evidence

No.14
Wan Ming
Examination
(Contd.)

Q: Apart from that, did you then take them into the room?

A: Yes.

Q: One by one?

A: Yes.

Q: And, officer, did you keep a record in your notebook of the name of the person you introduced, the time you introduced him?

A: Yes.

10

Q: And that notebook is with you here, is it, as an exhibit?

A: No, it has already been produced in Court.

Q: Do you remember the time when you introduced the first person?

A: Yes.

Q: What time was that?

A: 10.30.

Q: And what time did you introduce the last person?

20

A: 10.37 the last one.

Q: And did you ask that person any question?

A: Yes.

Q: What question did you ask?

A: Which one?

Q: Each one.

INTERPRETER: From the first you mean, Mr. Addison?

Q: You asked them a general - specific type of question?

30

A: The first one whom I took in was Choy Chuen, my Lord.

Q: And did you ask him a question?

A: Yes.

9th August, 1965 @ 12.10 p.m.

Q: What did you ask him?

A: Well I introduced Choy Chuen to the accused, my Lord, by telling the accused that this man, Choy Chuen, is from Kung Fat Mahjong School.

40

In the Supreme
Court

Prosecution
Evidence

No. 14

Wan Ming
Examination
(Contd.)

- Q: Did you ask Choy Chuen a question?
- A: And I asked Choy Chuen whether the accused, Chan Wai-keung had been playing mahjong between 3.00 and 7.00 p.m. on the 11th of May.
- Q: And what did he say?
- A: Choy Chuen said he did not.
- Q: What about the next person?
- A: The second person was LAI Yin-heung from Kai Kee Mahjong School.
- Q: Did you ask him a question?
- A: To Lai Yin-heung I asked this question, 'Did this man, Chan Wai-keung play mahjong in your mahjong school between 11.30 p.m. on the 11th of May up till 1.00 a.m. on the 12th of May?'
- Q: And did Lai Yin-heung reply?
- A: He did - he said he did not see the accused and that the accused did not play mahjong there.
- Q: What about the third person?
- A: The third man was Cheung Lau-kan.
- Q: Did you ask him a question?
- A: To the third man I said, "Well this man - did this man, Chan Wai-keung come to your apartment at 2.00 a.m. on the 12th of May and rent Room 217?"
- Q: Yes, did he reply?
- A: In reply, this man said, 'He did not come to our apartment.'
- Q: Was the fourth person Pau Ying?
- A: To Pau Ying, I asked whether the accused, Chan Wai-keung had been to his place and took his meal there in the afternoon of the 12th of May, and in reply Pau Ying said he did not come.
- Q: Did any of these persons you interviewed have a discussion with the accused?
- A: No.
- Q: Did he say anything to them?
- A: No, he did not.
- Q: And after having introduced these persons did you leave the room?
- A: Yes.
- Q: Where was the defendant in that room?

In the Supreme
Court

Prosecution
Evidence

No.14
Wan Ming
Examination
(Contd.)

A: Well he was sitting at a little table near the corner of the room.

Q: Did you notice anything about him at that time?

A: No, he was as usual.

Q: Was he handcuffed or not - did you notice?

A: No, no.

Q: And did you have occasion later that evening to go back into that room?

10

A: Yes, I was asked by Sergeant 1075 to go back to the room to keep watch - that was already some time after eleven.

Q: Did you keep watch on him?

A: I did.

Q: Was there anybody else?

A: Yes, together with 4462.

Q: Until what time?

A: Up till nearly six o'clock in the morning, and then the Officer in charge then asked us to go out.

20

Q: And did you leave that room with 4463?

A: Yes.

Q: During that night, did he eat anything - the defendant - eat anything?

A: Yes, at about 12 midnight the accused had some fried rice and tea.

Q: Did he have anything else?

A: Yes, he had cigarettes to smoke.

Q: Where did he get those from?

30

A: Well at first he smoked his own cigarettes, but later on it was 4463 who gave him some cigarettes.

Q: You saw that did you?

A: Yes.

Q: Did he ever ask for any food after his meal at midnight?

A: Well until the following morning at about 8.30 after we had returned from the factory he was then given some sandwiches and tea.

40

- Q: Now at 9.30 a.m. on the 5th of June, were In the Supreme
you handed by Cheung Lau-kan two registeresCourt
hotel registers of his apartment residents? -----
- A: Yes. Prosecution
Evidence
- Q: Did you see those two registers - exhibit
29? -----
No.14
- A: Yes. Wan Ming
Examination
(Contd.)
- 10 Q: And did you cause certain entries in
those registeres to be translated by the
Supreme Court Translator?
- A: Yes.
- Q: Are those translations marked Exhibits 29A
to D respectively?
- A: Yes, correct.
- Q: And did you keep those in your possession,
and do you now produce them?
- CLERK: Exhibits P.29A to D. Exs. P.29
A to D
- 20 Q: Together with the two registers Exhibit
29?
- A: Yes.
- Q: Was the person from whom you received the
registers the same person whom you introduced
on the night of the 25th?
- A: Yes.
- XXN: BY MR. SWAINE: Cross-
examination
- Q: On the 25th of May you and Constable 4463
together with one other police officer went
to the Hoi Sum Temple area and saw the
accused there with Chan Pui?
- 30 A: Yes.
- Q: Who was the other police officer?
- A: 1488 - Corporal.
- Q: Yes, and you had telephoned to 4463 and to
Corporal 1488 from the Kam Wah Teahouse, and
these two officers met you at this teahouse and
from there you proceeded to the Hoi Sum Temple
area?
- A: Well in fact I made a phone call to Corporal
1488 and as a result 1488 came with 4463.

In the Supreme
Court

Prosecution
Evidence

No.14
Wan Ming
Cross-
Examination
(Contd.)

Q: Yes, and you showed the way to the place at Hoi Sum Temple where you found the accused and Chan Pui?

A: Yes.

Q: And you knew exactly where to go?

A: What do you mean?

Q: You didn't just chance there by accident - you went there because you knew where to go?

A: That is correct.

10

Q: No doubt Chan Pui told you that was where he was meeting the accused that evening?

A: Yes.

Q: Now I suggest to you that you were going to get the accused to go to the Police Station whether he liked it or not and it was for that reason that you went along with two other police officers?

A: No.

Q: And I suggest to you that as soon as the accused had arrived at the Police Station, handcuffs were put on his hands?

20

A: No.

Q: And you subsequently went on this errand to round up the four persons in question in order to contradict the account of the accused as to his movements on the 11th and 12th of May in order to extract a confession from him?

A: No, we only wanted to know the true facts whether he actually went to those places as he had earlier related about his movements.

30

MR. ADDISON: No re-examination, my Lord.

COURT: Thank you.

MR. ADDISON: My next witness, my Lord, is Choy Chuen - he is at page 19 of the depositions - the first of the four people introduced, my Lord. It appears he hasn't suggested the time - I feel obliged to call this person - as the time which is alleged the defendant was with him is not actually the time ...

40

No.15
Choy Chuen

In the Supreme
 Court

P.W. 22 - CHOY Chuen - Affirmed in Punt.

Prosecution
 Evidence

XN. BY MR. ADDISON:

No.15
 Choy Chuen
 Examination

Q: You full name is Choy Chuen?

A: Yes.

Q: And are you a supervisor of the Kung Fat Mahjong School, 111 Wuhu Street, Ground Floor?

10 A: Yes.

Q: Where you have been so employed for four years?

A. Yes.

Q: Were you on duty there on the 11th of May of this year?

A: Yes.

Q: From what time?

A: From twelve noon to twelve midnight.

Q: And how many tables of players were there?

A: On the ground floor 13 tables.

20 Q: And did you see the persons playing?

A: Yes.

Q: Do you know the defendant?

A: Yes.

Q: Has he ever been to this Kung Fat Mahjong School?

A: Not that day.

Q: Has he ever been there?

A: I 'don't know - he seldom went there.

30 Q: Seldom - do you know whether he was there on the 11th of May or not?

A: No, he did not.

Q: Did you on the night of the 25th of May go to C.I.D. Police Station, Hung Hom?

A: Yes.

Q: And were you shown into a room there?

A: Yes.

Q: By the last witness?

In the Supreme
Court

Prosecution
Evidence

No.15
Choy Chuen
Examination
(Contd.)

A: Yes.

Q: Do you know about what time that was?

A: Round about ten o'clock.

Q: Did you see anyone inside that room?

A: Four persons - five including myself - three of them were police officers.

Q: Who were the three police officers?

A: The last witness and another two whom - officers whom I don't know. 10

Q: And who was the fifth person?

A: The accused.

Q: Did you see him - what was he doing, sitting or standing in the room?

A: He was sitting down.

Q: Could you see his hands?

A: No.

Q: Did you see whether there was anything on his wrists?

A: No. 20

MR. SWAINE: He could not see his hands.

A: No, I did not see.

Q: Were you asked a question by the officer?

A: Yes.

Q: What did you say?

A: I said he did not go.

Q: Did the defendant say anything?

A: He did not say anything but when I entered the room the accused said he did not know me. 30

MR. ADDISON: Yes, thank you.

XXN: BY MR. SWAINE:

Cross-
examination

Q: As you say that on the 11th of May you were on duty at your mahjong school from 12 noon to 12 midnight - there is someone else who supervises from midnight to 12 noon, is that it?

- In the Supreme
Court
- Prosecution
evidence

No.15
Choy Chuen
Cross-
examination
(Contd.)
- A: No, because by 12 midnight we close down.
- Q: Oh, I see - you said there were 13 tables on the ground floor - are there tables on any other floors?
- A: Yes.
- Q: I see - how many other tables were on other floors?
- A: 9 tables on the first floor.
- 10 Q: And are there any other floors that belong to the school?
- A: No more - only these two floors.
- Q: It means to say 22 tables, and you say four players to a table, is that right?
- A: Yes.
- Q: Yes, now as I understand it, persons patronising the mahjong school come in at any odd time and if there is a chair free then they sit in and join the game?
- A. Yes, that is correct.
- 20 Q: So there is a record turnover of customers coming in and customers going out?
- A: Yes.
- Q: And the 11th of May is a special day in your mind because you were asked on the 25th of May about the 11th of May?
- A: Yes.
- Q: But before you were asked on the 25th of May about the 11th of May, there was nothing special about the 11th of May?
- 30 A: Yes, that is correct.
- Q: Yes, now when the last police witness came for you on the 25th of May, did he tell you where you were to go and why you were to go?
- A: Well he said to me he was taking me back to identify a person.
- Q: I see, and did he tell you in relation to what day you were being asked to identify a person?
- A: Yes, at the police station.
- 40 Q: I see, so before you went to the Police Station, there was nothing special in your mind about the 11th of May?

In the Supreme
Court

Prosecution
evidence

No.15
Choy Chuen
Cross-
examination
(Contd.)

A: Yes.

Q: And you will agree that between the 11th and the 25th of May, 14 days had passed?

A: Yes.

Q: No doubt your mahjong school had been functioning every day from the 11th to the 25th of May?

A: Yes.

Q: And in the course of those fourteen days presumably very many customers went in and out of your mahjong school?

10

A: Yes.

Q: Before going into the Police Station how could you be sure that the accused had not been to your mahjong school on the 11th of May?

A: Because I did not see him, and in fact I did not know him and all the customers we have are from Hung Hom area whom I know.

20

Q: But you were asked just now whether you knew the accused, you said, 'I know the accused' and you went on to say, 'he seldom went to the mahjong school.'

A: Yes.

Q: Now presumably he had been to your mahjong school, otherwise you would not have said, he seldom went there?

30

A: I did not know him - I never saw him.

Q: Are you saying he never went to your mahjong school?

A: No.

Q: Why did you say he seldom went there?

A: I did not say that.

Q: I think you can take it from me that you said he seldom went there. I am asking you why you said he seldom went there if now you say he had never been there?

40

A: I mean to say I knew him when I saw him at the Police Station. I identified him there.

In the Supreme Court

Q: Apart from that you did say that he had seldom been there - seldom been to the mahjong school?

Prosecution evidence

A: I said he did not come on the 11th.

No.15

Q: Yes, you said he did not come to the school that day - he seldom went there.

Choy Chuen
Cross-examination
(Contd.)

10 A: I was asked formerly - I said about formerly I did not know him.

COURT: Did you ever see him there?

A: No, very seldom - never came.

Q: I suggest to you that you do not know what you are saying - you do you know what you mean.

A: Yes, never came - I never saw him there.

20 Q: Well I put to you that the accused went to your mahjong school and played the afternoon and evening of the 11th of May.

A: I did not see him.

RE-EX. BY MR. ADDISON:

Q: It has been suggested to you, I think, that he was there 3.00 p.m. to 7.30 p.m. on the 11th of May.

A: No, I did not see him, and at that time there were only about four or five tables of mahjong players.

30 Q: Have you ever seen him, ever at any time in your mahjong school?

A: I never saw him - he never came.

Q: On any other day?

A: Never.

Q: I see.

COURT: Next witness?

MR. ADDISON: The next witness, my Lord, is Cheung Lai-kan - I beg your Lordship's pardon, Lai Yin-hung - page 19A of the depositions.

In the Supreme
Court

No.16
Lai Yin-hung.

Prosecution
evidence

No.16
Lai Yin-hung
Examination

P.W.23 - LAI Yin-hung - Affirmed in Punt.

XN. BY MR. ADDISON:

Q: Your name is Lai Yin-hung?

A: Yes.

Q: And are you an employee of the Kai
Kee Mahjong School, No.2 Tai Cheung
Street, ground floor, Kowloon?

A: Yes.

10

Q: What are your normal hours of duty
at the school?

A: From 11.00 p.m. up to 9.00 a.m.

Q: And do you remember the night of the
11th of May?

A: Yes.

Q: Were you on duty there that night?

A: Yes.

Q: What hours were you on duty on the
night of the 11th?

20

A: As usual, from 11.00 p.m. to 9.00 a.m.
the following morning.

Q: And were you the only person there on
duty that night?

A: Yes.

Q: Now how many tables were there
operating that evening?

A: Thirteen or fourteen tables.

Q: About how many players?

A: About 50 or 50 odd.

30

Q: Now what about - and all these persons
played for the same stakes or not?

A: No, not same.

Q: One of the stakes between one dollar
and two dollars?

A: Yes.

Q: And how many people were there playing
mahjong at the stake for the price of
one to two dollars?

In the Supreme
Court

Prosecution
evidence

No.16
Lai Yin-hung
Examination
(Contd.)

- A: About four or five tables.
- Q: And how many people were there, comprising?
- A: Approximately twenty persons.
- Q: And would they all be playing on the same floor of that building or not?
- A: Yes.
- Q: And did you have occasion to see these players during the night?
- 10 A: Yes.
- Q: And did you actually come into personal contact with each of those persons that night?
- A: Yes.
- Q: Why did you come into personal contact with them?
- A: Well because I was in charge of collecting the commission.
- Q: What is this commission that you collect?
- 20 A: Well I would go to the person who finished the game and won that round of game and collect the commission from him.
- Q: Can you recall how many times you went around collecting commission among the players playing for the stakes of one to two dollars that night?
- A: Well the whole evening I was going collecting commission and there were so many tables I cannot possibly remember.
- 30 Q: My question is just those tables of persons playing for the stakes of one to two dollars - can you say during the course of the night, how many times you visited the tables?
- A: Well we always stand by and walking up and down and walking around.
- Q: Is it often or not often?
- A. Walking around the whole night and the whole time.
- 40 Q: It is very difficult for us - for me Mr. Lai - you may go up to a table and collect your commission twenty or thirty times an evening or two or three times?

In the Supreme
Court

Prosecution
evidence

No.16
Lai Yin-hung
Examination
(Contd.)

A: Well our duty is to walk around in the mahjong, up and down the aisle and to collect commissions, but as to the number of times I am afraid we never count.

Q: I see, perhaps we could get it clear this way - do you collect commission after completion of each game of mahjong?

A: Yes.

10

Q: And might a game last as short as one or two minutes?

A: Yes.

Q: And as long as say five minutes?

A: No, not that long.

Q: I see, so that you go around all the tables, to those playing for these stakes at least once every five minutes?

A: Yes.

Q: Now do you know the defendant?

20

A: No.

Q: Do you remember whether he was there playing mahjong on the night of the 11th of May between half past eleven and one o'clock on the 12th?

A: I don't know - no, he did not.

Q: Would you explain what you mean by that?

A: He did not go.

Q: Have you ever seen him at your mahjong school?

30

A: No.

Q: How long have you been working there?

A: For more than two years.

Q: Did you on the night of the 25th of May go to the C.I.D. Office, Hung Hom with another police officer?

A: Yes.

Q: Were you there shown into a room by a police officer?

A: Yes.

40

- Q: And asked whether the defendant had been to your mahjong school on the night of the 11th?
- A: Yes.
- Q: At that time how many people were inside the room, apart from yourself?
- A: Yes, there were three other persons, that is two men and the accused.
- Q: You saw him inside that room?
- 10 A: Yes.
- Q: Did you notice his hands?
- A: Yes.
- Q: Was there anything on them?
- A: He was sitting down like this (demonstrating).
- Q: Anything on his wrists?
- A: No.
- Q. And were you asked did he play mahjong and you said he had not?
- 20 A: That is correct.
- Q: Did the defendant say anything to you?
- A: He said he never saw me.
- Q: He said he never saw you?
- A: That is correct.
- Q: When did he say that?
- A: That evening.
- Q: What, in the Police Station?
- A: Yes.

In the Supreme
Court

Prosecution
evidence

No.16
Lai Yin-hung
Examination
(Contd.)

In the Supreme
Court

Prosecution
evidence

No.16
Lai Yin-hung
Examination
(Contd.)

Q: Had you already told the -
answered the police officer's
question whether you had seen him,
the accused, at the mahjong school?

A: Well he was asked if - I had been
asked whether the accused had been
to my mahjong school, and when I
replied in the negative and then
the accused was asked whether he had
seen me he said he had never seen me. 10

Q: I see, thank you.

COURT: We will adjourn then.

MR. SWAINE: My Lord, before the court
rises, I have asked my learned friend
to make available to me for cross-
examination Inspector Li and also
the police officer Chan Kam Pui in
relation to certain questions I put
to D.P.C. 4463 - perhaps my learned
friend is not prepared ... 20

COURT: I don't see why he should -
if you wish to call them you must
call them as your own evidence.

MR. SWAINE: If it pleases, my Lord.

COURT: Half past two - don't discuss
this case with anybody over the
adjournment and be back by half
past two.

1.00 p.m. Court adjourns. 30

August 9th, 1965.
 Court resumes: 2.31 p.m.
 Appearances as before.
 Accused present.
 J.A.N.

PW.23 - LAI Yin-hung. o.f.affn. Puntl.

XXN. by MR. SWAINE:

In the
 Supreme
 Court

Prosecution
 evidence

No.16
 Lai Yin-hung
 Cross-
 Examination.

- 10 Q. What are the hours of operation of the Kai-kee mahjong school? A. From 11 p.m., my lord, until the following day, one or two p.m.
- Q. Your duty hours are from 11 p.m. to 9 a.m. so I take it someone else is on duty after you have gone off duty? A. That is correct.
- 20 Q. And have you always been -- and have you always done the same duty hours or do you sometimes do other duty hours? A. No, I do not do the 9 o'clock to 1.00 or 2 p.m. shift; I am always on the regular night shift -- 11 p.m. up till the following morning 9 a.m.
- Q. You said that there were 13 or 14 tables operating on the 11th of May but how many tables are there altogether at the mahjong school? A. 20 tables.
- Q. And on a busy night I imagine all 20 tables might be occupied? A. Well, that happened probably during the New Year.
- 30 Q. And you don't restrict your customers to any particular type of people -- anyone who comes in and has the money to play can join the game? A. That is correct, anyone could come in.
- Q. And the practice I believe is a player comes in and finds a free chair, sits in on a game, and when he has had enough he leaves -- there is a turnover of players in the course of any day of operation? A. Yes, that's correct.
- 40 Q. And is the \$1 and \$2 stakes the most popular at your mahjong school? A. Yes, more people play at that stake.

In the Supreme
Court

Prosecution
Evidence

No.16

Lai Yin-hung
Cross-
Examination
(Contd)

- Q. But you have bigger stakes I imagine?
A. Yes.
- Q. And in the games with bigger stakes no doubt the house collects a bigger commission? A. Yes.
- Q. Therefore no doubt you pay particular, greater interest in the tables with the bigger stakes? A. No, not necessarily.
- Q. I see. Now it is true to say, I think, that you do not keep any registers or books showing the number of players who come in, the customers who come in and play - you don't keep a register of players? A. No. 10
- Q. And a complete stranger to the mahjong school could come in and sit down and play and walk away, and there would be no interest taken in such a person? A. Yes.
- Q. And in the course of your years of service at the Kai-Kee mahjong school no doubt you have seen many hundreds of faces pass in and out? A. I won't say really so many strange faces because most of our customers are people from our neighbourhood who live in the area and that district. 20
- Q. So there would be amongst your patrons a number of regulars - people who live in the neighbourhood and do come every now and again? A. Yes.
- Q. Equally well, I suppose, amongst your patrons there are those who are strangers to this mahjong school and presumably you never see them again? A. Very few - I wouldn't say there aren't such people, there are probably a few among the rest occasionally. 30
- Q. But if the accused had come in occasionally to your school, it is quite possible he might have come and gone without your actually noticing him? A. Well, it was alleged that the evening he came was 11.30 but in actual fact well the customers come to our mahjong school round about ten minutes to 12.00; not until about that time ten to 12.00 do I see our customers coming in and start playing mahjong. 40

Q. You have said that you opened at 11 p.m.? In the Supreme Court
 A. Well, I mean I go back at 11.00 to commence my daily work but we have got to get some preparations, got to get ready for the business.

Prosecution
 Evidence

No.16

Lai Yin-hung

Cross-

Examination

(Contd)

10

Q. You don't require 50 minutes to get ready for the business - from 11.00 to 11.50? A. Well, my lord, the other mahjong schools, some of them they operate between 12 noon to 12 midnight and usually we have to wait until the other mahjong schools have closed down, and then when they have already sent their customers away before we get our customers to come into our mahjong school to play, because they finish at 12 midnight.

20

Q. Are you saying these customers go from one mahjong school to another? A. Well, that is our business, we cater for those people.

30

Q. Now to come back to my question and forgetting about the 11th of May because I have not asked you about the 11th of May, I asked you whether it was quite possible for the accused to come to the mahjong school, spend some time there and then go away again without being particularly noticed? A. Well, if he had been to our mahjong school I certainly would know my lord, because I walk around and at the table where the four players sitting down and I go from table to table and I must pass by every table.

40

Q. Are you able here and now to think back two weeks in your mind's eye, make up a picture, of who were and who were not at the mahjong school two weeks ago out of the blue? A. Well, if I see their faces I shall be able to recognise and remember them.

Q. Even if someone who went in once only, stayed for a short space of time and never came back, you would be able to pick him out? A. Well, I should have the feeling that I must have seen this someone somewhere - the face would certainly appear to be familiar to me.

In the Supreme
Court

Prosecution
Evidence

No.16

Lai Yin-hung
Cross-
Examination
(Contd)

- Q. Now surely you are exaggerating Mr. Lai, surely a face that might have been at your mahjong school two weeks ago and was there for only a short space of time, that face might well have made no impression on your mind and you would not be able to say one way or another after two weeks? A. No, I am not exaggerating, my lord, but I can - well, supposing I am facing the interpreter here in court, talking to me while I am in the witness box and supposing one day that I should meet you (referring to me, my lord) in the street - he said: although I might not greet you but I certainly will realise that your face is very familiar to me, that I have seen you somewhere. 10
- Q. On the 25th evening when you were escorted to the police station by the police officer, did he tell you why you were going to the police station? A. I was told by one other employee of the mahjong school that the police officer was looking for me and that I was wanted to go to the police station to identify a certain person. 20
- Q. Yes, now you arrived at the police station and went into a room where you saw the accused and other people? A. Yes.
- Q. Was it obvious to you that the accused was not himself a policeman when you went into the room? A. As soon as I stepped into the room one of the police officers asked me while pointing at the accused whether I knew him. 30
- Q. How many other people were there in the room apart from the accused? A. There were three other persons and then this accused but I don't know whether they were all policemen because they were not in uniform. 40
- Q. I suggest to you that you were mistaken when you said that the accused was not handcuffed, because he was handcuffed. A. At the time when I entered the room the defendant was sitting this way (demonstrating) - as I sat, to me, so I couldn't really see his hand, his arms very clearly but then when I was asked whether 50

I knew this accused the accused then turned round and I saw his arms like this - in this manner (demonstrating).

In the Supreme Court

RXN. by MR. ADDISON:

Prosecution Evidence

No.16

Lai Yin-hung Cross-Examination (Contd)

Q. You told me in examination-in-chief you worked there on the night of the 11th/12th May from 11 p.m. to 9 a.m.? A. Yes.

Q. What hours does the school operate?
A. Although we begin at 11.00 p.m. but we actually start the business at the earliest at about quarter to 12 midnight and then carry on until the following day noon or to one or two p.m.

Re-examination.

10

MR. ADDISON: Thank you. (witness released)

MR. ADDISON: My lord, there is a woman CHAN Fuk-Mui, No.32 on the list, I don't propose calling that person - I understand from my learned friend that he doesn't wish to ask that woman any questions, so in the circumstances perhaps she could be released.

20

No. 17

Cheung Lau-kan.

No.17

Cheung Lau-Kan

Examination

Pw.24 - CHEUNG Lau-Kan. affirmed in Punti.

XN. by MR. ADDISON:

Q. Is your full name CHEUNG Lau-Kan? A.Yes.

Q. Are you the owner of an apartment known as 'Hing On' apartment, 379 Shanghai Street, 1st floor, Yaumati. A. Yes.

30

Q. Where you worked? A. Yes.

Q. Is it right the apartment has 18 rooms.
A. Yes.

Q. And that in respect of each person staying in any of those rooms at any time you keep a register? A. That is correct.

Q. And will you look please at exhibit 29, are those two such registers kept by you?
A. Yes. Ex.29

In the Supreme
Court

Prosecution
Evidence

No.17

Cheung
Lau-Kan
Examination
(Contd)

- Q. Now would you look at the entry relating to room 217 - is there an entry showing that the room was hired out on the 9th of May 1965 - the 9th day of May? A. That room was not rented out that day on the 9th of May.
- Q. Which day was it rented out? A. Well, I will have to check the whole book because whenever the room is rented it must be registered in this book. 10
- Q. Would you look at an entry there No.0450? A. Yes.
- Q. Now is that an entry made by you - yes or no? A. No, it was in fact the customer who wrote it.
- Q. In your presence? A. Yes.
- Q. And does that entry in your book show that room 217 was occupied up to the 9th day of May of this year for a period of 3 hours 50 minutes? A. No, this customer rented the room for one whole day. 20
- Q. I see, was that then up to 3.50 p.m.? A. Yes.
- Q. So lest there be any confusion, does that record show this particular room 217 was being occupied up to 3.50 p.m. of the 9th May? A. Yes.
- Q. Would you please look at entry No.0481 - is this also in respect of room 217? A. Yes. 30
- Q. And does the entry on that page show that the same room was occupied on the 12th day of May of this year up to midnight? A. The customer in fact came at midnight on the 12th.
- Q. So there was a person booking this room at midnight on the 12th? A. Yes.
- Q. Did that person pay you any money? A. Yes he did, he must pay.
- Q. Did that person give you his name? A. Well he made the entry himself - the customer made the entry. 40

COURT: What is the name?

A. TSE something - I cannot read the other character - T - S - E.

Q. Is there a name written on that page?

A. Yes.

Q. And you say you cannot read? A. Yes.

Q. I see. (My lord, we have the position where we have a certified translation of it) - Now do you know how long that person stayed in that room? A. He stayed in that room until the following afternoon - some time after 4.00, he then left.

Q. Now was the time previous to the occasion when the room was taken by this person who came at midnight, when the room was previously occupied was the 9th of May - perhaps I could put it more clearly - had the room previously been vacant for three days? A. That is correct.

Q. Now you see the defendant in this case? A. Yes.

Q. Has he ever rented a room at your apartment? A. Yes.

Q. On how many occasions? A. Three times.

Q. Do you remember those occasions? A. Midnight on the 19th May.

Q. Was that the first occasion when he came to stay at your apartment? A. Yes, that was the first occasion.

Q. Did he fill in one of your registers? A. Yes.

Q. Would you look please at your register - at an entry for 0556. A. Yes.

Q. Is that an entry in respect of room 217? A. Yes.

Q. And what is the name of the person there? A. CHAN-keung.

Q. Do you know the defendant's name? A. Well, I only know his name from this entry he made - CHAN Keung.

Q. That entry you can read? A. Yes.

Q. And does it show on that page that the date of arrival was the 19th of May at 12 hours? A. Yes.

In the Supreme Court

Prosecution Evidence
No.17

Cheung
Lau-Kan
Examination
(Contd)

10

20

30

40

In the Supreme
Court

Prosecution
Evidence

No.17

Cheung
Lau-Kan
Examination
(Contd)

- Q. P.M.? A. In fact, midnight.
- Q. Did he pay you any money? A. That evening he did.
- Q. How much did he pay you? A. \$5.
- Q. Was there any special concession made in respect of his charge - no, I won't pursue that - did he occupy this room or any other room after the 19th of May? A. Yes, on the 21st.
- Q. Is there an entry in your register showing that? A. On the 21st when he came to rent the room he had no money to pay me and he waited until the 22nd., i.e. the following day, he then brought money in to pay me. 10
- Q. What day did he complete the register? A. Well, it was made - the date of the entry was the 22nd, the date he paid the money.
- Q. Is there an entry in his own handwriting in your register? A. The entry made on the 22nd was not made by the accused, but the entry made on the 19th was made by the accused. 20
- Q. Who made the entry on the 22nd? A. I made it.
- Q. Is that entry in your register? A. Yes.
- Q. At what number? A. 0578.
- Q. And does it show that a man named CHAN-keung stayed - arrived at your apartment on the 22nd of May at 6 hours p.m.? A. Well, he came in fact to my apartment at midnight on the 21st; as I said, he had no money to pay me therefore he made payment the following day at 6 p.m. 30
- Q. What room did he occupy from midnight on the 21st May? A. 217.
- Q. Now this was the second visit? A. Yes.
- Q. Did he make any other visits? A. The third occasion he came was on the 23rd of May. 40
- Q. Which room did he stay in at your apartment? A. 205 and he had no money to pay.

In the Supreme
Court

Prosecution
Evidence

No.17

Cheung
Lau-Kan
Examination
(Contd)

10

Q. Was any entry made in any of your registers? A. No, because as I said he had no money to pay, therefore, I could not enter it.

Q. Then the position, without belabouring the matter, is this: he came for the first occasion at midnight on the 19th; he next came on the 21st but the entry was made on the morning of the 22nd, and the third occasion of the 23rd he paid no money, and therefore no entry was made? A. Correct.

Q. And that on the first two occasions he occupied room 217, and on the last occasion room 205? A. Correct.

Q. Now did you on the night of the 25th May have occasion to go to the CID office, Hung Hom? A. Yes.

20

Q. And were you taken into a room by a police officer? A. Yes.

Q. Were there other people in that room? A. Yes, I was asked to identify this accused and I was asked whether I knew him, at that time - at that time there were two or three other persons.

Q. And did you tell the officer whether you knew him? A. Well, I said I recognised him.

30

Q. Were you asked whether he had been - did you notice anything about him at the time - notice anything about the defendant? A. Well, before I went back to the police station, of course, I did not notice anything about him but when I got back to the police station I was asked whether I recognised him.

Q. Did you see his hands at the police station? A. He was sitting down.

40

Q. Did you notice his hands? A. He was sitting down there.

Q. Did you notice his hands? A. He was sitting down with his hands on the side like this (demonstrating)

Q. And as to the entry made in your register No.0481, are you certain that that person is not the defendant? A. No - I am certain not the accused.

In the Supreme
Court

Prosecution
Evidence

No.17

Cheung

Lau-Kan

Examination

(Contd)

Cross-

examination

- Q. And when you say that person made the entry at midnight on the 12th of May, was that one minute before the commencement of the 13th of May? A. If a person comes in at 12.00, it is written 12.00 - if he comes in at 12.30, it is written 12.30.
- Q. And it was midnight of the 12th? A. Yes.

XXN. by MR. SWAINE:

- Q. From what you say, you saw the accused on four occasions - three times at your hotel apartment and once at the police station? A. Well, in fact, only on three occasions - twice in my apartment and once at the police station. 10
- Q. From what you have said he booked a room in your apartment on three occasions - twice he paid rent and once he didn't? A. Yes, three occasions.
- COURT: And once at the police station? A. Yes. 20
- COURT: Four times altogether? A. Yes.
- Q. I imagine your apartment is open 24 hours a day, isn't it? A. Yes.
- Q. But you presumably are not on duty 24 hours a day? A. Well, whenever any customer comes in to be registered in to hour apartment, then I would be wakened up.
- Q. I see - do you employ a desk clerk or someone to receive customers when you are not there? A. Yes, I have one amah and the other man who is doing the odd jobs. 30
- Q. But you are saying that when a customer comes in them you are invariably on hand to see to the registration? A. Yes.
- Q. Now one of the entries that you were referred to, i.e. 0578, is not strictly correct is it, because the time of entry in 0578 i.e. 6 o'clock is referable, according to the entry, to the date of arrival but you say that the time entered is, in fact, the time of payment? A. That was the time when he made the payment and, in fact, I have entered another chinese 40

character on that entry to indicate from the previous day.

In the Supreme Court

Q. Would you point out the entry?

A. (Indicating) - there is one character here, my lord - the character means it is related to the previous day.

Prosecution
Evidence
No.17

Q. Now you have said that when you went to the police station the accused was sitting down? A. Yes.

Cheung
Lau-Kan
Cross-
Examination
(Contd)

10 Q. And was he sitting in front of a table or just sitting on a chair some distance away from any table? A. He was sitting on a chair.

Q. Was the chair by the table or not?
A. Whether there was a table or not I am afraid I don't recollect.

Q. But you recollect you said he was sitting down with his arms by his side?
A. As soon as I stepped into the room I was asked whether I knew him and I saw him sitting down so I said: 'Yes, I know him'.

20

Q. For all you know he might have been sitting down with his hands folded on his lap rather than hanging by his sides?
A. I am afraid I am not clear about that because the moment I stepped into the room I was asked whether I knew him.

Q. So he might have been sitting with his hands folded, and he might have been handcuffed for all you noticed?

30

COURT: Two questions there, Mr. Swaine.

MR. SWAINE: He said in answer to the first that he wasn't clear.

A. All I remember I saw him sitting down but whether his wrists were manacled I don't know, I couldn't see.

(Witness released).

In the Supreme
Court

No. 18
PAU YING

Prosecution
Evidence
No.18
Pau Ying
Examination

PW.25 - PAU Ying. Affirmed in Puntl.

XN. by MR. ADDISON:

- Q. Is your full name PAU Ying? A. Yes.
- Q. And do you live in a hut, no.235 off Boundary Street, Tai Kok Tsui? A. Correct.
- Q. Answer my question - do you see the defendant in the dock in this case?
A. Yes, I can recognise him. 10
- Q. Do you remember the 13th of May? A. Yes.
- Q. Did you see the defendant on that day?
A. Yes, I did.
- Q. On the 13th of May did you see the defendant? A. On the 15th of May.
- Q. I am not asking about the 15th, I am asking about the 13th of May? A. No, I did not see him on that day
- Q. What happened on the 15th of May? A. I saw him on the 15th. 20
- Q. What time? A. Nearly 12 midnight when I saw him.
- Q. Did he ask you anything? A. Well, he came to tell me that he had been dismissed and that he was unemployed.
- Q. Did he ask you anything? A. And he further said it was very late at night and asked whether he could spend the night at my house.
- Q. Yes, did he do so? A. Yes, he did spend the night there. 30
- Q. When did he leave? A. He left the following day about 1 p.m. after he had had his meal.
- Q. Did he come back after that? A. Yes, he came back at night.
- Q. When was the next time you saw him? A. 24th at about 3 p.m.
- Q. Did he stay there with you? A. Yes, that evening he stayed with me.

Q. Did he leave the next day? A. I didn't see him leaving my house the following day because I had already left my house.

In the Supreme Court

Q. What time did you leave your house?
A. I left some time after 1.00, after my lunch.

Prosecution Evidence
No.18

Q. And what time did you come back? A. I came back some time after 5.00.

Pau Ying Examination
(Contd)

10

Q. And was the defendant there? A. No, he had already gone.

Q. Now you have told my lord and the jury that at midnight on the 15th of May he, the defendant, came and stayed at your house? A. Yes.

Q. Had you seen him before the 15th of May - yes or no? A. On the 13th of April I saw him.

20

Q. So between the 13th of April and the 15th of May you had not seen him? A. I didn't see him during that period.

Q. Did you on the evening of the 25th May go to the CID office at Hung Hom? A. I did.

Q. And there were you taken into a room by a detective? A. Yes.

Q. Did you - do you see that officer here in court? A. Yes. (4215 identified).

Q. Was there anyone in that room? A. Yes, two other police officers and the accused.

30

Q. Were you asked something by that officer? A. Yes.

Q. What was your answer? A. I was asked whether I knew the accused.

Q. And did you tell him? A. I told them that I knew him.

Q. Were you asked anything further by this officer? A. I was asked whether the accused went to my house on the 12th of May.

40

Q. What did you say? A. I told him he didn't come.

Q. Did the defendant say anything? A. No, he said no(thing)

In the Supreme Court

Prosecution Evidence
No.18
Pau Ying
Examination
(Contd)

Q. Did you notice the defendant's hands at all? A. He was sitting down and with his hand in this manner, my lord (demonstrating)

Q. We cannot see that demonstration, please come down. A. (witness leaves box and demonstrates).

Q. Did you notice his wrists? A. No.

Q. You saw his hands? A. Yes I saw and nothing was on his hand.

Q. Was anything on them? A. Nothing.

10

MR. ADDISON: Yes, thank you.

Cross-examination

XXN. by MR. SWAINE:

Q. You are saying that you saw the accused on the 13th of April and the next time after the 13th of April that you saw the accused was the 15th of May? A. Correct.

Q. Now during that interval of more than a month, from 13th April to 15th May, was it not likely that he might come to visit you and that visit made no impression on your mind and therefore you did not remember that he did come? A. It is not possible because I went back to my country on the 5th of May and returned on the 12th of May.

20

Q. At the police station on the 25th of May, I suggest to you that you were mistaken about what you said of the hands of the accused because he was handcuffed at the police station? A. He had no handcuffs on when I saw him.

30

NO REXN. BY MR. ADDISON (witness released)

No.19
Lau Kin Yeuk
Examination.

No. 19
LAU Kin Yeuk

P.W.26 LAU Kin Yeuk - on former oath

XN. BY MR. ADDISON:

Q. Is your full name LAU Kin Yeuk? A. That is correct.

In the Supreme
Court

Prosecution
Evidence
No.19
Lau Kin Yeuk
Examination

- Q. And are you the officer-in-charge of the Criminal Investigation Department, Hung Hom? A. That is correct.
- Q. At 10 minutes past 9 of the morning of the 12th May as a result of a telephone message, did you go to the Bonnie Hair Products Factory at No.95 Ha Heung Road, C and D Blocks? A. That is correct, I did.
- 10 Q. Were you accompanied by D.P.C.1928 and other officers? A. Yes, that is correct.
- Q. Did you enter inside the factory? A. I did.
- Q. Were there other employees in the factory at that time? A. There was not any one except I saw a Chinese male lying on the left side of his body in a camp bed.
- Q. He appeared to be dead? A. He appeared to be without breath.
- Ex.Pl 20 Q. Would you take a look at the bundle of
C,E photographs, Ex.Fl. Is that camp bed shown in photographs C and E? A. Yes.
- Q. And the head, was there were the blood is shown? A. Yes. That's the camp bed.
- Q. Were there injuries on the body - on the head? A. There were injuries on the head.
- Q. Was the person wearing a vest and underpants? A. Yes, he was.
- 30 Q. And was he covered in any way? A. In between his thighs there was a woollen blanket.
- Q. Was there anything spread over the camp bed. A. There was a bed sheet spread over the camp bed.
- Q. Under the body? A. Under the body.
- Q. Did you notice signs of blood on the floor? A. Yes, there were signs of blood.
- Q. As shown in the photographs just referred to? A. Yes.
- 40 Ex.PlF Q. And did that blood in fact extend under-
neath the rack as shown in photograph F? A. Yes.

In the Supreme
Court

Prosecution
Evidence
No.19
Lau Kin Yeuk
Examination
(Contd)

Ex.P1C,
P1E

Q. Did you notice anything on the floor?
A. There was blood and there was a pair of wooden clogs with dotted bloodstains on them.

Q. Now you see those clogs in photographs C and E? A. Yes.

Q. Were they in that position when you first saw them? A. Yes.

Q. Were they later taken away from that position? A. No.

10

Q. They are still in that position? A. They were taken by D.P.C.1214 later on.

Q. That same morning. A. That same morning.

Q. What time? A. 12 o'clock.

Q. So they were in this position, as far as you were concerned, from the time you went to the premises until 12 o'clock? A. Yes.

Q. Did you anything else on the floor?
A. There was a wooden pillow on the floor with bloodstains on it.

20

Ex.P1B

Q. Photograph B? A. B.

Q. Did you notice anything else on the floor?
A. And at the other end of the camp bed there was a towel on the floor.

Q. Anything else in this room? A. Behind the iron rack, the angled iron rack, there was a track of dotted blood...

Q. Apart from the bloodstains - I am not concerned with bloodstains - was there anything else in this room that you noticed? A. There was an empty pay packet on the floor.

30

Q. Would you recognize it if you saw it again? A. Yes, I could.

Q. Would you look at the packet please,
Ex.24. A. Yes, that's the packet I saw on the floor.

Q. And is that shown in photograph G, being the position where you saw it in the room after your entry? A. Yes, that's the packet.

40

Q. Was there anything in it? A. It was empty.

- Q. Did you then go into, further into the stitching room? A. Yes, I did.
- Q. Did you see there an office? A. Yes, I saw it.
- Q. Is that office shown in photograph H? A. Yes, that's the office shown in photograph H.
- 10 Q. Did you notice anything about the windows? A. One of the sliding windows was opened.
- Q. Which window was that? A. This window (indicates in PLH)
- Q. And later did you have arrangements to have that window taken away for examination of fingerprints? A. Yes, I did.
- Q. Was that window removed that morning? A. Yes.
- 20 Q. Do you remember what time that was about? A. About 11 o'clock.
- Q. In the morning? A. In the morning.
- Q. And then did you go into that office? A. Yes, I did.
- Q. Did you notice anything about the door when you went into that office? A. The door was open.
- Q. How far open was it? A. Fully open.
- 30 Q. Did you see anything inside? A. I saw the central drawer of the desk near to the entrance of the office was slightly opened and I noticed the tongue of its lock was sticking up.
- Q. Any marks on that drawer? A. Yes, there were marks of being forced open on the drawer.
- Q. As if by what? A. As if by a screw-driver or similar instrument.
- 40 Q. Did you notice anything on the floor? A. There was a locking catch on the floor beside this desk.

In the Supreme Court

Prosecution
Evidence
No.19
Lau Kin Yeuk
Examination
(Contd)

Ex.PLH

In the Supreme
Court

Prosecution
Evidence

No.19

Lau Kin Yeuk
Examination
(Contd)

Ex.Pl-I

- Q. Would you please look at photograph I. Does that show the condition of the middle drawer and the condition of the window lock? A. Yes.
- Q. What about the two drawers on the left hand side? A. They were opened.
- Q. As shown in the photograph? A. As shown in the photograph.
- Q. And did you see anything else inside this office? A. There was also a screw-driver on the floor beside the desk further away from the entrance to the office.

10

Ex.PlJ

- Q. Would you look at photograph J? A. Yes.
- Q. Does that show the position? A. Yes, that's the position of the screw-driver.
- Q. Were these taken possession of by one of your officers under your supervision? A. Yes.
- Q. And were these items handed to you? A. Yes.
- Q. And do you produce them formally in Court? A. Yes.
- Q. There is the window lock, Ex.No.25. A. That's the lock.

20

Ex.P25

CLERK: Ex.P25.

- Q. And the screw-driver, Ex.21. A. That's the screw-driver.

Ex.P21

CLERK: Ex.P21.

COURT: What about the Chinese styled jacket and trousers?

30

MR. ADDISON: I shall deal with them later on. They were found in another room.

- Q. And from your inquiries which you made, were you satisfied that the screw-driver was one similar in appearance to others appearing on the premises? A. Yes.

- Q. Did you then go into the what is known as In the Supreme the dyeing and cleaning section? A. Yes, Court I did.
- Q. Is that shown in the photograph M? A. Yes, that is part of the dyeing and cleaning section.
- Q. And in that section did you notice something? A. Yes, I noticed there was a plastic tub containing some water and in this were some clothings. I picked them up and I found they were a suit of Chinese styled clothings.
- Q. And were they taken possession of by one of your officers and later handed to you, and do you now formally produce them? A. Yes.
- Q. Do you see the jacket and trousers, Ex.17 and 18 respectively? A. Yes, that's the jacket I saw.
- 20 CLERK: Ex.P17. Ex.P17
- Q. And that's the trousers.
- CLERK: Ex.P18. Ex.P18
- Q. Inside the jacket did you find something? A. Yes, I found a pair of glasses, a ball pen and a fountain pen. The pair of glasses was contained in a plastic case.
- Q. And was the position in which those items of clothing were found in the tub photographed by the photographer in your presence? A. Yes, as shown in N.
- 30 Ex.P1N
- Q. Did you notice anything about the windows in the dyeing and cleaning section? A. I noticed that the lower portion of a window near to the toilet was devoid of a glass pane.
- Q. Is that shown in photograph M? A. Yes. Ex.P1M
- Q. Just indicate to my Lord and the jury. A. That's the window (indicates)
- 40 Q. And did you peer through that window? A. Yes.
- Q. What did you notice? A. I noticed a bamboo scaffolding was erected outside and this scaffolding led to the roof top.

Prosecution
Evidence
No.19
Lau Kin Yeuk
Examination
(Contd)

Ex.P1M

In the Supreme
Court

Prosecution
Evidence

No.19

Lau Kin Yeuk
Examination
(Contd)

Q. Is your opinion that the window frame without the pane was of sufficient size to allow a man to enter? A. Yes.

COURT: Did you measure it?
A. Yes. 15 ins. by 13 ins.

Q. Did you notice anything outside the office in which you found the screw-driver?
A. Yes, I noticed there was a length of water piping leaning against the wall just outside the office.

10

Q. Was that taken possession of by one of your officers? A. Yes.

Q. Was it bent at the time as you now see it? A. Yes, that's the length of water piping I saw.

Ex.P5

CLERK: Ex.P5.

Q. Did you examine the premises, other parts of the premises? A. Yes, I did.

Q. And were you satisfied that from this floor, the 9th floor, there were stairs going both up and down? A. Yes.

20

Q. Together with a lift in this block? A. Yes.

Q. And were their similar stairs and lifts in each corner of the whole of the block itself, serving different blocks?
A. Yes.

Q. And does the photograph of the lift leading to the office the one you saw?
A. Yes, that's the lift.

Q. And did you have occasion to go upstairs on the roof top? A. Yes, I did.

30

Q. And there did you examine the light well which led down to the shaft from which you saw a broken pane on the 9th floor?
A. Yes.

Ex.P10

Q. And is that a photograph of the light well on the top floor shown in O? A. Yes.

Q. Did you notice anything when looking down? A. I saw there was a form, an iron fork.

40

Q. Whereabouts? A. On the cross-beam.

Q. Did you instruct one of your officers to take possession of the fork?
A. Yes, I did.

Q. And did you later take it in your possession and seal it and do you now formally produce it in Court?

A. Yes, that is the fork I saw.

CLERK: Ex.P6.

Q. Since we are now producing exhibits, will you now formally produce the pair of wooden clogs, Ex.16?

A. Yes, that's the pair of wooden clogs.

CLERK: Ex.P16.

Q. Is it right that the staircase leading from the 9th floor on both sides of the factory was not in any way locked?

A. No, they were not locked.

Q. And access could always be made from the street up to any floor by any of the staircase?

A. They are all swinging doors.

Q. Now when you were on the roof top and looking down the light well, did you notice anything else besides the fork?

A. There was a scaffolding.

Q. Anything else? What about the window, the pane of which you noticed was missing? Was that visible to any one of you? A. Yes

Q. And is that shown in photograph P? A. Yes

Q. What was your opinion: the scaffolding, a person could scale down it and gain entry through the open window?

A. That was my opinion at that time.

Q. Did you examine the entrance to the factory and all doors leading from the factory on to the lobbies served by the lifts? A. Yes, I did.

Q. Did any of these doors seem to have been tampered with?

A. The main entrance, I understand, was forced open by the factory personnel. As for the other three exits they appeared that they had not been tampered with in any way.

Q. Did DPC1214, whom you instructed to collect those exhibits, take possession of those exhibits from the positions which you have previously stated in this case? A. Yes.

Q. And did he then hand them to you at the police station? A. Yes.

Q. And having received the items, including the

In the Supreme Court

Prosecution Evidence

No.19

Lau Kin Yeuk Examination (continued)

Ex.P6

Ex.P16

Ex.P1P

10

20

30

40

In the Supreme
Court

Prosecution
Evidence

No.19

Lau Kin Yeuk
Examination
(continued)

fork and the screw-driver, did you arrange for them to be sent to the Government Pathologist for his examination? A. Yes.

Q. And was the report received by you on the blood on any of the instruments negative?
A. Yes.

COURT: That does not include the clogs?

A. That does not include the clogs.

COURT: Just the screw-driver, the iron pipe ...

A. ... and the fork.

10

Q. Were you present at that office on the 19th May when the premises were surveyed by Mr. LEUNG? A. Yes, I was present.

Q. Now officer, you are one of the officers having the conduct of the investigations of this case. A. Yes.

Q. And you are the most senior officer?

A. I am not.

Q. Who was the most senior officer?

A. Inspector LEE.

20

Q. How many police officers were involved in these investigations? A. About 15.

Q. And were numerous persons interviewed.

A. Yes.

Q. How many in all? A. About 195 persons in all.

Q. And were statements taken from all those persons? A. Yes.

Q. And in the course of police inquiries were the statements verified where necessary?

A. Yes.

30

Q. Were you present at the police station, Hung Hom, on the night of the 25th of May?

A. Yes, I was present.

Q. What time did you go to that police station?

A. I returned to the station at about quarter to ten in the evening.

Q. And do you have an office there? A. Yes.

Q. And did you have occasion to go into your office? A. Yes.

Q. About what time was that?

40

- A. It was quarter to 10, that is when I returned to the station?
- Q. When you went in there, was any one in that room?
- A. There was Detective Sergeant 1075, DPC4463 and a Chinese male.
- Q. And is the Chinese male here in Court?
- A. He is over there. He is the defendant.
- 10 Q. And were there any other officers in the room? A. They were the only two officers.
- Q. And how long did you remain in that room?
- A. About 3 minutes.
- Q. Did you speak to either of those two officers? A. Yes.
- Q. Did you speak to the defendant?
- A. I spoke to Detective Sergeant 1075. I did not speak to the defendant.
- Q. And you say you remained there for how long?
- A. About 3 minutes
- 20 Q. And did you have occasion to go back into that room again at any time?
- A. Until 10 to 6 o'clock the following morning.
- Q. 5.50 a.m. A. 5.50 a.m.
- Q. Now at some stage that evening did one of the officers bring something and show something to you? A. Yes.
- Q. What was that? A. A statement.
- Q. Would you look at this statement, please, Ex.26.
- 30 COURT: Which officer showed it to you? A. DPC4463.
- Q. Is that the statement? A. That's the statement.
- Q. And did you hand that officer anything?
- A. Yes, I did. I gave him a length of water piping.
- A. is that the piping which you see in Court, Ex.5? A. Yes, that's the water piping.
- Q. And did you give him any instructions?
- A. Yes, I did.
- 40 Q. And as a result did he leave your presence.
- A. Yes.

In the Supreme Court

Prosecution Evidence

No. 19

Lau Kin Yeuk Examination (continued)

Ex.P26

Ex.P5

In the Supreme
Court

Prosecution
Evidence

No.19

Lau Kin Yeuk
Examination
(continued)

- Q. And go back into the room?
A. Yes, he went into the room.
- Q. About what time was it that the officer came out and show you that statement?
A. It would be about 5 minutes to 11 p.m.
- Q. Now you say you saw the accused at about 9.45 p.m. Did you see him again? A. Yes.
- Q. What was the time?
A. 5.50 a.m. the following morning.
- Q. Were you with anybody? 10
A. Yes, I was with Mr. MOK Yim Tong and also Mr. Jenkins, the Superintendent, C.I.D., Kowloon District.
- Q. Who is MOK Yim Tong? A. He is my interpreter.
- Q. And in which room did you see him?
A. In my office.
- Q. Were there any other officers with him at that time?
A. Yes, there were two; DPC4215 and DPC4463 were with the defendant at the time. 20
- Q. Did those officers stay with you or not?
A. I told these two officers to leave the room.
- Q. Did they leave? A. Yes, they did.
- Q. Now present in this room were yourself, Superintendent Jenkins and Mr. MOK Yim Tong.
A. And also the defendant.
- Q. What did he look like at this time?
A. He appeared normal.
- Q. Did you say anything to him?
A. Well, I identified myself to him and I then introduced Mr. Jenkins and Mr. MCK to him. I then asked him if his name was CHAN Wai Keung. He replied in the affirmative and I told him that I was charging him with murder. I read out the charge on the prepared form in English to him and instructed my interpreter, Mr. MCK, to translate it in Punti dialect to him. 30
- Q. You speak Punti dialect? A. Yes.
- Q. And does Mr. MCK speak Punti?
A. Yes, Mr. MCK also speak Punti dialect. 40
- Q. Yes?
A. Mr. MCK did as I told him. I then read

In the Supreme
Court

Prosecution
Evidence

No.19

Lau Kin Yeuk
Examination
(continued)

out the caution in accordance with the set form as printed on the form in English language to him, and instructed Mr. MCK to read the caution in Puntí, also in accordance with the set form as printed on the form to him. Mr. MCK did so. The defendant then elected to make a statement himself by writing it down on the prepared form in Chinese. After he had finished I caused Mr. MCK to read his statement back to him and offered him an opportunity to correct any of his mistakes if he so wished. He said it was correct. He then signed, Mr. Jenkins, Mr. MOK and I signed.

- 10 Q. Now whose pen did he use when he wrote this down? A. The ball pen.
- Q. Where did it come from? A. It was on the desk.
- Q. Did any one speak to him whilst he was making the statement? A. Only I and Mr. MOK spoke to him.
- Q. Did any one tell him what to write? A. No.
- 20 Q. Did you know what he was going to write?
A. No, I did not.
- Q. And after you read back to him you said the defendant signed it. Did you sign it?
A. Yes, I did.
- Q. And what about the interpreter?
A. The interpreter also signed and Mr. Jenkins also signed.
- Q. Would you please look at the document EX.30. Is that the document which he wrote and counter-signed by all officers present?
30 A. Yes. That's my signature.
- Q. I believe you are able to read Puntí, is that right? A. Yes.
- Q. Would you read it out please?
A. (reads in Puntí) This is not a Chinese character at all - "ngor" something.
- Q. Now you read it back to him in English, did you?
A. Mr. MCK read it back to him.
- Q. In English? A. In Cantonese.
- 40 Q. But you read it back in English, did you? A. No.

COURT: It was never read to him in English?

In the Supreme
Court

Prosecution
Evidence

No.19

Lau Kin Yeuk
Examination
(continued)

A. Only I read out the charge and also the caution.

COURT: What is your own language? Which particular dialect is your own?

A. Punti.

Q. And did you later cause that same statement to be translated and certified by the Supreme Court Translator? A. Yes.

Q. Would you read the translation please?

A. "I did kill some one. It was my intention to go into the factory to steal. I had no intention of killing him. Because he hit me, first, I through a mistake of the hand hit and killed him. He had done nothing else disadvantageous to me. It was CHAN Wai Keung who killed some one."
(sd.) CHAN Wai Keung.

10

COURT: What is the character which you say it not Chinese? A. This word.

COURT: What word is it in English? A. "Killed".

20

Q. Now after he had written that statement and had signed, did you leave the room?

A. Yes.

Q. What did the other officers do?

A. Superintendent Jenkins and Mr. MOK, they also left the room.

Q. Did any one else come back into the room?

A. DPC4215 and 4463.

Q. Now were you in that office later than morning when Dr. LEE Fuk Kee examined the accused?

30

A. Yes, I was present.

Q. Who else was present at the time the defendant was examined by the doctor?

A. There was the defendant, Dr. LEE, myself and also the doctor's assistant.

Q. What time was that? A. 6.30 a.m.

Q. Can you tell us how long that examination lasted? A. About 25 minutes.

Q. And what was the demeanour of the defendant like at this time?

40

A. Well, he appeared normal to me.

Q. Did he make any complaint regarding anything?

A. No, he did not,

Q. Did he seem to you to be a completely free agent at the time? A. He was.

Q. Was he embarrassed by any police officer present at that time? A. No.

Q. I think I omitted to ask you formally to produce the pay envelope, Ex.24, together with the translation, Ex.24A, of the characters. A. Yes.

10

CLERK: EX.24 and 24A

Q. Thank you, officer.

EXN. BY MR. SWAINE:

Q. You said that the sliding windows outside were examined for fingerprints. I imagine no fingerprints were found.

A. Yes, fingerprints were found.

Q. But the fingerprints of the accused were not found upon this window pane. A. No.

20

Q. Or on anything else in the factory, is that correct? A. That is correct.

Q. Now you have said that something like 194 witnesses or persons were questioned by the police in connection with this case. A large number of persons were questioned in this case and that in some cases their statements were verified, is that right? A. Yes.

30

Q. I believe altogether the statements of three persons questioned by the police were verified by the method of confronting the person in question with witnesses, is that right?

A. That's right.

Q. That is to say, the accused was confronted with witnesses and two other persons who had been questioned by the police were also confronted by witnesses. A. Yes.

A. But these two other persons were confronted by witnesses during the day time and it was the accused only who was confronted with witnesses at night, is that right?

40

A. That is correct.

In the Supreme Court

Prosecution Evidence

No.19

Lau Kin Yeuk Examination (continued)

Ex.P24, 24A

Cross-examination

In the Supreme
Court

Prosecution
Evidence

No. 19

Lau Kin Yeuk
Cross-
examination
(continued)

Re-
examination

Q. And the whole point of confronting the accused with the four persons in question was to contradict his alibi with a view to breaking him down to get a confession.

A. Yes; also to verify the truth.

Q. So if he was not telling the truth, then you were hopeful of breaking down his alibi and getting him to confess, is that right? A. Yes.

REXN. BY MR. ADDISON:

10

Q. I don't understand this: It seems, in answer to my learned friend, that the object of confronting the defendant was to contradict his alibi and break him down and get a confession and to get the truth. Now from whom were you looking, in the first instance, for the truth? Persons were introduced, is that right, to the defendant? A. Yes.

Q. Is that what you mean by confronting.

20

A. Yes.

Q. Why were those persons introduced.

A. To verify if the defendant was speaking the truth.

Q. At the time when those persons were introduced, did you know whether or not there was truth in the defendant's story?

A. I don't know.

Q. Who were you relying upon when you introduced those persons to the defendant?

30

A. I only relied on the persons who were being introduced.

Q. Did you know what they were going to say when they were shown to the defendant?

A. I don't.

Q. Was there any way of verifying if they knew the defendant apart from showing the defendant to them at that time?

COURT: He was not there.

40

Q. What was the object of these persons being shown into the room?

A. The main purpose was to verify if the defendant was speaking the truth.

Q. And at that stage you don't know one way or the other what those persons would say.

A. No.

Q. Did you in any way seek to break down the defendant? A. No.

Q. Or obtain a confession from him? A. No.

MR. FOREMAN: My Lord, we would like to clarify, first, was there any fingerprints at all on the bar, on the pipe?

A. No fingerprints

MR. FOREMAN: The second thing we would like to ask is: You said you went on to the roof of the building. You went up the stairs to the roof; at the top of the stairs is a door leading on to the roof. Was it just open?

A. They were swinging doors.

MR. FOREMAN: Not locked? A. Not locked.

(witness released)

MR. ADDISON: My Lord, I would offer the Superintendent, but my learned friend says he does not wish to cross-examine or ask any question.

COURT: You don't want to ask him any questions, Mr. Swaine?

MR. SWAINE: No, my Lord.

NO. 20

MOK YIM TONG

N.W.27 MOK Yin Tong - on former affirmation

XN. BY MR. ADDISON:

Q. Is your full name MOK Yin Tong? A. Yes.

Q. Are you a police interpreter attached to the C.I.D., Hung Hon? A. I am.

Q. I believe you are a civilian in fact. A. Yes.

Q. Did you at 5 to 6 on the morning of the 26th May at Hung Hon Police Station act as Interpreter to Inspector LAU, the last witness, when he charged the defendant in this case CHAN Wai Keung

In the Supreme Court

Prosecution Evidence

No.19

Lau Kin Yeuk Re-examination (continued)

No.20

Mok Yin Tong Examination

10

20

30

In the Supreme Court

Prosecution Evidence

No. 20

Mok Yin Tong Examination (continued)

- with murder? A. Yes, I did.
- Q. Was Superintendent Jenkins also present in that office? A. Yes, he was.
- Q. Did Inspector LAU read out the charge and caution the accused in English according to the printed form? A. Yes.
- Q. Aid did you faithfully translate all that to the defendant? A. Yes, I did.
- Q. Explaining to him the nature of the charge?
A. Yes. 10
- Q. And then were you satisfied that he understood the charge and the caution?
A. I satisfied myself.
- Q. Did he elect to make a statement?
A. Yes, he did.
- Q. Did he take hold of a ball pen from the desk?
A. Yes.
- Q. Your ball pen and wrote down a statement.
A. Yes.
- Q. Did any one speak to him at the time when he was writing? A. No one. 20
- Q. And when he had finished writing his statement was it read over by you?
A. I read back to him but I asked him to explain two characters which I did not understand.
- Q. There were two characters which he wrote which you did not understand. What are the characters.
A. The meaning for the 3rd character on the 1st line and also the 6th character on the 3rd line. 30
- Q. And did he explain what the 3rd character on the 1st line meant? A. Yes, he explained.
- Q. What does it mean?
A. He said it was "killed".
- Q. And what about the 6th character on the 3rd line?
A. He said it appeared to be a mistake.
- Q. And was your translation then corrected accordingly? 40
A. I did not make any.

Q. And when you read it back to him, did you read it back to him with that particular meaning?

A. Yes, I did.

Q. And then did you invite him to alter or correct the statement in any way if he chose to? A. Yes.

Q. Did he sign the statement, reading its contents? A. Yes.

Q. Did the other officers sign also?

A. Yes.

Q. Do you see your signature on Ex.30?

A. Yes. This is the one.

Q. And then you later handed that statement to Inspector FAU? A. Yes.

Q. Thank you.

NO XXN. BY MR. SWAINE

COURT: That is your case, Mr. Addison?

MR. ADDISON: I am glad to inform your Lordship that is the prosecution's case.

COURT: We'll adjourn now and start the defence tomorrow morning at 9.30.

4.29 p.m. Court adjourns.

10th August, 1965

9.30 a.m. Court resumes.

Accused present. Appearances as before. Jurors answer to their names.

MR. SWAINE: If it please your Lordship I call the accused.

COURT: Have you any other witnesses?

MR. SWAINE: No, my Lord.

NC. 21

CHAN WAI-KEUNG

D.W.1 - CHAN Wai-keung - Affirmed in Pointi.

In the Supreme Court

Prosecution Evidence

No. 20

Mok Yim Tong Examination (continued)

Defence Evidence

No. 21

Chan Wai-keung Examination

10

20

30

In the Supreme
Court

Defence
Evidence

No. 21

Chan Wai-keung
Examination

IN. BY MR. SWAINE.

- Q. On the 25th May this year you were with your friend Chan Pui at a spot near the Hoi Sum Temple at about 8 o'clock in the evening?
- A. Yes.
- Q. Now, a police party of three plainclothes detectives arrived at the scene? A. Yes.
- Q. We shan't discuss the intervening happenings, but later that evening you were at the Hung Hom Police Station? A. Yes.
- Q. And what happened when you arrived at the police station - so far as you yourself were concerned? 10
- A. I was immediately handcuffed as soon as I arrived at the police station.
- Q. Who handcuffed you? A. 4463, my Lord.
- Q. And in the O.C.'s room at the police station you were questioned about your background and about your movements on the 11th and 12th May of the same year. A. Yes.
- Q. Later, 4 persons were brought in by the police into the O.C.'s room, one by one. 20
- A. Yes.
- Q. Each one of them contradicted your account of your movements on the 11th and 12th May and subsequently? A. Yes.
- Q. After the last of these 4 persons had left the room, did anyone in the room say anything to you? A. Yes.
- Q. In your own words, will you tell us what was said to you and by whom? A. 4463. 30
- Q. Yes? A. And Tean Kei.
- Q. That is Det.Sgt. 1075?
- A. Yes and Inspector Li who is here, my Lord, and Chan Kam Pui.
- Q. Is he a police officer or a civilian?
- A. He was also a police officer.
- Q. And has he given evidence in this case for the Crown? A. No.
- Q. Then who spoke to you first and what did he say? A. 4463 spoke first. 40

- Q. Yes, what did he say? A. He said: Well, you can't deny it now. You have to admit to that murder case at the On Lok Building. Well, I then said I know nothing about it.
- Q. Yes? A. He then said: if you refuse to admit to it I am going to handcuff you again.
- Q. Yes. Were you at that time in handcuffs? A. Yes.
- Q. What do you mean by handcuff you again? A. I mean to say that he would handcuff me behind my back.
- 10 Q. I see, yes? A. And he did handcuff me from the back but I did not admit to anything and he then punched me on my chest.
- Q. Yes? A. He then said: If you don't admit to it you won't get your meal.
- Q. Yes? A. Then Inspector Li and Chan Kam Pui persuaded me to admit to it.
- Q. Yes and what were the words used by Inspector Li?
- 20 A. Both of them said: Younger brother, you had better admit to it, look out if you don't.
- Q. Yes? A. Chan Kam Pui then offered me some cigarettes.
- Q. Yes? A. He said: You better admit to it and co-operate with us, the police.
- Q. Yes? A. He said: If you admit to it we will give you \$3,000/- later on.
- Q. Yes? A. Well, I did not admit to anything. The handcuff behind my back was then tightened.
- 30 Q. Yes? A. I felt the pain and 4463 then said: Well, whenever I say something you simply nod your head, that will do.
- Q. Who in the O.C's room said the most things to you amongst the police officers? A. 4463.
- Q. And he then said to you: you just nod your head when I say these things. All right then, take it on from there and what happened? A. Well, I then nodded to every sentence he said. I then nodded my head.
- 40 Q. Yes? A. And he further said: When it is finished you have to sign it.
- Q. Yes? A. I then said: I am not going to sign, I

In the Supreme Court

Defence Evidence.

No.21

Chan Wai-keung Examination.

(Cont,)

In the Supreme
Court

Defence
Evidence.

No.21

Chan Wai-keung
Examination.
(Cont.)

- already said I know nothing about the case.
- Q. Yes? A. He then said: If you don't sign I am going to assault you.
- Q. Yes? A. Well, I was threatened and under such duress I had no alternative but to sign it.
- Q. Yes, then what happened? A. He then taught me how to make my statement.
- Q. Yes? A. I told him I did not know how to write it. 10
- Q. Yes: A. He then said: Well, it is all right; I will say one sentence and you'll write it down.
- Q. Did you then write it out that way? A. Yes.
- Q. And after you had written it out, what then?
A, Well, I was then asked to sign it.
- Q. And did you? A. I did.
- Q. Yes, do go on? A. He then said: Well, when you see the Superintendent and the Inspector you have to sign it again in their presence. 20
- Q. Yes, who said that? A. 4463.
- Q. Yes. Now who was present in the O.C's room when you wrote out the statement? A. 1075.
- Q. And 4463, because he was speaking to you? A. Yes.
- Q. What about Inspector Li and Chan Kam Pui?
A. They left the room after we finished it.
- COURT: Were Inspector Li and Chan Kam Pui present when 4463 dictated this statement to you? A. No, they were not there, my Lord.
- Q. Yes, then after the reference to the Superintendent what then? A. He further said: If you don't sign it, I am going to beat you up until you sign it. You'll know it when you come back. 30
- Q. I see, and then? A. And then I don't remember whether it was some time shortly after five or round about six o'clock when the Superintendent came. I had no alternative but to sign it because I was being threatened.
- Q. Yes, threatened by whom? A. 4463. 40

- | | | |
|----|--|--|
| | Q. Now, Than Wai-keung did you on the 11th and 12th May break into the factory of the Bonnie Hair Products Manufactory in the On Lok Mansions? | In the Supreme Court |
| | A. No. | Defence Evidence. |
| | Q. Did you kill the watchman of that factory? | |
| | A. No. | No.21 |
| | Q. On the 11th May evening at about 9 or 10 o'clock where were you? A. I was in Lai Chi Kok Amusement Park, my Lord. | Chan Wai-keung Examination.
(Cont.) |
| 10 | Q. What were you doing there? A. I was watching a show. | |
| | Q. And when did you leave the Lai Chi Kok Amusement Park? A. About 11.40. | |
| | Q. Yes. What did you do after you left? A. I went to Kowloon City. | |
| | Q. What did you do in Kowloon City? A. I went to play mahjong in a mahjong school. | |
| | Q. Yes, which mahjong school? A. Kai Kee. | |
| 20 | Q. And what time did you leave the Kai Kee Mahjong School? A. Some time after one. | |
| | Q. And what did you do after you left? A. I went to Tong Mei Road. | |
| | Q. What did you do there? A. I went up to the roof-top of No.63A Tong Mei Road. | |
| | Q. What did you do there? A. I went there to sleep. | |
| | Q. And did you leave the roof-top of Tong Mei Road that night or early morning of 12th May? A. Yes, I did. | |
| 30 | Q. What time did you leave? A. About 8 o'clock in the morning. | |
| | Q. Yes, from about one something to eight in the morning of the 12th May did you leave the roof-top of Tong Mei Road? A. No, I did not. | |
| | Q. Now, you have told the police in the first part of your statement that you had spent the night in question at the Hing On Apartment in Shanghai Street, why did you do that? A. Well, I couldn't remember the exact time and where I spent my evenings. So in fact I went to Hing On on the 21st and apparently my memory failed me and I thought it was on the 11th. | |
| 40 | MR. SWAINE: Yes, thank you. | |

In the Supreme
Court

Defence
Evidence.

No.21
Chan Wai-keung
Cross-
Examination.

XXN. BY MR. ADDISON.

- Q. How old are you? A. 23.
- Q. And do you agree that at one time you were employed at the factory on the roof-top of On Lok Building? A. Yes.
- Q. Of which Mr. Ho was one of the supervisors?
A. Yes.
- Q. Were you employed there from the 1 th April until 10th May, leaving on the morning of the 11th? A. Morning of the 10th. 10
- Q. You left there, did you not, on the morning of the 11th? A. Yes.
- Q. And do you agree that the entrance to the Tat Kwong Electric Bulb Factory was gained from a door actually on the roof-top? A. Yes.
- Q. And is it right that you knew the light-well situated on the roof-top? A. Yes, I know.
- Q. Do you know the existence of bamboo scaffoldings there? A. No, I don't know.
- Q. You haven't noticed it? A. No, I didn't notice it. 20
- Q. Look at the photographs - you understand photographs? A. Yes.
- Q. Did you not notice that the bamboo scaffolding was right there when you were working in the factory? A. I wasn't observant.
- Q. Did you ever have occasion to go down the shaft? A. No.
- Q. So you never noticed the missing pane of the factory window at the 9th floor? A. I did not see. 30
- Q. And when you used to leave your work at the Tat Kwong Electric Bulb factory did you use the lifts to go to the ground floor? A. Well in fact there are so many entrances and exits in that building that you can take any exits or entrances, my Lord.
- Q. Did you take the stairs at any time going down to the floor of the "D" block? A. Yes.
- Q. Did you use that lift on some occasions?
A. Yes. 40

- Q. Did you also use the stairs on the "C" block? In the Supreme
A. Yes. Court
- Q. And the lift of "C" block? A. Yes. Defence
Evidence.
- Q. Did you use all the lifts and stairs or not? No.21
A. Not "A". Chan Wai-keung
Cross-
- Q. You are very familiar with this building? A. I am familiar with the upper floors, not downstairs. Examination.
Chan Wai-keung
Cross-
(Cont.)
- 10 Q. Did you have occasion, when you used to visit Chan Pui, to go into the factory? A. No I have never been there.
- Q. Have you ever been inside any part of the factory itself? A. Which factory?
- Q. Bonnie Hair Products. A. No.
- Q. Now, is it right that from time to time you used to visit Chan Pui? A. Well, because of my work.
- Q. Well, he worked, as you heard, as a lift operator for the factory? A. Yes.
- Q. And did you know him? Did you use to meet him in the lift? A. Sometimes.
- 20 Q. Did you ever meet him on the lift on the 9th Floor? A. No.
- Q. Now, is it correct that he helped you in finding employment with the Tat Kwong Electric Bulb Factory? A. Correct.
- Q. And he was, to all intents and purposes, a friend of yours? A. Yes.
- Q. You got anything against him? A. Not at that time.
- Q. Have you now? A. At the time of my dismissal, yes.
- 30 Q. Did you ask him to look after a suitcase for you?
A. I did.
- Q. And has he still got that suitcase? A. Yes.
- Q. So when you left your employment on the 11th you were friendly with him? A. What do you mean by that?
- Q. Sufficiently to trust him with your belongings?
A. Yes.
- Q. And is it right that he says that he did not see you between the 11th May and the 21st May? A. Yes, that is correct.
- 40 Q. And is it right that on that occasion he spoke to you about the murder which had taken place in the factory?

In the Supreme
Court

Defence
Evidence.

No. 21

Chan Wai-keung
Cross-
Examination.

(Cont.)

MR. SWAINE: What occasion, please?

MR. ADDISON: On the 21st.

A. I did not see him on the 21st.

Q. I thought a little earlier you said you did see him on the 21st?

MR. SWAINE: I don't think that is what he said, my Lord. He did not see him between 11th and 21st, that is true enough.

COURT: I thought he did.

MR. SWAINE: If he had said so without being questioned, that is the conclusion one should draw - and he had on one occasion been asked yes or no; the answer is no. 10

COURT: However, it is on record what he said. You now say you did not see him on the 21st?

A. I did not see him, my Lord.

Q. You saw him on the 11th when you gave him your suitcase for safe custody? A. Yes, I saw him on the 11th.

Q. Did you see him again? A. On the 25th? 20

Q. Did you not go to the factory on the 21st and asked him to lend you some money?

A. No.

Q. He gave that evidence, didn't he? A. Well, he could say that I went there to see him on the 5th if he so wishes.

Q. So you deny going to the factory on the 21st and he mentioning anything to you about the murder which had happened in the factory?

A. No. 30

Q. So you say the next time you saw him was on the 25th, the day you were invited to the police station? A. In the afternoon of the 25th.

Q. Was that at Pau Ying's house? A. Yes.

Q. He said that Pau Ying was not in at the time; do you agree with that? A. Yes, that is correct.

Q. And he says that he asked you about where you were working because he was surprised to see you at home? A. Yes, he did ask me. 40

Q. Was he surprised to find you not at work on that occasion? A. I don't know whether he was surprised or not.

Q. And did he say to you: Why are you at home and not at work? A. He asked me where I was working.

In the Supreme
Court
Defence Evid-
ence.

No. 21

Chan Wai-keung
Cross-Examin-
ation. (Cont.)

- Q. Please answer my question. Was he surprised in any way to find you at home?
A. No, he wasn't.
- Q. So he wasn't telling the truth there either?
A. How do you mean not telling the truth?
- Q. Well, he gave evidence saying that he was surprised to find you at home? A. Yes.
- 10 Q. And he asked you why are you sleeping here at this time of the day when you are supposed to be working at a garment factory?
A. He did not ask me that.
- Q. Did you ever tell him that you were working at a garment factory? A. No.
- Q. Did you say: Don't talk about it here; we'll go to a cafe? A. Yes, I did say that.
- Q. What did you not want him to talk to you about at that time? A. I did not say that. He asked me to go there with him.
- 20 Q. So you never suggested that you should not have your conversation in that house?
A. I did not.
- Q. And here again he did not tell the truth?
A. I don't know whether he is not telling the truth or telling a lie because I myself did not say that.
- Q. Have you ever told him - were you working between the 11th and 25th of May?
A. I did not work.
- 30 Q. Did you ever lead him to believe at that time that you might be working at a garment factory at North Point? A. On the 11th?
- Q. Did you ever tell him between the 11th - when you left the Tat Kwon Bulb Factory, did you have other employment to go to? A. No.
- Q. Did you ever say anything to Chan Pui suggesting that you were working at a garment factory in North Point? A. No, I did not.
- Q. Or suggest that that factory had a branch factory at Chaung Sha Wan? A. No.
- 40 Q. So all this would be either invention or mistakes on the part of Chan Pui? A. Yes.
- Q. Did you go to the coffee-house in Lai Chi

In the Supreme
Court

Defence
Evidence.

No.21

Chan Wai-keung
Cross-
Examination.

(Cont.)

Kok Road? A. Yes.

Q. You say it was at Chan Pui's suggestion?

A. Yes.

Q. Did you want to go there? A. Well, I said to him I haven't got money with me; I don't want to go. Chan Pui then said it is all right, come along, I'll treat you.

Q. Was there anything that you did there that you could not have done in the house?

A. I don't know what you mean. 10

Q. You agreed to go with him, according to you, to this coffee-house? A. Yes.

Q. Was there any conversation in that coffee-house concerning the murder? A. No.

Q. Had there been any conversation between you and Chan Pui about the murder at this house of Pau Ying? A. No.

Q. Was there any discussion between you and Chan Pui about the murder at the factory?

A. When we were walking along the street. 20

Q. Where was that? From where to where?

A. While we were walking from the end of Boundary Street to Shumshuipo.

Q. Was that from Pau Ying's house on the way to the coffee-house? A. After we had had our tea.

Q. After you had visited the coffee-house it was the first time the murder was mentioned?

A. That is correct.

Q. Who raised it? A. Chan Pui raised it. 30

Q. But he gave evidence and said that it was at this coffee-house he said words to the effect that the police were making a number of enquiries about you? A. Well, that conversation took place at the Hon Lok Apartment.

Q. I see, and he said also that at this coffee-house you asked him for money so that you could go to Macau or Mainland China?

A. Well, in actual fact he was the one who was trying to borrow money from me. 40

Q. Did you ever ask him for money to go to Macau or Mainland China?

A. No.

Q. Did he in fact ask you for money on this occasion? A. No, not at that stage. Money lending was not mentioned at all.

In the Supreme
Court

Defence
Evidence.

COURT: By either of you?

A. That is correct, my Lord.

Q. So you deny the conversation, as it is being alleged by Chan Pui, at this coffee-house at Lai Chi Kok Road? A. No.

No.21
Chan Wai-keung
Cross-
Examination.
(Cont.)

10 Q. Who paid for the coffee? A. He paid.

Q. Did you have any money with you? A. No.

Q. Were you, if I may put it colloquially, flat broke? A. That is correct.

Q. No money at all? A. No money at all.

Q. And is that right, did you go to the Hon Lok Apartment? A. Yes.

Q. And he hired a room there? A. Yes.

Q. For you? For your use? A. Chan Pui asked me to go; I had no money.

20 Q. Who was going to use the apartment?

A. For both of us. We were both there together.

Q. And was there any discussion there about money?

A. He did.

Q. So he discussed money there? A. Yes.

Q. Did he want to borrow money from you? A. He did ask me and I said I didn't even have five cents with me, so how could I lend him money.

Q. How much money did he want to borrow from you?

30 A. He said he wanted to borrow several tens of dollars or \$100/-.

Q. On the afternoon of the 25th he asked? A. Yes.

Q. Did you discuss the work you were doing? A. I did.

Q. Did you tell him you were unemployed? A. I did.

Q. Did he say why he wanted to borrow money from you?

A. He said he lost his money in gambling.

Q. And did you discuss with him ways in which he might be able to raise money from someone else?

A. I told him I had no ways and means to raise the money.

In the Supreme
Court

Defence
Evidence.

No.21
Chan Wai-keung
Cross-
Examination.
(Cont.)

Q. Did he make a telephone call in your presence? A. Yes, he did make a phone call.

Q. And you later left that apartment?

A. That is correct.

Q. Now, you say there was a discussion at this apartment about a murder having taken place in the factory? A. Yes.

Q. Did he tell you that the police kept on interviewing him? A. Yes, he did.

Q. And that he was fed-up with it? A. Yes. 10

Q. Did you ask him why the police were interviewing him? A. I did.

Q. Did he tell you? A. Well, he said he did not know why the police kept on looking for him.

Q. Did he tell you that the police were looking for you and wanted to see you? A. No he did not.

Q. If you had known the police were looking for you, would you have gone to the police station? A. Well, if I had known that I would not be afraid. I am not the one why should I be afraid? 20

Q. You had no fear of the police at that stage at all? A. Of course I am not afraid of the police. I have not committed the offence why should I be afraid.

Q. That is why you went voluntarily to the police station? A. Well, I was asked to go. I had no way but to go. I was asked by the police to go. 30

Q. You weren't frightened of them at that stage?

A. Of course, I was not afraid.

Q. At this stage then Chan Pui has told a great number of untruths, hasn't he? A. I don't know what he said. He could say anything he liked.

COURT: He heard, while in the box, what Chan Pui said.

A. Of course he was lying. 40

Q. Did you go to the Kam Moon Restaurant?

A. Yes.

In the Supreme
Court

Defence
Evidence.

No.21

Chan Wai-keung
Cross-
Examination.
(Cont.)

- Q. Why did you go there? A. Chan Pui asked me to go there, my Lord.
- Q. Were you interested in this outing in any way for yourself? A. I thought of not going but Chan Pui told me to go with him. He said: Come along, let us go together.
- Q. Did you know the purpose of that visit of his?
A. No, I did not.
- 10 Q. Did you know that Wong Chun Nin would be asked for money? A. How should I know what he was trying to borrow.
- Q. You knew that Chan Pui had made a telephone call? A. He was in the room. I knew he was making a phone call but how should I know what sort of phone call he was making.
- Q. Didn't you know the object of that visit to the restaurant was to see Wong Chun Nin and was to raise money? A. He did not tell me about that when we were in the apartment. He told me
20 when we got down to the street.
- Q. So on the way to that restaurant you knew, did you not, that Wong Chun Nin would be asked to lend money? A. Yes, he told me about it when we were on our way to the cafe.
- Q. Yes, and you knew Wong Chun Nin didn't you?
A. Yes.
- Q. And did he tell you that he was going actually to ask Wong Chun Nin for money? A. Well, he said he was going to borrow money. How should I know what sort of money he was going to borrow from
30 Wong Chun Nin.
- Q. Did you know he was going to borrow money from Wong Chun Nin? A. That is correct.
- Q. And you know Wong Chun Nin? A. Yes.
- Q. Now, why didn't you at the restaurant sit at the same table? A. Chan Pui said not to sit with them.
- Q. Were you surprised? A. Yes, I was but I did not know why.
- 40 Q. Did you ask him why you shouldn't be allowed to sit at the same table? A. No, I did not ask such a thing.
- Q. Never? A. No, never.

In the Supreme
Court

Defence
Evidence.

No.21
Chan Wai-keung
Cross-
Examination.
(Cont.)

- Q. So you would agree then with Wong Chun Nin that he might not have seen you in that restaurant? A. I do not know whether he saw me or not at the restaurant.
- Q. Why did you go inside the restaurant when, if what you say is true, Chan Pui asked you not to sit with him? A. He asked me to go in.
- Q. But not sit with him, is that it? A. Yes.
- Q. And you were in fact surprised but you didn't ask questions? A. That is correct; that is not my affair. 10
- Q. Chan Pui gave evidence and said you told him that you didn't want to see Wong Chun Nin?
A. No, I didn't say that.
- Q. Were you on that day seeking to borrow money from anybody? A. No.
- Q. Did you want money? A. Why should I want money for? I was asked to come out and I don't know for what. 20
- Q. Is it right that you even left the restaurant separately? A. I left with Chan Pui together.
- Q. Has Chan Pui ever lent you \$50/- to buy clothing and your suitcase? A. Yes on the 16th April.
- Q. Now, outside the restaurant, is it right that you agreed that you would meet each other later that night? A. He asked me to go to the Hoi Sum Temple. 30
- Q. At that time were you walking along Lok San Road? A. That is not Lok San Road.
- Q. Were you walking in the direction of Hoi Sum Temple at that time? A. We didn't go by Lok San Road. We in fact went by way of that vacant lot adjacent to Lok San Road, my Lord, and from there one can get to Hoi Sum Temple.
- Q. You were in the vicinity of the temple?
A. Yes.
- Q. And did Chan Pui tell you, before he left you, that he was going to try to raise money from a friend in Kowloon City? A. Yes, he said that. 40

- Q. And that he was going to meet you afterwards at the Hoi Sum Temple? A. Yes and he asked me to wait for him there.
- Q. Is that right, that he was with you on the afternoon from about 4 p.m. till just after 6 p.m.? A. Well, in fact he was together with me from a quarter past five up till some time after six.
- 10 Q. Now, you did go to the area near the Hoi Sum Temple that evening, didn't you? A. Yes, I did.
- Q. And you waited for over an hour for him, didn't you? A. Yes.
- Q. A long time you were waiting for him to come?
A. Yes.
- Q. And he came? A. Yes.
- Q. Why did you wait so long for him? A. Well, he asked me to wait for him. How should I know? There was no reason for me not to wait for him.
- 20 Q. What was the purpose of waiting for him in this open area, as opposed to the apartment? A. He had also no money with him.
- Q. Why did you wait for him to come? A. He asked me to wait and there was no reason for me not to wait for him.
- Q. Did you know the reason why you were asked to wait for him at that place? A. No, I don't know.
- Q. Do you agree that you could have waited at the apartment or at Pau Ying's house to meet him?
30 A. Well, because we had already got down to that Hoi Sum Temple, so why should we take the trouble to walk on.
- Q. But he left you at about 6 p.m. and you next met somewhere in the region of 9 o'clock? A. He asked me to wait for him at that spot until 8.30.
- Q. Did you wait there from 6 p.m. to 8.30 pm? Or did you go somewhere from there? A. Well, when we got down to Hoi Sum Temple it was approximately 7 o'clock.
- Q. And did you stay there then until he came back?
40 A. Yes.
- Q. So are you now saying that he left you to go to Kowloon City as he said at about 7 p.m.? A. He left

In the Supreme Court

Defence Evidence.

No. 21

Chan Wai-keung
Cross-
Examination.
(Cont.)

In the Supreme
Court

Defence
Evidence.

No.21
Chan Wai-keung
Cross-
Examination.
(Cont.)

to go to Kowloon City at about 7.15.

Q. Yes, and you waited there all the time?

A. Yes.

Q. Why - what were you waiting for? A. I don't know - he asked me to wait for him.

Q. Didn't you ask him, "Well, what do you want me to wait here for?" A. I did.

Q. Did he say why? A¹/₂ He said, "To borrow money."

Q. But was any of that money going to go to you? 10

A. Why should I want the money?

Q. Well, did you ask him to get you any money?

A. No, No, I did not.

Q. Well, what was the necessity for you to stay there then? A. He asked me to wait. There was no reason for me not to wait for him.

Q. I see. You agree, however, that you could have waited anywhere else? A. Well, he asked me to wait for him there.

Q. Is this a fairly deserted place? A. No, it was not a deserted area. 20

Q. Now you told my Lord and the Jury that the matter of the watchman's death was discussed at the On Lok apartment? A. Yes.

Q. Was it discussed after you left the On Lok apartment? A. It was also discussed at the restaurant.

Q. What, the Kam Moon Restaurant? A. No, at Lai Chi Kok.

Q. Well, is this the restaurant to which Pau Ying went with the-- no, no. Was this the restaurant you went to before you went to the On Lok apartment? A. Well, after we got out of that restaurant before we went to On Lok apartment. 30

Q. On the way to the On Lok apartment and at the On Lok apartment the matter of the watchman's death was discussed? A. Yes.

Q. Was it discussed ever again between you after you left On Lok apartment? 40

INTERPRETER: "After you left On Lok--"

A. No, not after we left On Lok.

- | | | |
|----|---|----------------------|
| | Q. Are you quite sure about that? A. Yes. | In the Supreme Court |
| | Q. Who- you told us that it was CHAN Pui who first raised the subject, is that correct? | _____ |
| | A. Yes. | Defence Evidence. |
| | Q. Did you know of this death before it was first mentioned by CHAN Pui to you? A. Well, I read it from the paper. | _____ |
| | Q. Well, did it never- were you interested in it? | No.21 |
| 10 | A. Why should I be concerned or interested in it because I was not the one who killed him? | Chan Wai-keung |
| | Q. Well, weren't you surprised that someone in the building where you had been working had been killed? A. Why should I be surprised? I was not working in that factory, I was working on the floor above that factory. | Cross-Examination. |
| | Q. Did you know LEUNG Pui-chuen? A. No. | (Cont.) |
| | Q. Did you ever either when you used the stairs or saw CHAN Pui ever see on the 9th floor an elderly watchman? A. No. | |
| 20 | Q. There is a canteen, isn't there, on the roof-top? | |
| | A. The canteen in fact was set up the day I left the factory. | |
| | Q. I see. Were you surprised when the Police came to this place near the Hoi Sum Temple? A. Yes, I was. | |
| | Q. Is it right that the Police Officer told you who he was and what his business was? A. Yes, he did. | |
| 30 | Q. So you knew from that stage that they wished to interview you in connection with your movements on the night of the 11th and 12th of May? A. Well, when he revealed his identity I did not know what was the matter. | |
| | Q. There were only three Police Officers who invited you- who escorted you to the Police Station, is that right? A. Yes. | |
| | Q. And was that in a vehicle, private vehicle belonging, as far as you knew, belonging to one of the Police Officers? A. Yes. | |
| | Q. You never went in a Police vehicle, did you, as such? | |
| 40 | A. What do you mean? | |
| | Q. It wasn't a vehicle that had emblazoned over it "Police"? A. Well, nothing on the car, it was only a private car. | |

In the Supreme
Court

Defence
Evidence.

No.21
Chan Wai-keung
Cross-
Examination.
(Cont.)

Q. And is it right that you weren't handcuffed on your way to the Police Station?

INTERPRETER: "You were handcuffed--"?

MR.ADDISON: "You were not handcuffed."

A. No, I was not.

Q. Were you surprised when you were handcuffed immediately after your arrival at the Police Station? A. Yes, I was.

Q. Did you ask anybody why you were being handcuffed? A. I did ask. 10

Q. What did they say? A. The Police Officer said, "Well, you are connected with the case which happened at the On Lok Building."

Q. So are you suggesting to my Lord and the Jury that they suspected you as being the culprit from the very moment after your arrival at the Police Station? A. Well, I didn't know, I was surprised when they handcuffed me, and if they had not told me about it I would not have known. 20

Q. Would you agree with me that if they were there to extract by force or threat any confession from you they need never have called any witnesses to the Police Station?

INTERPRETER: Pardon?

Q. Would you agree with me that if they were determined to extract a false confession from you-

INTERPRETER: Yes.

Q. -that they need never have called any witnesses to the Police Station? 30

INTERPRETER: Yes.

INTERPRETER: He said, "Would you please repeat it, I don't quite understand."

Q. Well, I will come to that later. They did give you an opportunity, didn't they, of explaining your movements on the night of the 11th and 12th? A. Yes, but as soon as I was handcuffed I got already frightened, I did not know what was the matter. 40

Q. You heard the evidence of Mr. LAI Yin-hung, who says that when he visited the Police Station he

saw nothing on your wrists whatsoever? A. Well, I was handcuffed at the time, and if that was what he said then I would say that we did not see each other at all.

In the Supreme Court

Defence Evidence.

No.21
Chan Wai-keung
Cross-
Examination.
(Cont.)

- 10 Q. And PAU Ying, he gave evidence that he saw no handcuffs? A. My Lord, that is how I was sitting. (demonstrating) (Hands crossed in front) and a statement was taken from me, and a Police Officer then said, "Nothing more to say".
- Q. Your story is that at the time these witnesses were introduced your wrists were handcuffed in front of you? A. Yes, that is correct.
- Q. Do you know of any reason why these four persons, quite independent of the Police, should not be able to say that you were handcuffed? A. In actual fact I was manacled, but why they said they did not see the handcuffs, why should I know?
- 20 Q. Now were your wrists hurting you at the time you were handcuffed? A. It was more painful when I was handcuffed from the back.
- Q. But nevertheless it was painful when you were handcuffed in the front? A. Not in front.
- Q. Is that right, that you had been at the Police Station from 9, about half-past 9?
- INTERPRETER: "About from half-past 9?"
- Q. Yes, you had been in the Police Station from about half-past 9? A. Yes.
- 30 Q. And are you saying that it was only after the fourth person left the room that the threats and violence started? A. Yes, that is correct.
- Q. So there was nothing in the conduct of the Police up to the moment when the fourth person left the room which had any effect upon you in making a confession? A. No, not until the four persons had left.
- Q. And that was at 10.40, wasn't it, according to the evidence of 4215, Police Constable 4215? A. I don't remember the time.
- 40 Q. Would you accept the evidence given by that Officer that he made in his notebook at the time a note as to the moment, the moment when the fourth witness left? A. I did not look at the watch or clock, how should I know? You can say it was 12 o'clock

In the Supreme
Court

Defence
Evidence.

No.21
Chan Wai-keung
Cross-
Examination.
(Cont.)

midnight, if you wanted to.

Q. But therefore it would follow, would it not, that from the time of your arrival up to 10.40 - there is evidence about that -- there was nothing done to induce you or to frighten you into making any confession? A. Well, in fact before the four persons were brought in, the Police Officer also said to me, "If what these four persons are going to say does not fit into what you have told us you better look out." 10

Q. But you had no reason not to assume these persons wouldn't corroborate what you had told the Police, had you? A. No, I did not think that what they said was not going to corroborate.

Q. Now the statement - evidence has been given - the statement was finished at 11 p.m.?

INTERPRETER: I beg your pardon?

Q. Evidence has been given that the statement was completed at 11 p.m.? A. I did not look at the time - I do not know when it was completed. 20

Q. Well, would you dispute that? A. Which statement - my own statement, do you mean? I don't know when my statement was completed.

Q. You see, if what you say is true, the threats or violence took place during the course of about 15 to 20 minutes. A. I did not pay attention to the time, and I did not check the time.

Q. Well, would you dispute that? A. What do you mean by 15 minutes? 30

Q. Would you dispute that the period of time when you were threatened and violence offered was no longer, in your version, than 15 to 20 minutes - because the last witness left at 10.40 and the statement was finished at 11? A. I was threatened for more than 20 minutes - I was threatened for more than 20 minutes.

Q. Well-- A. And I was already scared at that stage and I did not know what was the matter.

Q. How long were you actually writing your statement? 40

A. I spent about 15 to 20 minutes in writing my statement.

Q. Were you assaulted whilst you were writing or

anything of that nature? A. I was handcuffed but I was not assaulted.

In the Supreme Court

COURT: Were you handcuffed while you were writing the statement?

Defence Evidence.

A. Not at the time when I was writing it, the handcuff was taken off.

Q. You were handcuffed up to the moment you began writing, is that right?

INTERPRETER: Pardon?

No.21

Chan Wai-keung
Cross-
Examination.
(Cont.)

10 Q. Writing your statement. A. The statement which I wrote - when I was going to write it my handcuffs had been taken off, my Lord.

Q. Now would you please tell my Lord and the Jury what had the greatest effect upon you - the handcuffing, the punch, the threats, what was it?

A. Everything - every method that they exercised.

Q. Was the handcuffing of your wrists behind your back extremely painful? A. Yes, because it hurt my bones.

20 Q. Were they tightened (tighter) then? A. Not very, very tight, but it hurt my knuckle and my joint.

Q. Were you punched when you were handcuffed?

A. Yes, one punch, I remember.

Q. Whereabouts, on your chest? A. My chest.

INTERPRETER: Right in front, my Lord, here (centre of chest)

Q. Did that hurt you? A. Of course it hurt me. Even now I am still feeling a little pain.

30 Q. Even today? A. I mean at the time when I had been punched.

Q. Do you feel pain now, as you just told us, or not?

A. Not now.

Q. Was it a powerful blow? A. I would say for an average person that was a substantial blow.

Q. And were you worried about being deprived of food?

A. No, not at the time, I was not concerned, but then they exercised every means and methods in their threat.

40 Q. So the threat that you would not get any food until - unless you confessed - had no effect upon you?

A. They were depriving me of my food, and they induced

In the Supreme
Court

Defence
Evidence.

No.21
Chan Wai-keung
Cross-
Examination.
(Cont.)

me by telling me that they were going to give me money.

- Q. I will come to that.
But I am just saying to you that the threat that you would not get any food until you admitted, didn't worry you? A. Well, I was so frightened I just could not bother to be concerned or not concerned.
- Q. I will deal with the matter shortly.
Are you suggesting that they offered - two Police Officers offered you \$3,000. if you confessed? A. The Inspector, - who offered me that money. 10
- Q. Did you believe him? A. I did not believe him.
- Q. Did you confess because you expected to come by \$3,000? A. Well, why should I expect to get the \$3,000.? You mean to tell me that I would admit to that in order to get \$3,000., admit to something which will endanger my life?
- Q. It was a stupid offer, wasn't it, to a man of your intelligence? A. (Witness does not understand) 20
- Q. It was a stupid offer made by this Officer to you - it was an insult to your intelligence?
A. Well, the Inspector was certainly trying to get cases in order to gain promotion.
- Q. But you saw through all that, didn't you?
A. Oh well, I did not think of that - I don't know.
- Q. You did not expect to receive money from him, did you? Yes or no? A. No, I did not. 30
- Q. So it had no effect upon you? A. Well, he wanted me to admit to it. He was trying ways and means to get me to admit to it - even threatened me by saying that he was going to beat me up to death.
- Q. So they threatened to beat you to death?
INTERPRETER: Pardon?
- Q. So they threatened to beat you to death?
A. Well, he said he was going to beat me up until I admit to it. 40
- Q. You have just said that they threatened to beat you up to death, didn't you? A. I mean to say he threatened me by saying that he was going to beat me up, and he also - he was also trying to

offer me money.

Q. Just answer my question:

Did you not say just now that they said to you that they would beat you to death? A. I mean to say I would be beaten until I would admit to it.

COURT: Answer the question. Did you not say in the box just now that they threatened to beat you to death - yes or no?

10 A. No, I mean to say I would be beaten until I admit to it.

C/REPORTER: "A. Well, he wanted me to admit to it. He was trying ways and means to get me to admit to it - even threatened me by saying that he was going to beat me up to death."

COURT: (To Interpreter)

Please explain to him that this is part of the transcript taken down by the shorthand writer, and this is what you said.

20 INTERPRETER: Yes, my Lord (does so)

A. I did not admit to it because I did not do it, and they tried every ways and means, my Lord.

Q. I would ask you this question:

Were you frightened that you might be beaten to death? A. Of course I was frightened.

Q. Of being beaten to death? A. Yes, of course.

Q. In fact you only received one blow, according to your version? A. Yes.

30 Q. Are you seriously suggesting that the Officers dictated what you were to say in your statement?

A. Yes.

Q. Would you look at Exhibit 26, please? (Statement) P.26
(Handed to witness)

Q. Do you agree that you signed that statement no less than four times apart from the occasions when you signed the bottom of every page? A. Yes, four times.

40 Q. And are you seriously saying that what you had written in your confession after you first signed the first caution was dictated to you by these Officers? A. You mean my own statement?

Q. Yes.

In the Supreme Court

Defence
Evidence.

No.21

Chan Wai-keung
Cross-
Examination.

(Cont.)

In the Supreme
Court

Defence
Evidence.

No.21
Chan Wai-keung
Cross-
Examination.
(Cont.)

- A. Yes, I was taught by him how to write and I wrote it down.
- Q. Are you suggesting on oath that the Police Officer 4463 suggested that you should write that 'he tried to take a wooden clog to hit me'? A. Everything was taught by him and I knew nothing about it.
- Q. So all these facts were invented by the Police for you to confess to? A. It was dictated to me sentence by sentence and I wrote it down. 10
- Q. So that if the Police Officer had told you to write that 'you struck the watchman whilst he was asleep on the canvas bed', you would likewise have agreed to write that? A. Yes, I was at the Police Station - if I should refuse to write he would beat me up - I had to write what he taught me.
- Q. And therefore it was because the Police Officer decided to put you inside the office and threatened to beat you up that you agreed to those alleged facts? A. Well, with regard to the background of my life I made that statement. 20
- Q. Are you saying on oath that the same threat operated some six to seven hours later when you were seen by the Superintendent, Inspector LAU and Mr. MOK?
- MR. SWAINE (to Interpreter) Same threat operated on his mind.
- A. Yes. 30
- Q. Did anyone tell you exactly what you were to say to the Superintendent? A. Yes.
- Q. Did you have to learn it by heart? A. Well, I must remember, but not exactly memorise it. I was being threatened.
- Q. Were you told the precise version to give the Superintendent? A. I wrote down what I was being taught, sentence by sentence.
- COURT: No, look, when you were before the Superintendent you wrote some words down, is that right? A. Yes, my Lord. 40
- COURT: Did Mr. MOK tell you what to write?
A. No, my Lord.

COURT: Did Mr. LAU tell you what to write? A. No, my Lord.

COURT: Who told you what to write? A. 4463.

COURT: When? A. That evening, my Lord.

COURT: Now did you learn those words that he told you off by heart? A. I had to remember, my Lord, because otherwise I would not be able to write it out.

10 COURT: So you did learn them off by heart - is that what you are saying? A. Not exactly, my Lord, but, well, I kept it in my mind, what I was going to write.

Q. Well, would you look at the statement, which is Exhibit 30, is that your signature on that? (Handed to witness) A. Yes.

Q. Did you write that yourself? A. Yes.

Q. What you wrote there- (To Interpreter) Please give it to him. (does so) Would you hold it? - Thank you.

20 INTERPRETER: Pardon?

Q. Is what you wrote there - was any part of it - were you told to use any -- Were you told to write your confession to the Superintendent in those words? A. Yes, that's right.

Q. That it was your intention to go to the factory to steal - yes or no? A. Yes, that is correct.

Q. Did the Officer also tell you that you were to write down that you had no intention of killing him? A. That is correct.

30 Q. Did he tell you that you had to write down, "because he hit me first I through a mistake of the hand hit and killed him"? A. He taught me that.

Q. Did he also teach you to say, "He had done nothing else disadvantageous to me."? A. The whole statement was taught to me by the Police Officer.

Q. Was anyone present? A. Yes, 1075 was there.

Q. Are you sure about that? A. Yes, 4463 and 1075 were present.

40 Q. This was before 11 o'clock then, was it? A. Yes.

In the Supreme Court

Defence Evidence.

No. 21
Chan Wai-keung
Cross-
Examination.
(Cont.)

P. 30

In the Supreme
Court

Defence
Evidence.

No.21

Chan Wai-keung
Cross-
Examination.
(Cont.)

- Q. You see, you heard the evidence of 1075 - he said that after he had been present with you and signed the statement, your first statement, he left. A. He had not gone out.
- Q. But he wasn't keeping you company throughout the night, was he? A. No.
- Q. You were with 4215 and 4463? A. Yes, these two Officers, namely, 4463 and 4215, accompanied me until dawn.
- Q. So that nothing was said then by 4463 as to what you were to tell the Superintendent after 11 o'clock? A. Well, he taught me what to say at about 1 o'clock. 10
- Q. But 1075 wasn't there with you at that time? A. He was there.
- Q. Had you eaten at that time or not? A. No.
- Q. The Officers say they gave you food at midnight, do you dispute that? A. Food was given to me at about 2 o'clock.
- Q. Well, I am going to put it to you that this is all invention on your part, and that you were not handcuffed. A. Well, if you don't believe me you might as well believe all what the Police have said. 20
- Q. And that you were not threatened? A. Yes, they did.
- Q. Or punched? A. They did.
- Q. They gave you food, didn't they, and gave you cigarettes? A. Well, there was no reason for them not to give me after I had signed my name. 30
- Q. You saw the Doctor at 6.30 that morning, did you not? A. Yes.
- Q. And he examined your wrists, didn't he? A. Well, blood was taken from me for testing.
- Q. And he felt the power of your grip, both your left and right hands? A. Yes.
- Q. He gave that evidence here? A. Yes.
- Q. And you heard him say there were no signs of injury on your body? A. Well, I was handcuffed but there were no injuries to my wrists-- it was not necessary that there must be injuries to my wrists because of the handcuffs because I was 40

merely handcuffed like that.

Q. Did you tell the Doctor you were suffering from pain on your wrists? A. No, I did not. I was told not to say that.

Q. By whom? A. 4463.

Q. He even had the foresight to tell you what to say to the Doctor? A. Yes.

Q. Did you tell the Doctor about the punch to your chest? A. No.

10 Q. But did you not feel free to tell the Doctor anything you wanted to tell him? A. No, I did not think of such freedom.

Q. Now do you agree that you were mistaken as to your having been at the apartment, the Hing On Apartments on the night of the 11th and 12th of May? A. That is correct.

Q. Do you agree that you did stay there on two occasions, namely, on the 21st--

COURT: What apartments?

20 INTERPRETER: Hing On, my Lord, (spelt)

Q. On the 19th, 21st and 23rd?
Would you look at Exhibit 29, please, "C" and "D"? (Handed to witness) 29, "C" and "D".

COURT: 19th?

MR. ADDISON: He said he stayed there on the 19th, 21st and 23rd.

Q. Are those in your handwriting? A. Yes, my handwriting, only my name though.

30 Q. And you on each occasion gave the name "Chan Keung"? A. Yes.

Q. Did you say in your statement to the Police that you stayed at this apartment under the name of "Chan Ming"?

MR. ADDISON: Page 2, my Lord.

A. When I went there to stay with my friend that was the name.

COURT: What date was that?

A. I don't remember, my Lord, that was in April.

40 Q. Do you sometimes use the name "Chan Ming" - yes or no? A. No.

In the Supreme Court

Defence Evidence.

No.21
Chan Wai-keung
Cross-
Examination.
(Cont.)

P.29
C-D

In the Supreme
Court

Defence
Evidence.

No.21

Chan Wai-keung
Cross-
Examination.
(Cont.)

Q. Did you say to the Police then that you had hired this room under the name of "Chan Ming"?

A. I was asked what sort of name I used, and I said "Chan Ming".

Q. When did you come to remember where you were then that night? A. Remember what?

Q. Well, perhaps I haven't made myself clear. Did you now say, in examination-in-chief, that you spent the night of the 11th on the roof-top of 663 Tong Mei Road? A. Yes.

10

Q. When did you come to remember then? A. About a week after I had been arrested I then remembered that.

Q. Was anyone else on that roof-top?

INTERPRETER: I beg your pardon?

Q. Was anyone else on that roof-top? A. No.

Q. No other person who can verify your whereabouts on that night? A. I don't know whether anybody saw me there or not.

Q. Had you ever slept there before? A. Yes.

20

Q. Well, didn't you know any of the other people?
A. No, I don't know those people there.

Q. Did you meet anyone on the way up the stairs or anything of that kind? A. No.

Q. Well, what about while you were at the amusement park?

INTERPRETER: "What about-?"

Q. When you were at the amusement park- did you go there alone? A. Yes, I went there alone.

Q. Were you alone throughout all that night?

30

A. Yes, I was alone.

Q. There's nobody who can say that you saw them or you were with them or you spoke to them between 11 p.m. and 4 a.m. on the night of the 11th/12th of May? A. Nobody, because I saw nobody.

Q. How many times have you been to this Kai Kee Mahjong School? A. I seldom went there.

Q. About how many times? A. Two or three times.

Q. Are you well-known there?

40

INTERPRETER: "Are you well-known"?

In the Supreme
Court

Q. Yes. A. How should I know whether I am known there?

Defence
Evidence.

Q. Well, don't you play with the same people every time? A. Well, there are all sorts of people in the Mahjong School - how should I know who they were.

No.21
Chan Wai-keung
Cross-
Examination.
(Cont.)

Q. Didn't you bump into any friends or anything? - Did you not bump into any friends? A. No.

10 Q. Now you heard the evidence of LAI yin-hung? He says that he never saw you there. A. Well, there are hundreds of people stepping in and out of that Mahjong School, how could they recognise me?

Q. Well, you heard his evidence. He collects the commissions at that School - had you seen him there before? A. Well, I concentrated my mind in playing mahjong - I was not observing people - whether I saw him or not I don't know.

20 Q. Now will you tell me this - after you left, as you say, this Mahjong School that night, in the early hours of the morning at about, you gave evidence that at 11.40 p.m. you left the amusement park and went to the Kai Kee Mahjong School? A. Yes.

Q. Do you normally go first to the Lai Chi Kok Amusement Park and then on to the Kai Kee Mahjong School? A. Not always, sometimes not.

Q. How many times can you recall having done those two in succession during one night? A. That was the only occasion.

30 Q. Now this is important: Are you saying that this is the only occasion on which you can remember in one night first going to the Lai Chi Kok Amusement Park followed by the Kai Kee Mahjong School? A. Yes, that was the only occasion.

Q. I see. Were you able easily to remember that because that was the same day, or the night of the day when you left the Tat Kwong Bulb Factory?

A. Yes.

40 Q. And when you left the mahjong - the Kai Kee Mahjong School, how did you go, how did you travel to Tong Mei Road? A. I took a taxi.

Q. So your recollection of that in your statement is also correct? A. Yes.

In the Supreme
Court

Defence
Evidence.

No.21
Chan Wai-keung
Cross
Examination
(Cont.)

Q. You heard the evidence of Mr. LAI Yin-hung from this Kai Kee Mahjong School?— He said that when he saw you inside the Police Station and he answered the Officer's questions, telling him that he had not seen you there that night, you replied that you had not seen him. A. He was being asked at the time whether he knew me — I was not asked.

Q. Well, I am going to put it to you that it was you who broke into this Factory and that when you were disturbed you attacked the watchman with this iron bar and that you killed him. A. I did not go. 10

Q. And that your confessions were voluntary confessions made by you at the Police Station because of the anxiety and distress which you were still suffering from?

A. I did not admit to it and I did not agree to it. It was alleged in fact and made by the Police Officer. 20

MR. ADDISON: Yes, thank you.

NO REEXN. BY MR. SWAINE (Of CHAN Wai-keung, Accused)
BY COURT:

Q. Now when these four people came into the room, was Inspector Lee the man sitting there, in the room at the same time?

A. He was not there, my Lord.

Q. What about the other man you mentioned, CHAN Kam Pui? A. No, he was not there either, sir. 30

Q. You told me before that he was there then — do you say that is wrong now? A. They came in after the four persons had left, my Lord.

Q. You see, you told me earlier that CHAN Kam Pui was there. Do you say now that you made a mistake? A. What I mean to say, my Lord, is that both this Inspector Lee and CHAN Kam Pui came into the room after the four men had left.

COURT: He can go back.

COURT: Now are you ready to address or would you like a short adjournment? 40

MR. ADDISON: I would like a short adjournment, my Lord.

COURT: Yes, well I suggest we adjourn until 2.40 this afternoon because I see it is already 12 o'clock.

MR. ADDISON: As your Lordship pleases

COURT: And then we can hear the addresses then.

...

So, gentlemen, we will adjourn now until 2.30 this afternoon.

11.55 a.m.

No. 22Closing Address for the CrownClosing Address
for the Crown10th August,
18652.30 p.m. Court resumes.

Accused present. Appearance as before. Jurors answer to their names.

10 Mr. ADDISON: May it please you, my Lord. Members of the jury, it is now my privilege to address you for the last time before my learned friend addresses you on behalf of the defendant and this case is by any standards, and more so particularly for the defendant, a very serious one indeed and there is not a question in this case of you saying to yourselves, 'Well, I have heard what the defendant has had to say and I have heard the defence witnesses, and on balance I think that you should prefer one story to the other' because as I said to you at the very opening of this case the Crown must prove the guilt of the defendant beyond all reasonable doubt. Therefore if there is any part of the Crown's case
20 which leaves you in a reasonable doubt so much so that you say to yourselves, 'Well, I am not so certain about that' then you will, of course, resolve that point in favour of the defendant and it is only if at the end of all your deliberations that you are satisfied beyond all reasonable doubt that the defendant is guilty of this offence that you will return such a verdict; and of course it goes without saying it will be your happy duty to acquit him if in any way you are left in any doubt.

30 Now, members of the jury, you will take my Lord's direction of the law entirely and anticipating what his lordship may say to you perhaps I may say this: that you must first of all be satisfied that the deceased died. Well, happily you may think there is little doubt about that because as you will recall there was the evidence not only of the police officers but also of the doctor as to the injuries sustained by the deceased and causing the death which he suffered.

40 Now, I would invite you no further than that to have regard to the next medical evidence because it links up in our submission with the next element that we have to prove, namely that the circumstances

In the
Supreme Court

No. 22

Closing Address
for the Crown
(contd.)

10th August,
1965

which led to his death show an intention on the part of whoever the offender was to kill him and that was no accident, no question of self-defence, or anything of that kind, and you will recall that the doctor described the wounds - the nine split wounds - on the head and the cut wound on the right side of the jaw and, members of the jury, I would invite you on behalf of the Crown to take one important fact into consideration and that was this. Not only was there blow after blow but the doctor - when the pathologist when he carried out his post-mortem examination discovered something which could never have been known by a mere external examination and that was the injury done to the left wing of the hyoid bone. You will remember it was fractured and the doctor gave a description of that part. There was some bruising in the surrounding structures and there were abrasions on the front of the neck just left of the Adam's apple - about here - and the doctor told you about that. 10 20

Now, members of the jury, you may think and it is a matter entirely for you - you may think that that shows, does it not, that the deceased was not actually lying down asleep on the camp bed when he was struck the blows which caused blood to flow from those injuries. Now, this is in our opinion a significant point because we have never sought to put forward this case to you that a person entered the factory unlawfully and then, seeing the watchman asleep, struck him to death and then sought to rob or steal from the factory at will. It was never our intention and we will invite you to bear in mind the importance of the medical evidence because the doctor said that some pressure was necessary in order to fracture the hyoid bone. Well, members of the jury, if you are satisfied that this man died and if you accept the medical evidence as to the injuries - and you will remember some of the teeth were broken inside the mouth - that there was a furious attack committed upon him and that from that you are satisfied that there was an intention to kill or an intention at least to do grievous bodily harm where death certainly was likely to result, particularly in view of the type of weapon which 30 40

we say was used, then, members of the jury, the next question would be 'Who in fact was the assailant?'.

Closing Address
for the Crown
(contd.)

10th August,
1965

10 Now, it is not for the defendant to establish his innocence, and quite naturally if he is innocent then what else can he say than 'I didn't do it; it was someone else.' It is for us to prove to your satisfaction that no other person but the defendant was the guilty person. You must go, members of the jury, as far as that and convince you if it comes to that that it was the defendant alone who did this particular offence.

20 Now, members of the jury, what really is the strength of the Crown's case? Because you see we are under a duty entirely to place the facts before you as they come whether they support us or whether they don't, and we have sought as far as possible to call these witnesses or make them available for cross-examination in an attempt to place before you all the facts so as to assist you in arriving at your conclusion. It would be idle for us to assume that we do not rely to a large extent upon the confessions, and in opening this case you may wonder why those confessions were not mentioned to you. Well, members of the jury, that really is of no real concern but that is part of the evidence which is now before you and is a matter which you are entitled to take into account. No doubt, my Lord will direct you as to the statements and the type and weight you may put on them but you must be satisfied that they were 30 voluntary. You must be satisfied that the weight that you want to put upon those statements is entirely one for you. Let me say this, that a man may confess to an offence of which he has not committed and I think a little while back in England a man did so confess and it turned out that he confessed simply and solely for the purpose of getting a little publicity, nothing more and nothing less, and that was the story he told the jury and it was believed and somehow he was acquitted. But in this 40 particular case the defendant's story is that 'I wrote what I wrote because I was told to write it'. I wasn't a free agent whatsoever.' Well, members of the jury, if you think for a moment that he wasn't a free agent, or that he was likely not possibly more than possibly but it was likely on balance that the police officers did tell him what to write, that they did make him

In the
Supreme Court

No.22

Closing Address
for the Crown
(contd.)

10th August,
1965

confess, well, members of the jury, I am sure that you will disregard those statements as against the defendant and look at the remaining evidence that there is, and you may think without those statements - without those statements, members of the jury, there is not much evidence at all against this man because we do rely upon those statements as being voluntary statements and made by him.

Now, I am sure that with all the common sense that you have you may ask yourselves even at this stage 'Why should a man who has committed a brutal offence' - and it would seem thereby that he is a brutal person - 'Why should he when he was taken to the police station suddenly make a statement of the kind which has been made?' Well, members of the jury, as I told you in my opening very often in cases of this kind confessions are made and it may be for one of any number of reasons why a person make such a statement. My learned friend might seek to say to you that the police in the way they treated him at the police station like confronting him with these witnesses by more or less contradicting him and making him confess, treated him in this way and that he had no other alternative. Well, members of the jury, the Crown does not invite you to take that view at all. Whoever did this offence must surely have some remorse of what took place - must later at some stage have felt some guilt of what he had done and this is one of the things we put forward to you, but, members of the jury, it does not really advance the Crown's case to speculate in a manner of this kind because it is the facts with which we are concerned.

Now, the evidence as to identity is really based on the statements - no fingerprints either on the glass windows, no one saw this man enter or leave, and therefore we are relying upon a confession and there is no circumstantial evidence as to blood on his clothing or anything of that kind but of course several days elapsed between the time when the offence was committed and the time when the accused was invited to the police station. Now, if, as I would invite you to do, you consider these statements against all the other little bits of evidence, that is the police evidence

Closing Address
for the Crown
(contd.)10th August,
1965

on one hand against, or surrounded by, the evidence of the other little facts, this may help you in determining the truthfulness of those statements. You see, because there is the evidence of Chain Pui - and we put him forward as being a truthful witness - now, you may think that he knows a bit more than what he has told you. Well, members of the jury, you are fortunately entitled to come to whatever conclusions you like, but surely his evidence is such, is it not, that it does implicate the defendant by showing some peculiar conduct on his part? Then, if you are satisfied that that is established, you will ask yourselves, 'Well, is the explanation given by the defendant on oath, and subject to cross-examination, such that I believe him, or I am left in doubt, or such that I believe Chan Pui?'; and if you believe Chan Pui and are satisfied that the defendant's story on oath is not altogether a truthful one, then I would invite you to say that from those parts of the evidence it would, in my opinion, be possible for you to look even more clearly at the statements themselves. Now, let me try and explain that a little further.

You see, Chain Pui gave evidence that he met the defendant on the 21st. Well, the defendant denies that, and the defendant goes on to say that they only met on the 25th of May. Well, if you are satisfied that they met on the 25th, ask yourselves 'Was it on the 21st - ' - ask yourselves that. Does that carry the matter any further because Chain Pui says on that occasion he saw the defendant at the factory and he asked him about the murder and the defendant looked very frightened and there was perspiration? Well, that may or may not amount to anything very much by itself. Nevertheless, if one looks at the agreed evidence of the 25th that the defendant was seen in Pau Ying's house and on that occasion he had no money at all - It was agreed first of all they went to the coffee bar and then on to the Hing On Apartment. Now, what does the defendant say about this? He says, 'Well, there was some talk about this particular incident,' and then thereafter they went to this Kam Moon Restaurant. Now, the restaurant, members of the jury, I would invite you to say, is a difficult matter for the defendant to explain because what Chan Pui says is this, 'I was looking for money. I wanted to get some money to give it or lend it to the defendant.'

No.22

Closing Address
for the Crown
(contd.)

10th August,
1965

That was the whole object of what I was doing'. Everything that Chan Pui did was, in my opinion, - and it is a matter entirely for you - solely explicable by that fact. Yes, he did ring up Wong Chun Nin and you have heard the evidence of Wong Chun Nin and Wong Chun Nin was asked in the restaurant for money; and, furthermore, the defendant was waiting from six o'clock according to Chan Pui, from seven o'clock according to the defendant, in the region of the Hoi Sum Temple. 10
What was he waiting for? You see, Chan Pui says, 'I was going to Kowloon to look for some friends who might lend me some money, and if I got that money I was going to give it to the defendant.' The defendant says, 'I had no money at all. I didn't ask for any and I did not know he was going to get money to give to me.'; but the facts show, don't they, that he was waiting there from seven until after 8.30. Why was he waiting there? He could have gone to an apartment; he could have gone to a flat, but he was waiting there and in fact he carried on waiting until Chan Pui went back. 20
Then there is the business about the restaurant. Why did he not go and sit beside Chan Pui? Well, the defendant says, 'Chan Pui asked me not to sit with him' but, you know, members of the jury, Chan Pui was never asked that as far as I recollect. It was never put to Chan Pui 'You told the defendant that he was not to sit with you?' 30
Chan Pui's evidence went unchallenged at that stage that they sat at separate tables and that he went there to get money which he intended to give to the defendant. It was put to him and I think I had better correct this that the accused never asked him for money and Chan Pui, in answer to my learned friend, said he did.

Now, Chan Pui says the defendant had suggested to him that he wanted to go to Macau or the mainland of China. Well, the defendant denied that and has persisted in his denials, but when it comes to finding out what is the truth, aren't the actions of Chan Pui explicable only by what he says he did and was seeking to do? Could there be any other reason for him going back, or ringing up Wong Chun Nin, or going to the restaurant except to talk to the defendant in a quiet place and the defendant hanging around at night in a deserted place, perhaps in the hope of not being seen? One does not know, members of the jury, though that is a 40

In the
Supreme Court

No.22

Closing Address
for the Crown
(contd.)

10th August,
1965

matter entirely for you. So I would invite you to say, so far as the evidence of Chan Pui is concerned, that he is a witness of truth and that he has told you the truth when he mentioned about the defendant saying that he did not want the police to keep asking him questions and that Chan Pui did say to the defendant that the police were looking for him. You see, there was never any evidence that Chain Pui had any earlier opportunity to point out the defendant to the police other than on the 25th of May. You see, they met on the 11th but before the offence took place. Then he came unexpectedly according to Chan Pui to the firm on the 21st May, and then he bumped into him at Pau Ying's house on the 25th, and you will remember in the afternoon the appointment was made for the night and the police officer corroborated that, and so you may think that Chan Pui was doing all he could to assist the police not for the purpose of saying this man is an offender.

Members of the jury, when the police went and saw the defendant and invited him to go to the police station there were but three police officers and everybody knew the nature of the attack upon the watchman, and the police had been interviewing hundreds of people and taking statements from them and they were interested in interviewing anybody who had any connection with anyone in that building, be they worked as Mr. Ho did in the bulb factory or in the very factory itself. They and their friends were interested to interview and take statements from them, and the defendant has agreed in this case that he was invited to the police station.

Now, let us look at it in this light: that he was taken to the police station in order to be questioned. Well, is there anything wrong in that, members of the jury? Surely one would expect police officers to take a man to the police station to question him, and if you look at this statement, Exhibit 26, isn't it in the form of questions and answers, or rather a narrative given in answer to questions which one would expect any police officer to ask a person who might be a possible suspect? He even put it as its highest in this case. They asked him where he was and where he had been. Now, the defendant has maintained that as soon as he arrived at the police station, or very shortly afterwards, he was handcuffed. Members of the jury,

In the
Supreme Court

No.22

Closing Address
for the Crown
(contd.)

10th August,
1965

I shall seek to tell you and show you how improbable his story is because he was never handcuffed before, and, you see, the police were making enquiries. They did not know the alibi's story. How could they possibly know? When once the defendant told what the story was, well, they sent a person out to collect and bring in those witnesses; and what more diligent preparations could have been carried out than for instructions to have been given immediately because if the story is corroborated this man would obviously have been released straight-away, and he would have been told 'Thank you very much for your assistance.' That is the end of the matter. You see, the reason why Lai Yin-hung and Cheung Lau Kan went to the police station was because at some stage they must see the defendant because the police officer must say to them 'Did you see this man on the night of the 11th of May?' It is no good saying to them 'At the apartment house' or 'At the mahjong school'. They will say 'What man? Chan Wau-keung? We don't know him - must have a look at him' and so they brought him in. 10 20

Now, if you look at it this way, what had the defendant to be worried about up till that time? By the same token what reason had the police got for suspecting this person except carrying out enquiries at the earliest possible opportunity? You see, the police officer who brought these men in one by one kept a note of the time at which he introduced them and this, members of the jury, is a very valuable piece of evidence because we know the first came in at about 10, and certainly the last at 10.30 I think it was - and certainly the last person left at 10.40. 30

Now, according to the defendant he was then handcuffed and we asked all the police officers 'Was he handcuffed?' - 'No'. Now, members of the jury, we have got nothing to hide because any one of those witnesses called in independently could say 'Yes', he was in handcuffs.' No one said that he was, and in fact, one said his hands were down here, and another one said his hands were not handcuffed. Now, members of the jury, just think of this for one single moment. Why is the defendant suggesting that he was handcuffed at that stage if he were not? Isn't it because he is seeking to create a doubt in your mind as to police brutality from the very moment he goes inside the police 40

10th August,
1965

station so as to give strength or colour to his story later on that he was told what to write? Because we invite you to say there was no evidence at all that he was handcuffed and then if he were, should he not have told the doctor when he was examined by the doctor and his assistant? You see, the doctor gave evidence and I asked him specifically 'How did the defendant seem to you?' He said, 'Well, I examined him for half an hour and it is true

10 another officer Inspector Lau was present but he seemed at ease and he did not seem perturbed that there was a police officer present.' Might he not have told him? And what about the blow to his chest? You remember him saying on oath that 'it even hurts today' and then he retracted this, did he not, by saying that it hurt at the time? Well, he is in effect suggesting in a mild way you may think that the police were hitting him in the chest once whilst he was handcuffed and before he makes his actual

20 confession. Well, members of the jury, supposing for a moment that this was the way in which these enquiries were conducted by the police, would not the police have refused to ask him any questions at all - wouldn't they have said 'You write this down here and now'? Do you think they would have taken the trouble to send another person out to bring people to their police station and show them one by one to the defendant? And do you think that if he had been beaten up and bruised - Do you think for a

30 single moment the police would have done that - there would be marks on him when all he need do was to shout out to them 'I am being assaulted. Get somebody for me or do something'. Not a mention was made by him to one single person who came into that room including Pau Ying whom he knows because it was in his house he was staying on the 25th May. So these are part and parcel of the facts which I would invite you to consider when you come to determine whether these statements were voluntary because,

40 members of the jury, it is for all persons concerned a very very serious allegation to make and one which is a disturbing allegation to any person connected with this trial that a confession has been extracted from him.

Now, what are the things that he says happened at that police station? Well, he was offered \$3,000. Well, you heard him and you saw him, and I asked him, 'I don't believe you got \$3,000, did you?' 'No ... I am not going to sign my life away.' That was more

In the
Supreme Court

No.22

Closing Address
for the Crown
(contd.)

10th August,
1965

or less his answer on a promise of \$3,000. Of course, that had no effect on him at all, did it, members of the jury? And then this question about the meal. Well, you have heard him. He was a man of very little means and it may be that this idea came to his head as a result of the evidence led by the Crown in the first instance when the Crown sought to show that he was given a meal, he was given cigarettes, he was allowed to smoke his own cigarettes when he was given others, and he was given a meal of rice and tea. Why? Because this is part and parcel of the way one would expect police officers to act towards any person who are in their custody, whether they had been charged with an offence, whether they had made a confession or not, but it has never been really suggested by the defendant that without that meal he would not have confessed. No, members of the jury, he came back time and time again to the same thing, '4463 threatened me. It was 4463.' He is in fact suggesting the whole set-up was the meal, the money, the threats, the punch, the handcuffs. Well, members of the jury, perhaps you can exclude the handcuffs - that is a lie and we invite you to say that that is a lie - and consider the rest of them. The money - Of course, what police officer would say to any man in custody, particularly a senior inspector, 'I will give you \$3,000 if you will confess to a murder' because that he knew what was the subject of the enquiry; and if you accept Chan Pui's evidence - Chan Pui has already told you the police wanted to see him not about the murder, although the previous conversations had related to the death of the watchman at this factory. Right, the punch. He told the doctor about it. Well, then, there is the threat, members of the jury - do you remember what he said? He tried very hard to avoid saying it but it slipped out. He said 'They threatened to kill me, to beat me to death.' Those were his actual words. Now, why did he say that? Because it slipped out. He did not really mean to tell you that because, once he said that, can you genuinely believe that any person in police custody might think a police officer was going to beat him to death then and there and have his body in the police station? That is why he retracted it and the transcript was re-read as to that part. No, he said he felt that he was going to be beaten. Well, what assault did

10

20

30

40

In the
Supreme Court

No.22

Closing Address
for the Crown
(contd.)

10th August,
1965

10 did he receive? One only according to him, none according to the police, but you see this is the vital thing. The very vital thing in this case is that this did not start until after the fourth witness had left the room and that, we know, was 10.40 p.m. Members of the jury, I do ask you to bear this in mind because all this happened after the fourth witness had left. He said the Inspector together with another officer, Chan Kum Pui, said to him, 'Well, you had better co-operate with us, young brother, you had better co-operate' and then they left and then the officers said words to the effect, 'Well, you know, you have got a taste of a beating. If you don't confess you know what is going to happen to you.' Now, that was after 10.40. The statement was concluded at 11 p.m., and do you remember 4463 saying he actually finished writing his statement about 5 to 11, because 'when I left I took the statement to Inspector Lau who sort of

20 looked at it very quickly ... I went back into the room.' so the actual part of the confession - giving him the benefit of the doubt - was about 11 o'clock. So all this took place within 20 minutes. In other words, the threats were made; they suddenly rained down as if from heaven and the punch was made, and suddenly although he had been in this station for an hour and a quarter suddenly he confesses, and then he says that the policeman said, 'Just nod ' What is he going to nod because he wrote the statement himself, with his own biro pen? Now, it has been suggested - and let us not mince words - in this case that the police officer DPC 4463 and/or one Sargeant 1075 who is after all just a station sargeant - that those two persons told him precisely what to write, that they are the persons who conducted everything that appears on Exhibit 26, and, members of the jury, you have, I believe, copies of this statement and I will invite you now if you would just look at that state-

40 ment again against the background of the evidence of Chan Pui to see whether a police officer could do such a diabolical thing as to induce a man to make such a confession in the way in which it was - it is written.

You see, the entry into the premises is one thing and the forcing of the drawers - well, members of the jury, with all your common sense you will say to yourself as indeed I asked the officer, 'Did you go to the scene?' 'Yes.' So it is clear, isn't it,

No.22

Closing Address
for the Crown
(contd.)

10th August,
1965

that the officer must have known where the entry was made into the premises. It is clear also that that officer knew that the drawer had been forced. Assume that in the defendant's favour. Well, then 'you see, I pushed the watchman out. You see, I took an iron fork into the office with intent to force open the drawer. Now, after being discovered by the watchman, I pushed the watchman out.'

Now, members of the jury, look at the photographs. What would not have been more reasonable for this officer, who after all isn't the officer having the conduct of the enquiries - he is not the investigating officer - than to assume that the defendant beat the deceased to death whilst he was lying on the camp bed? But, you see, someone knows somewhere along the line, if the defendant himself hasn't admitted it, that the watchman was pushed out, presumably either out of the office or from outside the office back into the watchman's room, because you see we have the medical evidence about the injuries done to the neck, and what we invite you to say is this: the defendant knows that because it was a voluntary statement which only he could come to know because he was the actual offender. Then he goes a bit further, members of the jury, because if you consider the inventiveness of the police officer, well, then, isn't it embellished to a very high degree when one reads the next statement 'He tried to take a wooden clog to hit me'? Members of the jury, if the defendant were there, wouldn't he only know because he was there? You see, look at the clogs there - they are by the bed side; and is this police officer even inventing that? That he is saying 'I will make this up as well because nobody can know about those clogs except those police officers who happened to be there and collected them, and saw them, and the actual offender himself.' So there are two sentences, are there not, one by one? After all, what we say is this was a voluntary statement by the defendant who knew and could only have known about the clogs and the pushing because he actually did it, and the police officers can only say to you what in fact they said, 'I did not dictate anything to this man at all. Nobody said anything to him at all.' Then it goes on 'He was pushed down the canvas bed by me. I hit him with a fist.' Well, what a wonderful inventive story, isn't it, by a police officer who was trying to get a man to confess to a most serious

No.22Closing Address
for the Crown
(contd.)10th August,
1965

crime in the calendar, and then he fainted - conked out - and then the rest of the statement about the pipe, the suit of clothing, could coincide with what a police officer knew from visiting the scene - could; but that other part in the middle is a very bitter pill to swallow, is it not, and it would be diabolical inventiveness on the part of the police officer who must have known about all these facts, must have thought about them, and it is a coincidence, isn't it, that the doctor happened to say that the man's neck was held; and was it held in the way it was pushed as it has been suggested here? How was the man pushed? Well, the defendant says he wasn't there. Members of the jury, we say that he was. Now, look at the last sentence, 'I did not intend to kill him. I wish the judge would pardon me.' Well, a very nice statement, isn't it, if it has been invented by the police officer; he puts that in just to round it off nicely - just to give it colour of further pretence. Now, in this statement, members of the jury, there is a suggestion that the deceased tried to take a wooden clog. Well, we are not suggesting for one single moment that the verdict in this case could be other than murder, that is, there was an intention to kill, but my Lord will direct you no doubt as to the law of manslaughter if he thinks that that is appropriate and I will leave that and not proceed any further because our case is that this was a deliberate intention to kill the watchman so as to rifle the premises.

Now, the facts don't stop there. 1075 - and I am sure my Lord will correct me and my learned friend will correct me if I am wrong - I must say I believe that this was the evidence that Sargeant 1075 said that he left the room at about just after 11. You remember his signature appears in this document, does it not, and he didn't go back. I believe I am right in this, but, members of the jury, if I am wrong then I should be corrected because it is an important point. Now, what the defendant said in cross-examination was this, 'I was told by 4463 what I had to say to the Superintendent of Police - Superintendent Jenkins - when I was going to be charged and cautioned, 'and I asked him 'Who else was present?' and he said, 'Sargeant 1075' and I asked him again, 'Are you sure about that?' and he said, 'Yes, Sargeant 1075'. Now, that means then, does it not, that the compulsion

In the
Supreme Court

No.22

Closing Address
for the Crown
(contd.)

10th August,
1965

for him to say a second confession took place before a few minutes after 11, and that had operated on him throughout the rest of the night because 1075 was not present. You see, he hasn't said, 'I was detained afterwards in this room. There were present with me two police officers 4463 and 4215, and all through that night they drilled me; they kept saying to me you must confess, you must confess.' Nothing was suggested like that at all. He says 'the compulsion was put upon my mind and which operated several hours later - seven hours later, so that it was given to me by 4463 at the time when Sergeant 1075 was present.' Well, members of the jury, all this took place in 20 minutes after the fourth witness left that room. Well, it is a miraculous piece, is it not, and I asked him, 'What have you to say?' and you know, members of the jury, he did not say 'They told me to say whatever way I like.' No, members of the jury, he went further, and he said, 'I was told I had more or less to recite or re-write what I had to learn by heart at the time.' Now, members of the jury, a man may lie and a man may lie for a variety of reasons, but what we are inviting you to say here is that this man - if you are satisfied it is untrue - is not telling the truth because of he having made a voluntary statement at the police station. You see, the other officers were taken away; it was a completely new group of officers - the superintendent of police who wasn't actually called but he was made available for my learned friend to ask questions and my learned friend said he did not want to ask him any questions, so there was that officer, there was the interpreter - a civilian, he is not a police officer, he is employed by the Government but he is not a police officer - and there was Inspector Lau. Now, the police officer and Inspector Lau and the Interpreter said 'we did not ask him any questions.' He was charged with the offence and he was cautioned and he read out the statutory caution and you may have that statement saying 'you needn't say anything' unless you wish to do so,' and this was almost six o'clock in the morning several hours later and what did the defendant write? Well, he says, 'I did kill somebody. I had no intention of killing him. I did it through a mistake of the hand. He had done nothing else disadvantageous to me.'

10

20

30

40

3.15 p.m.No.22Closing Address
for the Crown
(contd.)10th August,
1965

10 Isn't that a type of statement that you would expect a man to make, who comes to realise that the officials know, through his voluntary confession, what he has done, and isn't it a continuing remorse and realisation of the horror of what he has done, and weigh that against the evidence of Chan Pui - weigh that against the evidence of Chan Pui, who says he wanted money to go to Macau and get out of the way. Isn't that all consistent with a guilty mind?

20 Now as to his alibi - this is also a matter of some interest. You see the 11th of May is a date he cannot forget, not only because we say that is the day he committed the offence but because that was the morning of the day when he left his employment with the Tat Kwong Bulb Factory. You see it is sometimes very difficult to say to a person, 'What were you doing on the 16th of February? - I don't know'. 11th of May, members of the jury, he is able to pinpoint that straightaway because something happened to him on that day - that makes it easy for him to remember, and he told the police in the statement what he was doing. He said - and Members of the Jury I asked him questions about this - he says, well first of all he gives an account - he goes off to the Laichikik Amusement Park, and that was at 9.00 p.m. and then at 11.40 p.m. - he

30 shouldn't be able to give the exact time, nevertheless he was able to do so - 'I left there and I went around to the Kai Kee Mahjong School'. Do you remember I asked him specifically, was there ever another occasion when you had been to the Laichikok Amusement Park at night and thereafter to the Kai Kee Mahjong School, and he said, 'No, it was the first time I had ever done those two things in succession at night.' Members of the Jury, isn't

40 then the significance of that this, that he can remember what he was doing on that night, up to the time when he gets to the Kai Kee Mahjong School, and then you had his statement - I asked him - no trickery, Members of the Jury, I asked him, 'How did you leave the Kai Kee Mahjong School?' and he said, 'I went by taxi.' Members of the Jury, there it is in his statement - he went by taxi. That is precisely what he told the police on the 25th of May, and it follows the same sequence what he has done on that night, and never done before in his life.

In the
Supreme Court

No.22

Closing Address
for the Crown
(contd.)

10th August,
1965

Then you see thereafter, at the vital time, that is for the rest of the night he has gone wrong, because he says he hired an apartment. Well, Members of the Jury, is that genuine forgetfulness on his part? Is it? Is it really so as he would have you believe, that he remembered accurately up to that time, but not afterwards, because you see the mahjong school is like a football field - is like a dog track - is like a public house - lots of people about and you can get lost in a crowd, and no one can see you, but night time it is a bit more difficult to retreat somewhere when no one knows - you have got to go home - you have to go somewhere to sleep - you have got to find an apartment where somebody would be able to identify you. What he would invite you to say, he chose Hing On Apartment, because he knew he had been there before the 25th. You heard the witness say, 'Yes, he had been here' It is in the bag, he no doubt - we would invite you - thought it was a pretty safe bet - the police would have difficulty in cracking that one open - he thought he would perhaps get away with it. But you see he now remembers that he did not go, and he says he went to the roof top at No.663 Tong Mei Road, and I asked him 'when did you remember that?' Wasn't his answer a peculiar one - he did not say, 'I remembered that night - I remembered a week later.' Why one week later if ever that was the occasion for you desperately to put your mind actually to that point - it was after that the witness from the apartment came into the Police Station. You see what he said was, 'Stop asking me - now stop asking questions because now I am going to tell what really happened.' Wasn't the weight of this affair too much for a man of his years? In view of all the circumstances, you see, he did not know precisely, did he, what Chan Pui might have told the police - how far they have been in liaison between them. You know if a person commits an offence, Members of the Jury, and a policeman walks up to him, you know - you may or may now know - that feeling - Young boys who have done something naughty and a police officer comes up towards them - you know you give him credit for knowing infinitely more - well you do it. Isn't that what happened in this particular case, and was the reason why he made these particular confessions? Can you really believe that what 4463 said to him about the threat, was still operating on his mind a long time later when he was seen by police officers?

10

20

30

40

50

10th August,
1965

Now it may be suggested - it may be suggested, Members of the Jury, that he should have been allowed to go to sleep in the Police Station, but police officers are officers who are on duty 24 hours a day, and it is to their credit, you may think in this case, they didn't let the grass grow under their feet - they sent out immediately to find out whether this person's story was capable of being verified or not. And he was in that room - he made one confession, and he wasn't handcuffed, according to the police - he was given some food. Members of the Jury, would you in those circumstances, go to sleep? You see he dozed. Wouldn't you have asked for a paper and pencil and do something else? He dozed, Members of the Jury, and so I would invite you to say that perhaps it might have been nicer if he had been given a proper bed or something of that kind, but he never suggested it, and this had never been put to any of the witnesses, that he was exhausted or so tired that at six o'clock he did not know what he was saying. In fact you have the evidence of the doctor, an independent witness, who says, 'I examined him but on that morning he seemed bright and normal'. Members of the Jury, there it is, and what we invite you to say is this has not been, as it has been suggested by the defendant, a diabolical invention by a police officer to get this man to confess to a murder, merely for the purpose of clearing the books. What other reason would a police officer stoop to such a level, and why should it assist at all, so that this man is writing word for word what is suggested, -- we would invite you to examine that statement and see the business about the pushing and look at the photographs - isn't it, from the findings in the medical report - his injuries - isn't it consistent with him having been beaten to death not whilst he was asleep? And if you are satisfied that the police officers have not invented this, well then Gentlemen, this man in fact committed this offence, and hasn't he confessed to it because he in fact did it, and is he not now denying these confessions and trying to find another alibi merely because of his own guilt? You see he has not been able to call one single person to verify his whereabouts on the night of the murder.

Well, Members of the Jury, I am not going to take up any more of your time, except to say this that if you are left in any doubt, if you think the police did invent it, well Members of the Jury, I am sure you will very happily and readily acquite the defendant.

In the
Supreme Court

No.23
Closing address for the Defendant

No.23
Closing Address
for the
Defendant
10th August,
1965

MR. SWAINE: May it please you, my Lord, Members of the Jury, it is now your solemn duty to decide for yourselves whether the prosecution have proved the guilt of the accused beyond all reasonable doubt, and I am confident that you will come to your verdicts on the basis of your assessment of the evidence, bearing in mind the extreme penalty which the Law will impose in this case. I am confident that your verdict will be on the basis of your assessment of the evidence and your assessment alone. I say that because you are the only persons in this court charged with the duty and the responsibility of finding the facts in this case. My Lord, the judge, is under a duty to tell you what the law is, and he will, I am sure, direct you as to the ingredients necessary at law to substantiate the charge in this case, but it is not his Lordship's function to determine the facts of this case, although it is well within his competence to comment upon the evidence and to express to you, if he so desires, his opinion as to the evidence in this case, and his opinion as to how he may assess the evidence in this case, but remember, and remember always, that it is your duty to assess the evidence and to find the facts, and you are at liberty to completely disregard whatever his Lordship may say as to his view of the facts. You are duty bound to take the law from his Lordship, but you are not in any way bound to accept his assessment of the evidence, his opinion of the facts. And I repeat, having regard to the extreme penalty which the law will impose in this case, if you find the accused guilty you will come to your verdict on the basis of your assessment of the evidence in this case.

Now the jury system is a system that has been in force in the English Courts and other courts for a good many years, and we in Hong Kong have adopted the jury system as it applies in England. You may well ask why you, as laymen, should be charged with the responsibility of finding the facts in this type of case? Why should you as laymen be charged with the responsibility of finding on the evidence whether the accused is or is not guilty? You may well agree with me that the reason the jury system has survived and survived so successfully through all the centuries is that you, because you are laymen, are able to look at the facts of the case with a layman's point of view.

In the
Supreme Court
No. 23

Closing Address
for the
Defendant
(contd.)

10th August,
1965

10 You, as laymen are in a position of being able to look at the evidence with a fresh point of view.. There is always the danger, Members of the Jury, that a person who is versed and experienced in the law may develop possibly a little professional hardness. He has heard evidence many, many times before and he lacks the fresh point of view which you, as laymen, Members of the Jury, are able to bring to bear upon the facts of this case, and I repeat, the question whether or not on the facts you think the prosecution have proved the guilt of the accused beyond all reasonable doubt is for you and you only to decide.

20 Now there are certain features of the evidence which I would wish to bring to your attention to show that there is every doubt whether the accused did or did not commit this murder. You have heard from the lips of one of the prosecution witnesses that the persons working at the roof top factory of this building, would have known that the Bonnie Hair Products Factory employed a watchman. It has been part of the prosecution case that the accused person, because he was employed at this roof top factory, knew enough about the Bonnie Factory to have done what he did. I say that the very reverse is the case. The accused worked at the factory, above the Bonnie Factory, something like three weeks and in that space of time, he must have known if he were in anyway planning something criminal that the Bonnie Factory employed a watchman. In that know-
30 ledge I ask you, Members of the Jury, would he have attempted to break into this factory? And after all, it is the case of the Crown that the accused broke into this factory not in order to kill the watchman but in order to steal in the factory and the killing of the watchman came about because the accused was, so the prosecution say, caught in the act by the watchman. Now I ask you whether in the knowledge which the accused must have had, if he
40 were planning something criminal, that there was a watchman employed at the Bonnie Factory, would he have chanced it - would he have broken into this factory knowing that he stood a very grave risk of being caught in the job by the watchman? I say that the accused, if he was minded to do something criminal, would not have broken into the Bonnie Factory - he would have tried his luck elsewhere, some place where he was not going to be caught in

In the
Supreme Court

No.23

Closing Address
for the
Defendant
(contd.)

10th August,
1965

the act. Then, of course, there wasn't just the watchman at the Bonnie Factory that the accused might have had to contend with, because the factory building itself, the On Lok Mansion, employed a care-taker. As you will remember, having heard in evidence, this caretaker, after he had turned off the lifts and had a nap, made the rounds of the ground floor in the early hours of the morning, but not always at the same time. He would make the rounds of the ground floor to ensure that all the ground floor exits were secure or safe. Again, Members of the Jury, is it reasonable that the accused, having worked within the factory building for a space of about three weeks before the incident, would he have taken the trouble - would he have taken the chance of being caught by the caretaker when going up from the ground floor to the roof. It is far more reasonable, having regard to the presence of caretaker/watchman for the whole building and the presence of the watchman in particular at the Bonnie Factory, that the person who broke into the Bonnie Factory was someone who did not know very much about the security of the building and the security of the Factory in particular. 10 20

You would remember the evidence of Inspector Lau, that a number of fingerprints were found on the pane of glass of the office in the Bonnie Factory, but the fingerprints of the accused were not found at all upon the premises, and you may well think, as you are entitled, that that is a fairly strong piece of evidence in favour of the accused not having been to the Bonnie Factory on the night in question. 30

Another feature of the evidence which I commend to you for your consideration is this, that admittedly the accused had handed over his suitcase into the custody of his friend, so he thought, Chan Pui his friend on the 11th of May, and it is again admitted that that suitcase to this day remains in the custody of Chan Pui. Now Members of the Jury, if the accused had committed this crime and were anxious to flee Hong Kong for the relative safety of Macau or the Mainland, would he not have required his suitcase? One does not just get up and go - one when making a trip, one would imagine a fairly permanent trip of this nature, would require one's belongings. One would require one's suitcase in 40

In the
Supreme Court

No. 23

Closing Address
for the
Defendant
(contd.)

10th August,
1965

which one's belongings would be stored, but the accused made no effort to re-possess the suitcase and I suggest for your consideration that the absence of any request by the accused to re-possess the suitcase goes to show that he had no intention of leaving the Colony, and strengthens my suggestion that he had nothing to do with this offence.

10 Now the prosecution appear to rely to a considerable extent upon the evidence of Chan Pui, and a lot of time has been taken by my learned friend on examination of Chan Pui's evidence vis-a-vis the evidence of the accused. Well, Members of the Jury, if the prosecution require Chan Pui's evidence to strengthen their case, then they cannot have much of a case, because Chan Pui, contrary to what my learned friend says, is simply not a witness of truth. He in the witness box said most emphatically that he did not inform the police that he was
20 going to meet the accused on the evening of the 25th of May near the Hoi Sum Temple, and he used an extravagant phrase in the witness box, like, 'May I be struck dead' or words to that effect - 'I should I be telling a lie', and he went on to say 'You can ask the police officer whether or not I informed on the whereabouts of the accused on the 25th of May.' Well you have heard what Police Officer 4215 has had to say about this piece of evidence, because he said very readily that Chan Pui told him when they met
30 by pre-arrangement in the earlier part of the evening of the 11th of May, that he, Chan Pui, was going to meet the accused that evening. Now it must be clear beyond all shadow of doubt that Chan Pui is simply not a witness of truth. He has told a deliberate lie in the witness box, and I invite you to take the view that nothing that Chan Pui says is going to carry any weight at all, because if he has told a lie upon his solemn oath, as he has clearly lied, then nothing that he has said in the witness
40 box is deserving of any credit at all. I would invite you, Members of the Jury, to take the view that the reasons for the way in which Chan Pui and the accused passed the afternoon and early evening of the 25th of May was no more and no less Chan Pui's desire to deliver his friend to the police, Chan Pui met 4215 by arrangement in the early part of the evening of the 25th, some time after six o'clock, I think is the evidence on this point.

In the
Supreme Court

No.23

Closing Address
for the Defend-
ant (contd.)

10th August,
1965

Now is it not a perfectly reasonable explanation of why the accused and Chan Pui went to these various places the afternoon of the 25th of May, the fact that Chan Pui was stalling and killing time and waiting for the evening to go on because he knew that he was going to meet 4215 in the evening, and he wanted to be sure that he would have the accused where he wanted him. He wanted to be sure that the accused would be there and waiting, so that after he, Chan Pui, had informed on the accused to the police, the police would have time enough to pick up the accused. Now isn't that the most reasonable explanation of why the accused and Chan Pui passed the afternoon and evening of the 25th as they did. I would ask you further, Members of the Jury, to accept the view that the police were out to get the accused. After all 4215 interviewed Chan Pui on a number of occasions and expressed a definite interest to interview the accused. Chan Pui has said that he went to the address of Pau Ying on the 25th of May in order to ascertain from Pau Ying the whereabouts of the accused, and he did that, he said, because he had in mind the police desire to locate and interview the accused. So you may reasonably assume Members of the Jury, that Chan Pui was going to a fair amount of trouble to locate the accused for the police, and you may equally well reasonably assume that the police were going to a fair amount of trouble to locate the accused. Then some time after 8 o'clock on the 25th of May in the evening near the Hoi Sum Temple a trap was sprung, because the police party of three arrived upon the scene by prior arrangement with Chan Pui.

Now the police officer has said very piously in the witness box that his only motive on the 25th of May was to ask the accused whether he would go to the Police Station. It seems to me very difficult to comprehend why, if that was the only intention of the police, there should be three of them at the scene; if all that was necessary was to invite the accused to go to the Police Station then I say that 4215 could have performed this relatively pointless task himself, but he took the trouble of contacting his colleague, a Police Corporal by telephone, and that Police Corporal with Police Constable 4463 met Constable 4215 at a Teahouse, and the three of them then drove to this spot near Hoi Sum Temple. The accused, having arrived at the Police Station, it is

In the
Supreme Court

No.23

Closing Address
for the
Defendant
(contd.)

10th August,
1965

my submission that the police were out to crack any alibi that he may put forward and therefore they acted with such alacrity and speed in securing the presence of four witnesses at the Police Station.

Inspector Isau said in evidence that more than 190 persons were interviewed by the police in connection with this case, but out of these 190 odd, only three of them had their stories checked by the method of a trick confrontation with witnesses, that is to say the accused and two others - in regard to the other two this confrontation took place in the day time. In regard to the accused, as you will have heard, the confrontation took place quite late at night. Now the accused, having had his account of his movements of the 11th and 12th of May contradicted by the four witnesses in question, the police, I submit, were very quick to take advantage of this situation, and in the words of the accused 4463 then said to him, 'Well you have no alternative now. You better admit to what you have done and you had better co-operate.' The accused said that he was subjected to this type of compulsion, and subjected also to inducements of various kinds for quite a long interval of time, not merely twenty minutes, but a considerably longer period of time had passed, and during that fairly lengthy period of time in the evening of the 25th, the accused was subjected to police pressure and police compulsion, and I ask you, Members of the Jury, to accept his evidence that he wrote out the statement at the dictation of the police and signed the statement, because he was compelled to do so. I ask you to accept his evidence that he had not been to the Bonnie Hair Products Factory and that he knew nothing of this case and had nothing to do with it. After he had put his signature to the statement, he remained in the room in question at the Police Station until all the way up to the early hours of the morning when he made further statements in the presence of Inspector Lau and Superintendent Jenkins, whom we have not, however, seen in court. Now the accused was clearly in police custody in those early hours of the morning prior to his being seen by Inspector Lau and the Superintendent. There is no question of his being able to get up and leave the Station of his own free will. He was clearly in police custody. He was being watched by two police officers

10

20

30

40

In the
Supreme Court

No.23

Closing Address
for the
Defendant
(contd.)

10th August,
1965

and it is more than reasonable that you should accept that he remained in the same state of mind which had produced the first statement of the evening. He had been threatened by 4463 and Detective Sergeant with merciless beating if he did not, when before the Superintendent, admit the offence and co-operate with the police.

Now the statements made in the presence of Inspector Lau certain reads peculiarly, because after the accused had made the confession, he went on to say 10

"It was Chan Wai-keung who killed someone."

This is the, if I may remind you Members of the Jury, second statement which the prosecution have put in - a statement made by the accused at about six o'clock that morning.

My Lord, do the Members of the Jury have copies of the second statement?

COURT: Yes, they have.

MR. SWAINE: I see - apparently they have not. 20

COURT: Apparently not - read it out.

MR. SWAINE: The words that I desire to stress, Members of the Jury, are the last words which appear on the statement,

"It was Chan Wai-keung who killed someone."

Now if this was a statement made by the accused in his own words and of his own free will, would he not have said, "It was I who killed someone." It is not the customary usage of the language, that one should say, 'It was Chan Wai Keung' or Bill Smith or William Brown, as the case may be, "who killed the watchman." One doesn't name oneself when making a statement which is one's own. One says, 'I did it.' But don't these words completely bear out the evidence of the accused that he was told what to say and what to write when in the presence of the Superintendent? One might almost, Members of the Jury, visualise 4463 saying to the accused 'When you appear before the Superintendent, remember to 30

10th August,
1965

say it was you, Chan Wai-keung who killed the deceased.' And it was not too much of a strain on one's imagination to visualise the accused, when in the presence of the Superintendent, remembering what he had been told by 4463 and remembering the form of words in which these directions were given by 4463, therefore using this peculiar form of words, "It was Chan Wai-keung who killed someone."

10 Before I conclude my address to you, Members of the Jury, I would like to say, and you would have, I think, appreciated it for yourselves, that the only real evidence against the accused is the two confessions. Take away the two confessions and what have you got? Just circumstances of possible suspicion which might just link the accused with the crime in question. There can be no doubt that it is the confessions which make up the prosecution's case, and are you not, Members of the Jury again with your fresh point of view as laymen, not
20 surprised that the accused, having volunteered statements to the police incriminating himself, should now that he is on trial, retract those statements if those statements had been voluntary? If one is full of remorse, and for that reason, confesses to a crime, is it not reasonable to assume that one will remain remorseful, and that one will, at some later time, not retract a confession voluntarily made.

30 I say to you that the reason the defence attacked these confessions, is the fact that these statements were not voluntary. They were extracted out of the accused. He did not commit the offence with which he is charged. He was compelled to make the statements and now that he is at liberty to speak his mind, he tells you, as his judges, that he did not commit the offence and that these confessions are not worth the paper they are written on.

40 In our own Hong Kong courts, Members of the Jury, the Court of Appeal in Hong Kong has had occasion to make in very recent years, as recently as 1961, the following remarks about these so-called voluntary confessions. This is what the President of our Court of Appeal in Hong Kong has said in a reported case about the so-called voluntary confessions, and this was in 1961. He said:-

"Before we depart from this case there are two matters to which we would refer. This

In the
Supreme Court

No.23

Closing address
for the
Defendant
(contd.)

10th August,
1965

Court views with some disquiet the large number of cases that come before it, in which retracted admissions or confessions are involved. We are reminded of the words of Mr. Justice Cave in the Queen against Thompson,"

and here the Hong Kong Court was quoting from the judgment of the English Court in a case tried in England, and here referred to as the Queen Against Thompson - now the English Court said in that case:- 10

"I would add that for my part I always suspect these confessions which are supposed to be the off-spring of penitence and remorse, and which nevertheless are repudiated by the prisoner at the trial. It is remarkable that it is of very rare occurrence for evidence of a confession to be given when the proof of the prisoner's guilt is otherwise clear and satisfactory; but, when it is not clear and satisfactory, the prisoner is not infrequently alleged to have been seized with the desire born of penitence and remorse to supplement it with a confession; a desire which vanishes as soon as he appears in a court of justice."

20

And is that not precisely the case here? It has been suggested to you by the prosecution that the only reason the accused made these two confessions was his feeling of guilt and remorse, and there was absolutely no compulsion. It is most surprising in these circumstances; Members of the Jury, that he should now if what the prosecution suggest is true, seek to repudiate the confessions, and to tell you from the witness box the truth of the matter; and make no mistake about this, Members of the Jury, were it not for these confessions, there would be simply no case against the accused. If you find him guilty you will find him guilty on his confessions, and having heard the evidence of the accused, having heard how these confessions were extracted from him by threats, other methods of compulsion, are you really able to say to yourselves you are convinced beyond a reasonable doubt that these confessions were perfectly voluntary, because that is the test which these confessions require to pass, in order that you may act upon them. You have to be satisfied beyond

40

In the
Supreme Court

No.23

Closing Address
for the
Defendant
(contd.)

10th August,
1965

reasonable doubt that these confessions were voluntary, Can you have any reasonable doubt at all, having heard the accused, having heard his account of how he came to make these confessions, and having heard from his own lips in a most solemn fashion, of the fact that he had had nothing to do with this crime? I ask you, Members of the Jury that you acquit the accused, because there cannot but be a doubt in your mind that these confessions are voluntary.

10

I am confident that you will not convict the accused upon confessions which he has repudiated in your presence, and there is no other evidence of any weight which you may consider incriminating the accused. There is simply no other evidence of sufficient weight to incriminate the accused. It is the confessions and the confessions only, and he has repudiated them and he has said that they were not made by him in a voluntary way.

20

COURT: It is too late to sum up tonight, so we will adjourn to 9.30 tomorrow when I will sum up to you.

MR. ADDISON: Before your Lordship rises, I wonder if I may most respectfully invite your Lordship's attention to the last paragraph in Archbold, 35th Edition, paragraph 554 - I am quite confident your Lordship will be fully aware of that matter, but I thought it perhaps my duty to invite your Lordship's attention to it -

30

COURT: Just the last paragraph?

MR. ADDISON: Paragraph 554.

COURT: You did not, Mr. Swaine, deal with manslaughter deliberately, I presume?

MR. SWAINE: Quite so, my Lord.

COURT: Do you gentlemen wish me to deal with the matter that was raised in the absence of the jury on the first occasion?

MR. ADDISON: My Lord, in view of certain rules pertaining to this matter, I feel I should leave the matter entirely in your Lordship's hands.

40

In the
Supreme Court

MR. SWAINE: I would like to leave it in your
Lordship's hands, my Lord.

No.23

Closing Address
for the
Defendant
(contd.)

10th August,
1965

COURT: Very well, I will consider that. I will
sum up tomorrow. Please don't discuss this case
with anybody except amongst yourselves - 9.30
tomorrow.

4.12 p.m. Court adjourns.

No.24

Summing-up

11th August,
1965

No.24

Summing-Up

IN THE SUPREME COURT OF HONG KONG
CRIMINAL JURISDICTION

10

Case No. 3
July 1965 Session

Transcript of a tape-recorded summing-up
delivered by the Honourable the Puisne Judge,
Mr. Justice G.G. Briggs on 11th August, 1965
at the trial of Regina vs. CHAN Wai-keung,
charged with Murder.

Gentlemen of the Jury:

It is now my task to sum this case up to you,
after which I will ask you to consider your verdict
one way or the other.

20

Now, there are two matters, minor matters, with
which I would like to deal rightaway. During the
beginning of this case, a witness called Chan Pui
said something in Chinese in the witness-box and
counsel for the defence stopped him at once and it
was never translated; so it is not part of the
evidence in this case. It was an allegation of dis-
honesty or embezzlement against the accused. He said 30
that he (Chan Pui) had accused the accused of embezzling
a hundred dollars or so. I want you totally to ignore
that if you heard it at all, because it is no part of
this case. As far as this case is concerned the
accused is a man of unblemished character. Now the
second point I wish to clear out of the way is this:
the punishment for murder, as you must well know, in

10 this territory, is death and that is something which is of no concern to you and must not be considered by you when dealing with your - when coming to a conclusion on the evidence in this case. There was a slight reference to the seriousness of the consequences of your verdict by the counsel for the accused; that must be ignored. The verdict is yours. What happens after the verdict is no concern of yours - wholly irrelevant to any consideration which you may have.

20 Now, in this case you must accept from me what I state to be the law but the facts are for you. You are the judges of fact and if I seem to give an opinion in my summing-up what I consider the facts are in this case, you are to ignore it. You are the judges of facts and that is why you have been here, in order to judge the facts. This is a question - a case, of murder or nothing. I shall, at the end of my summing-up, ask you to give a verdict and it will be either guilty of murder or not guilty of murder. Those are the only alternatives I shall lay before you and in such a verdict you must be unanimous, that is to say: you must all agree. There is no room, in a capital case, for a majority verdict of the jury.

30 Now, first of all, what is murder? Murder is always described as the unlawful killing of another with malice aforethought. Malice is a difficult word. Malice will be implied if the victim was killed by a voluntary act of the accused, done with the intention either to kill him or to do him some grievous bodily harm. And grievous bodily harm merely means serious harm; harm which would interfere with the comfort and health of the victim. I will come back to that definition later in my summing-up.

40 The burden of proof in criminal cases always lies on the Crown. It is not for the accused to excuse his conduct. It is not for the accused to satisfy you that he did not do this. It is for the Crown to prove to you that the accused is guilty and unless the Crown satisfies you beyond all reasonable doubt that he has committed this murder, you are to acquit him.

Now, to come to the facts. The victim was a watchman employed by the Bonnie Hair Products

In the
Supreme Court

No. 24

Summing-Up
(contd.)

11th August,
1965

Factory which had its premises on the 9th Floor of the Ha Heung Road in Kowloon. He was a man of 60 or thereabouts and he slept on the premises on a camp-bed. He was seen by the factory operatives leaving those premises as they usually did, on the 11th May for the last time alive, except for the person who was responsible for his death. The next morning, at about 8 o'clock, the factory operatives could not get into the building because it was locked. The last man leaving on the 11th evening was let out 10 by the watchman and he said he heard the watchman turn the keys in the door - it was part of the watchman's duty to keep the keys. Well, I gather there are two front doors. They forced, on the morning of the 12th, they forced the doors and the moment they came inside they found the deceased lying on the camp-bed dead, very seriously injured. There was blood all over the floor, underneath the bed, and on the bed itself and you have seen photographs taken immediately after the removal of the body therefrom. It is obvious that he 20 was killed and it is quite obvious, I think, that there is not a possibility here that it was a suicide or an accident. The very wounds show that. It was a very savage attack and, upon examination, the doctor who did the post-mortem discovered that there were no less than nine split wounds on the head of this unfortunate man. There were three on the forehead; one on the left side of the head; two above the left eye; one on the left cheek; one on the left jaw. There was also a cut wound on the right jaw. 30 Both eyes were bruised and the front teeth were broken - six teeth - and so were the cheek bones. He also said that there were wounds on the arms and the palm of one hand and, on doing a complete post-mortem, he discovered from internal examination that the left wing of the hyoid bone - it's a bone in the neck - was fractured inwards. There was, just on the outside of where that was, an abrasion on the neck of the deceased close to the Adam's apple, on the left-hand side of his neck. The doctor said that the 40 cause of death was haemorrhage and shock due to these very serious wounds; and you will notice that the wounds are all on the front of the face. There was no wound found on the back of the deceased or the back of his head. All the wounds were caused by what is described as a blunt instrument except the wound on the right jaw, which was a cut wound. The doctor put the time of death at between 1.30 a.m. and 4.30 a.m. of the 12th May.

Of course, the police immediately began an investigation and, amongst others, they interviewed one Chan Pui, who was employed as a liftman on those premises. Chan Pui gave evidence and he said that the accused was employed on the roof where there was another factory which made bulbs or connected with bulbs. Chan Pui knew him because he had helped to get that job and had lent him \$50/- when he took the job. He also said that the accused was in the habit of using his lift. He said the accused was sacked from his employment on the 11th May and on that date he left his suitcase with Chan Pui for safe custody. Chan Pui said he did not see the accused again until the 21st May when he came back and asked Chan Pui if he could lend him some money. He told Chan Pui that he was in work and he told him where he worked and how much he was getting. The murder which had occurred on the premises on the 12th was mentioned by Chan Pui and he said that, upon mentioning this, the accused looked very frightened and became sweaty. Chan Pui had already been questioned by the police about this murder; firstly, on the 13th May which was the day after the body was found; and on several other dates. And he had mentioned to the police the existence of the accused as early as the 15th and they then said that they were interested in the accused. And so when Chan Pui saw the police the first time after the 21st May, he reported to the police what the conversation between the accused and himself had been. The police continued after that to come and see him and to question him and so he went - this is Chan Pui - to Pau Ying whom he knew as a relative of the accused. There he found the accused; and the date was the 25th - the all-important date in this case. He said the moment he arrived there, he was surprised to find the accused, because he expected to find the accused working but he wasn't; he was there in this man's house. He said the accused said to him: "Don't talk here, let's go to a teahouse; we can talk there." So, that was done. And that morning Chan Pui said that he told the accused that the police was looking for the accused and he told the accused about these enquiries. He said that the accused then asked him for money to go to Macau or to go to China; and the accused, he said, suggested they should go to an apartment, which you can hire by the hour, the On Lok Apartment, where they could talk quietly. And it was there, he said,

In the
Supreme Court

No.24

Summing-Up
(contd.)

11th August,
1965

that he wished to get some money in order to go to Macau or else to go to Mainland China, and he wanted about \$150/-. They talked the matter over and Chan Pui suggested that they borrow from one Wong Chun Nin who, I think, was also employed as a liftman in the same block. And arrangements were made by telephone to meet Wong Chun Nin at a restaurant called the Kam Moon that same evening. Then, Chan Pui says, when they came to go to the restaurant, the accused said he did not wish to meet Wong Chun Nin and so it was arranged that Wong Chun Nin and Chan Pui sat at one table, and the accused sat separately at a different table. And Wong Chun Nin, who gave evidence that he did go there and meet Chan Pui, told us, if you remember, that he never saw the accused there at all. Well, they were unable - and Chan Pui was unable to borrow any money from this man and so he then suggested to the accused that he had a friend in Kowloon City from whom he might be able to borrow some money. And it was agreed they should meet later that night at a certain rock near the Hoi Sum Temple. Chan Pui then left, ostensibly to go to Kowloon City, but in actual fact he contacted the police with whom he had a previous arrangement to meet. And you may think, it is for you, that it is obvious, although he denied it, that he told them, told the police where he and the accused were to meet that evening. When he was giving evidence, you may remember, he was stressed on this point; and he denied that he had told the police that; but he kept on saying he was in a very difficult position because he was between the police and his friend. Anyway, he did meet the accused at the place stated that evening. And almost, very soon after they had met, which is about 9 o'clock, I think, at night, the police arrived. Three police arrived and the two of them were taken by a police private car to the police station.

Now, what happened at the police station is vital to the case for the prosecution. Two completely different accounts have been given and it is for you, gentlemen, to decide which to believe or whether you believe partly one and partly the other. I am here only dealing with the Crown's case to begin with; I will deal with the case for the defence later.

In the
Supreme Court

No.24

Summing-Up
(contd.)

11th August,
1965

Various police officers gave evidence on behalf of the Crown and they said the accused came to the police station voluntarily. They interrogated him and they asked him questions about his background. They also asked him questions about his movements on the 11th and 12th May. Now, they told the accused they were investigating this particular crime and they said they were just carrying out perfectly normal police interrogation in the police station. Sgt. 1075 was the senior officer present and the questioning was done by Det. Police Constable 4463. During the course of this interrogation 4463 wrote down the answers to the queries which were made and that document has been produced in court. During the course of his account of where he was on the 11th and 12th May, the accused mentioned four persons. He mentioned that he was at two distinct mahjong schools; he mentioned that he went to an apartment to sleep and he mentioned another man whom he said he was with. Immediately those were mentioned the police took steps to get hold of witnesses to confront the accused in order to test his story. They came in, one by one, and they were asked: Do you know this man? Were you with this man at such and such a time and so on? And they all contradicted his story. Later in the case the accused, when he gave evidence, admitted that those four men had come in, one by one, into the police room where he was being questioned and they had contradicted the account that he had given of his movements on the night in question. Now, the police say that immediately that happened, the last of the four men left the room, and they came in one after another very quickly indeed. He said - the police said the accused then made a statement to them as follows:- he said "You need not ask me too many questions; I am quite bored and I'll tell you about the real facts of the incidents that night concerning the watchman of the Bonnie Hair Factory at the On Lok Factory Building." Then P.C.4463 immediately realised what was going on and stopped the accused from going further and he administered the caution in the correct form. The accused said he understood the caution and then the accused wrote down a statement, which you have before you a translation, in his own handwriting, underneath the writing of D.P.C. 4463 on the same sheet of paper. And he used his own pen and he signed it and the other two policemen signed, and the two policemen signed as witnesses. Now, then

In the
Supreme Court

No.24

Summing-up
(contd.)

11th August,
1965

the Sergeant, I think it was, took the statement out and showed it to a superior officer who was not in the room - Inspector Lau - and when he had done that, Lau gave him that piece of iron piping which had been exhibited and which was a piece of iron piping found at the scene of the crime, and this was shown to the accused who immediately said that he used it to hit the watchman and he wrote down words to that effect on the same sheet of paper. He was again cautioned before he did that and it was the accused who signed and the two policemen signed that second statement. And the police entered the time on that statement that it was at that time, which was 2300 hours, 11 o'clock. Now, after that the Sergeant left the room, and his place was taken by D.P.C.4125 who had taken a leading part in this investigation, having interviewed Chan Pui on many occasions, having been one of the police to pick up the accused and Chan Pui at the Hoi Sum Temple, and having been the constable who searched the four witnesses to confront the accused when he was making his statement. Those two constables remained with the accused in that room for the rest of the night. The accused was given a meal, they say, at 12 midnight; but he remained there until early the next morning. Early the next morning - I should perhaps add this: the police were asked questions as to the demeanour of the accused person when he was making his statement and before the second statement, which I am going to deal with in a minute, was made. And they were agreed. They said that he was uncomplaining; that he certainly looked depressed and worried; one of them said he looked sad. Anyway, he remained there with those two policemen in that room for the rest of the night.

10

20

30

At 5.50 a.m. the following morning the two constables left the room and a Supt. of Police, who is an Englishman, Inspector Lau and one Mok, who was a civilian Police Interpreter, came into the room and the accused was charged with murder. He was charged in the English language which was translated into Punti. And after he had been charged he made a statement which he wrote in his own handwriting with a pen that happened to be there, and signed it; and it was witnessed by those who were present. Then those men left the room and at 6.30 a.m. the accused was seen by Dr. Lee Fuk Kee. Lee Fuk Kee examined the accused and tested him, amongst other things,

40

for his grip. He said he made no complaint to Dr. Lee and, although he tested his wrists, he saw no mark or anything. He did not recall having seen any mark or anything such as a mark on the wrists of the accused. Now, the police witnesses positively swear that no threats were used to the accused at all; that no inducement was made to the accused to make either of these two statements. They said the accused was treated decently; when he wanted it he was given tea and he was given cigarettes, and he was given a meal at 12 o'clock midnight. And particularly, they say, at no time at all was he handcuffed - neither in front of his body nor behind his body. In fact the suggestion is that it was a perfectly ordinary interrogation which was being carried out, during which alibi was put up which was proved, by confronting him with several witnesses, to be untrue. Then the police say that accused realised that all was up and he made a clean breast of it.

Now, I don't intend, at this stage, to read the two confessions or statements which I have mentioned because you've had copies of them. Have you, Mr. Foreman, copies of both of them?

MR. FOREMAN: We haven't copies of the second statement. We have the original.

COURT: The second one, then I will read that. You have the original so I will not waste time by reading that.

The second one reads as follows: This is the statement by the accused in his own handwriting at 6 o'clock or thereabouts in the morning when, after he had been charged with murder, when of course he was in police custody:-

"I did kill someone. It was my intention to go into the factory to steal. I had no intention of killing him. Because he hit me, first, I, through a mistake of the hand, hit and killed him. He had done nothing else disadvantageous to me. It was CHAN Wai-keung who killed someone. (Signed: Chan Wau-keung)."

Now, the Crown also called various factory

In the
Supreme Court

No. 24

Summing-Up
(contd.)

11th August,
1965

operatives and they deposed that entry could have been made by the light-well into the factory through a certain window in which a pane of glass was missing; they deposed that the office of the factory had been broken into that night and a drawer forced open, and some drawers left open; they deposed that the watchman's clothes were found in the dyeing-room of the factory in a plastic bucket full of water; and they also deposed that the exhibit, that pipe, was found leaning against the wall of the office; they also deposed that there was a pair of wooden clogs under the bed of the watchman and that there was an iron fork on a concrete beam inside the well. These I mention because those are mentioned in the statement which I have not read but which is before you.

10

Now, that is the Crown's case. It depends upon, gentlemen, on the two confessions or one or each of the two confessions. If you have any doubts about those confessions you must acquit. Now the weight and value of those confessions and evidence is in your hands. It is for you to put such weight and to give such value to those confessions as you think proper. If you reach the conclusion that the confessions were obtained by threats or inducements, you will give them no weight at all. There are two confessions; each must be separately considered. If you think that both were obtained by duress or inducements then you must acquit, because there is insufficient evidence without those confessions or one of them, if you do not consider that they are voluntary. If you consider that one of the confession, either one of them was obtained by duress or inducement then you must put it totally from your mind when considering this case. This is not a case where the defendant, the accused, is saying: "I did not mean to do it". The defence of the accused in this case is that: "It was not me; I did not do this at all". It's a complete denial.

20

30

The accused gave evidence himself and you were able to see his demeanour in the witness-box. He admits that he works in the roof, on the roof of the building which holds this Bonnie Hair Products Factory and he admits that he was dismissed on the 11th May and he says that he left there; and as he left there he left his suitcase in the custody, safe custody, of Chan Pui. Now, I will say at once that there is a very important piece of negative evidence

40

in favour of the accused. The police made a very thorough examination of this factory premises where this crime took place, but they found no fingerprints of the accused there at all. Now, though, he says, the accused says, that he worked on the roof, he said he did not notice the scaffolding of which you have seen photographs as it was then; and he never looked down the light-shaft. He said he's never been into the factory but he did admit

10 that he knew Chan Pui who worked on the lift; who'd helped him get the job and who'd lent him \$50/-; and with whom, as I've said, he left his suitcase when he quit. He did not see Chan Pui again, he says, until May 25th when Chan Pui turned up at Pau Ying's. Certainly, he said, he did not see him on the 21st in the factory. And on the 25th he gives a different version of the events from that given

20 by Chan Pui. He said that it was Chan Pui who took him out to the cafe because he, the accused, was flat broke. He said that there was a conversation about the murder in the street and at the place where they took tea. Chan Pui it was who tried to borrow money from him; not he trying to borrow money from Chan Pui. He admits they went to the On Lok Apartment and again it was Chan Pui who tried to borrow money from him. Chan Pui told the

30 accused, according to the accused, that the police were pestering him, that is to say, were pestering Chan Pui. But the accused said Chan Pui never said that the police were looking for the accused. They went to the Kam Moon restaurant and he said he remained at a separate table from Wong Chun Nin because Chan Pui suggested it. Chan Pui asked him to meet him at the Hoi Sum Temple whilst he, Chan, went to Kowloon City in order to try and borrow money. Now, he waited there for Chan Pui, according to his own account, for a very long time, but he did not explain why he waited there for a very long

40 time, although it is perfectly fair to say that he admits that he was out of work and broke, and he might as well, of course, remain sitting there waiting for Chan Pui as not. Anyway, he waited until Chan Pui came at about 9 o'clock. He then said that three policemen arrived and he admits that he went willingly to the station in the police car. He was not quite sure why he was wanted but, he said, immediately he got to the police station, he was handcuffed. He was questioned about his background and about his movements between the 11th

50 and 12th May. And he said that four persons were

In the
Supreme Court

No.24

Summing-Up
(contd.)

11th August,
1965

brought in to contradict what he had said. I am going to read you now the notes I took down of what he gave in evidence after that, because this is fundamental to this case. It is completely different from the accounts given by the police and it is for you, gentlemen, to make up your mind which story is the truth. He said:- "After the last of the four had gone, 4463 and 1075, Inspector Li and Chan Kam Pui, who was an officer in the police, were present. 4463 spoke first. He said: "Well, you can't deny it now. You must admit to that murder case at the On Lok Building. I said I know nothing about it. He said if you refuse to admit it I am going to handcuff you again. I meant to say that he would handcuff me behind my back and he did. I was already handcuffed. I did not admit anything. He punched me on my chest. He said: If you don't admit you will get no meal. Inspector Li and Chan Kam Pui persuaded me to admit. They both said: You'd better admit to it and co-operate with us, the police. Chan Kam Pui then offered me some cigarettes. They said: they said to me: We will give you \$3,000/- later. But I did not admit anything. The handcuffs behind my back were then tightened. I felt the pain and 4463 said: Well, when I say something you simply nod your head. It was 4463 who spoke the most. I then nodded to every sentence he said. He further said: When it is finished you must sign it. I said I won't; I know nothing about the case. He said: I am going to assault you. I had no alternative but to sign it. He then taught me how to make my statement. I said I don't know how to write it. He said: I will dictate it sentence by sentence. I signed it. He said: When you see the Superintendent and the Inspector you must sign it in their presence again. 4463 said this. 1075 and 4463 were present when I wrote the statement. Li and Chan Kam Pui were not there when the statement was dictated. After they had referred to the Superintendent, they said: If you don't sign I shall beat you up. You will know it when you come back. Some time after five the Superintendent came and I had to sign because of the threat made by 4463."

That is the accused's account of what happened in the police station after the four witnesses had been brought in and had left. Now, when he was cross-examined, he went much further. He said he was handcuffed right up until he began to write the

dictation of 4463, including the time when the four witnesses were in the room. He said that threats of violence continued for 15 to 20 minutes and he complained of the handcuffs which he said hurt; of the punch, which he said 4463 had given him; of continual threats being offered to him and of being offered \$3,000/- as a bribe to confess and also he was told that if he did not confess, he would get nothing to eat. Finally, he said he was afraid of being beaten to death. You may remember that I had that part read back to him to make quite sure that he realised what he had said, and you will recollect his attitude in the box to this. Altogether he implicates four police officers. Now, in his statement, he says in his statement, that is the statement which he wrote, which he says was taken down by 4463, this is a statement, not a confession, because the interrogation preceded the confession. In that statement he said that he had slept at the Hing On Apartment and you may remember one Cheung Lau Kan came to court, gave evidence, and contradicted his evidence and the register has been produced from his apartment to disprove it. In the box the accused said, actually he had not been there, and although he had told the police that at that time, it was not true. He said he had been on that night at the roof top of 63A Tong Mei Road. He said that he recollected that he made that statement to the police about a week after he'd made that statement. It is for you to assess the importance of this. Now, as to the statement, the second statement, which I have read out to you, made to the Superintendent, he says this was taught to him by 4463. He taught him what to say and I must point out to you that he said that Sgt. 1075 was present with 4463 when that was done. If the police evidence as to times is believed, you will notice that this means that that must have been done some time before a little after 11 p.m. on the 25th, for Sgt. 1075 gave in evidence that he left the room shortly after the completion of the statement, which was 11 o'clock. So, for about seven more hours the accused remained in the room with 4215 and 4463. There has been no complaint by him of any conduct during that time, or of any occurrence during that time, and it wasn't until 6 o'clock in the morning that he writes the second statement in the presence of the Superintendent and in the presence of Mr. Mok and Inspector Lau. Now, I have already read that statement and I will

In the
Supreme Court

No.24

Summing-Up
(contd.)

11th August,
1965

not read it again.

Finally, at 6.30 a.m. he is seen by the doctor and makes no complaint to him. The doctor did not give evidence that he complained of being overtired or exhausted.

Now, you've heard the comments of counsel and they have addressed you fully and very fairly as to the weight to be attached to the statements. I will just mention a few of the points made by them for your consideration, without comment or further comment. Why, if this is a true confession, why should he retract it? If it was made from remorse, wouldn't he still be remorseful? Secondly, if the police wanted a confession, would they have gone to this length at the preliminary investigation, and does that - the wording of that first confession - sound like an invented story by a policeman or does it bear the ring of truth? Do you again, do you think that the accused was still afraid when he made the second statement? Why didn't he complain that he was? There were different people he was being confronted with. And finally, did the accused choose that place, of all places, to go to steal? For, if he was there, he almost certainly knew that there was a watchman on the premises and he must have known, I think, that there was a caretaker who was in the habit of going the rounds. 10 20

Those have all been raised for your consideration - those points by counsel - and I ask you to give them consideration. But it is for you to decide, as I have already said, the weight and the value, if you think, of these two statements separately. If you think that either of them were induced by threats and inducements, you must put that right out of your mind when considering this case. Now, this is a case of murder. The case of the Crown is that the accused committed this murder when engaged in committing another crime, namely burglary. You must ignore the fact that he was engaged, that it is alleged that he was engaged, or that he was engaged in committing the offence of burglary. That is not material here. If you reach the conclusion however that it was the accused who struck the deceased with that iron pipe and that he intended to cause him grievous bodily harm, then your verdict will be guilty of murder. But before you come to such a verdict you must weigh the evidence carefully, including those two statements 30 40

In the
Supreme Court

No.24

Summing-Up
(contd.)

11th August,
1965

and you must not reach the conclusion that he was the person who did this crime unless you are satisfied beyond all reasonable doubt that the evidence inevitably brings you to that conclusion.

Now, gentlemen, I wish you to retire to consider your verdict.

(Jury retires at 10.40 a.m.)

No.25

Proceedings re Question by Jury
prior to verdict

10

12.16 p.m. Court resumes.

Accused present. Appearances as before. Jurors answer to their names.

Jury Seeks Clarification from Court:

COURT: You wish to ask one question?

FOREMAN: Yes, my Lord. We have not reached a decision yet. We are not very clear about the roof in this case. The situation of the factory - the factory where the accused was employed. Probably you will enlighten us as to the situation and whereabouts of the factory and also where the accused slept; the locking of the doors, if any, on the roof. But we are very interested to know the situation of the lamp factory on the roof.

20

COURT: Well, the evidence was that it was on the roof above the other factory.

MR. ADDISON: My Lord, I wonder if the jury is really asking to go and see the scene. My Lord, it could be arranged.

30

COURT: Do you wish then to see the scene?

FOREMAN: We would very much like to see the scene.

COURT: Well, this is very unusual and the case is closed, so you would not be able to ask any questions. You understand that?

No.25

Proceedings re
Question by
Jury prior to
Verdict

11th August,
1965

In the
Supreme Court

No.25

Proceedings re
Question by
Jury prior to
Verdict(contd.)
11th August,
1965

FOREMAN: Yes.

COURT: But the evidence, such as it was, was that the factory was above the factory on which the accused worked - was on top of the roof and they had exits to the staircases from the roof down to the 9th floor on each side of the plan. There was, so far as I remember, the only evidence about the door leading from the staircase top on to the roof was that it was a swing door. But I don't think there is anything else about that subject whatsoever, but if ... 10

MR. ADDISON: My Lord, I believe, I am sure there was evidence given during the course of the trial that it was competent for any person at any time to go from the stairway from the street to any part of the building.

COURT: Well, that is common knowledge. Surely this is a common stairway connected to the different doorways?

FOREMAN: The jury would like to know: Is this the only factory? 20

COURT: That is not given in evidence. I can't answer it. But it is a factory on the roof and it is a factory adjoining to the factory below it by the staircase and lift provided on the floor beneath, the 9th floor, and went down.

FOREMAN: My Lord, we would like to see the factory.

COURT: You would like to see the factory? Well, what arrangements can be made for that?

MR. ADDISON: Perhaps I might have a word with my officer. My Lord, the Inspector informs me that he could arrange police transport for this afternoon and that the jury could travel perhaps in a police vehicle; so that they can be kept together. 30

COURT: Yes, they must be kept together. So you have to go together in that police vehicle. And it would be necessary of course -- should the Court go as well?

MR. ADDISON: If you think it necessary.

COURT: Yes, you will be put in charge of the jury. I don't think that the Court should go. What do you think, Mr. Swaine? I have never met this situation before.

Proceedings re
Question by
Jury prior to
Verdict
(contd.)

MR. SWAINE: In another case (inaudible).

COURT: But not after, surely, the summing-up?

11th August,
1965

MR. SWAINE: Not after summing-up.

10 COURT: You see, the difficulty is, gentlemen, that you have to decide on the evidence that you have heard already. And if you go the place, there is no - I mean, I am not suggesting but it is quite possible that it isn't now as it was then. I don't think it would be proper perhaps for you to go because it might be that there have been alterations there. So I think that probably it would not be correct for you to go there at this stage. It would have been correct if you had gone during the course of the case - if you had thought that it was necessary - but not after I have summed up to
20 you and you are considering your verdict, practically behind locked doors. Now, is there anything else on which I can help you out?

FOREMAN: Excuse me, would it be in order, my Lord, for us to inform the Court the reason why we want to see the factory or why we requested to see the factory? Is it in order for us to let you know?

30 COURT: Only if I can assist you from what has gone before in this case; otherwise not. And I might perhaps say that you will remember that the accused said that he knew where the light-well, which was referred to during this case, was. That might indicate to you that the factory was at that side, partially anyway, on the roof.

FOREMAN: I think that will be sufficient, my Lord.

COURT: Well, will you please retire then.

(Jury retires at 12.25 p.m.)

In the
Supreme Court

No. 26

Verdict and
Sentence

11th August,
1965

No. 26

Verdict and Sentence

11th August, 1965

10.00 a.m. Court resumes.

Accused present. Appearances as before. Jurors answer to their names.

10.02 a.m. Court sums up to the Jury.

10.41 a.m. Court adjourns pending deliberation of the Jury.

12.16 p.m. Court resumes.

10

Accused present. Appearances as before. Jurors answer to their names.

12.17 p.m. Jury seeks clarification. Court gives further directions to the Jury.

12.25 p.m. Court again adjourns pending deliberation of the Jury.

3.05 Court resumes.

Accused present. Appearances as before. Jurors answer to their names.

CLERK: Mr. Foreman, will you please stand up? I am going to ask you to return your verdict. Now, on the count of murder against the accused, CHAN Wai-keung, have you come to a decision? 20

FOREMAN: We have.

CLERK: How say you, do you find him guilty or not guilty?

FOREMAN: Guilty.

COURT: Have you anything to say?

MR. SWAINE: There is nothing much I can say, my Lord.

30

In the
Supreme Court

No.26

Verdict and
Sentence
(contd.)

11th August,
1965

MR. ADDISON: I have nothing to say, my Lord.

COURT: Tell the accused to stand up. The sentence of the Court is by death in the manner authorised by law.

It remains for me to thank you, gentlemen, for the very patient way you have considered this case.

3.08 Court rises.

No.27

In the Supreme
Court
(Appellate
Jurisdiction)

No.27

Application for
Leave to Appeal

12th August,
1965

10

THE CRIMINAL PROCEDURE ORDINANCE
(Cap.221 of the Revised Edition)

FORM VII

Notice of Application for Leave to Appeal
against a Conviction under Section 82(1)(b)

TO THE REGISTRAR, COURTS OF JUSTICE, HONG KONG.

I, CHAN Wai Keung, Prisoner No. 13642 having been convicted of the offence of Murder and being now a prisoner in the H.M. Prison at Stanley (or *now living at) and being desirous of appealing against my said conviction do hereby give you Notice that I hereby apply to the Full Court for leave to appeal against my said conviction on the grounds hereinafter set forth.

(Here state the offence, e.g. larceny, murder, forgery, etc.)

(*Where appellant for any reason not in custody.

20

(Signed) CHAN Wai Keung (in Chinese)
(or Mark) (CHAN Wai Keung)
Appellant.

Signature and address of
Witness attesting Mark.

30

(Sd.) D. Hampton.
Ag. Supt. of Prisons.

Dated this 12th day of August, 1965.

In the Supreme Court (Appellate Jurisdiction)

PARTICULARS OF TRIAL AND CONVICTION

(Fill in all these particulars)

No.27

- 1. Date of Trial 11th August, 1965
2. Sentence Death

Application for Leave to Appeal (contd.)

Grounds for Application

(Here state as clearly and concisely as possible the grounds on which you desire to appeal against your conviction)

12th August, 1965

That I was falsely accused and wrongly convicted.

You are required to answer the following questions:-

Yes (was a factory worker)

1. If you desire to apply to the Full Court to assign you legal aid on your appeal, state your position in life, amount of wages or salary, etc., and any other facts which you submit show reason for legal aid being assigned to you. 10

No

2. If you desire to be present when the Full Court considers your present application for leave to appeal, state the grounds on which you submit that the Full Court should give you leave to be present thereat.

Everything will be in the hands of my solicitor

3. The Full Court, if you desire it, consider your case and argument if put into writing by you or on your behalf, instead of your case and argument being presented orally. If you desire to present your case and argument in writing set out here as fully as you think right your case and argument in support of your appeal. 20

Yes

State if you desire to be present at the final hearing of your appeal.

No. 28

Additional Grounds of Appeal

IN THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 386 of 1965

In the Supreme
Court
(Appellate
Jurisdiction)

No.28

Additional
Grounds of
Appeal

3rd September,
1965

BETWEEN

Chan Wai-Keung Appellant

and

The Queen Respondent

10

ADDITIONAL GROUNDS OF APPEAL

1. The Appellant was prejudiced in his trial by the statement on oath of the prosecution witness, Chan Pui, during the trial of the action that he had said to the Appellant that he, the Appellant, had embezzled one hundred odd dollars, and by the refusal of the learned trial Judge to order a new trial upon application made to him by the counsel for the Appellant.

20

2. The learned trial Judge misdirected the jury, alternatively did not adequately direct the jury on the burden of proof of the voluntary nature of the statements allegedly made by the Appellant to the police.

Dated the 3rd day of September, 1965.

(Sd.) J. J. Swaine
Counsel for the Appellant.

In the Supreme
Court
(Appellate
Jurisdiction)

No.29

Judgment,
Rigby, J. and
Macfee, A.J.

8th October,
1965

No.29

Judgment, Rigby, J. and Macfee, A.J.

IN THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 386 of 1965

BETWEEN

CHAN WAI KEUNG

Appellant

and

THE QUEEN

Respondent

J U D G M E N T

10

On the 11th of August the appellant was convicted of murder and sentenced to death. Against that conviction and sentence he appealed to this Court.

Before dealing with the single ground of appeal advanced by Mr. Swaine, counsel for the appellant, it will be convenient to refer briefly to the facts of the case.

The deceased was a male Chinese about sixty years of age. He was employed as a watchman by Bonnie Hair Products Factory, which carried on its business on the 9th floor of the On Lok Mansions, Kowloon. The watchman slept in one of the work-rooms on the factory's premises. The 9th floor was, in fact, the top floor of the building. There was a lift service operating up to the 9th floor, and from there one would walk up a short flight of stairs to the roof of the building. A number of business concerns and organisations carried on their activities on the roof.

On the night of the 11th of May, several of the employees of Bonnie Hair Products Factory were working late on the premises. They were let out by the deceased at about 11 p.m. and, as usual, he was heard to lock the door from the inside after the last worker had left. The following morning when some of the employees arrived at the factory they were unable to get admission. The door was forced open and the deceased was found lying on a camp bed in the working room he normally used during the night. He was dead:

there were a number of serious injuries on his face. Death was due to shock and haemorrhage. The subsequent post mortem disclosed that the hyoid bone of the neck was also fractured. The police were called. A search of the premises revealed that a ratchet had been broken off a window of an internal office: the drawers of the desk inside the office were open; the centre drawer had itself been forced, and there were signs generally indicative of the premises having been broken into and searched for valuables.

In the Supreme Court
(Appellate Jurisdiction)

No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

The shirt of the deceased was found soaking in a bucket of water in another room. The pay envelope of the deceased was found lying empty on the floor of the room in which the body was found. In that same room a piece of iron piping - used for stirring the hair in the process of dyeing - was found leaning against the wall of the internal office. Finally, a pane of glass was found to be missing from the external window of one of the rooms of the premises. This window looked on to a light-well stretching the whole height of the building. There was a bamboo scaffolding up the light-well, extending from the ground to the roof. The evidence established that this pane of glass had been missing for some time past. From the roof - which was only one storey higher than the factory premises - anyone looking down the light-well could see that a window pane of these premises was missing. It would not have been too difficult for any determined and adventurous person to climb down from the roof, by means of the scaffolding, and effect entry into these premises through this window.

8th October,
1965

Police enquiries were extensive. Amongst the large number of persons interviewed was a man named Chan Pui who was, in fact, the operator of the lift going from the ground to the 9th floor.

Chan Pui was a friend or acquaintance of the appellant and it would appear that he had been responsible for obtaining employment for the appellant with an electric bulb factory, which carried on its business on the roof of these very premises. The appellant had been employed by that factory for a period of some three weeks. On the morning of the 11th of May, the appellant left his employment and, at the time of so doing, left his suitcase containing his belongings with Chan Pui. On the 21st of

In the Supreme
Court
(Appellate
Jurisdiction)

No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

May, the appellant returned and tried unsuccessfully to borrow some money from Chan Pui.

On the 25th of May, Chan Pui again met the appellant by chance at the premises of a friend. In the course of conversation, Chan Pui disclosed that the police were still making enquiries about the murder that had taken place on the premises of the Bonnie Hair Products Factory, and had taken statements from him. According to Chan Pui the appellant appeared to be worried about this, and he again said that he wanted to borrow money to go to the Mainland or to Macao. 10

During the period of time they were together the appellant asked Chan Pui to meet him at a named coffee house. Chan Pui was to go there with another person whom he was to ask for money: the appellant would be sitting at another table: if Chan Pui was successful in obtaining a loan, he was to hand it over to the appellant. The meeting took place, but the request for the loan was unsuccessful. Chan Pui informed the appellant and they left the coffee house together. After they had gone for some distance, the appellant asked Chan Pui to meet him again at 8.15 that evening and then left him. The arrangement was that they should in fact meet at the same place in the street where they had just separated. Chan Pui then informed the police of what had transpired. The rendezvous was kept. Later the police arrived and the appellant was taken back to the police station. There, he was asked to account for his movements on the night of the 11th of May. 20 30

During the course of his statement the appellant named four persons whom he had seen, or with whom he had been, at different times on the evening of the 11th May. The four persons were sent for and brought to the police station. Each one of them denied the story of the appellant. According to the case for the prosecution, the appellant then said: "You need not ask me too many questions; I am quite bored, I'll tell you about the real facts of the incidents that night concerning the watchman of the Bonnie Hair Factory at the On Lok Factory Building". He was then cautioned and he wrote down a statement in his own handwriting, in the presence of two police officers. The statement reads as follows: 40

"I, on the night of the 12th May, at about 2 o'clock midnight, at the roof-top of the On Lok Factory Building, climbed down to the 9th floor from a bamboo scaffolding, entered the Bonnie Hair Products Factory through a window. (I) first took an iron fork (and then) entered the office with intent to force open the drawer/s. After having been discovered by the watchman, I pushed the watchman out. He tried to take a wooden (illegible) to hit me. (He) was pushed down to the canvas bed by me. I first (of all) hit him with fist. (He) already fainted. Later he called out, 'Save Life'. After that, I took up a piece of water pipe (and) hit him. He fainted. After that, I took a suit of clothing from him, (and) went into the dyeing room where I made a search and took away (illegible) a dollar and a half and a bundle of keys, and placed the suit of clothing into a basin of water. After that, I cleaned the piece of iron with water, (and) placed (it) in the office by the side of the wall. After that (I) climbed out through the window, and up the bamboo scaffolding to the roof-top. The iron fork for forcing open the drawer/s (illegible) fell down to a stone pillar in the bamboo scaffolding. From the roof-top, I escaped via a staircase. After that, (I) threw away the keys. I did not intend to kill him. (I) wish the judge would pardon me."

In the Supreme Court
(Appellate Jurisdiction)

—————
No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

After the statement had been recorded the police constables reported the matter to a Police Inspector Lau at the police station. Police Inspector Lau entered the room in which the appellant was and again cautioned him and showed him the piece of iron piping which had been found at the scene of the crime. The appellant then said that this was the piece of iron piping he had used to hit the watchman. Early the following morning, the appellant was formally charged with the murder of the watchman, Leung Pui-chuen. After being charged the usual caution was administered to him. He then wrote the following statement in his own handwriting.

"I did kill some one, It was my (intention) to go into the factory to steal. I had no intention of killing him. Because he hit me, first, I through a mistake of the hand hit and killed him. He had done nothing else disadvantageous to me. (It) was Chan Wai Keung (who) killed some one."

In the Supreme
Court
(Appellate
Jurisdiction)

—————
No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

The statement was then signed by him. It was, and is, manifest that the case for the prosecution depended entirely upon the admissibility of the appellant's own statements. The appellant denied that they were free and voluntary and alleged that they had been obtained from him by inducement, duress and actual ill-treatment.

As regards the first two statements, he said that they had, in fact, been dictated to him by police officers as to what he was to write down. The contention was that as a result of their lengthy investigations and enquiries into the matters the police had themselves reconstructed their own theory or version as to how and why the watchman had been killed and had put their version of the events into the statement which the appellant wrote down at their dictation. As to the third and final statement, he said that he had earlier been told, under threat of further ill-treatment if he did not comply, that when formally charged he was to repeat the statement that had earlier been dictated to him and which he had written down.

10

20

The jury, after a retirement of four hours and twenty minutes, returned the verdict of guilty of murder.

So much for the facts. Now during the evidence of the witness Chan Pui, in answer to a question put to him by Crown Counsel as to whether he had seen the appellant after the 9th of May, the witness gave the gratuitous and totally irrelevant answer "I said to him that you have embezzled a hundred odd dollars". That answer was given in Cantonese and, although not interpreted into the English language, was probably heard and understood by the four Chinese members of the jury. We do not think reliance can be placed on the fact that the statement was not in the language of the court and, of course, in his summing-up the judge himself expressed the answer in English.

30

Mr. Swaine, counsel for the prisoner, at once drew the attention of the judge to the matter and asked for the jury to withdraw. The following morning Mr. Swaine, in the absence of the jury and having had an opportunity to consider the implications of the matter, asked that the jury be discharged and a new trial ordered. The learned trial judge, having heard the submissions of counsel, ruled that it was

40

unnecessary to discharge the jury and continued with the trial. However, at the commencement of the summing-up, he said this to the jury:

"During the beginning of this case, a witness called Chan Pui said something in Chinese in the witness-box and counsel for the defence stopped him at once and it was never translated; so it is not part of the evidence in this case. It was an allegation of dishonesty or embezzlement against the accused. He said that he (Chan Pui) had accused the accused of embezzling a hundred dollars or so. I want you totally to ignore that if you heard it at all, because it is no part of this case. As far as this case is concerned the accused is a man of unblemished character."

We think it right to say that all the members of this Court, faced with a similar position to that of the trial judge, would have taken the same course as he did and continued with the trial. The question is, however, whether that was the proper course and whether the learned judge should have acceded to counsel's application by discharging the jury and ordering a new trial.

We accept that there are two elements which must be present before a new trial is ordered:

- (1) there must be a statement with regard to the accused's record or some similar statement as to his character inadvertently made from the witness box;
- (2) the statement must be such as might fairly be said to prejudice the accused.

It is not necessary that an application for a new trial should have been made by counsel for the accused at the trial although the absence of any such application may well be an indication there was no manifest prejudice: Stirland v. D.P.P.⁽¹⁾ If the accused is not professionally represented it is the duty of the judge to inform him of his right: The King v. Featherstone⁽²⁾.

(1) (1944) 2 All E.R.13.
 (2) (1942) 28 Cr. App. R. 176

In the Supreme Court
 (Appellate Jurisdiction)

No.29

Judgment,
 Rigby, J. and
 Macfee, A.J.
 (contd.)

8th October,
 1965

In the Supreme
Court
(Appellate
Jurisdiction)

No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

The reason for discharging the jury and ordering a new trial where a statement injurious to the accused and inadmissible in evidence is made is expressed by Lord Hewart, L.C.J., in the case of R. v. Firth (3) in the course of which he said:

"It is a very difficult matter always to arrive, with certainty, at what effect a particular incident may have on the minds of the jury, and it is important to remember that the jury is not one person, but 12 persons. It might be a profoundly difficult matter to arrive with real certainty at the effect of such an incident on the mind of each of the 12 persons in the jury box. Ought a person to be called upon to take that risk?"

10

Mr. Swaine, who has urged everything that could be said on behalf of the appellant, contended before us, as indeed he had done before the trial court, that the chance remark of Chan Pui was particularly prejudicial to the appellant in this case since it was an imputation on the honesty of the appellant in a case in which his honesty was at stake - and contention of the Crown being that he had broken into these premises in furtherance of theft. The statement, Mr. Swaine argued, on its face value and uncontradicted, signified that the appellant was a dishonest person and implied that he was in need of money. Finally, Mr. Swaine laid stress on the fact that it had apparently taken the jury 4 hours and 20 minutes to make up their minds as to the guilt of the appellant, and he suggested that it might well have been that final allegation of dishonesty, uppermost in the mind of one or more of the jurors and accepted and given undue weight by the remainder, that finally tipped the scales against the appellant. Such a suggestion must, of necessity, be pure speculation since we are not permitted to know what matters weighed with the jury in arriving at their verdict.

20

30

40

In support of his able argument, Mr. Swaine referred us to a number of authorities which, in general, support the proposition we have stated. But, as Lord Parker, L.C.J., pointed out in the case of R. v. Dickerson and Cavill (4), it is abundantly

(3) (1938) 3 All. E.R. 783 at 685.
(4) (1964) C.L.R. 821.

clear that in each case the decision whether or not to discharge the jury must depend on its own facts and, in particular, the degree of prejudice likely to occur from a chance remark. In this case we find ourselves quite unable to accept the submission that the random and irrelevant observation made by Chan Pui that he had told the appellant that he (the appellant) had embezzled a hundred odd dollars was in any way liable to prejudice, or did prejudice, the fair trial of the appellant on the charge of murder.

10

There is no suggestion as to how, when, where, or why the "embezzlement" took place or from whom. It is not as though it was a formal accusation made by a police officer. At its worst it was a vague and unspecified accusation made against the appellant by a so-called friend.

It is, of course, always a difficult decision for a trial judge to make as to whether, a chance observation of this kind having been made, the better course is to make no reference whatsoever to it and hope the jury will have completely discounted or forgotten it or, alternatively, specifically to refer to it in the summing-up and tell the jury to disregard it.

20

In this case the learned judge, in the exercise of his discretion, took the latter course. We are quite unable to say that such a course was wrong and that the appellant was, or might fairly and reasonably have been said to be, prejudiced by it. This ground of appeal must accordingly be dismissed.

30

That would have been the end of the matter were it not for the fact that this Court, of its own motion, drew attention to certain passages in the summing-up of the learned judge and invited counsel to address the Court as to whether those passages contained a sufficient and proper direction to the jury on the vital issue as to whether they satisfied that the self-implicatory statements made by the appellant were not only true but were also made freely and voluntarily.

40

On the general onus of proof the learned judge, at page 2 of the transcript of his summing-up, very properly directed the jury in the following terms:

In the Supreme Court
(Appellate Jurisdiction)

No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

In the Supreme
Court
(Appellate
Jurisdiction)

No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

"The burden of proof in criminal cases always lies on the Crown. It is not for the accused to excuse his conduct. It is not for the accused to satisfy you that he did not do this. It is for the Crown to prove to you that the accused is guilty and unless the Crown satisfied you beyond all reasonable doubt that he has committed this murder, you are to acquit him."

After having dealt generally with the evidence as to the events leading up to the time the appellant was brought to the police station, the judge then went on to say, at page 5 of the transcript of his summing-up: 10

"Now, what happened at the police station is vital to the case for the prosecution. Two completely different accounts have been given and it is for you, gentlemen, to decide which to believe or whether you believe partly one and partly the other. I am here only dealing with the Crown's case to begin with; I will deal with the case for the defence later." 20

The criticism is made by Mr. Swaine that, taking that passage as it stands, no direction is given to the jury as to what course they should take if they were left in doubt as to which of the two different accounts they should believe. Mr. Swaine submits - and, of course, rightly submits - that if they were left in doubt as to which of the two courses they believed, they should resolve - and they should have been directed to resolve - that doubt in favour of the appellant. But later on in the course of the summing-up the learned judge, at pages 8-9, having dealt with the case for the Crown, said this: 30

"Now, that is the Crown's case. It depends upon, gentlemen, on the two confessions or one or each of the two confessions. If you have any doubts about those confessions you must acquit. Now the weight and value of those confessions and evidence is in your hands. It is for you to put such weight and to give such value to those confessions as you think proper. If you reach the conclusion that the confessions were obtained by threats or inducements, you will give them no weight at all. There are two 40

10 confessions; each must be separately considered. If you think that both were obtained by duress or inducements then you must acquit, because there is insufficient evidence without those confessions or one of them, if you do not consider that they are voluntary. If you consider that one of the confessions, either one of them, was obtained by duress or inducement then you must put it totally from your mind when considering this case."

As to that passage Mr. Swaine makes two complaints. The learned judge has told the jury: "If you have any doubts about those confessions you must acquit." But, says Mr. Swaine, doubt about what?: Doubt about the truth of the confession?: Or doubt as to the voluntary nature of the confession?

The judge then went on to say:

20 "If you reach the conclusion that the confession were obtained by threats or inducements, you will give them no weight at all ... If you think that both were obtained by duress or inducements then you must acquit ...

30 Mr. Swaine complains that giving those words their ordinary and natural meaning the effect was to indicate to the jury that they should disregard the confessions if they came to the conclusion that they were obtained by threats or inducements. But here again, says Mr. Swaine, what was to be the position if the jury were left in doubt as to whether the confessions were free or voluntary? Mr. Swaine complains that the direction is defective in a vital respect in that the jury should have been told that if they had any reasonable doubt on this matter they should wholly disregard the confessions because the onus was affirmatively upon the prosecution to show that they were made freely and voluntarily.

40 Again, at a later stage, when dealing with the evidence of the voluntariness or otherwise of the confessions the judge said this:

"I am going to read you now the notes I took down of what he (the accused) gave in evidence

In the Supreme Court
(Appellate Jurisdiction)

No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

In the Supreme
Court
(Appellate
Jurisdiction)

No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

after that, because this is fundamental to this case. It is completely different from the accounts given by the police and it is for you, gentlemen, to make up your mind which story is the truth."

Again, Mr. Swaine complains that was a wrong direction. It was not simply a question for the jury to make up their minds on this vital issue as to which of the two stories they believed: they should have been further directed that if they were left in doubt as to which of the two versions they believed they should disregard the statements because the onus was on the prosecution to show that they were free and voluntary. 10

Again, towards the conclusion of his summing-up the learned judge, at page 13, said this:

"But it is for you to decide, as I have already said, the weight and the value, if you think of these two statements separately. If you think that either of them were induced by threats and inducements, you must put that right out of your mind when considering this case." 20

As to that passage Mr. Swaine makes the same criticism, namely, that the jury were only told to disregard the statements if they thought that they had been induced by threats or inducements without being further told that if they were left in any reasonable doubt on this matter they should disregard the statements.

Finally, the judge said: 30

"If you reach the conclusion, however, that it was the accused who struck the deceased with that iron pipe and that he intended to cause him grievous bodily harm, then your verdict will be guilty of murder. But before you come to such a verdict you must weigh the evidence carefully, including those statements, and you must not reach the conclusion that he was the person who did this crime unless you are satisfied beyond all reasonable doubt that the evidence inevitably brings you to that conclusion." 40

As to that passage Mr. Swaine contends that the

general direction therein does not cure the vital defect that the jury should have been told that they should entirely disregard the statements unless they were first satisfied beyond reasonable doubt that they were freely and voluntarily made. So much for the directions given by the learned judge.

In the Supreme Court
(Appellate Jurisdiction)

No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

10 It is an elementary and well-established principle of law that a statement by an accused person is inadmissible in evidence unless it is affirmatively established by the prosecution that it was freely and voluntarily made and not made as a consequence of any improper duress or any unfair inducement or persuasion. When objection is taken to production of a statement on any of these grounds, it is the duty of the judge to hear evidence, in the absence of the jury, and to rule whether the state-
20 ment is admissible in evidence for the consideration of the jury. It is then for the jury, after they have heard all the evidence, and upon a proper direction from the judge, to consider not only whether they were satisfied that the contents of the statement are true but also to consider whether they are satisfied that it was freely and voluntarily made. In the words of the Court of Criminal Appeal in the case of R. v. Bass (3) the jury should be told that

30 "... if they are not satisfied that it was made voluntarily, they should give it no weight at all and disregard it."

40 Now it is beyond dispute that the learned judge directed the jury that if they reached the conclusion that the confessions were obtained by threats or inducements they should give them no weight at all. But there is a vital distinction between directing the jury that "if they are not satisfied" that the confessions were voluntarily made they should disregard them, and telling them that if they reached the conclusion they were not voluntarily made they should disregard them. The very essence of the complaint made against the various passages in the summing-up to which we have referred is that the jury may very well have been left with the overall impression that unless they were satisfied that the confessions were improperly obtained they were entitled to consider them or, in other words, that the burden was on the defence

In the Supreme
Court
(Appellate
Jurisdiction)

No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1955

to prove that the confessions were obtained by improper or unfair means.

In the case of R. v. Sartori, Gavin & Phillips (4), it would appear that Edmund Davies, J., on objection being taken to the admissibility of two out of three statements made to the police as not being voluntary, ruled that the burden of proof on the prosecution to satisfy the judge that statements were voluntary was the same as that on the prosecution to satisfy the jury of the guilt of the accused, that is to say, proof beyond reasonable doubt. One may venture, with respect, to express the view that it would have been surprising if the learned judge had come to any other conclusion. But the decision, in itself, is of little or no assistance in considering what degree of proof is necessary, the judge having initially ruled the statements as admissible, to satisfy the jury that the statements were free and voluntary. A case of very much greater assistance is that of R. v. Parkinson (5) referred to in 1964 Criminal Law Review, page 398. In that case the prisoner was charged with three offences of dishonesty. The evidence against him consisted of a written statement made by him after caution. Objection was taken to the production of the statement on the grounds that it was not free and voluntary. After hearing evidence in the absence of the jury, the learned judge ruled that the statement had been voluntarily made and was accordingly admissible in evidence. Upon the resumption of the trial in the presence of the jury, counsel for the defence again cross-examined the police officers - as he was clearly entitled to do - with the object of showing that the statement was not in fact voluntary. The trial judge directed the jury in these terms:

"Whether that statement is admissible was what the court was considering as a matter of law when you retired and the court, having heard the evidence about that, came to the conclusion that it was a voluntary statement and admissible and the only reason you can reject it now is if you think it is untrue."

(3) (1953) 1 Q.B.D. 680 at 684.

(4) (1961) Criminal Law Review at 397

(5) The Times 21st February, 1964.

The Court of Criminal Appeal held that that direction was clearly wrong: and that it was still for the jury to decide not simply whether the statement was true but also whether the statement was voluntary. If they found that it was not voluntary they were to disregard it.

In the Supreme Court
(Appellate Jurisdiction)

No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

10 We would again reiterate that in the present appeal now before this Court there can be no doubt that the trial judge did direct the jury that if they reached the conclusion that the confessions were not voluntary they should disregard them. But for the purposes of this appeal the vital part of the decision in Parkinson's case (5) is in the ruling of the appellate court: that it is for the jury to decide on the evidence before it whether a statement is voluntary, bearing in mind that the burden of proof is on the prosecution throughout. In accordance with the established principles of criminal law we can only interpret those words to be "burden of proof beyond reasonable doubt" and that it is not sufficient simply to direct the jury in the terms used by the learned judge in the present case that if they had reached the conclusion that the confessions were obtained by threats or inducements they must disregard them, but that the judge should have directed them in terms similar to those indicated in Bass's case (3), namely that if they were not satisfied that they were voluntarily made they should give them no weight at all and disregard them. The distinction between the expressions used lies, of course, in clearly indicating to the jury that the burden of proof lies upon the prosecution to establish that the statements were freely and voluntarily made.

20

30

40 The decision in Parkinson's case (5) as to the burden of proof upon the prosecution to satisfy the jury, as distinct from the judge, beyond reasonable doubt that a confession tendered in evidence was free and voluntary, is further fortified by the case of R. v. Fudge (6). That, again, was a case largely dependent upon the admissibility in evidence of a written confession the voluntariness of which was disputed by the accused. In quashing the conviction the Court of Criminal Appeal stated, in terms, that it was the duty of the trial court to tell the jury

(5) The Times, 21st February, 1964.

(6) The Times, 3rd November, 1964.

In the Supreme
Court
(Appellate
Jurisdiction)

No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

that it was binding on the prosecution to satisfy them so that they felt sure that there was no such inducement. The jury were not given a clear direction on this point, nor was it conveyed to them that, even if satisfied that the statement was true, it was inadmissible if obtained by inducement.

The appeal was accordingly allowed and the conviction quashed.

Assuming that that case is correctly reported the decision must surely put beyond doubt that it is the view of the Court of Criminal Appeal in England that the degree of proof required to satisfy a jury that a statement made by an accused person was free and voluntary is proof beyond reasonable doubt. (See also the case of R. v. Ward. (7). 10

The authorities to which we have referred are undoubtedly cases in which the circumstances are readily distinguishable from the facts in the present case in that they were cases in which the trial judge had either withdrawn the issue of voluntariness of the confession from the jury on the ground that he himself already ruled on that issue or, alternatively, cases in which the trial judge had failed to direct the jury at all that they must be satisfied that the confession was voluntary before they gave any consideration to it. 20

No such criticism can be made of the judge in the present case; the only criticism that can be made is that the judge did not go far enough in the course of his direction to the jury in that he failed adequately to make it clear to the jury that the burden of proof in establishing that the confessions were voluntary was upon the prosecution and if they were left in doubt on that score they should disregard them and attach no weight to them. 30

The decisions of the Court of Criminal Appeal that for the purposes of the jury the degree of proof required as to the voluntary nature of a confession is proof beyond reasonable doubt have been the subject of considerable criticism in the courts of Australia and, indeed, by some of the writers of textbooks. The grounds of criticism are 40

(7) The Times, 18th November, 1964.

that it is the duty of the judge, as a matter of law, to rule whether or not a confession tendered is admissible in evidence. The test for such admissibility is whether it was free and voluntary; if it was, it is admissible; if it was not, it is inadmissible. It is argued that once a judge has discharged his responsibility of ruling, as a matter of law, that the statement is admissible in evidence, then the statement is effectively before the jury and their sole duty is to consider whether or not they are satisfied that the contents of the statement are true. We can see little value in this argument. As a matter of both logic and law it is no doubt true that it is the duty of the judge to rule whether or not a statement is admissible in evidence, and if he decides in the affirmative the statement is then before the jury for their consideration. But the decision of the judge is, in effect, only tantamount to a preliminary ruling, allowing the statement to go before the jury for their consideration. It must surely be the ultimate responsibility of the jury, as the final arbiters on all issues of fact relevant to a criminal charge, to decide whether the statement was in fact voluntarily made and, if so, then to decide whether the contents are true. On both these issues of fact, in accordance with well recognised principles, the jury must be satisfied beyond reasonable doubt. By way of analogy, the position seems to us not dissimilar to that of judge and jury in an action for libel or slander. It is for the judge to rule whether the words written or spoken are capable of having a defamatory meaning; it is for the jury to decide whether they do in fact have a defamatory meaning. The preliminary ruling of the judge (it may well, of course, be a final ruling in the sense that it may put an end to the case) is described as a ruling of law. But it is surely a preliminary legal ruling on a question of fact; the ultimate decision still resting with the jury as judges of fact as to whether the words are defamatory. In the same way, in our view, the ultimate decision must still rest with the jury, as judges of fact, as to whether the confession was free and voluntary and if they are not so satisfied - and satisfied within the meaning normally attributed to that word in the context of the criminal law - they should give it no weight at all and disregard it. Some support for this analogy may be drawn from Cleary's case.(8) (1963) 48 C.A.R.116.

In the Supreme
Court
(Appellate
Jurisdiction)

—————
No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

In the Supreme
Court
(Appellate
Jurisdiction)

—
No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

Turning now to the case before this Court, with great reluctance the Court has come to the conclusion that the learned judge, in the course of a careful, lengthy and otherwise unexceptionable summing-up, has failed adequately to direct the jury that the burden was on the prosecution to satisfy them beyond reasonable doubt that the confessions were freely and voluntarily made, and if they had any doubt on that matter they should disregard the contents of the statements and attach no weight to them. In this case the jury retired for 4 hours and 20 minutes before they returned to give their verdict. It is clear that the only real evidence against the appellant consisted of the statements. In the absence of those statements there was really no evidence upon which he could have been charged with this offence, let alone convicted. It is impossible to conjecture what was in the minds of the jury which caused them to take such a length of time in arriving at their verdict. But it may well be that if they had been sufficiently directed as to the position if they were left in any reasonable doubt as the voluntariness of the statements made by the appellant, they might have come to a different conclusion. 10 20

If it had been open to us now to do so the Court would have thought it right to allow this appeal. The Court is, however, placed in a position of grave embarrassment and difficulty. When the point was first taken by the Court as to whether or not the directions of the learned judge to the jury were adequate this Court, after having heard the arguments of counsel, dismissed the appeal, stating that we would give our reasons for so doing at a later stage. During the course of our subsequent deliberations members of the Court came to consider a number of authorities which, in the view of the Court, put a different aspect on the matter and which, most unfortunately, had not been cited to us by counsel appearing before us. In these circumstances we thought it proper to inform counsel that we would be glad to hear further argument. Upon the resumed hearing Crown Counsel, whilst most ably addressing us upon the further issue raised, reserved the right to take the point that this Court had in fact delivered judgment dismissing this appeal and was, accordingly, functus officio. During the hearing of the further argument as to whether we had power to alter the oral pronouncement and decision given in open court dismissing the appeal, we were referred 30 40

to several authorities dealing with the powers of a court, both in civil matters and as regards sentence in criminal matters, to alter a decision once given. Those cases, although of interest, are of little relevance or assistance when considering the authority of a court in a criminal matter to alter its judgment, as distinct from altering its sentence, once that decision or judgment has been pronounced in open court. As regards this latter proposition, with one exception, such authorities as have been cited to us deal only with the position as to whether a magistrate's court has power to alter its judgment once it has been pronounced. Whilst it may at one time have been open to argument that a conviction was not effective as a final and decisive order until it had been formally drawn up (see Jones v. Williams (9) and Warne v. Martin (10) the cases of R. v. Essex Justices ex parte Final (11) and R. v. Campbell ex parte Hoy (12) would appear to leave no doubt that an order of conviction (or acquittal) is final once it has been pronounced from the Bench and can thereafter only be altered by a superior court. Whilst it is, of course, only of persuasive authority, our attention was drawn to the Indian case of Pragmadho Singh v. Imp. (13). In that case a judge of the High Court of Allahabad pronounced sentence in open court upon a number of criminal appeals. He died before he had initialled the fair copies of these judgments. The Criminal Procedure Code of Allahabad required that the judgment should be certified to the court below. However, notwithstanding that express provision the appellate court held that the judgments were valid and complete.

Mr. Swaine, for the appellant, contended that the oral pronouncement of the decision in this court was not perfected until the reasons for its decision were given. Attractive though that argument may be - particularly to this court in its present predicament - we are satisfied that it is unsound. Whilst it is obviously desirable that a court should give reasons for its decision there is no legal requirement affecting the Full Court that

In the Supreme
Court
(Appellate
Jurisdiction)

No.29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

- (9) (1877) 41 J.P. 614.
(10) (1954) C.L.R. 936.
(11) The Times 8th November, 1962.
(12) (1953) 1 All E.R. 684.
(13) (1933) A.I.R. (All.) 40.

In the Supreme Court
(Appellate Jurisdiction)

No. 29

Judgment,
Rigby, J. and
Macfee, A.J.
(contd.)

8th October,
1965

a judgment must be signed before it is perfected, nor that this court should give reasons for its decision.

It is of interest to observe that in the case of Joyce v. D.P.P. (14) the House of Lords dismissed an appeal against conviction on a capital charge indicating that they would give their reasons at a later date. The appellant had in fact been executed before the reasons for the decision were delivered. That case merely reinforces the argument that in a criminal case the oral pronouncement of the court giving its decision is the effective, operative and unalterable order of the court and the grounds for its decision are purely incidental to that order.

10

We are, therefore, firmly and unanimously of the opinion, however unfortunate and regrettable the position may be, that this Court is functus officio, that this appeal stands already dismissed, and that this Court has no jurisdiction to alter that decision. We can only hope and trust that the propriety of the decision of the Court dismissing this appeal may be tested elsewhere.

20

(I.C.C. Rigby)
President.

(K.R. Macfee)
Appeal Judge.

(14) (1946) A.C. 347.

No. 30

Judgment,
Huggins, A.J.

8th October,
1965

No. 30

Judgment, Huggins, A.J.

IN THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 386 of 1965

30

BETWEEN

CHAN Wai-keung

Appellant

and

THE QUEEN

Respondent

J U D G M E N T

It is with reluctance that I find myself

compelled to dissent from the judgment of the other members of the court in so far as it relates to the direction which ought to have been given by the learned judge about the confessions, although I concur with their views upon all the other points raised.

In the Supreme Court
(Appellate Jurisdiction)

No.30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

10 Where an accused person has made an extra-judicial confession it is well established that upon the prosecution's seeking to put the confession in evidence the judge must decide as a matter of law whether it should be admitted. To be strictly accurate I should perhaps say that he must decide both as a matter of law and as a matter of discretion. As a matter of law he must decide first whether the confession is relevant. If it be relevant he still has a discretion to exclude it where the possible prejudice to the accused if it be admitted exceeds its probable probative value. While the probative value of a voluntary confession is normally very high that of an involuntary confession is normally nil. On the other hand the prejudicial effect of an involuntary confession may be enormous and it is for this reason that what I believe started as a discretion to exclude confessions not proved to be voluntary has in the course of time been elevated to the status of a rule of law. Today the real discretion is but a vestige of what it was formerly - a discretion extending only to voluntary confessions. Whether any inducement which may have existed is such as could render the confession involuntary is, of course, a question of law: Reg. v. Cleary (1), a case to which I shall have to revert later. It has not been argued that the confessions in this case were wrongly admitted and I will assume that the burden is on the prosecution to establish to the satisfaction of the judge that a confession is voluntary, the degree of proof required being proof beyond all reasonable doubt. That is in accordance with Reg. v. Sartori (2) and I think there may be grounds for preferring that decision to Reg. v. Donohoe (3), to the obiter dicta in Wendo v. Reg. (4) and to the views of Wigmore in his Treatise on Evidence (3rd Ed.) paras. 860 and

20

30

40

(1) (1964) 48 Cr.App.R. 116.

(2) (1961) Cr. L.R. 397

(3) (1962) N.S.W.R. 1144.

(4) 1963) 109 Cr. L.R. 559.

In the Supreme
Court
(Appellate
Jurisdiction)

—————
No. 30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

1451. This preference would perhaps be more on the ground of practical safety than of logic, bearing in mind that, as Wigmore says at para. 861, "the confession rules" (i.e. the rules as to admissibility) "are artificial, based on average probabilities or possibilities only, and do not attempt to measure the ultimate value of a given confession". The important thing to note for our purposes is that the ruling requires a definite finding of fact: it is not just a matter of ruling that there is prima facie evidence upon which a jury may reasonably find the confession to be voluntary. For that reason I do not think it is truly analogous to a ruling by a judge that words are capable of a defamatory meaning.

10

What is said here is that there was no sufficient direction given to the jury in relation to the statements and the questions we have to decide are (1) what form of direction ought to be given and (2) whether the direction given here was adequate. The argument for the appellant is that the jury must be directed to decide two separate and distinct questions: (a) were the statements voluntary? (b) if they were voluntary, what weight (if any) should be attached to them? As to the first question, it is contended, there must be a clear direction that the prosecution have to prove the voluntariness of the statements beyond all reasonable doubt. The argument for the Crown was that the direction given by the learned judge could have left the jury in no doubt that they must be satisfied beyond all reasonable doubt that the confessions were voluntary. In the course of the argument I asked whether it was necessary to have such a direction and counsel referred to authorities casting doubt upon the matter but I think it is fair to say he based the Crown's case principally upon the sufficiency of the direction in any event. I respectfully agree with the other members of the Court that the direction was insufficient if it was necessary to put two separate and distinct questions to the jury. What in my view needs to be asked is whether the true principle is not that the only issue for the jury was what weight they thought should be given to the statements having regard to all the circumstances (including those surrounding the taking of the statements), it being unnecessary to

20

30

40

direct the jury that they had to be satisfied beyond all reasonable doubt that the statements were voluntary before they have regard to the statements at all.

In the Supreme Court
(Appellate Jurisdiction)

No. 30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

10 There is no doubt that some of the authorities suggest that the jury must be directed to make a definite decision on the issue of voluntariness, but it will be necessary to consider these authorities with some care for there appears to have been no little confusion as to the true functions of judge and jury in the matter. Cross in his book on Evidence (2nd Edition) at p.446 gives a useful note on the suggested rationale of the present law relating to the admission and exclusion of confessions although some (and particularly the last two) of the reasons cited may be of doubtful validity. The important thing, as it seems to me, is to emphasize that whatever the grounds for admitting or excluding a confession questions of admissibility are for the judge and not for the jury. It may be that questions of fact which the judge must decide when considering (as a matter of law or discretion) to admit a confession will have to be answered again by the jury incidentally to their consideration of the weight which they are prepared to attach to the confession, but strictly it is wrong to tell a jury that they may "reject" or "disregard" a confession which has been admitted because it is the duty of the jury to have regard to all the evidence which has been put before them. There is no power in the jury to "reject" a confession as being inadmissible but they may properly "attach no weight to it". While this may sound too nice a point I think it is one which will be worth bearing in mind.

20

30

40 The judgment of Cave, J. in the Reg. v. Thompson(5) is the locus classicus on the admissibility of confessions and that judgment has been cited at length in the course of the argument. Although I have in a case at first instance questioned the applicability of the learned judge's obiter dictum at the end of his judgment to conditions in Hong Kong I have no doubt as to the local application of the ratio decidendi of that case. However, as the case was concerned with admissibility and not with any question as to the direction which ought to be given to a jury it is of no assistance at all in deciding the issue in dispute here.

In the Supreme
Court
(Appellate
Jurisdiction)

No. 30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

I turn then to Reg. v. Bass (6). In that case the Deputy Chairman of Quarter Sessions told the jury that they must be sure that the confession was a genuine confession and that they must decide whether the police had threatened that the prisoner would not be given bail unless he talked, but omitted to tell them in plain words that unless they were satisfied that it had been made voluntarily they should reject it and - in view of the fact that it was the only evidence against the prisoner - acquit him. 10
So far two things may be noticed: first that the confession was the only evidence against the prisoner, as in the case before us, and secondly that the Court of Criminal Appeal spoke of "rejecting" the confession. But there was a further point in that case because the Deputy Chairman referred to the fact that he had already, in ruling on the question of admissibility, considered whether the statement was voluntary and had decided that it was. As to this the Court of Criminal Appeal said: 20

"It is to be observed, as this Court pointed out in Murray, 34 Cr. App. R. 203, 1951 1 K.B. 391, that while it was for the presiding judge to rule whether a statement is admissible, it is for the jury to determine the weight to be given to it, if he admits it; and thus, when a statement has been admitted by the judge, he should direct the jury to apply to their consideration of it the principle as stated by Lord Sumner and he should further tell them 30
that if they are not satisfied that it was made voluntarily, they should give it no weight at all and disregard it."

(The reference to the principle stated by Lord Sumner is of course to Ibrahim v. Reg. (7).) With respect to the Court of Criminal Appeal that seems to be a non sequitur. The principle adumbrated by Lord Sumner was concerned with admissibility and not with the weight to be given to a confession. The jury, on the other hand, are concerned with weight and not 40
with admissibility and the reference to "disregarding" the confession increases the suspicion that the Court confused the functions of judge and jury. This view appears to have been taken by the Supreme Court of

{6} (1953) 1 Q.B. 681; (1954) Cr. App.R.51
{7} (1914) A.C. 599, 609.

Ontario in Reg. v. McAloon (8), the only report of which that we have in Hong Kong being contained in the Canadian Abridgement. MacKay, J.A. is reported as saying:

In the Supreme Court
(Appellate Jurisdiction)

No. 30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

10 "Whether a confession is a voluntary one in the sense laid down by Lord Sumner in the case of Ibrahim v. R. (7) is first a question that goes to the admissibility of the statement as evidence and is determined by the trial judge alone. Once admitted as evidence, the question of its being a voluntary statement, in the sense referred to, is relevant to the weight, if any, to be given to it by the jury, or, to put it another way, the question that the jury must decide is whether the statement is true, not whether it was a

20 voluntary statement. But in coming to a conclusion as to whether they are convinced beyond reasonable doubt that the statement is true, they may and should consider all the circumstances leading up to and surrounding the making of the statement."

In that case the judge had directed the jury in the words: "Even if you think the statement not voluntary, yet, if you think it was true, you may act upon it". The Supreme Court held this was not a misdirection.

30 Reg. v. Fudge (9) is cited as further authority for the proposition that the jury ought to be directed that they must be satisfied beyond all reasonable doubt both as to the voluntariness of the confession and as to its truth. Valuable as the reports in The Times Newspaper often are, this particular report is much condensed and the reasoning upon which the decision is based is not clearly set out. For my part I cannot accept it as an authority. A somewhat similar position arises in connection with the Reg. v. Parkinson (10). The report is authenticated by counsel and is in clear terms but it is not as full a report as one could have wished for. It

40 does appear, however, that the direction of the trial judge was open to the same criticism as that in Reg. v. Bass (6) when he said:

- (8) (1959) O.R. 441. (6) (1953) 1 Q.B. 681.
(9) The Times Newspaper 3.11.64.
(10) (1964) Crim. L.R. 398.

In the Supreme
Court
(Appellate
Jurisdiction)

No.30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

"Whether that statement is admissible was what the Court was considering as a matter of law when you retired and the court having heard the evidence about that came to the conclusion that it was a voluntary statement and admissible and the only reason you can reject it now is if you think it is just untrue."

In the words of the Court in Reg. v. Bass (6) "the jury may well have thought, in view of these observations, that they were being asked to decide a matter which had already been decided by the (judge)". 10
Nevertheless the Court of Criminal Appeal is reported as saying it was for the jury to decide on the evidence before it whether the statement was voluntary, bearing in mind that the burden of proof was on the prosecution. If they found that it was not they must disregard it. If they found that it was, they could go on to consider whether it was true. The report contains only this bare statement of the principle without indicating whether the Court considered the validity of that principle. There is no doubt (as the commentator observes at 1964 Crim. L.R. 399), "that the question of voluntariness of a confession must be reconsidered by the jury after the judge has decided to admit it, seems not to be well established in English Law": but no one suggests that it should not be reconsidered; the question is, to what end must it be reconsidered and what direction is required? The Court of Criminal Appeal doubtless now feels itself bound to follow its 20
previous leaning towards "a second ruling on admissibility" but it is still open to the House of Lords to sweep aside this confusion and until Their Lordships have ruled one way or the other it cannot be said that the matter is settled. Remarkable as it may seem the issue did not come under discussion until very recent years and the rule in Bass's case(6) 30
is not so hallowed by antiquity that it must be left to Parliament to displace it. In the recent past in their desire to ensure a fair trial appellate 40
courts have tended to require ever more meticulous directions to be given until, while the standard of intelligence of jurors has undoubtedly increased, those jurors must often find it difficult (especially where the language of the court is more often than not different from the native language of some if not all of them) to see the wood for the trees - a result which may not always be in favour of the

accused. Where these nice directions are based upon a confusion of the functions of judge and jury it seems to me to be singularly unfortunate.

In the Supreme Court
(Appellate Jurisdiction)

No.30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

10 Chan Kau v. Reg. (11) was referred to for the proposition that in a case of murder the rule that the onus of proof is on the prosecution is of general application and permits of no exceptions. That is the proposition which was laid down in Woolmington v. D.P.P. (12) and it has never been
10 (and could not be) challenged in the present case. Indeed the learned judge clearly directed the jury more than once that the onus of proving the guilt of the appellant was on the prosecution. What is argued is that something more was required, namely that the jury should have been told that if they were in any doubt about the confessions being voluntary they must acquit. Reg. v. Sartori (2), again, was concerned only with the standard of proof on
20 the question of admissibility and is irrelevant. Reg. v. Francis & Murphy (13) was a case where the recorder never gave a ruling upon the admissibility of some confessions but left it to the jury to decide whether the statements were voluntary. Unfortunately he left the matter to them in the form "Do you believe the statements or not?" Assuming that the burden of proving admissibility is on the prosecution and the standard of proof is that of proof beyond all reasonable doubt that was clearly not a sufficient direction for it did not leave open the possibility of
30 doubt and instruct the jury what they should do if they were in doubt. Had there been a proper direction on the onus and standard of proof it may well be that the Court of Criminal Appeal would not have interfered because no harm would have resulted from the omission by the recorder to give a ruling. The case is no authority for the proposition that where a judge has ruled a statement to be admissible the jury must be told to disregard it (even though they are satisfied beyond all reasonable doubt that it
40 is true) if they are not also satisfied beyond all reasonable doubt that it was voluntary.

A case which was not referred to in argument and which is of some relevance is Lau Hoi v. Reg. (14).

(11) (1955) A.C. 206 (12) Vol.25 Cr.App.R.72
(13) (1959) 43 C.A.R. (14) (1948) 32 H.K.L.R.49
(2) (1961) Cr. L.R. 397.

In the Supreme
Court
(Appellate
Jurisdiction)

No. 30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

There also statements were tendered in evidence and without them there was not sufficient evidence to convict. They were objected to on the ground that they had been obtained by improper inducement. With the specific consent of counsel for the accused the learned judge heard evidence on the question of admissibility in the presence of the jury. He held that they were admissible. In his charge to the jury the trial judge said:

"You remember before I permitted these statements to be read to you, certain evidence was called. Before I admitted them, I had to be satisfied that they were made freely and voluntarily, not under duress or not induced by threat or promise by someone in authority. I had to be satisfied that that was so before I permitted it to be read. I was so satisfied and permitted these statements to be put in as voluntary statements made by the various accused Now, when you are considering the statements, if you believe the accused or if you think he may be telling the truth when he tells you the statement he made is not correct as regards his part, then you should find him not guilty because apart from these statements, the evidence, I consider, has not reached the standard which will entitle you to find any accused guilty - far from it. If, however, you think the evidence of any accused is just a pack of lies, then the previous statement made by him stands for your consideration as an admission to be given such weight as you think it deserves having regard to the circumstances in which it was made i.e. the weight or value that you attach to the statements. It depends on you. You are to decide what value you should attach to these statements." 10
20
30

On appeal it was submitted that the jury should have been told that it was open to them to take a different view of the allegations made by the accused and so to give much less weight to the statements. Gould. J. delivering the judgment of the Court distinguished between such cases as those where the judge found there had been an inducement but inducement based on religious grounds only or inducement stemming from a person not in a position of authority and cases where the judge disbelieved the allegations of inducement altogether. He went onto 40

point out that if it were open to the jury to find that the judge had made a wrong finding of fact (so that he should not have admitted the statement) they would be considering exactly the same question as had been before, and decided by, the judge. At p.55 he said:

10 "Surely it is more reasonable that the direction should be that the statement is before the jury as one made voluntarily, and that all questions of weight are for the jury but on that basis - the jury should consider all surrounding circumstances including the standard of intelligence and education of the person making it, the actual contents, to what extent corroboration is provided by other evidence and any other relevant matter but should disregard any allegation that it was not a voluntary statement".

And again at p.56:

20 "If the proper direction in law is that it is open to the jury to take a different view of the evidence upon which the judge has decided that the statements have been voluntarily made, it may be that this was not made sufficiently clear to the jury in the summing-up under consideration. But the Court takes the view that the true principle is that where the judge has heard evidence, either in the presence, or more properly in the absence of
30 the jury, and upon that evidence decided that a statement was voluntarily made in that it was not made as a result or under the influence of ill-treatment or threats, it is not proper for the jury to consider again upon the matter of weight the evidence as to the fact of such ill-treatment or threats, where the only conclusion which the jury could come to which would be favourable to the accused is that the ill-treatment and threats or some part thereof had in fact been established by the
40 evidence, that the statement was not voluntary within the legal principles applicable and that the judge had been wrong in admitting it in evidence."

In the following year the legislature passed an amendment to the Criminal Procedure Ordinance by

In the Supreme Court
(Appellate Jurisdiction)

No.30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

In the Supreme Court
(Appellate Jurisdiction)

No. 30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

inserting what is now s.60. This reads:

"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."

10

It seems probable that the object of this amendment was to nullify the decision in Lau Hoi v. Reg. (14) and it effectively does so. The precise wording may not be without significance for it emphasizes that the evidence relating to the circumstances in which the alleged statement was made is to be admissible "for the purpose of enabling the jury to decide upon the weight (if any) to be given to the statement"; nothing is said about having to decide as a separate question whether the statement was voluntary. However, for my part I am inclined to think in the light of the later cases that Lau Hoi (14) was wrongly decided and that s.60 is merely declaratory of the Common Law, so that undue weight should not be attached to the wording of it in deciding what is the extent of the Common Law.

20

30

The true principle of the Common Law was considered by the High Court of Australia in Basto v. Reg. (15). At p.640 the Court said:

"The jury is not concerned with the admissibility of the evidence: that is for the judge, whose ruling is conclusive upon the jury and who for the purpose of making it must decide both the facts and the law for himself independently of the jury. Once the evidence is admitted the only question for the jury to consider with reference to the evidence so admitted is its probative value or effect. For that purpose it must sometimes be necessary to go over before the jury the same testimony and material as the judge has heard or considered on a voir dire

40

for the purpose of deciding the admissibility of the accused's confessional statements as voluntarily made. The jury's consideration of the probative value of statements attributed to the prisoner must, of course, be independent of any views the judge has formed or expressed in deciding that the statements were voluntary. Moreover the question what probative value should be allowed to the statements made by the prisoner is not the same as the question whether they are voluntary statements nor at all dependent upon the answer to the latter question. A confessional statement may be voluntary and yet to act upon it might be quite unsafe; it may have no probative value. Or such a statement may be involuntary and yet carry with it the greatest assurance of its reliability or truth. That a statement may not be voluntary and yet according to circumstances may be safely acted upon as representing the truth is apparent if the case is considered of a promise of advantage being held out by a person in authority. A statement induced by such a promise is involuntary within the doctrine of the common law but it is plain enough that the inducement is not of such a kind as often will be really liked to result in a prisoner's making an untrue confessional statement."

In the Supreme Court
(Appellate Jurisdiction)

No. 30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

Again at p.641 it is said:

"and voluntariness is only a test of admissibility: see Cornelius v. The King, (1936) 55 C.L.R. 235, at pp. 246, 248, 249."

Section 5 of the Supreme Court Ordinance reads as follows:

"Such of the laws of England as existed when the Colony obtained a local legislature, that is to say, on the 5th day of April, 1843, shall be in force in the Colony, except so far as the said laws are inapplicable to the local circumstances of the Colony or of its inhabitants, and except so far as they have been modified by laws passed by the said legislature."

Rightly or wrongly that section has for over a century been interpreted as applying the Common Law

In the Supreme
Court
(Appellate
Jurisdiction)

No. 30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

of England to the Colony and clearly the day is far past when it would be open to this Court to adopt a different interpretation. The Common Law may develop but it cannot change. Are the English courts alone able to lay down what is (and was in 1843) the Common Law of England? Once a principle of the Common Law has been clearly propounded by the House of Lords there can be no doubt that that decision establishes the law of Hong Kong and, of course, subject to that an opinion of the Privy Council is binding upon us: see Will v. Bank of Montreal. (16). Beyond that we are not bound by authority and we have a duty to reach our own conclusions with the assistance of such persuasive authorities as are available. It has been said that a Colonial judge who is called upon to construe a statute ought generally to adopt a construction of the English statute which has been approved by the Court of Appeal. Nor can it be doubted that as a general rule colonial courts will follow statements of the Common Law by the Court of Appeal and the Court of Criminal Appeal, for such statements have indeed very high persuasive authority. But I should be sorry to think that we were bound to follow the decisions of those courts blindly. In the present instance it seems to me that the arguments of the High Court of Australia and of the Supreme Court of Ontario are unanswerable and that an opportunity to rationalise this particular branch of the law in Hong Kong should be seized upon before the confusion becomes worse confounded. 10 20 30

I said that I would have to revert to Reg. v. Cleary (1) and I must do so because at first sight the judgment appears to contain dicta which are inconsistent with the view I have advanced. In that case the judge ruled as a question of law that certain words used to the accused were not capable of amounting to an inducement and consequently he did not direct the jury upon the possible effect of there having been an inducement. The Court of Criminal Appeal held that the words were capable of amounting to an inducement but went on to say that the question whether words amount to an inducement is not a question of law but a question of fact for the jury. It is that latter statement to which I must refer because, with the utmost respect, it seems to me that it is based upon the same confusion 40

(16) (1931) 2 Western Weekly Reports, 364.
(1) (1964) 48 Cr. App. R.116.

of the functions of judge and jury as can be found in Reg. v. Bass (6). In deciding whether a statement is admissible the judge must decide whether it was voluntary. He cannot decide whether it was voluntary unless he first decide not only whether the circumstances were such as were capable of amounting to an inducement but also whether he is satisfied that they did not in fact amount to an inducement (although, where it is merely a matter of words, it may be supposed that if they were capable of amounting to an inducement the judge could rarely be satisfied beyond all reasonable doubt that there was no inducement). Once the statement has been admitted, however, it ceases to be vital whether the statement was voluntary, i.e. whether it was induced. That, again, is not to say that it is not most material for the jury to consider whether there was an inducement, but the question for them is whether they should attach any (and, if so, how much) weight to the statement.

In the Supreme Court
(Appellate Jurisdiction)

No. 30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

There is no doubt that Briggs, J. very adequately directed the jury on the general onus of proof and the standard of proof in the present case. Moreover he clearly told them that the case depended on the confessions and that the weight and value of these confessions was for them to decide. He warned them that if the confessions were obtained by duress or any other inducement they should give them no weight at all. He even said:

30 "If you have any doubts about those confessions you must acquit."

But that observation is certainly ambiguous: it might refer to doubts about the truth of the confessions or to doubts about the voluntariness of the confessions or to doubts about both these matters. In so far as it may have been understood by the jury to refer to doubts about the voluntariness of the confessions the direction was immediately nullified by the passage which followed:

40 "If you reach the conclusion that the confessions were obtained by threats or inducements, you will give them no weight at all. There are two confessions; each must be separately considered. If you think that both were

In the Supreme
Court
(Appellate
Jurisdiction)

No. 30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

obtained by duress or inducements then you must acquit, because there is insufficient evidence without those confessions or one of them, if you do not consider that they are voluntary. If you consider that one of the confessions, either one of them was obtained by duress or inducement then you must put it totally from your mind when considering this case." (The emphasis is mind.).

I cannot help thinking that this was, in so far as it could be taken as referring to the issue of voluntariness, an invitation to the jury to decide one way or the other whether the confessions were voluntary and to lead them to believe there was no half way house. More than that, it suggests that the onus of proof as to voluntariness would be on the accused rather than on the prosecution. Again, a little further on the judge said:

10

"I am going to read you now the notes I took down of what he gave in evidence after that, because this is fundamental to this case. It is completely different from the accounts given by the police and it is for you, gentlemen, to make up your mind which story is the truth."

20

And at the end:

"But it is for you to decide, as I have already said, the weight and the value, if you think, of these two statements separately. If you think that either of them were induced by threats and inducements, you must put that right out of your mind when considering this case."

30

If, therefore, it was necessary for the jury to decide the question of voluntariness as a separate issue I would (as I indicated at the outset) agree with the other members of the Court that there was not a sufficient direction and I do not think it is an omission which could properly be cured by the application of the proviso to s.82(2) of the Criminal Procedure Ordinance. In my view, however, the question for the jury was whether the accused was guilty and that question in its turn depended on whether the confessions (or either of them) were true. It was made abundantly clear that on these

40

questions the jury must be satisfied beyond all reasonable doubt, having regard to the allegations of inducement, and I would dismiss the appeal.

(Alan Huggins)

8th October, 1965.

In the Supreme Court
(Appellate Jurisdiction)

No. 30

Judgment,
Huggins, A.J.
(contd.)

8th October,
1965

No. 31

Order granting Special Leave to Appeal
in forma pauperis

In the Privy Council

No. 31

AT THE COURT AT BUCKINGHAM PALACE
The 31st day of January, 1966

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY
LORD PRESIDENT MR. WIGG
EARL OF LONGFORD MISS BACON
MR. SECRETARY ROSS

Order granting
Special Leave
to Appeal in
forma pauperis

31st January,
1966

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 18th day of January 1966 in the words following, viz:-

"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 Chan Wai Keung in the matter of an Appeal from the Supreme Court of Hong Kong (Appellate Jurisdiction) between the Petitioner and Your Majesty Respondent setting forth that the Petitioner desires to obtain special leave to appeal in forma pauperis to Your Majesty in Council from the Judgment and Order of the Supreme Court of Hong Kong (Appellate Jurisdiction) dated the 8th October 1965 whereby the Petitioner's Appeal against his conviction of murder and sentence of death in the Supreme Court of Hong Kong on the 11th August 1965 was dismissed: And humbly praying Your Majesty in Council to grant him special leave to appeal

In the Privy
Council

No. 31

Order granting
Special Leave
to Appeal in
forma pauperis
(contd.)

31st January,
1966

in forma pauperis from the Judgment and Order of the Supreme Court of Hong Kong (Appellate Jurisdiction) dated the 8th October 1965 or for further or other relief:

"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 and Counsel for the Respondent not opposing Their Lordships do this day agree humbly to report to 10
Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal in forma pauperis against the Judgment and Order of the Supreme Court of Hong Kong (Appellate Jurisdiction) dated the 8th day of October 1965:

"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced upon the hearing of the Petition ought to be accepted as the Record 20
proper to be laid before Your Majesty on the hearing of the Appeal."

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.

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 30
are to take notice and govern themselves accordingly.

W. G. AGNEW

EXHIBITSExhibit No. P. 26A - Statement by AccusedHONG KONG POLICE
STATEMENT/REPORT

Exhibits

No. P.26A

Statement by
Accused

25th May, 1965

Name of informant/witness CHAN Wai-keung Age 23
sex C/MAddress Unn. hut at the end of Boundary St.
Shamshuipo.Nationality and dialect Tung Kun10 Taken by DPC 4463 LEUNG Sui-wing in Punti Language
at 21.25 hours on 25.5.65.

States:-

My name is CHAN Wai-keung. (I) am not married. I was born in Tai Nong, Tung Kun. I have an elder brother CHAN Sang, 32 years, res. at 28, Sim Leun Street, 2nd floor, and also an aunt, CHAN Fuk-nui, aged about 57 years, residing at 63A, Tong Mei Road, 5th floor, who is the principal tenant of that flat.

20 On 16th April, 1965, C/M CHAN Wing-pui recommended me to work with the Tak Kwong Electric Bulb Factory, at the On Lok Mansion, 10th Floor, Ha Heung Road, as an odd job worker, at a wage of \$210 per month. (I) provided myself with food. (I) slept in the factory. Every day, (I) worked from 8 a.m. to 6 p.m. Every night, after the working hours, I and another odd job worker CHOI Chiu-man were responsible and must sleep in the factory. On the night of 10.5.65, I was dismissed by the contractor of the factory, Mr. HO Shing. That night, I still

30 slept in the factory. The following morning, at 08.30 hrs. on 11.5.65, I left the factory. The reason for my dismissal was that Mr. HO Shing discovered that I had not paid my food bill, a total of \$120-HK., to the factory. (He) said that I was extravagant and wanted (me) to obtain an guarantee from CHAN Wing-pui or a shop's seal. (Sd.) CHAN Wai-keung for (his) continuing to employ me. As a result - CHAN Wing-pui dared not guarantee

40 me and I therefore left. On 11.5.65, at 08.30 hrs., when I was leaving the factory, it was raining heavily.

Exhibits

No. P.26A

Statement by
Accused
(contd.)

25th May, 1965

I went to have a haircut in a barber shop somewhere in Ha Heung Road. The barber shop's name I do not remember. After the haircut, I went to see the 12.30 p.m. show in the Wah Lok Theatre by myself. It was a Chinese film. The name of the film I do not remember. After the show, at about 3 p.m. I went to the Kung Fat Mahjong School at Wuhu Street, where I played a mahjong game of \$1-2. Because when I left the factory in the morning HO Sing lent me \$30 and therefore I had the money to play the mahjong game. As a result, I won \$45 HK. At about 19.30 hours, I left that mahjong school, and went to a cooked food stall at Tong Mei Road, Tai Kok Tsui near the Ying King Theatre, to take some coffee. After taking coffee, I went to the Lai Chi Kok Amusement Park where I saw an opera. At 23.30 hrs., (I) took a Route No. 6C bus from the outside of the Lai Chi Kok Amusement Park to go to the Walled City and played a mahjong game in the Kai Kee (Mahjong School). It was also a game of \$1-2. I played the (game) until 01.00 hours. on 12.5.65, when I left the Kai Kee Mahjong School. I was then still having \$32 left with me. After having left the Kai Kee Mahjong School, I took a taxi to go to the Hing On Apartment at Shanghai Street and hired room No.217. The rent was \$5 per day. I registered my name as CHAN Ming on the apartment's register. The time was approx. 2.30 a.m. After I had hired the room, I went downstairs to eat some "Wan Tun" noodle at a cooked food stall, for which I paid \$1. After finishing eating, (I) immediately returned to the apartment and after taking a bath, I went to sleep in the room. I did not go out again that night. I was sleeping by myself (Sd.) CHAN Wai-keung.

The following day, 12.5.65, at about 10.30 hrs., when I was just getting up from bed inside the room, I heard a female worker of the apartment press the bell, and saying, "Very late. It will soon be 11 o'clock, still not getting up". At that time, I only replied, "Thanks". At that time, I did not open the door to see who pressed the bell, therefore I did not see her.

At about 11.00 hours on 12.5.65, I no longer hired the room and left the Hing On Apartment. At Reclamation Street, I took a Route No.12 bus to go to Tai Kok Tsui and went to see a morning show in the Ying King Theatre. I did not meet any friend of mine on my way. At about 12.30 hrs. after the show, I went

bymyself on feet to 63A, Tong Mei Road, 5th floor, the address of my aunt where I took a meal together with my aunt CHAN Fuk-nui. After the meal, at about 15.00 hours, I accompanied my aunt to go to Mong Kok somewhere near the market, the name of the street and house number I do not remember, to look for my aunt's elder brother, whose name I do not know. At that time, I only accompanied her to go upstairs. I then left her. I walked out to Reclamation Street, where I took a bus to go to visit a friend (residing) at a hut at the end of Boundary Street. He is named PAU Ying (male). We both then had a talk. I told him that I was no longer working with the Tak Kwong Factory. That night, I took my meal at PAU Ying's place, and slept there. I did not go out to anywhere with him.

Exhibits

—
No. P.26AStatement by
Accused
(contd.)

25th May, 1965

At 12.00 hours on 13.5.65, after I had my meal at PAU Ying's place, I left. I went by myself to play mahjong in a mahjong school near the Ying King Theatre, Tai Kok Tsui. I did not know any of the people in that mahjong school. At that time, I still had twenty dollars odd left with me, and as a result, I lost them all. At about 16.00 hrs. I left the mahjong school. (I) walked aimlessly to Mong Kok and Yaumati Districts, until late at 23.00 hours when I went to sleep on the roof-top of my aunt's address. I slept on the roof-top for three nights running. From the night of the 13th to the night of 16th, I slept on that roof-top. My aunt did not know that I slept on the roof-top because there was no space at my aunt's address, between the 14th and the 16th, I took my meal in PAU Ying's place. It was on the forenoon every time (I) took my meal in his house. I had to suffer hunger during the evening meal (time). During these three days, I was wandering about aimlessly. On 16.5.65, at 08.00 hours, on the morning of that day, after I had left my aunt's roof-top and when I was walking along Shanghai Street near the Banyan Tree Square. Later, I went to the Tai Fat Choi Mahjong School at Temple Street to play mahjong. You need not ask me too many questions. I am quite bored. I now tell you about the real facts of the incident that night concerning the watchman of the Bonnie Hair Products Factory at the On Lok Factory Building. (I immediately stopped him from further saying and reminded (him) of the caution). I am now investigating a case of murder which occurred on the 12th day of May this

10

20

30

40

Exhibits
 —
 No. P.26A
 Statement by
 Accused
 (contd.)
 25th May, 1965

year, at the On Lok Factory Building, 9th floor, in which the watchman of the Bonnie Hair Products Factory was murdered. I now caution you, CHAN Wai-keung. You are not obliged to continue 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. Do you understand?)

"I understand." (Sd.) CHAN Wai-keung.

(Sd.) D.P.C. 4463 LEUNG Sui-wing.

Witness D/Sgt. 1075 TSANG Kei.

10

"I, on the night of the 12th May, at about 2 o'clock midnight, at the roof-top of the On Lok Factory Building, climbed down to the 9th floor from a bamboo scaffolding, entered the Bonnie Hair Products Factory through a window. (I) first took an iron fork (and then) entered the office with intent to force open the drawer/s. After having been discovered by the watchman, I pushed the watchman out. He tried to take a wooden (illegible) to hit me. (He) was pushed down to the canvas bed by me. I first (of all) hit him with fist. (He) already fainted. Later he called out, 'Save life'. After that, I took up a piece of water pipe (and) hit him. He fainted. After that, I took a suit of clothing from him, (and) went into the dyeing room where I made a search and took away (illegible) a dollar and a half and a bundle of keys, and placed the suit of clothing into a basin of water. After that, I cleaned the piece of iron with water, (and) placed (it) in the office by the side of the wall. After that (I) climbed out through the window, and up the bamboo scaffolding to the roof-top. The iron fork for forcing open the drawer/s (illegible) fell down to a stone pillar in the bamboo scaffolding. From the roof-top, I escaped via a staircase. After that, (I) threw away the keys. I did not intend to kill him. (I) wish the judge would pardon me."

(Sd.) CHAN Wai-keung.

(Sd.) D.P.C. 4463 LEUNG Sui-wing.

Witness: D/Sgt. 1075 TSANG Kei.

40

"I now remind you, CHAN Wai-keung, you are still under caution. 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.

Do you understand?"

Exhibits

"I understand."

No. P.26A

(Sd.) CHAN Wai-keung.

Statement by
Accused
(contd.)

(Sd.) D.P.C. 4463 LEUNG Sui-wing.

Witness: D/Sgt. 1075 TSANG Kei.

25th May, 1965

"I did with this piece of water pipe which you are now showing me, to hit the watchman. I recognise this piece of iron pipe."

(Sd.) CHAN Wai-keung

10

(Sd.) D.P.C. 4463 LEUNG Sui-wing.

Witness: D/Sgt. 1075 TSANG Kei.

25.5.65. 23.00 hours.

I certify that the foregoing is a true translation of a statement in Chinese in the police notebook of D.P.C. 4463 pp.21-27.

(Sd.) CHAN Sing-cheung.
COURT TRANSLATOR
8.6.65.

Exhibit No. P30

No. P.30

20

Statement by Accused

Statement by
Accused

C.I.D./H.H.

26th May, 1965

OFFICER IN CHARGE OF CASE D.I. LAU Kin-yeuk
(Sd.) Lau Kin-yeuk

INTERPRETER'S NAME MOK Yim-tong (Sd.) Mok Yim-tong

TIME & DATE 05.50 hrs. 26/5/65

NAME OF DEFENDANT CHAN Wai-keung

is charged Murder

Under { Proclamation No. Article
Ordinance No. of Section ...

30

Contrary to Common Law.
in that:-

Exhibits

No. P.30

Statement by
Accused
(contd.)

26th May, 1965

CHAN Wai-keung, you are charged that, on the 12th day of May, 1965, at Kowloon, in this Colony, you did murder LEUNG Pui-chuen.

Defendant was cautioned in the following terms in Panti 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:- (Translation of the Statement in Answer to Charge)

I did kill some one. 10
It was my (intention) to go into the factory to steal. I had no intention of killing him. Because he hit me, first, I through a mistake of the hand hit and killed him. He had done nothing else disadvantageous to me. (It) was Chan Wai Keung (who) killed some one. 20

(Sd.) Chan Wai Keung.

A copy of this document has been received by me at 0.50l hrs. on 26/5/65.

(Sd.) Chan Wai Keung (in Chinese)

I hereby certify that the foregoing is a true translation of the Chinese statement in answer to charge.

(Sd.) CHAN Sin Cheung
COURT TRANSLATOR
1.6.65.

30

IN THE PRIVY COUNCIL

No. 5 of 1966

O N A P P E A L

FROM THE SUPREME COURT OF HONG KONG,
APPELLATE JURISDICTION

B E T W E E N :

^A
CHAN WAI KEUNG ... Appellant

- and -

THE QUEEN ... Respondent

RECORD OF PROCEEDINGS

T.E. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.

Solicitors for the Appellant

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.

Solicitors for the Respondent