Judgment 31 of 1978

No. 39 of 1977

IN THE PRIVY COUNCIL ON APPEAL FROM THE COURT OF APPEAL OF HONG KONG

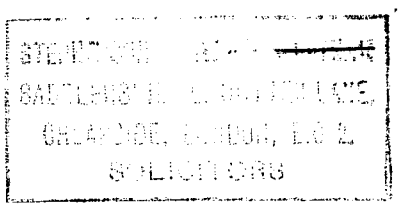
BETWEEN

AU Pui-kuen — *Appellant*

AND

THE ATTORNEY GENERAL OF HONG KONG — *Respondent*

PETITION OF APPEAL and CASE FOR THE APPELLANT



Solicitors for the Appellant

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No. 39 of 1977

IN THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN:—

AU PUI-KUEN *Appellant*

and

THE ATTORNEY GENERAL OF HONG KONG *Respnodent*

PETITION OF APPEAL

TO THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

THE HUMBLE PETITION of the Appellant sheweth that:—

1. On the 20th day of September 1976 the Appelant was put on Trial by way of a voluntary bill charging him with inter alia the offence of murdering Li Hon-Shing on the 9th day of January 1976.

2. On the 30th day of September 1976 the Appellant was convicted of the charge of murder as aforesaid.

3. On the 21st day of January 1977 the Court of Appeal of Hong Kong after hearing arguments on only the first 3 grounds of Appeal and part of the 4th ground quashed the Appellant's conviction by the unanimous decision of the 3 Judges sitting in the Court of Appeal.

4. On the said 21st day of January by order of a majority of the said Court of Appeal an Order for Retrial of the Appellant was made.

5. On the 3rd day of February the said Court of Appeal being satisfied that it was not functus officio with regard to the Order for Retrial and that the said Order had not issued witheld the issue thereof and set the matter down for further argument.

6. On the 16th and 17th days of February 1977 the said Court of Appeal heard further argument and again by a majority an Order for Retrial was made.

7. On a date unknown a document purporting to be a Judgment of the Court of Appeal was put inter alia into the Court File kept in the library of the Supreme Court, and the said Judgment has never been disclosed or handed down and no copy had been given to the Appellant or his legal advisers.

8. On the 26th day of July 1977 the Board of the Judicial Committee of the Privy Council reported to the Queen's Most Excellent Majesty in Council that special leave ought to be granted to the Appellant to enter and prosecute his Appeal in forma pauperis against the Order made by the Court of Appeal of Hong Kong on the 17th day of February 1977.

AND HUMBLY PRAYING Your Majesty in Council to take this appeal into consideration and that the Order of the said Court of Appeal of the 17th day of February 1977 may be reversed.

No. 39 of 1977

IN THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL OF HONG KONG

BETWEEN:—

AU PUI-KUEN *Appellant*
and
THE ATTORNEY GENERAL OF HONG KONG *Respondent*

CASE FOR THE APPELLANT

Record

1. This is an Appeal from an Order of the Court of Appeal of Hong Kong made orally on the 17th day of February 1977 affirming by a majority its previous Order (made by a majority on the 21st day of January 1977) for a re-trial of the Appellant whose conviction for murder had then been quashed by the said Court.

2. (a) The issue in this Appeal concerns the exercise of the power to order a re-trial under Section 83E (1) of the Criminal Procedure Ordinance which reads as follows:—

> "Where the Full Court allows an Appeal against conviction and it appears to the Full Court that the interests of Justice so require, it may order the Appellant to be retried."

(b) The words "Full Court" have subsequently been changed to "Court of Appeal".

3. The Appellant is a Detective Constable in the Royal Hong Kong Police Force and has been in service in the force for upwards of 13 years.

4. (a) On the 9th day of January 1976 the Appellant was attacked by 3 youths held around the throat from behind by one of them whilst being punched by one or both of the others and injured in Yaumati a District in Kowloon in Hong Kong.

(b) The Appellant who was lawfully armed at the time succeeded in drawing his revolver fired 2 shots in quick succession one of which fatally injured one of the 3 youths named Li Hon-shing.

5. The sequence of events of the Inquest on the dead youth the Appellant's Trial his conviction his Appeal and the Orders for Retrial are set forth in the document of facts agreed between Counsel for the Petitioner (Appellant) and Counsel for the Crown on the application for special leave to Appeal by the Petitioner (Appellant) on the 12th day of July 1977.

Pp. 415/6

Record

6. (a) In deciding whether the interests of justice so require and/or in deciding how to exercise the discretion to order a re-trial under Section 83E (1) of the Criminal Procedure Ordinance the paramount factor in deciding whether or not a re-trial should be ordered is or ought to be the strength or otherwise of the evidence adduced by the prosecution.

(b) The test to be applied should be that a re-trial should not be ordered unless the Court of Appeal on an examination of the transcript of the Trial is satisfied that a Jury properly directed would probably convict on the evidence adduced in the Trial but in any event should not be ordered where it is likely to cause an injustice to the accused person.

7. The Court of Appeal in purporting to exercise its discretion by majority vote to re-order a re-trial was in the circumstances of this case acting contrary to the principles applicable thereto and/or acting contrary to natural justice in that:—

(a) The Appellant on the 20th day of March 1976 after an Inquest lasting 18 days had been absolved of all culpability by a 3-man Cantonese Special Jury directed by the Coroner to consider their verdict on the basis of only a balance of probabilities — P. 415 ll. 9-12

(b) (i) The Appellant on misdirection of law (as set forth in the first 4 Grounds of Appeal) contained in the summing up of the Trial Judge before a 7 person Jury of mixed nationalities was on the 30th day of September 1976 after a Trial lasting 10 days convicted of murder and acquitted of the offence of shooting with intent to do grievous bodily harm to the said Li Hon-shing — P. 404

(ii) Thus the Appellant was found to have had sufficient animus to commit murder in one location and then to have chased his victim down one street and around the corner into another street and there having his victim at his mercy and at his last grasp not to have had sufficient animus even to be guilty of shooting with intent to do him grievous bodily harm

(c) Having thus faced 2 Juries giving diametrically opposite verdicts on the subject of murder it is unconscionable to require the Appellant to face a third Jury.

8. In the publicly-expressed opinion of the Chief Justice who dissented from both the decisions to order a re-trial the evidence for the prosecution was unsafe and unsatisfactory and insufficient to justify a conviction and such a publicly expressed opinion makes the Order for re-trial itself unsafe and unsatisfactory and contrary to natural justice. — P. 416 ll. 10-13

9. Having regard to the lapse of time since the death of the said Li Hon-shing on the 9th day of January 1976:—

Record

(a) the memories of the prosecution witnesses are likely to be more blurred than at the Trial of the Appellant in the month of September 1976 and

(b) the presence of witnesses vital to the case for the Appellant might be in question (as was the case at the said Trial of the Appellant when one Kwok Tim-choy who despite public appeals was absent therefrom but who at the said Inquest gave corroborative evidence of the Appellant having been seized and held from behind around the throat).

Pp. 66 ll. 21-end
67 ll. 1-14

10. (a) Having regard to the biased highly prejudicial and widespread publicity given to the incident and referred to by the Trial Judge by Counsel for the Defence and by Counsel for the Crown at the said Trial such publicity being particularly prominent at the time of the Inquest and from the date of the verdict of the Coroner's Jury to the preferment of the indictment in which the Appellant was tried the likelihood of a fair Trial was ever doubtful and the Order for re-trial is in consequence unusually unsafe and unsatisfactory and unconscionable.

Pp. 362 ll. 1-11
11 ll. 1-6
27 ll. 14-40

(b) Some of the possible effects of such public pressure may be gauged from the facts that:—

(i) The Trial Judge ruled there was a case to answer having less than a year previously and in circumstances where the accused policeman in that case was at no worse disadvantage than the Appellant held there was no case to go to the Jury. (Transcript of Judgment annexed and marked "A")

Pp. 28 ll. 22/3
35 ll. 37-42
236 ll. 8-18

(ii) Both Counsel for the Crown and Counsel for the Defence were misled as to a fact to which such prominence had been given namely the Police Station to which the Appellant was attached at the time and

P. 78 ll. 4-18

(iii) A Jury woman had been so misled as to believe and subsequently to address the Foreman of the Jury with the words "He wasn't yelling?" in a loud voice when the learned Trial Judge was answering the Foreman's question on another point there being no evidence before the Jury at any time that the Appellant had yelled out.

11. The case for the prosecution was so weak and unsatisfactory as not to justify a re-trial in that inter alia:—

Pp. 42 ll. 20-end
52 ll. 19-30
56 ll. 26-end
57 ll. 1-36
171 l. 10

(a) 2 prosecution eye-witnesses Tso Siu-tat and Fong Bun gave evidence of having seen the Appellant seized and held around the throat by one of his 3 assailants but Lee Wai-tang one of the assailants denied even having seen that occur

Pp. 71 ll. 12-14
152 ll. 33-5
172 ll. 33-6

(b) all the prosecution witnesses with the exception of a Bank watchman Cheung Him and the said Lee Wai-tang heard shots fired and yet both of those 2 witnesses denied having heard shots fired at all

(c) the estimate of the interval between the first 2 shots being fired varied between one second according to the said Fong Bun and 2 minutes according to one Poon Lai-Ying — Record: Pp. 62 ll. 14/5; 106 ll. 13-23

(d) the said assailant Lee Wai-tang claimed not to know whether in the course of the fighting the Appellant was hit at all and yet the other surviving assailant Wong Hon-keung after first claiming that he did not notice did not see clearly and did not remember how many hits Lee Wai-tang had delivered after cross-examination agreed that blows delivered by the said Lee Wai tang had landed on the Appellant's face on one occasion that he had been observing very clearly and that he recalled the said Lee Wai-tang deliver 3 or 4 further blows with force on the chest of the Appellant — Pp. 147 ll. 12-14; 188 ll. 37/8; 204 ll. 3, 26; 205 l. 5; 204 ll. 10-16; ll. 30/1; 205 ll. 6-30

(e) the same assailant Wong Hon-keung was severely rebuked by the Trial Judge for attempting to hide behind the shield of the phrase "I can't remember" — P. 208 ll. 8-12

(f) the same assailant Wong Hon-keung gave evidence both in chief and in cross-examination of the Appellant being forced back against some railings in the course of the attack and on re-examination that the Appellant remained against the railing "until the fight broke up" — P. 221 ll. 17-26

(g) neither surving assailant Lee Wai-tang and Wong Hon-keung could give any rational explanation of their headlong flight from the scene — Pp. 149 ll. 40-end; 153 l. 7 to 155 l. 44; 189 ll. 41-end; 190 ll. 1/2; 217 ll. 15/6

(h) both surviving assailants confirmed that the fight involved weaving and turning — Pp. 159 ll. 18-30; 189 ll. 7-13

(i) the prosecution witness Fong Bun gave evidence that so far as he could see as a direct onlooker standing near to the traffic sign on the corner where the incident occurred the Appellant's 2 shot were fired whilst the Appellant was still seized and held from behind the throat — P. 58 ll. 10-35

(j) a prosecution witness Tam Kin-kwok after giving contradictory and confusing evidence of both the events and the sequence of events as recalled by him of an incident which first occurred to his rear agreed in cross-examination that his recollection of the sequence of events might possibly be wrong just as he had earlier admitted that he only had a very vague recollection of what had happened — Pp. 117 ll. 30-end; 116 ll. 12-14

(k) a prosecution witness Wong Moon-lam whose recollection of the incident was likewise after having turned round was that he had been unable to see any blows being delivered in the course of the fight because several people had blocked his view — P. 90 ll. 14-22

Record

(l) the wife of the said Wong Moon-lam that is the said Poon Lai-ying from her position beside her husband gave evidence to the effect that one of the assailants fell down on the pavement in front of her got up and then ran off in the opposite direction an occurrence which was totally at variance with the evidence of all the other prosecution witnesses and was also totally at variance with the evidence of the 2 surviving assailants

P. 109

P. 136 ll. 21-30 (m) Police Constable Li To-sing saw blood on the left hand side of the mouth of the Appellant and blood by his left cheek-bone

P. 79 ll. 22-end (n) the full extent of the injuries inflicted on the Appellant formed part of an agreed statement by Doctor Chan Tin-sik such injuries including a contusion on the chest as well as multiple injuries to his face

(o) Police Auxiliary Sergeant Li Kin-ping gave evidence that when the Appellant was describing the incident to him immediately after the fatally-injured assailant had collapsed he took the Appellant's words "He snatched my revolver" to mean that someone had attempted to snatch his revolver.

P. 139 ll. 3-17

12. (a) In the absence of any prosecution witness whose evidence could point to a crime suggesting murder and in the face of the evidence of the sole prosecution witness who saw everything from in front of him throughout that is the said Fong Bun (whose evidence pointed to no other conclusion than that reached by the 3-man Cantonese Special Jury at the Inquest) the Crown sought to found the case of murder against the Appellant on what Counsel for the Crown termed "the medical and ballistics" evidence as put forward in his arguments to the Trial Judge in the absence of the Jury.

P. 248 l. 2

(b) Such "evidence" amounted to no more than that the 2 wounds on the deceased were uncontestedly fired from behind.

(e) The contention of the Crown that the production of the revolver induced the 3 assailants to take to headlong flight rather than merely induce them to weave or turn is an ex post facto rationalisation of the movement rendering the so-called evidence of "the medical and ballistics" evidence wholly insufficient upon which to base any conviction for murder and disregarding the fact proved by witnesses called by the Crown that the Appellant was in close contact with 3 assailants and/or was being seized and held around the throat from behind.

13. (a) The discretion of the Court of Appeal to order a re-trial ought not to be exercised in a case where the principal participants as Crown witnesses are directly and materially contradicted by other Crown Witnesses.

(b) In this case the evidence of the principal participants namely the said Lee Wai-tang and the said Wong Hon-keung was directly and materially contradicted by other Crown Witnesses in particular the said Tso Siu-tat the said Fong Bun and the said Cheung Him on matters going to the root of the Crown's case and of the defences to be negatived by the Crown namely those of:

(i) self-defence
(ii) justifiable apprehension of absconding assailants
(iii) justifiable apprehension of absconding would be robbers.

14. The Court of Appeal by ordering a re-trial on the 17th day of February 1977 by a majority vote unreasonably and/or unfairly extended or failed to follow the rationes of the decisions in which such orders were made as were set by their effective predecessor in title in Hong Kong namely the Full Court.

15. The Court of Appeal failed to apply the proper or any adequate test in exercising its power under the said Section 83E (1).

16. The Court of Appeal having made their order for re-trial on the 21st day of January 1977 without having considered the evidence in the Trial below in the course of the hearing before them when they allowed the appeal ought not later to have called for a public or any examination of the Crown evidence in extenso or at all.

17. In the case of murder and by extension of the established rule that the verdict of a Jury must be unanimous the decision of the Court of Appeal to order a re-trial for murder ought to be unanimous.

18. It is submitted that having regard to all the facts and in the light of all the circumstances set out hereinbefore an order for re-trial ought not to have been made and in making such an order the Court of Appeal failed to exercise its discretion properly or at all and/or acted contrary to the principles of making such orders and/or acted unconscionably and/or contrary to natural justice.

FRANCIS EDDIS

In the Supreme Court of Hong Kong Case No. 63 of 1975
Regina v. HUI Kwok-ying

THIS IS ANNEXURE MARKED "A" TO CASE FOR THE APPELLANT

26th November, 1976
10.00 a.m. Court resumes

Accused present. Appearances as before. JURY ABSENT.

COURT: Gentlemen, having considered the matter fully overnight I have come to the conclusion that the accused has no case to answer. I have to explain that to the jury and direct them to return a verdict of not guilty since the accused is in their charge. Accordingly, I will adjourn for about ten minutes and when the jury has assembled I will direct them formally to return a verdict of not guilty and give them the reason.

10.02 a.m. Court adjourns

10.11 a.m. Court resumes

Ruling by LI J.

Accused present. Appearances as before. JURY PRESENT.

COURT: Members of the Jury, when learned counsel for the Prosecution opened his case to you he has told you certain propositions of the law which is quite correct and fair. First of all, he told you of our respective functions—that I am the judge of law and you are the judges of facts, so that any issue of facts should properly be tried and decided by you. However, in criminal proceedings, when it comes to a certain stage when the question of mixed law and facts arises, then I will have to decide on the question of law first and I have then to see whether it is proper to impose a further duty upon you to decide upon the facts. In this case such a question does arise. That is why yesterday afternoon you were requested to leave the court so that counsel can address me on points of law and on points of mixed law and facts. In short, defence counsel has submitted that the accused in this case has no case to answer and he should be acquitted.

Now the criteria for this question is this—whether, taking the totality of the Prosecution evidence, there is any evidence of fact for you to decide whereupon you could convict the accused of the offence charged. The second question of mixed fact and law is whether, assuming that you could so convict, taking the totality of the Prosecution evidence, you would convict as a reasonable jury. So that there are two separate questions. Indeed, if I were to take the easy way out in our respective functions to the letter, I can easily say that, "All right, at certain stage of this case, irrespective of the evidence, you, members of the jury, you will decide". This type of method is not new. It happened more than 1900 years ago when a judge can wash his hands and let you decide. However, if I do that, I will be shirking my duty as a judge because I have to give the matter my serious thought and see whether it is fair that the trial should continue. I have given it serious thought in the course of last night after the submissions in the afternoon. I have now come to the conclusion that the accused should not be put in jeopardy any further. Therefore

I am going to direct you, members of the jury, to return a verdict of not guilty.

Perhaps I owe you an explanation because in so doing I am not usurping your function. Nor do I want the public—indeed, it is a case of public interest—or particularly members of the Royal Hong Kong Police Force to think that this decision is going to be regarded as a shooting charter for the police. This is very important because every case must be judged on its own merit. I shall now proceed to give you a brief reason for this decision.

Learned counsel for the Prosecution is correct in putting to you when addressing you that the burden of proof is always on the Prosecution. It is for the Prosecution to prove every ingredient of the offence beyond reasonable doubt. Some of the statements that have been put by the Prosecution are statements by the accused himself. Nevertheless, such statements form part and parcel of the Prosecution case. Then, what is manslaughter? Manslaughter simply means where a person unlawfully kills another. No further requirment is required except that he unlawfully kills another. There are two types of manslaughter. One is by negligence which is called involuntary manslaughter. That is the type of manslaughter you are now concerned. The other type is called voluntary manslaughter, where a person should be indicted for murder but because he has been provoked to such an extent that he has lost control temporarily and he kills another. That is reduced from murder to manslaughter. That is called intentional killing. There is no suggestion in this case that the accused intended to kill. The case of the Crown is that it was a killing by gross negligence. It is up to the Crown to prove that it was a case of gross negligence that killed the deceased. It is also up to the Crown to prove that the killing was unlawful. All forms of killing are unlawful unless that one kills in self-defence or kills in the course of apprehending a dangerous criminal or to prevent a very serious crime.

As far as killing in self-defence is concerned, there is a difference between a private individual and a police officer. Before an ordinary individual may kill in self-defence, he must retreat up to a certain point that there is no way for him to retreat, or that it would be very dangerous for him to retreat any further because of the imminent attack by the other person. In the case of a police officer or a person assisting him in apprehending a criminal, he has no duty to retreat. If he should retreat, it would show dereliction of duty or cowardice. He had no business to retreat. He must stand firm and try his best to apprehend the criminal. If, in so doing in self-defence, he kills the criminal, then it is justifiable homicide. It is up to the Prosecution in this case to negative this self-defence and to adduce evidence before you that there is no evidence of self-defence at all, before the accused can be found guilty of manslaughter. It is not for the accused to prove his innocence. It is for the Prosecution to prove that it was not a case of self-defence. If a serious crime has been committed or the person who is killed proved to be a dangerous criminal, and the killing occurred in the course of apprehending him, then it is still

excusable homicide. I shall just want to read one passage of *Archbold* in criminal law to you which I adopted. It reads this:

> "Where an officer or private person, having legal authority to apprehend a man, attempts to do so, and the man, instead of resisting, flees, and resists and then flees, and is killed by the officer or private person in the pursuit; if the offence with which the man was charged was treason or grave crime, or a dangerous wounding, and he could not otherwise be apprehended, the homicide is justifiable".

That is common law; that is ancient law. I shall not bother you with the statutory law which has a section in the Criminal Procedure Ordinance which leads us no further. It just takes us once round the circle. What it means is this: the law still stands. It is wrong for a police officer to kill a pickpocket or kill someone who has committed a slight traffic offence by using great force like opening fire. That would be certainly manslaughter in the least. It is a different affair when he kills someone, even when he flees, if that person has proved himself to be a dangerous criminal. Thus, it is for the Prosecution to show at least one of two things. One, that the killing was not for self-defence; or, as this case, that the victim—the deceased—was never a dangerous criminal.

Let us then look at the evidence adduced before you by the Prosecution. By this time it will be clear in your mind that the whole trouble started from the check-point when the deceased failed to obey a signal to stop. The accused was ordered, as is part of his duty to do, to pursue while the deceased was driving this red Cedric car. He pursued him and gave him ample warning, one warning after another. He blew the police whistle, drew level with him and told him, "You must stop". The deceased, according to the evidence produced by the Crown, heard the accused and asked for a chance and then sped off ignoring the challenge—ignoring the accused's order to stop the vehicle by the road-side. In the course of so doing he has committed practically every offence against the traffic regulations. He was a suspected "pak pai" driver. I tell you all these, not for one second do I regard this as any serious offence that would justify the accused pulling out his revolver to shoot at the deceased. Indeed, members of the jury, one of you asked me a question yesterday whether a "pak pai" driver may be regarded as a criminal and I have tried my best to explain to you that, as far as moral turpitude is concerned, he is not to be regarded as one of those who injured, who robbed, who raped or killed. Indeed, all these traffic offences could have been regarded as fairly minor offences except the very dangerous driving that the deceased was scaring and scattering pedestrians. That was a serious traffic offence. Even so I would not regard that as that so serious. You see, members of the jury, I gave you that example between a person who committed a parking offence and a person who committed a murder. Perhaps these are the two extremes. A "pak pai" driver is an offender really due to a matter of policy. Five or six years ago, if one of these public light buses you see these days were

driven in town, the driver would have committed an offence. But you would not say that the moral turpitude of such a driver was the same as a criminal as we understand it in that term. Now by a change of policy—administrative policy or by whim or fancy—they can now roam about in the centre of town. I mean the public light buses. To-day, you may be driving from east to west or west to east in Queen's Road, Central. To-morrow, if the law—the whim of fancy of certain authority—should change, it may be an offence to drive in Queen's Road, Central. If any one of you is a driver along Robinson Road, you will remember that at one time you could drive fairly freely along Robinson Road from west to east. Now if you should try to do that you have committed an offence. However, I would hesitate to call you a criminal in the sense we understand it. Now so much for that aside.

What is relevant in this case is this. The second time that the accused drew level with this car at Chuk Yuen Road, the deceased's car was on the wrong side of the road. Therefore the accused was able to switch in to the left and challenge the deceased finally to stop for the last time. What did the deceased do? He swerved to the left, nearly hit his motorcycle, causing the accused to crash into the gutter and fall off. That was a dangerous act. Members of the jury, if the accused, then acting in the course of his duty, were killed in this fall, I would suggest to you the least that the deceased, had he survived in that episode—had he been able to succeed in killing the accused instead, he would have been indicted at least for manslaughter if not murder. That act proved the deceased to be a dangerous criminal. The accused was at all times acting in pursuit, as from that time onwards, a dangerous criminal. It is part of the Crown's case that the accused, nearly knocked down and caused to fall on the kerb, injured himself and he picked himself up, got into the taxi and followed that deceased's car. The deceased swerved to the left, nearly knocked the accused down. You have heard the evidence of CHAN Tin-fai, the taxi driver. He has told you evidence which indicates in no uncertain terms that the deceased at that moment was determined to shake off the accused, who was in pursuit, at all costs. When I said at all costs I meant even to the extent that the deceased couldn't care less whether the accused be killed or not. It was in such circumstances that the accused caught up with the deceased and challenged him not to run away. The accused warned that if he should run he, the accused, would fire. The accused drew his revolver. Up to that stage the Crown has no criticism on the conduct of the accused. The deceased persisted on running. There is also evidence that the deceased bent to his right at a certain point over the wall. You have seen the picture. He bent towards a pile of rubbles as if he was picking up something. The accused—he aimed to shoot at him. At that time there were at least two justifications for the accused to shoot. Firstly, the shooting occurred in the course of apprehending a dangerous criminal who had proved himself to have attempted to kill in order to shake off the police. Further, the accused was only about ten feet away from the deceased. The latter was bending over as if he was going to pick

Ruling by LI J.

up something. What the deceased could pick up is immaterial. But what was the object, while he was running away, for picking up something? Obviously to attack. Here is a dangerous criminal who now, instead of running away, stopped to pick up something. The obvious intention was to attack his pursuer. What else could the accused do in the execution of his duty? You put yourself, members of the jury, in the position of the accused. What would you have done except to enforce what you have already challenged, what you have been entitled to do. This is not an invented story because immediately after the shooting the accused made a statement to his superior officer to the effect that he saw the deceased try to pick up something and he feared that there might be an attack on him. Later in the same day, the Superintendent and Chief Inspector went to the scene of the shooting where the deceased was alleged to have bent over and found exhibit 7—a long piece of crow-bar. Who knows whether the deceased was trying to pick up the crow-bar or even pick up a piece of wood to attack? That is not the point. The point is that the deceased had proved himself to be a dangerous criminal and he was trying to resist the arrest and he was trying to wield some weapon and the accused was only ten feet away. By the Prosecution evidence alone the accused was acting in self-defence, and in the course of apprehending a dangerous criminal. For these reasons I say that he has no case to answer, and that as a reasonable jury you would not have convicted him. In the circumstances he is not guilty of manslaughter in law. Even if there is some slight evidence to be decided by you that he might, by shooting, commit an act of negligence, I hold that the negligence is not so gross as to constitute manslaughter. I further hold that no reasonable jury, as a question of mixed fact and law, would convict him of manslaughter. For these reasons members of the jury, I will direct you to return a verdict of not guilty formally because the accused is now already under your charge. Yes, Mr. Foreman.

CLERK: Mr. Foreman, will you kindly stand up? Having been so directed by his Lordship to return a verdict of not guilty against the accused HUI Kwok-hung, do you unanimously return a verdict of not guilty?

FOREMAN: Not guilty, your Lordship.

COURT: Thank you. HUI Kwok-hung, as I have held that you have had no case to answer and the jury has returned a formal verdict, you are absolved of the blame. You are discharged and you are free to go. Members of the jury, it remains for me to thank you for your services and assistance in this case. Thank you very much.

10.36 a.m. Court rises
26th November, 1975

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