

12/84

O N A P P E A L

FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N:

LAU SIK CHUN

Appellant

- and -

THE QUEEN

Respondent

CASE FOR THE RESPONDENT

1. This is an appeal by special leave of the Judicial Committee granted on the 22nd day of December 1982 from a judgment of the Court of Appeal of Hong Kong (Huggins V.P., Yang and Barker J's A.) dated 10th February 1982 which dismissed an appeal by the Appellant from a judgment of the High Court of Hong Kong (Barnes J. and a Jury) given on the 18th day of August 1981 whereby the Appellant was convicted of murder.

RECORD

2. The Appellant was charged with murder following an altercation between two groups of youths in a billiard hall. This incident resulted in the death of one youth (hereinafter referred to as the deceased). It was alleged by the Crown that the Appellant had participated in the altercation by verbally inciting others to kill, by attacking several people with a billiard cue and by participating in an attack upon the deceased which resulted in his death.

Pp. 254 & 255

3. The question of law raised on this appeal are:-

- (1) whether on the evidence adduced the Appellant was proved to have had an intention in common with whoever fatally injured the deceased to cause him grievous bodily harm.
- (2) whether the trial judge had properly directed the jury on the law relating to common intent to cause grievous bodily harm in relation to the murder count.
- (3) whether the trial judge had adequately directed the jury in relation to the identification of the defendant as being the person who had verbally incited others to kill.
- (4) whether in the light of flaws in the trial judge's summing up to the jury the Court of Appeal was right in applying the proviso to Section 83 (1) of the Criminal Procedure Ordinance Cap. 221 and thereby dismissing the appeal.

4. The Appellant was charged with Yeung Kwok-hung together with several other persons upon an indictment containing five counts as follows:-

- (a) the murder of Ng Fuk-nam. (1st Count)
- (b) unlawfully and maliciously wounding Yip Kam-ping with intent to do him grievous bodily harm. (2nd Count)
- (c) unlawfully and maliciously wounding Tam Man with intent to do him grievous bodily harm. (3rd Count)
- (d) unlawfully and maliciously wounding Kwok Shing-yip with intent to do him grievous bodily harm. (4th Count)
- (e) unlawfully and maliciously wounding Pang Pui-yuen with intent to do him grievous bodily harm. (5th Count)

All of the counts in the indictment averred that the offences were committed on the 26th day of June 1980 at the Good World Billiard Hall in Mongkok in the Colony of Hong Kong.

5. At the trial of the Appellant the case for the Crown was as follows:-

- (a) At about 10.00 p.m. on the 26th day of June 1980 Yip Kam-ping (nicknamed Tai Ngan-chai) went with Ng Fuk-nam (nicknamed Ah Nam), hereinafter referred to as the deceased, to the Good World Billiard Room in Mongkok. Whilst at the billiard room an argument occurred between Yip and a man called Luen Mo who was with the Appellant, a man called Ah Sang and several other people. During this incident Luen Mo endeavoured to strike Yip with a billiard cue. Following this altercation Yip and the deceased left the billiard hall and went to a restaurant called the Kam Wah Restaurant.
- (b) Whilst at the restaurant Yip received a message through a pager and as a result thereof he contacted the Appellant by telephone. The Appellant invited Yip to return to the billiard hall which Yip did accompanied by the deceased and several other youths.
- (c) Yip and his companions arrived at the Good World Billiard Hall at approximately 11.00 p.m. At the billiard room Luen Mo was in the company of the Appellant and Yeung Kwok-hung (the Appellant's co-accused) and several other youths. Yip was speaking with Luen Mo about the previous altercation when he was suddenly attacked by Luen Mo who punched him whilst at the same time someone struck him from behind with a hammer. At the time of this attack the Appellant shouted "kill Tai Ngan-chai first".
- (d) After the initial attack on Yip there followed an attack upon Yip and his companions by several youths who were present at the billiard hall. During the attack several of Yip's friends sustained injuries and as a result thereof the various charges of wounding were preferred against the Appellant and Yeung.

- (e) During the incident in the billiard hall the deceased accompanied by a man called Tam Man endeavoured to flee from the scene. After leaving the billiard hall and entering a corridor the deceased and Tam Man tried to enter an overcrowded lift. At this point in time the deceased and Tam Man were caught by a group of men and were dragged back into the billiard hall where they were beaten with billiard cues. One of the persons who dragged the deceased back into the billiard hall was the Appellant who participated in an attack upon the deceased. He struck the deceased several times on the back with a billiard cue after the deceased had fallen to the ground. Tam Man was injured and rendered unconscious. When he regained consciousness he found that the deceased appeared to be unconscious.
- (f) At approximately 11.20 p.m. the Police arrived at the scene of the incident and found the deceased lying in the billiard hall. He exhibited no signs of life. A post mortem of the deceased revealed that he had died from an intercranial haemorrhage, that is, bleeding into the skull box, and bruising of the brain. The fatal injuries were apparently caused by repeated blows with a blunt object with moderate to heavy force. There was bruising over the left side of the skull and back of the scalp. The deceased was also observed to have sustained lacerations bruises and abrasions over various parts of his body.

6. Eye witnesses to the attack gave evidence summarised as follows:-

- (a) Yip Kam-ping went to the Good World Billiard Room at about 10.00 p.m. on the 26th June 1980 with the deceased. At the billiard hall an argument developed between himself and a man called Luen Mo. This man was at this time accompanied by the Appellant, a man called Ah Sang and several other persons. The argument culminated in Luen Mo endeavouring to strike him with a billiard cue following which he left the billiard hall and went to a restaurant with the deceased. pp. 17 & 18

Whilst at the restaurant he received a message through contact with his pager and as a result he telephoned the Appellant. The Appellant asked him to return to the billiard hall which he did accompanied by the deceased and 6 or 7 companions. He encountered the Appellant on arriving at the billiard hall who told him to go and talk with his "big brother" (meaning Luen Mo). pp. 18 & 19

When he was speaking to Luen Mo he was punched by him and was struck several times from behind by someone wielding a hammer. At this time he heard a man shout "kill Tai Ngan-Chai first". He did not see the man who shouted but he recognised the voice as being that of the Appellant. p. 20
lines 47 - 54
p. 21
lines 1 - 15

Following the initial attack he was struck with a billiard cue by the 1st accused who thrust a billiard cue at his chest whilst he was running. He was helped away from the scene by two of his companions and taken to hospital where he was treated for head injuries. p. 21
lines 20 - 44

When it was suggested in cross examination that the person who had shouted "kill Tai Ngan-chai" was not the Appellant he said that he disagreed because at around that time he met the Appellant every day and talked to him so he was able to recognise his voice.

p. 27
lines 39 - 46

- (b) Tam Man (nicknamed Ah Man) was present in the Kam Wah Restaurant around 10.00 p.m. on the 26th day of June 1980. He accompanied Yip and several friends (including the deceased) to the Good World Billiard Hall. Almost immediately upon arrival at the billiard hall he saw Yip struck by a man called Luen Mo. A fight developed which several people joined in.

pp. 28 - 31

During the fight he escaped from the billiard hall to the entrance of a lift accompanied by the deceased. They were unable to enter the lift as it was overcrowded. At this point in time he and the deceased were caught by members of the group of attackers.

p. 31
lines 40 - 50

He saw the Appellant and a man called Ah Sang drag the deceased back into the billiard hall. He was attacked by others and was jostled into the billiard hall by the crowd. At the same time he noticed the deceased being attacked by 3 or 4 people including the Appellant and Ah Sang. He lost consciousness as a result of this attack. When he regained consciousness he noticed the deceased and believed that he was unconscious. After he tried to assist the deceased he endeavoured to leave the billiard hall but was stopped by the Police on the way out.

p. 31
lines 50 - 54
p. 32
lines 1 - 35
p. 33
lines 18 - 20
p. 34

- (c) Chan Chun-ki was present in the Kam Wah Restaurant on the evening of the 26th of June 1980 and he was one of the group that accompanied Yip and the deceased in the Good World Billiard Hall on that evening.

pp. 40 & 41

Upon arriving at the Billiard Hall he spoke to Luen Mo and was present when Yip spoke to Luen Mo. During this discussion Luen Mo struck Yip once and thereafter friends and brothers of Luen Mo picked up billiard cues and a fight broke out. He was pushed aside by some of Luen Mo's group and was told that it was none of his business. He noticed when he looked over his shoulder that Yip was running towards him and that his head was bleeding.

pp. 42 & 43
p. 43
lines 30 - 33

After Luen Mo had struck Yip he saw the Appellant rush forward and beat Yip. He did not see clearly whether he used his fist or any weapon. While he was escaping with Yip at the rear staircase he saw the Appellant strike Poon Chi-chuen with a billiard cue. He saw the Appellant strike several blows with the cue. He was able to escape from the billiard hall via the rear staircase together with Yip and Poon Chi-chuen.

p. 43
lines 33 - 50
p. 43
lines 51 - 55
p. 44
lines 1 - 10
p. 44
lines 18 - 30

- (d) Poon Chi-chuen went to the Good World Billiard Hall from the Kam Wah Restaurant on the 26th day of June 1980 together with Yip, the deceased and several friends.

pp. 52 - 54

- After arriving at the billiard hall Yip spoke to Luen Mo and saw Luen Mo hit Yip. A fight then developed. People came to fight his group. He saw a person strike Yip with a hammer. He endeavoured to escape and was injured. He and two other men helped Yip escape via a rear exit. pp. 54 - 55
- During the fight in the billiard hall he was attacked by the Appellant who endeavoured to strike him with a billiard cue. p. 55
lines 40 - 54
p. 56
line 52
- (e) Pang Pui-yuen went to the Good World Billiard Hall from the Kam Wan Restaurant with Yip and the deceased and several other people on the 26th of June 1980. pp. 58 & 59
- When he arrived at the billiard hall he saw Luen Mo and Yip speak to each other. He saw Luen Mo punch Yip's chest. He then heard the Appellant say "kill Tai Ngan-chai". He said this very loudly. He had seen the accused twice before that day. p. 60
lines 19 - 28
p. 60
lines 28 - 42
- People then struck him and his group with billiard cues and he endeavoured to flee but was chased by a group of attackers. He was attacked by 5 or 6 people using billiard cues and was beaten to the ground. He was able to get up and he ran to a place inside the billiard hall. He saw a person called Ah Sang and 3 others drag the deceased back into the billiard hall. He recognised Ah Sang but was unable to recognise the others. He saw Ah Sang and several other men strike the deceased with billiard cues. Both the deceased and Tam Man were attacked in this fashion. They were struck about their heads and bodies. They fell to the ground and the attack continued. The deceased was struck with elbows, was kicked in the head and chest and was struck with billiard cues whilst he was lying on the ground. Tam Man was able to get up after the attack but the deceased was unable to move. pp. 60 & 61

p. 62
lines 4 - 50
p. 63
lines 1 - 50
and
p.64
lines 1 - 15
- During the incident he also saw the Appellant strike blows with a billiard cue against Ah Sap (Poon Chi-chuen) and Ah Kei (not identified). p. 64
lines 16 - 35
- When cross examined about the verbal utterances of the Appellant and how he knew it was the Appellant who said "kill Tai Ngan-chai" he said that later on Tai Ngan-chai said it was him. When it was suggested that he was repeating what he had been told he said, "No". He said the utterance was heard by many others apart from Tai Ngan-chai. The Appellant was known to many others. p. 67
lines 33 - 51
- In re-examination about the verbal utterance he said he was not simply repeating what others had told him but that he had heard what was said as well as hearing others say what they heard. p. 68
lines 1 - 13
- (f) Lee Kit-hung was at the Good World Billiard Hall on the 26th day of June 1980. He was there playing billiards with his friends. He saw a man known to him as Luen Mo and a man known to him as Tai Ngan-chai having a quarrel. He knew the names of these people although he did know them personally. pp. 68 & 69

About an hour after the aforementioned quarrel he was watching other people playing billiards when he noticed about 40 people standing at one side of the billiard hall. Soon after that there was a fight amongst these persons and the situation became very confused. He was frightened and stood to one side.

p. 69

He recognised several of the participants in the fight including the Appellant. He saw a man known to him as Ah Sang and the Appellant together with one or two others bump open a door near the lift. Two men had been holding the door closed. After the door was opened these two men were assaulted.

p. 69
lines 44 - 49
p. 70
lines 1 - 16

He saw the Appellant and Ah Sang drag another man who was wearing light-coloured clothing into the billiard room and beat him up. This man fell to the floor unconscious, somewhere near the door Ah Sang continued to inflict blows with his elbow and fist on that man whilst the Appellant struck him with a billiard cue.

p. 70
lines 12 - 26

The man wearing light-coloured clothing continued to be attacked after he had fallen to the ground. He saw the Appellant striking the man's body on his back using a billiard cue. He saw 4 or 5 blows struck in this manner.

p. 71
lines 3 - 49

The parties eventually ran off leaving the man who had been attacked by the Appellant and Ah Sang lying motionless on the ground in the position where he had been attacked by the Appellant and Ah Sang.

p. 72
lines 28 - 40

- (g) Lee Keung went to the Good World Billiard Hall on the 26th day of June 1980. He went there from the Restaurant with Tai Ngan-chai together with about 7 companions. He was present when a fight broke out and he saw a man called Luen Mo beat Tai Ngan-chai with fists. About one minute after the fight started he left the scene. He was confused about the details of the fighting.

pp. 75 - 77

7. The prosecution adduced further evidence which can be summarized as follows:-

- (a) The Appellant was arrested on the 23rd day of February 1981. He made statements admitting being present at the Good World Billiard Hall on the 26th day of June 1980 and witnessing a quarrel between Yip and his brother. He was present when a fight broke out but he denied participating in any way in the incident. He denied the charges of murder and wounding.
- (b) A fingerprint lifted from a broken billiard cue seized from the scene of the crime was found to be the fingerprint of the Appellant's co-accused.

pp. 91 - 93

p. 114

pp. 94 - 96

(c) A forensic pathologist Dr. Lam Ping-yan gave evidence that he carried out a post mortem on the deceased Ng Fuk-nam on the 28th June 1980. He gave evidence concerning numerous bruises and abrasions on the body of the deceased. He gave evidence as to internal bruising of the scalp and brain. He stated that the cause of death was intercranial haemorrhage that is, bleeding into the skull box and bruising of the brain. The fatal injuries were caused by repeated blows by or against a hard surface, to the skull. The injuries were consistent with repeated blows by a blunt instrument with more than a moderate amount of force. The injuries were not consistent with blows from a hammer. The doctor observed bruising of the deceased's back which was consistent with having been caused by blows from a billiard cue. These blows would have been inflicted with moderate to heavy force.

(d) Evidence was given as to injuries suffered by the victims of the wounding count.

8. At the conclusion of the prosecution case the Crown indicated that it was not in a position to call Kwok Shing-yip. p. 115

9. Counsel for the defence made submissions to the Judge in the absence of the jury that there was insufficient evidence to be left to the jury in relation to both defendants on all the charges. pp. 117 - 141

In relation to the charge of murder it was submitted that there was no evidence that the Appellant had struck the fatal blow or that he participated in the attack with an intent to cause death or grievous bodily harm sharing a common intent with whoever it was who struck the fatal blow.

Counsel for the Crown replied to these submissions upon the basis that there was sufficient evidence for the jury consider whether the two accused persons were engaged in a joint enterprise to do grievous bodily harm to Yip and his companions. pp. 141 - 146

10. The Trial Judge at the conclusion of these submissions directed the Jury to acquit the Appellant on the wounding charge relating to the wounding of Kwok (4th Count) and ruled in respect of the remaining charges that there was sufficient evidence to go to the jury in respect of both accused persons. p. 147

11. Evidence was given for the defence which can be summarized as follows:-

(a) Yeung Kwong-hung said that he was present in the Good World Billiard Hall on the 26th of June 1980. He went there about 10.00 p.m. He was playing billiards there with a friend. He saw a number of people quarrelling. He knew some of these people. He recognised Tai Ngan-chai, Ah Kei Sap Chai and Luen Mo. He was not friendly with these people. He saw a person called Ah Kei pick up a billiard cue and hit people. A fight broke out and he walked to the side of the billiard hall and ran away therefrom with a person called Tak Chai. He said he did not see the Appellant during the fight and he did not know him. pp. 151 - 156

He said he was holding a billiard cue at the time the fight broke out but he threw it or dropped it down before moving to the side of the billiard hall. He denied under cross-examination that he took part in the fight.

pp. 156 - 163

- (b) The Appellant gave evidence that he went to the Good World Billiard Hall at about 10.00 p.m. on the 26th of June 1980. He met his elder brother, lau Sik-hung at the billiard hall. His brother's nickname is Luen Mo. His brother's wife was present with a man called Ah Sang. He played billiards with a man called Ming Chai. He was told that his elder brother had quarrelled with someone. He went to a billiard table where he saw Tai Ngan-chai quarrelling with his elder brother. He tried to persuade them to stop quarrelling. The quarrel ceased and the participants walked away.

pp. 164 - 167

He returned to play billiards and some time later heard a commotion. He said he did not make a telephone call during the intervening period. He saw his brother quarrelling with Tai Ngan-chai. They were surrounded by a number of people. He went to persuade them not to quarrel when he was attacked by people using billiard cues. He recognised only Char Kor-chai among his attackers. He noticed several people fighting. He did not take part in the fight but ran to the nearest rear exit. He endeavoured to leave through various exits and was eventually able to flee from the premises. He denied under cross-examination taking any part in the fighting.

pp. 167 - 175

pp. 175 - 185

pp. 237 - 240

12. The jury at the conclusion of the trial unanimously acquitted the 1st accused of all charges. The jury unanimously convicted the Appellant of all charges except the 5th Count. (The Appellant had earlier been acquitted in relation to the 4th Count. He was acquitted on the 5th Count).

p. 243

13. The Appellant was sentenced to death on the murder count and to 3 years imprisonment on each of the wounding charges. The sentences were concurrent.

pp. 247 - 254

14. An appeal against conviction by the Appellant to the Court of Appeal of Hong Kong (Huggins V.P. Yang J.A. and Barker J.A.) was heard and the Court dismissed the Appellant's appeal in relation to the murder count but allowed the appeal in relation to the wounding counts.

p. 247

15. (a) The Court of Appeal quashed the Count of wounding Yip Kam-ping in view of the judge's misdirection as to the evidence relating to the Appellant's involvement in the assault of Yip. The trial judge has directed the jury as follows:-

"The case against the 2nd accused on this charge hinges on the evidence on Chan Chun-ki because he says he saw the 2nd accused with others strike blows at Tai Ngan-chai's head and subsequent to the Tai Ngan-chai's head was seen to be bleeding.

This was conceded to be a misdirection because the evidence of Chan Chun-ki was that he had seen a number of persons pick up billiard cues and start fighting. He did not name the accused as one of these persons; later he saw the 2nd accused rush forward and beat Yip. He did not see clearly whether he used a fist or weapon: Yip's head was bleeding: later he saw the 2nd accused striking Poon Chi-chuen with a billiard cue.

There had been no direction as to common intent to do grievous bodily harm to Yip and the judge had left the Crown's case upon the basis of the accused's direct responsibility for the injuries to Yip. In view of this and the misdirection as to the evidence the Court quashed the conviction.

p. 247

(b) In relation to the wounding of Tam Man the Court quashed the conviction in view of the judge's failure to make it clear to the jury that the Crown's case was based on a common intent with others to cause grievous bodily harm to Tam man rather than direct participation and an intent on the Appellant's part.

p. 248

16. (c) In relation to the Murder Count the following submissions were made on behalf of the Appellant:-

- (a) There was no evidence of a common design to cause grievous bodily harm and in particular there was no evidence that the persons who attacked the deceased were members of a gang.
- (b) The Trial judge had failed to direct the jury as to the meaning of common design.
- (c) The trial judge misdirected the jury as to factual matters relevant to the Appellant's intent.
- (d) The trial judge failed to warn the jury about the dangers inherent in the identification of a voice. This was relevant to the alleged verbal utterances by the Appellant to "Kill Tai Ngan-chai".

17. (a) The Court after setting out briefly the facts relating to the incident and in particular the attack upon the deceased dealt with the submission in paragraph (a), by observing that the trial judge had invited the jury to consider whether there had been a common design to do grievous bodily harm to the deceased (rather than Yip, the deceased and other members of the group) and the Court concluded.

p. 249
lines 1 - 42

"The evidence of that common design was that the 2nd accused hit the deceased with a billiard cue while others were similarly attacking him, one or more of those others hitting him on the head. It is inconceivable that the 2nd accused was unaware of the fact that others were involved in the attack and that they, too, were using billiard cues.

It was a reasonable inference that all the attackers intended to do grievous bodily harm to the deceased. This was not a case where two or more assailants made independent assaults upon a victim when ignorant of the acts and intents of the others. Counsel sought to draw a distinction between a spontaneous eruption of violence and a concerted attack, but there can be an incident to which both descriptions can aptly be applied. No prior association or agreement is necessary to a common design".

- (b) In relation to submission (b) the Court dealt with this matter by concluding:- p. 250
lines 7 - 12

"Where the possibility exists that contemporaneous assaults by two persons might have been entirely independent, some explanation of the meaning of common design would no doubt be necessary, but in the present case we do not think that it was incumbent on the judge to say more than he did".

The Court after reviewing certain passages in the summing up relating to common intent and the Appellant's participation in the attack concluded that the jury could have been in no doubt about the necessity to find common intent. p. 250
and
p. 251
lines 1 - 5

- (c) In relation to paragraph (c) it was noted that the following passage amounted to a misdirection as to a factual matter. p. 251
lines 6 - 34

"Pang Pui-yuen gave evidence that he was at the billiard room and that after that attack on Tai Ngan-chai, he retreated to a side wall. He said he was there cornered and that he was attacked by the 2nd accused using a billiard cue".

It was apparent that the judge had confused Pang Pui-yuen with Poon Chi-chuen in that the attack described in this passage was clearly upon Poon and not Pang.

The Court concluded:-

"The passage relating to Count 2 was, in relation to Count 1, in our view not so serious a misdirection as to invalidate the verdict".

- (d) In relation to matter (d) the Court set out the following passage in the summing up:- p. 252
lines 3 - 14

"Now, the case against the second accused is a lot stronger. You have the evidence of Tai Ngan-chai who says he heard the second defendant call out, "Kill Tai Ngan-cahi first", and you will remember that he says that he's known the second accused for quite some time, is quite familiar with him, and can recognise his voice.

There was the witness Pang who also said that he heard the second accused call out, "Kill Tai Ngan-chai".

It had been argued by the Appellant that a warning in accordance with the guidelines laid down in Reg. v. Turnbull (1977) 1 Q.B. 224 was essential. It was further argued that this warning was even more important because the judge had dealt with this evidence right at the beginning of his treatment of the case against the 2nd accused.

p. 252
lines 14 - 22

It was further submitted that Pang's evidence as to identification in this respect was hearsay, a fact which he admitted in cross-examination.

p. 252
lines 22 - 28

The Court in dealing with these submissions concluded:-

p. 252
lines 27 - 40

"In our view Reg. v. Turnbull does not apply in all its rigour to a case such as the present. The principle is correctly stated in the first paragraph of the headnote:-

"Whenever a case against a defendant depends wholly or substantially on the correctness of one or more identifications of the defendant, which the defence alleges to be mistaken, the direction to the jury should include a warning of the special need for caution before convicting the defendant and the reasons for that caution". (Emphasis supplied).

Here, the identification of the voice, although clearly an important matter, was not vital to the case, for the judge himself suggested to the jury that "the really important witnesses" were Tam Man and Lee Kit-hung, neither of whom mentioned what has been described as "the murderous invocation".

p. 252
lines 41 - 28

The Court noted the relevant parts of Pang's evidence relating to the voice identification and noted the ambiguities in his answers in cross-examination and re-examination. The Court did state that it would have been better if the judge had warned the jury about the need for caution in relation to the voice identification by Yip and in relation to the corroboration of that identification by Pang. The Court concluded that no undue prominence has been given to the direction by the judge.

pp. 253 - 254

The Court of Appeal concluded its judgment as follows:-

p. 254
lines 6 - 14

"Having considered such weaknesses as there are in the summing-up, we nevertheless are of opinion that no miscarriage of justice has resulted and this is therefore a proper case for the application of the proviso to Section 81 (1) of the Criminal Procedure Ordinance. This appeal against the conviction on Count 1 is dismissed".

pp. 254 - 255

18. The Appellant petitioned Her Majesty in Council for special leave to appeal against the decision of the Hong Kong Court of Appeal. Special leave to appeal was granted on the 22nd day of December 1982.

19. The respondent respectfully submits that the decision reached by the Hong Kong Court of Appeal was correct.

20. The respondent submits that this appeal should be dismissed for the following:-

R E A S O N S

- (1) Because there was clear evidence that the Appellant participated in an attack upon the deceased whilst acting in concert with others and that this attack caused grievous bodily harm to the deceased which resulted in his death.
- (2) Because, although it could not be proved that it was the Appellant who struck the blow or blows which resulted in death, there was evidence from which it could be inferred that the Appellant shared a common intent with the other attackers to cause the deceased grievous bodily harm.
- (3) Because, the trial judge correctly directed the jury as to the law and in particular the need for the Crown to prove a common intent on the part of the Appellant to cause grievous bodily harm to the victim.
- (4) Because, such errors and omissions in the summing up as did exist, in relation to factual matters and the need for caution as to the voice identification, were minor matters in relation to the issues which were vital to the charge of murder. The Court of Appeal correctly applied the proviso to Section 83 (1) of the Criminal Procedure Ordinance Cap. 221.

M. LUCAS, Q.C.

C.W. REID
(Counsel for Respondent)

No. 23 of 1983

IN THE PRIVY COUNCIL

O N A P P E A L

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